

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger M. Young, Sr., Circuit Court Judge

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S.C. SUPREME COURT

JOHN CLEVELAND, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001369

APPENDIX

SUSAN B. HACKETT
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

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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State of South Carolina) In General Sessions Court
County of Charleston) Ninth Judicial Circuit

State of South Carolina) Transcript of Record
vs.) 2015-GS-10-00019
John Cleveland, Jr.,)
Defendant.)

October 13-15, 2015

Charleston, South Carolina

B E F O R E:

The Honorable William Jeffrey Young, Presiding
Judge; and a Jury.

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

Ted Corvey, Assistant Solicitor
Scott Maynor, Assistant Solicitor
Attorneys for the State

Robert Gailliard, Esquire
Attorney for the Defendant

SHARON L. VIZER
CIRCUIT COURT REPORTER

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(Marked at the conclusion of trial.)

1 Tuesday, October 13, 2015

2 (WHEREUPON, the jury panel enters the courtroom at
3 approximately 2:25 p.m.)

4 THE COURT: Thank you, ladies and gentlemen.
5 Please take your seats. Welcome back, to some of you.

6 Solicitor, are you ready to proceed? Call your
7 next case.

8 MR. CORVEY: Your Honor, the State calls the case
9 of John Cleveland, Jr. May I approach?

10 THE COURT: You may.

11 (A document was handed to the Court.)

12 THE COURT: All right. Ladies and gentlemen, we
13 are about to begin the case of the State vs. John
14 Cleveland, Jr. who is charged with failure to register as
15 a sex offender third offense.

16 Ladies and gentlemen, the indictment reads as
17 follows, and this is under indictment 2015-GS-10-0019,
18 the indictment reads in Charleston County South Carolina
19 on or about December 31, 2013 the defendant, John
20 Cleveland, Jr., did fail to register as a sex offender
21 with the Charleston County Sheriff's Department after
22 being instructed to do so as required by Section 23-3-400
23 et seq of the South Carolina Code of Laws 1976 as
24 Amended, to wit.

25 So, ladies and gentlemen, let me remind you, the

1 fact that the defendant failed to register as a sex
2 offender and is indicted for that in no way is indicative
3 that he committed this crime. The State has the burden
4 of proving each and every allegation of this beyond a
5 reasonable doubt. And, ladies and gentlemen, it will be
6 your job to determine whether the State has done that.

7 Now, ladies and gentlemen, you are not under oath.

8 So, Mike, would you please place them under oath.

9 (WHEREUPON, the jury was given their oath.)

10 THE COURT: Thank you. Everyone has accepted the
11 oath.

12 Ladies and gentlemen, as I told another jury panel
13 the reason that you are under oath is this is such a
14 crucial stage of the trial, and, you know, like a
15 building must have a firm foundation so must a jury be a
16 firm foundation of the trial of this case to be
17 productive of the State who is trying the case, and the
18 defendant who is on trial, and these questions that I'm
19 getting ready to ask you will be the basis by which these
20 attorneys build a jury that they believe to be fair and
21 unbiassed and will deliberate and render a true and just
22 verdict.

23 Now, ladies and gentlemen, the first question I
24 have is has anyone on the jury panel ever been related by
25 blood or marriage or have a close personal or business

1 relationship with the defendant, John Cleveland, Jr.?

2 Mr. Cleveland, if you'd please stand and face the
3 jury.

4 (The defendant stood.)

5 THE COURT: All right. Thank you. You may be
6 seated.

7 Thank you. No one is standing.

8 Ladies and gentlemen, this is a list of possible
9 witnesses in this case, and I'm going to go through this
10 list and then I'm going to ask you basically the same
11 question; Jason Bowen of the Charleston County Sheriff's
12 Office, Bob Stober of the Charleston County Sheriff's
13 Office, and Sarah -- is it Lippe?

14 MR. MAYNOR: Lippe.

15 THE COURT: Lippe of the -- or just Sarah Lippe.

16 Ladies and gentlemen, is there any member of the jury
17 panel related by blood or marriage or has had a close
18 personal or business relationship with any of these
19 potential witnesses? If so, please stand.

20 All right. Thank you. No one is standing.

21 Mr. Corvey, would you like to introduce yourself
22 and your staff.

23 MR. CORVEY: Good morning -- good afternoon, ladies
24 and gentlemen. My name is Ted Corvey. I'm an Assist
25 Solicitor here in the Ninth Judicial Circuit. Assisting

1 me in this case will be Assistant Solicitor Scott Maynor.

2 THE COURT: Thank you.

3 Mr. Gailliard?

4 MR. GAILLIARD: Good afternoon, ladies and
5 gentlemen. My name is Robert L. Gailliard. I'm an
6 attorney in private practice here in Charleston. My
7 office is on Romney Street.

8 THE COURT: Thank you.

9 Has any member of the jury panel ever been related
10 by blood or marriage or had a close personal or business
11 relationship or ever been represented by these attorneys
12 or the Solicitor's Office of the Ninth Judicial Circuit?
13 If so, please stand.

14 All right. Thank you. No one is standing.

15 Has any member of the jury panel either formed or
16 expressed any opinion about any issue that is involved in
17 this case? If so, please stand.

18 Thank you, ladies and gentlemen. No one is
19 standing.

20 Have you or any member of your family ever been the
21 victim of or charged with a violent crime? If so, please
22 stand, or if you'd like to speak with me privately I'll
23 be glad to hear it.

24 Yes, sir. Would you like to come down?

25 POTENTIAL JUROR: I can just --

1 THE COURT: Okay. Yes, sir. What's your name and
2 number?

3 POTENTIAL JUROR: My number is 114, Mike Gianoni.
4 I have a brother-in-law that has been charged with a
5 violent crime.

6 THE COURT: And would the fact that you have a
7 brother-in-law who is charged with a violent crime make
8 it so that you can't be fair and impartial to the State
9 or the defendant in this particular case?

10 POTENTIAL JUROR: No.

11 THE COURT: Thank you, sir.

12 Yes, ma'am?

13 POTENTIAL JUROR: I have a brother that was charged
14 with a violent crime.

15 THE COURT: Thank you. The fact that you've had a
16 brother who was charged with a violent crime make it so
17 that you can't be fair and impartial to the State or the
18 defense in this case?

19 POTENTIAL JUROR: No.

20 THE COURT: Thank you, ma'am. What was your name
21 and number again?

22 POTENTIAL JUROR: Dana Brown, 37.

23 THE COURT: Okay. Thank you.

24 Is there any member of the jury panel who is aware
25 of any bias or prejudice towards either the State or the

1 defendant in this case? If so, please stand.

2 (There was no response.)

3 THE COURT: Thank you. Is there any member of the
4 jury panel who was also on the grand jury that indicted
5 this case? If so, please stand.

6 Thank you. No one is standing.

7 Is there any member of the jury panel who is a
8 member of or a contributor to any group which has as its
9 primary concern the promotion of law enforcement or
10 victims' rights? These groups would certainly include
11 but not be limited to Mothers Against Drunk Drivers,
12 Students Against Drunk Drivers or Citizens Against
13 Violent Crime, or any other like group. If so, please
14 stand.

15 Yes, sir. State your name --

16 POTENTIAL JUROR: 114, Mike Gianoni. Yes. I've
17 contributed to groups like that in the past.

18 THE COURT: Okay. Would the fact that you have
19 given money to these groups make it so that you can't be
20 fair and impartial to the State or the defendant?

21 POTENTIAL JUROR: No.

22 THE COURT: Thank you, sir.

23 Has any member of the jury panel or your family
24 members ever had any criminal charges adjudicated by the
25 Ninth Circuit Solicitor's Office? If so, please stand.

1 Yes, ma'am. State your name and number.

2 POTENTIAL JUROR: 158, Claudia Johnson.

3 THE COURT: Yes, ma'am.

4 POTENTIAL JUROR: Possession of narcotics.

5 THE COURT: Okay. And who was that?

6 POTENTIAL JUROR: Me.

7 THE COURT: You. Okay. And it was prosecuted by
8 the Solicitor's Office?

9 POTENTIAL JUROR: Well, the case was dropped.

10 THE COURT: Okay. All right. Would the fact that
11 that happened make it so that you can't be fair and
12 impartial to the State or the defendant?

13 POTENTIAL JUROR: I can be fair and impartial.

14 THE COURT: You can. Thank you, ma'am.

15 Does any member of the jury panel have any
16 immediate relatives or close friends who are currently
17 incarcerated? If so, please stand.

18 (There was no response.)

19 THE COURT: Thank you. Does any member of the jury
20 panel know of any reason whatsoever why he or she should
21 not serve as a juror in this case with particular
22 emphasis being placed on your ability to be fair and
23 impartial to both the State and the defense? If so,
24 please stand.

25 (There was no response.)

1 THE COURT: All right. Thank you.

2 Does the State have any additional questions they
3 would like for me to ask?

4 MR. CORVEY: None from the State.

5 THE COURT: Does the defense have any additional
6 questions it would like me to ask?

7 MR. GAILLIARD: No, Your Honor.

8 THE COURT: All right. Thank you.

9 All right, ladies and gentlemen, as some of you
10 have seen, when your name is called, please come to the
11 podium. Each side will have an opportunity to strike
12 you. Please don't take it personally if you are stricken
13 from this jury. Like I said, each side has some idea as
14 to what they are looking for. They can strike you for
15 any reason or no reason except for race or gender.
16 Please bring all your personal items with you when you
17 come forward.

18 We will have 12 primary jurors and two alternates.
19 Five and five.

20 THE CLERK: Ladies and gentlemen, like the Judge
21 said, if your name is called, please come up to the
22 podium. I'll have you stand and face the parties. I'm
23 going to ask the parties questions, after which I'll
24 either ask you to have a seat in the jury box or ask you
25 to have a seat back in the audience.

1 Juror number 119. Marc Girault, 119.
2 (A white male came forward.)
3 THE CLERK: What say you for the State?
4 MR. CORVEY: Please seat the juror.
5 THE CLERK: What say you for the defendant?
6 MR. GAILLIARD: Please seat this juror.
7 THE CLERK: Mr. Girault, please have a seat in the
8 jury box. You've been selected as a juror in the case.
9 Juror number 206. Jamie Mitchum, 206.
10 (A white female came forward.)
11 THE CLERK: What say you for the State?
12 MR. CORVEY: Please seat the juror.
13 THE CLERK: What say you for the defendant?
14 MR. GAILLIARD: Please seat this juror.
15 THE CLERK: Ms. Mitchum, please have a seat in the
16 jury box. You have been selected as a juror in this
17 case.
18 Juror number 72. Nicholas Costa, 72.
19 (A white male came forward.)
20 THE CLERK: What say you for the State?
21 MR. CORVEY: Please seat the juror.
22 THE CLERK: What say you for the defendant?
23 MR. GAILLIARD: Please seat this juror.
24 THE CLERK: Mr. Costa, please have a seat in the
25 jury box. You have been selected as a juror in this

1 case.

2 Juror number 330. Brock Williams, 330.

3 (A white male came forward.)

4 THE CLERK: What say you for the State?

5 MR. CORVEY: Please excuse the juror.

6 THE CLERK: What say you for the defendant?

7 THE COURT: Did he say excused?

8 THE CLERK: Excused? You excused the juror?

9 MR. CORVEY: Yes, sir.

10 THE COURT: Okay, sir. Please have a seat back in
11 the audience. You have been excused for the trial of
12 this case.

13 Juror 342. Marvin Wright, 342.

14 (A black male came forward.)

15 THE CLERK: What say you for the State?

16 MR. CORVEY: Please seat the juror.

17 THE CLERK: What say you for the defendant?

18 MR. GAILLIARD: Please seat this juror.

19 THE CLERK: Mr. Wright, please have a seat in the
20 jury box. You have been selected as a juror in this
21 case.

22 Juror number 145. Michael Horan, 145.

23 (A white male came forward.)

24 THE CLERK: What say you for the State?

25 MR. CORVEY: Please seat the juror.

1 THE CLERK: What say you for the defendant?
2 MR. GAILLIARD: Please seat the juror.
3 THE CLERK: Mr. Horan, please have a seat in the
4 jury box. You have been selected as a juror in this
5 case.
6 Juror number 316. John Walker, 316.
7 (A black male came forward.)
8 THE CLERK: What say you for the State?
9 MR. CORVEY: Please seat the juror.
10 THE CLERK: What say you for the defendant?
11 MR. GAILLIARD: Please seat this juror.
12 THE CLERK: Mr. Walker, please have a seat in the
13 jury box. You've been selected as a juror in this case.
14 Juror number 305. Fredrick Tillman, 305.
15 (A white male came forward.)
16 THE CLERK: What say you for the State?
17 MR. CORVEY: Please seat the juror.
18 THE CLERK: What say you for the defendant?
19 MR. GAILLIARD: Please excuse this juror.
20 THE CLERK: Mr. Tillman, please have a seat back in
21 the audience. You've been excused from the trial of this
22 case.
23 Juror number 87. Willa Dobbins, 87.
24 (A white female came forward.)
25 THE CLERK: What say you for the State?

1 MR. CORVEY: Please seat the juror.

2 THE CLERK: What say you --

3 MR. GAILLIARD: Please seat this juror.

4 THE CLERK: Ms. Dobbins, please have a seat in the
5 jury box. You have been selected as a juror in this
6 case.

7 Juror number 15. James Barron, 15.

8 (A black male came forward.)

9 THE CLERK: What say you for the State?

10 MR. CORVEY: Please seat the juror.

11 THE CLERK: What say you for the defendant?

12 MR. GAILLIARD: Please seat this juror.

13 THE CLERK: Mr. Barron, please have a seat in the
14 jury box. You have been selected as a juror in the case.

15 Juror number 158. Claudine Johnson, 158.

16 (A black female came forward.)

17 THE CLERK: What say you for the State?

18 MR. CORVEY: Please excuse the juror.

19 THE CLERK: Ms. Johnson, please have a seat back in
20 the audience. You have been excused from the trial of
21 this case.

22 Juror number 31. Charles Bright, 31.

23 (A white male came forward.)

24 THE CLERK: What say you for the State?

25 MR. CORVEY: Please seat the juror.

1 THE CLERK: What say you for the defendant?
2 MR. GAILLIARD: Please excuse this juror.
3 THE CLERK: Mr. Bright, please have a seat back in
4 the audience. You have been excused from the trial of
5 this case.
6 Juror number 148. Sharon Humphries, 148.
7 (A white female came forward.)
8 THE CLERK: What say you for the State?
9 MR. CORVEY: Please seat the juror.
10 THE CLERK: What say you for the defendant?
11 MR. GAILLIARD: Please seat this juror.
12 THE CLERK: Ms. Humphries, please have a seat in
13 the jury box. You have been selected as a juror in this
14 case.
15 Juror number 315. Douglas Wagoner, 315.
16 (A white male came forward.)
17 THE CLERK: What say you for the State?
18 MR. CORVEY: Please seat the juror.
19 THE CLERK: What say you for the defendant?
20 MR. GAILLIARD: Please seat this juror.
21 THE CLERK: Mr. Wagoner, please have a seat in the
22 jury box. You have been selected as a juror in this
23 case.
24 Juror number 147. Cynthia Hull, 147.
25 (A white female came forward.)

1 THE CLERK: What say you for the State?
2 MR. CORVEY: Please seat the juror.
3 THE CLERK: What say you for the defendant?
4 MR. GAILLIARD: Please seat this juror.
5 THE CLERK: Ms. Hull, please have a seat in the
6 jury box. You have been selected as a juror in this
7 case.
8 Juror number 291. Thomas Strock, 291.
9 (A white male came forward.)
10 THE CLERK: What say you for the State?
11 MR. CORVEY: Please seat the juror.
12 THE CLERK: What say you for the defendant?
13 MR. GAILLIARD: Please excuse this juror.
14 THE CLERK: Mr. Strock, please have a seat back in
15 the audience. You have been excused from the trial of
16 this case.
17 That's three strikes for the defendant.
18 Juror 281. David Sperry, 281.
19 (A white male came forward.)
20 THE CLERK: What say you for the State?
21 MR. CORVEY: Please seat the juror.
22 THE CLERK: What say you for the defendant?
23 MR. GAILLIARD: Please seat this juror.
24 THE CLERK: Mr. Sperry, please have a seat in the
25 jury box. You have been selected as a juror in this

1 case.

2 Now picking for the first alternate. The strikes
3 are one and two.

4 Juror number 246. Jeffery Reynolds, 246.

5 (A white male came forward.)

6 THE CLERK: What say you for the State?

7 MR. CORVEY: Please seat the juror.

8 THE CLERK: What say you for the defendant?

9 MR. GAILLIARD: Please seat this juror.

10 THE CLERK: Mr. Reynolds, please have a seat in the
11 jury box. You have been selected as a juror.

12 Now picking for the second alternate. The strikes
13 are one and two.

14 Juror number 73. Sheila Costello, 73.

15 (A white female came forward.)

16 THE CLERK: What say you for the State?

17 MR. CORVEY: Please seat the juror.

18 THE CLERK: What say you for the defendant?

19 MR. GAILLIARD: Please seat this juror.

20 THE CLERK: Ms. Costello, please have a seat in the
21 jury box. You have been selected as a juror in this
22 case.

23 Your Honor, the jury has been selected and are
24 seated.

25 THE COURT: All right, ladies and gentlemen. You

1 all have been selected as the jury for this case. Right
2 now I'm going to send you back to the jury room but
3 please don't discuss anything about the case.

4 I've got a few matters I need to take up with the
5 attorneys but while you are back there if you all could
6 pick who you want to be the foreperson of the jury, and
7 the foreperson will, of course, be the spokesperson here
8 in court and would lead the deliberations at the
9 appropriate time and write down the verdict form, but
10 I'll give you more instructions on that at a later point
11 in time.

12 But, ladies and gentlemen, I'm going to send you
13 back for just a few minutes and then bring you back out
14 here and talk to you a little more. Thank you, ladies
15 and gentlemen. The foreperson of the jury can be any of
16 the primary jurors. It cannot be the alternate. Thank
17 you very much.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 2:45 p.m.)

20 THE COURT: Thank you. You may be seated.

21 Are there any objections to the jury that has been
22 selected or the manner in which they have been selected,
23 from the State?

24 MR. CORVEY: None from the State, Judge.

25 THE COURT: Mr. Gailliard?

1 MR. GAILLIARD: No, Your Honor.

2 THE COURT: All right. That will be our jury.

3 All right. Ladies and gentlemen, again, I'm sorry
4 some of you weren't selected to be on the jury but you
5 might have an opportunity tomorrow morning to be selected
6 for one more jury for the week. That will be the last
7 opportunity that you would have to serve as jurors. So
8 you need to call back after 6 o'clock tonight. You all
9 got a number that will have a recording and if you could
10 just follow the instructions on that recording.

11 Ladies and gentlemen, have a wonderful afternoon
12 and thank you for your contribution to your justice
13 system. Thank you, ladies and gentlemen.

14 (WHEREUPON, the jury panel leaves the courtroom.)

15 THE COURT: All right. What I'm going to do now is
16 I'll bring them back in in just a few minutes. Give them
17 a few more minutes, excuse them for this afternoon to
18 come back at two o'clock tomorrow, and then I'll listen
19 to your motion and then I'll give you a ruling on it. I
20 might take it under advisement. All right?

21 You want to see if they are ready?

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 2:50 p.m.)

24 THE COURT: You all can sit anywhere you want to.
25 Concert seating, I guess, not reserved seating, except

1 for the foreperson.

2 THE BAILIFF: Juror 145 is the foreperson, Your
3 Honor.

4 THE COURT: All right.

5 THE BAILIFF: And all are present.

6 THE COURT: You are Mr. Horan, right?

7 THE FOREPERSON: Correct.

8 THE COURT: Thank you, Mr. Horan, for being the
9 foreperson.

10 Ladies and gentlemen, we still have some pretrial
11 matters to take up in this case then I have some other
12 things I have to do tomorrow morning. So I'm going to
13 release you now with instructions that you be back here
14 at two o'clock tomorrow and then we'll start on this case
15 and hopefully we could be done by Thursday. That way it
16 won't interfere with anybody's weekend or any more of
17 your clean up work that you might be having to do as a
18 result of that storm.

19 Ladies and gentlemen, please do not do any
20 independent research on this. Don't go telling everybody
21 you got jury duty because what happens is you go, I've
22 got jury duty, and they go, You know, when I was a juror
23 this is what happened. Well, you don't need to hear what
24 happened in their case. This is a unique case and the
25 evidence will give you all you'll need to know to render

1 a verdict at the appropriate time.

2 So, ladies and gentlemen, have a nice evening. Go
3 to your jobs in the morning or don't go to jobs, whatever
4 you want to do. I won't tell anybody. But be back here
5 at two o'clock tomorrow. Okay? Thank you, ladies and
6 gentlemen.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 2:52 p.m.)

9 THE COURT: All right. Are you ready to argue your
10 motion, Mr. Gailliard?

11 MR. GAILLIARD: Yes, Your Honor. We handed up a
12 short memorandum in a case. We are moving to dismiss
13 this action in that the State cannot prove and the
14 defendant was not required to register in that he is
15 entitled to what's known as the sweetheart exception.

16 Apparently, the offense that we are taking about
17 occurred back in 1986. He was convicted some time after
18 that in 1987, sentenced under the Youthful Offender Act,
19 and it was not until he was released from the Department
20 of Corrections in 2001 based upon some further conviction
21 that had nothing to do with any kind of sex act that
22 apparently he was told that he had to register.

23 I don't see anything in the indictment or anywhere
24 else that indicates that he was given any kind of
25 registry form as is required under the statute or that he

1 was told that he had to register based upon the 1987
2 conviction under the Youthful Offender Act and without
3 that, which is jurisdictional, they can't proceed with
4 this case.

5 THE COURT: All right. Mr. Corvey?

6 MR. CORVEY: Thank you, Your Honor. First, Judge,
7 the State's position would be that the argument as to the
8 sweetheart exception is irrelevant in this case. I think
9 there's an abundance of evidence in the record and I
10 think we can call testimony to supplement the record in
11 this case to show that he's had ample notice with regard
12 to his requirements to be on the registry.

13 The conviction occurred in 1987. He did not have
14 the Department of Corrections stint until the late 90's
15 at which point he must have been told and as it's always
16 difficult in these cases it can be a little difficult to
17 try to track back when notice was provided or when notice
18 was not provided.

19 What I do know, however, is that Mr. Cleveland
20 signed up at the Charleston County Sheriff's Office
21 shortly after being released from prison in 2001 and
22 acknowledged several aspects of the registry on this
23 form. If I may approach, Your Honor?

24 THE COURT: Yes.

25 (A document was handed to the Court.)

1 MR. CORVEY: This is his initial paperwork with the
2 Charleston County Sheriff's Office regarding his
3 requirement to register. Since that time, Judge, he's
4 been intermittently registering with the Sheriff's
5 Office.

6 The way that that process works, Judge, is they do
7 -- given his conviction he's required to appear four
8 times a year. During each one of those convictions they
9 go through a registration process in which he
10 acknowledges when his next registration date is and
11 confirms a number of identifying information as well as
12 providing ID, an occasional taking a picture.

13 Once a year in an offender's birth month they go
14 through a little bit more of an intensive registration.
15 If I may approach, Judge?

16 THE COURT: Yes.

17 (A document was handed to the Court.)

18 MR. CORVEY: This was from his registration in June
19 of 2013, and from June of 2013 his next registration date
20 would have been September of 2013. He made that
21 registration date. If I may approach?

22 THE COURT: Yes.

23 (A document was handed to the Court.)

24 MR. CORVEY: The second page of this indicates his
25 signature and the Sheriff's Office indicates that his

1 next registration date was in December of 2013. That's
2 the date in question in which he missed. So with regard
3 to notice I think that's a moot point at this point of
4 the proceeding.

5 With regard to the sweetheart exception, that is a
6 carved out exception that is well recognized; however,
7 for it to be applicable the victim has to be within a
8 certain age range. The victim in this case was 12. Your
9 Honor, if I may approach?

10 THE COURT: Mr. Gailliard, you are saying that she
11 was 16? Your memorandum says she was 16 at the time or
12 was that just if she was 16?

13 MR. GAILLIARD: She was above 14 according to our
14 understanding.

15 THE COURT: Is there any exception that allows for
16 a 14 year old?

17 MR. GAILLIARD: The statute says 14, 14 or older.

18 THE COURT: Then I guess the question is is for me
19 to make that determination I would have to retry the
20 case.

21 MR. GAILLIARD: Well, I don't know that you have to
22 retry the case but there needs to be some evidence in
23 front of the Court to indicate whether or not he meets
24 the exception and the Court has to first determine --

25 THE COURT: But I don't know that -- if he was

1 charged with the criminal offense of doing that then that
2 wouldn't be an issue of mine. This issue is just whether
3 he registered or not.

4 MR. CORVEY: Well, Judge, I think I kind of put the
5 cart a little bit before the horse because ultimately I
6 still would contend that her age is irrelevant. I
7 believe she was 12. I actually spoke with her today and
8 confirmed her birth date of being [REDACTED].

9 However, as the Hazel case indicates as the
10 difficulty can arise with these cases where the sexual
11 conviction that places one on the registry predates the
12 actual existence of the registry there aren't findings of
13 facts as to these things so the appropriate remedy would
14 be a declaratory judgment.

15 However, as the Hazel case that Mr. Gailliard
16 mentioned -- or his motion makes clear the real
17 determinations regarding what version of the statute
18 applies to an offender is when they are eligible to begin
19 registering. Here in this case South Carolina adopted
20 the registry in 1994.

21 Mr. Cleveland wasn't incarcerated at that point.
22 He was at that point not known to the system. They
23 weren't going out en masse and finding everyone who had a
24 prior sex offense. He was not able to be properly
25 noticed until later 2000's. However, he was eligible for

1 the registry until 1994 and under that version of the act
2 there was no sweetheart exception. So I don't think it
3 would be applicable to him regardless whether or not we
4 took Mr. Gailliard's argument that the victim was 16 in
5 this case.

6 THE COURT: Yeah, assuming that would be true.

7 MR. CORVEY: Even withstanding that was true the
8 State's position would be that he's not eligible for the
9 exemption. And further, Your Honor, if I may approach?
10 I'm handing up the indictment, the original arrest
11 warrant and sentencing sheet for his 1986 conviction, and
12 I also had some investigators track down information
13 regarding the victim today. I also spoke with her on the
14 phone, with another member of my office present. She
15 confirmed her birth date.

16 (Documents handed to the Court.)

17 THE COURT: Anything else, Mr. Gailliard?

18 MR. GAILLIARD: Yes, Your Honor. I'd ask the Court
19 to forgive me. I need to actually put the right case
20 with this but the case law indicates and it is a
21 requisite to this requirement that the defendant be given
22 what's known as a preregistration form and that he has to
23 sign that, and I don't know that the State ever presented
24 that in all their papers saying that he was informed of
25 his requirement to register.

1 The fact that he did register does not get past
2 that requisite that they made sure prior to his release
3 that he signed the form. They were supposed to notify
4 him both verbally and get his written signature saying --
5 on the preregister form, signed and dated by the
6 defendant advising him of the registry requirement. If
7 they don't have that they can't go forward.

8 THE COURT: Well, what I mean though is if he's
9 already been registering, I mean, that would be like
10 saying, you know, that having a driver's license is
11 pretty much evidence that you passed the driver's test.
12 So the thing is self authenticating to some extent.

13 The fact that he had registered several times
14 before would indicate to the Court that he knew he had to
15 register because, you know, most people don't just go
16 register if they didn't have to. The fact that he
17 registered several times indicates to the Court that he
18 knew he has to register and that's why he did it. I'm
19 going to read over your cases. I'm going to take the
20 matter under advisement.

21 MR. GAILLIARD: I'll present you with the case --

22 THE COURT: That will be fine.

23 MR. GAILLIARD: -- that indicates this about the
24 requirement of the preregistry form being signed and
25 dated by the appellant which advises him of the

1 registration requirement.

2 THE COURT: And I can understand that argument if
3 the first time he was supposed to register he didn't
4 register. That would be a very good argument for that.
5 But I don't know that that argument holds a whole lot of
6 water for somebody who has already been registering.

7 MR. GAILLIARD: All right. I'll just present that
8 case to Your Honor tomorrow.

9 THE COURT: Thank you so much.

10 Anything further from the State?

11 MR. CORVEY: Just briefly, Judge, just to kind of
12 sum up, just to kind of go back to this. I think that
13 Mr. Gailliard's motion and his claims that his client
14 does not have to register are irrelevant in this case.
15 It's not a matter that's contained in the indictment and
16 it really doesn't have anything to do with the underlying
17 charge. I don't think there's any dispute that
18 Mr. Cleveland is, in fact, on the sex offender registry
19 and as a part of being on that registry he was required
20 to register quarterly. What we are here about is to
21 determine whether or not he came December of 2013 and
22 registered.

23 You know, I think the matter for declaratory
24 judgment would have been appropriate in another posture
25 of the case perchance and in addressing that the State's

1 position would be that the sweetheart exception that
2 Mr. Gailliard described is inapplicable to his client
3 since it wasn't enacted until the 1988 -- or 1998 version
4 of the statute. We believe that he was eligible under
5 the 1994 version of the statute and therefore any
6 exceptions or requirements must be against him under that
7 version of the statute.

8 Secondly, Your Honor, the exception doesn't apply
9 to victims who are 12 years old. So I think we have
10 provided ample documentation to indicate that at the time
11 of the conviction, at the time of the offense the victim
12 of the crime for which he was placed on the registry was
13 under the age of 14, was in fact 12.

14 THE COURT: All right. Thank you. I'm going to
15 take this matter --

16 MR. GAILLIARD: One further argument.

17 THE COURT: Yes, sir.

18 MR. GAILLIARD: Clearly, there is an equal
19 protection argument here that has to be made. The State
20 only, only requires persons who are convicted and
21 sentenced before they go back and look into their past.
22 For someone who was with Mr. Cleveland committed the same
23 offense and according to the solicitor would be required
24 to register they never notify, and they don't. So we
25 have to make an equal protection argument there that they

1 can't say, okay, the only people who we are going to
2 require to register are those who managed to get into
3 some criminal trouble and we have them in the Department
4 of Corrections and now we can say, okay, now we know that
5 you committed -- they could -- that's selecting out a
6 class of person and saying, okay, we are going to apply
7 the law to you and no one else, and his equal protection
8 argument has to prevail in that situation.

9 THE COURT: All right. Like I said, I'll take it
10 under advisement. If you all will be back at 1:30.
11 That's a half an hour before when I'll give you my
12 ruling.

13 MR. GAILLIARD: Thank you very much, Your Honor.

14 THE COURT: Thank you all.

15 MR. CORVEY: Judge, one more thing. I think
16 there's a matter of bond. My office's position would be
17 that trial has started at this point.

18 THE COURT: Well, the jury hadn't been sworn yet.

19 MR. CORVEY: Okay. That's true.

20 THE COURT: We are still in pretrial matters. I
21 would remind you, Mr. Gailliard, to explain to your
22 client if he doesn't show up tomorrow we are still moving
23 forward with this case. I'm going to leave him now
24 because the trial has not technically started and the
25 jury has not been sworn.

1 MR. CORVEY: Understood, Judge. And, Judge, if you
2 wouldn't mind if I could make additional copies of the
3 documents.

4 THE COURT: Certainly, I'll give all of these back.
5 Make me a copy of everything.

6 MR. GAILLIARD: I need a copy of them myself.

7 THE COURT: And he needs a copy.

8 MR. CORVEY: I will scan them all in via Pdf in one
9 document and e-mail them to your clerk. Thank you,
10 Judge.

11 THE COURT: Thank you.

12 MR. GAILLIARD: That's it for today, Your Honor?

13 THE COURT: That's it for the day.

14 MR. GAILLIARD: Thank you very much.

15 THE COURT: You all have a nice day.

16 MR. GAILLIARD: See you all at 1:30 tomorrow.

17 (WHEREUPON, the trial was recessed for the day.)

18 Wednesday, October 14, 2015

19 THE COURT: All right. This is the case of John
20 Cleveland, Jr. or State vs. John Cleveland, Jr., under
21 indictment 2015-GS-10-0019 on the charge of failure to
22 register as a sex offender.

23 Bailiff, could you please go call in the courthouse
24 halls three times the name of the defendant.

25 (PAUSE.)

1 THE BAILIFF: No answer, Your Honor.

2 THE COURT: All right. Mr. Corvey, are you ready
3 to proceed?

4 MR. CORVEY: Yes, sir, Your Honor.

5 THE COURT: Mr. Gailliard, have you heard from your
6 client today?

7 MR. GAILLIARD: Your Honor, I spoke with him on
8 three separate occasions today.

9 THE COURT: Do you think he's intending to come or
10 you don't know? You're just surprised he's not here, I
11 guess.

12 MR. GAILLIARD: The last conversation I had with
13 him he was to meet me here at one o'clock in courtroom
14 3B.

15 THE COURT: Okay. So let the record reflect that
16 it is now 2:30 and he is not present. Like I said, we
17 will proceed in his absence.

18 Mr. Corvey, you may call your first witness
19 concerning the bond.

20 MR. CORVEY: Thank you, Your Honor. With regards
21 to the bond, if I may approach?

22 THE COURT: Yes, sir.

23 MR. CORVEY: Your Honor, I'm handing up to the
24 Court the bail proceeding form, the second page, which he
25 signed the second page of which he acknowledges that his

1 failure to show up at trial at the top could result in a
2 trial in his absence.

3 THE COURT: Do you object to these going in?

4 MR. GAILLIARD: No, Your Honor, I do not.

5 THE COURT: Okay. Very well.

6 MR. CORVEY: I'm also handing the Court a letter
7 that was mailed to Mr. Cleveland on September 11, 2015
8 requiring his presence at the trial this week. A copy of
9 that letter was also sent to his attorney, Mr. Robert
10 Gailliard, at the address that he had on file with my
11 office.

12 THE COURT: All right. And Mr. Gailliard as an
13 officer of this Court has stated that he has talked to
14 his client, informed his client to be here today, at
15 least one o'clock. As the trial judge I spoke with the
16 defendant yesterday and told him that he had to be here
17 today or we would try the case in his absence. So I find
18 that the defendant had adequate knowledge. He had
19 absolute knowledge to be here today. He has chosen not
20 to proceed. The wheels of justice will not be slowed by
21 his dilatory actions and therefore we will proceed. All
22 right. Thank you.

23 Anything further, Mr. Gailliard?

24 MR. GAILLIARD: No, Your Honor.

25 THE COURT: Okay. Thank you.

1 Bring our jury.

2 (WHEREUPON, Court's Exhibit Numbers 1 and 2 were
3 marked and made a part of the record.)

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 2:35 p.m.)

6 THE BAILIFF: The jurors are present and seated,
7 Your Honor.

8 THE COURT: All right. Thank you.

9 Good afternoon, ladies and gentlemen. I hope you
10 had a good morning and a good evening last night.

11 Mike, would you please swear our jury.

12 (WHEREUPON, the jury was given their oath.)

13 THE CLERK: Let the record reflect that all 14
14 jurors took their oath.

15 THE COURT: Very well. Thank you.

16 Well, ladies and gentlemen, before we begin this
17 trial I want to tell you that this trial might be
18 different from what you might expect. You know, most
19 people never have an opportunity to attend and
20 participate in an actual trial as you are today and may
21 think from watching TV, movies or reading in books that
22 trials are always full of high drama, intense action and
23 riveting circumstance.

24 Now, while all these things might be true at times
25 this trial is not for entertainment. This is a real

1 trial which is a fundamental part of our democracy and
2 it's a search for the truth in an effort to make sure
3 that justice is done. In searching for the truth and
4 ensuring that justice is done is often slow, deliberate
5 and repetitive, the exact opposite of what you seen on
6 TV, movies or read in books.

7 Now, ladies and gentlemen, this courtroom is a
8 place of honor that is dedicated to the protection and
9 preservations of our citizens' rights through what has
10 been called and I truly believe in the bottom of my heart
11 to be the greatest justice system ever created by
12 mankind.

13 The attorneys who are appearing before you are
14 advocates for the parties that they represent but first
15 and foremost they are officers of this Court who are
16 sworn to uphold the integrity and the fairness of our
17 judicial system and to help you in your search for the
18 truth.

19 Ladies and gentlemen, you should expect them to be
20 professional, competent and ethical in the representation
21 of their client's interest and, ladies and gentlemen, I
22 remind you that you just took an oath to listen to the
23 evidence in this case and to reach a fair and just
24 verdict, and you are expected to be professional,
25 reasonable and ethical as well.

1 Now, ladies and gentlemen, what I'm going to tell
2 you now is intended to serve as an introduction of the
3 trial of this case. These remarks are not a charge on
4 the law. I'll charge you the law that is applicable to
5 this particular case at the end of the trial. This is
6 merely an explanation of the procedures that you will
7 follow so you may better understand what is happening.

8 Now, ladies and gentlemen, let me tell you up front
9 that you will not be allowed to take notes during this
10 trial and therefore it's very important that you listen
11 closely throughout this trial.

12 Now, ladies and gentlemen, the defendant in this
13 case is charged by indictment filed in this Court with
14 failure to register as a sex offender. The specific
15 elements will be explained to you later.

16 Now, ladies and gentlemen, the indictment charging
17 the defendant, as I told you before, is only the document
18 by which this case is brought into court and is not in
19 any sense evidence of any of the allegations contained
20 therein. The defendant has pled not guilty, therefore
21 the State has the burden of proving each and every
22 allegation of the charge in the indictment beyond a
23 reasonable doubt. And, ladies and gentlemen, it will be
24 your job to determine whether the State has met that
25 burden.

1 Now, ladies and gentlemen, your purpose is to
2 determine the facts in this case. You are to determine
3 the facts from the testimony you hear from this witness
4 stand and any other evidence that is introduced here in
5 court, and it will be up to you as jurors to determine
6 the inferences which you feel may be properly drawn from
7 the evidence.

8 Now, ladies and gentlemen, it's especially
9 important that you perform your duty diligently and
10 conscientiously because ordinarily there is no way for --
11 there's no way to correct an erroneous determination of
12 facts by a jury. On the other hand but with equal
13 emphasis the same law that makes you the judges of the
14 facts makes me the judge of the law, and the law given to
15 you by me is the only law that you may consider.

16 Ladies and gentlemen, you must accept the law as I
17 give it to you and apply it even though you might
18 disagree with it.

19 Now, ladies and gentlemen, and I'll make an
20 agreement with you right now that I will not tell you
21 what the facts are and you cannot disagree with me about
22 what the law is or what the law ought to be. Your job is
23 to take the law as I give to it you, apply it to the
24 facts as you find them and after listening to the
25 witnesses and the other evidence and after hearing that

1 evidence you will deliberate and render a just verdict
2 under the solemn oath that you just took as jurors.

3 Now, ladies and gentlemen, until I advise you to
4 begin your deliberation at the conclusion of this case
5 you must not discuss the case with others including your
6 fellow jurors except when authorized to do so by me. You
7 may not use a computer, cellular phone or other
8 electronic device with communications capabilities while
9 in attendance at trial or during your deliberations.

10 Now, of course, these devices may be used during
11 breaks, lunch breaks or when you go home for the evening
12 but still they can't be used to disclose any information
13 about the case when you are not in court, and information
14 about the case would include but certainly not be limited
15 to information about a party, a witness, an attorney or
16 court officer, any news accounts about the case or any
17 information collected through juror research.

18 Ladies and gentlemen, after the case is submitted
19 to you you must discuss it only in the jury room with
20 your fellow jurors. And, ladies and gentlemen, the
21 attorneys and the parties in this matter are advised that
22 they aren't to talk to you at all. So if you see one of
23 them out there in the little common square at four
24 corners of the law and they don't even speak, well, they
25 are not being unfriendly. They are just following my

1 instructions.

2 Now, ladies and gentlemen, it's very important that
3 you keep an open mind and not decide any issue in this
4 case until all of the evidence has been presented, the
5 attorneys have given you their close arguments and I have
6 charged you on the law of this case. And, ladies and
7 gentlemen, it's your responsibility to determine the
8 guilt or innocence of the defendant and your verdict must
9 be based solely on the evidence as it is presented in
10 this courtroom and on the law as I give it to you.

11 Now, ladies and gentlemen, in just a few minutes
12 the solicitor will make what is known as an opening
13 statement where he will explain to you what he believes
14 the issues are in this case. The attorney for the
15 defendant may also make an opening statement, although
16 he's not required to do so. But I do, again, remind you
17 what the attorneys tell you during their opening
18 statements is not evidence. It's only their contention
19 as to what they believe the issues are in this case.

20 Now, ladies and gentlemen, from time to time during
21 this trial you may hear one of the lawyers say something
22 like, Your Honor, I believe we have a question or a
23 matter of law to discuss with you or, Your Honor, may we
24 approach the bench, or sometimes I might find it
25 necessary to excuse you from the courtroom for a short

1 period of time while the attorneys and I discuss a matter
2 of law, and the reason for this, as I said, you are the
3 judges of the facts and sometimes when we are discussing
4 a matter of law it may be necessary for me to make some
5 comment on the facts as to whether a particular law
6 applies and as I said I'm not supposed to tell you what
7 the facts are so I will excuse you from these
8 conversations so that you will in no way be influenced by
9 anything that I say or do in connection with the facts.

10 And, ladies and gentlemen, also during the trial
11 you may hear one of the attorneys make an objection to
12 certain evidence that is about to be presented. Whether
13 I sustain, which is to grant the objection, or overrule,
14 which would be to deny the objection, should not be
15 construed that I favor one side over the other. I do
16 not. Nor should you infer that the objecting party is
17 trying to hide something from you.

18 Ladies and gentlemen, in this court as in all
19 situations in life there are specific rules that must be
20 followed and the attorneys as officers of this Court are
21 merely trying to follow the rules of evidence in making
22 their objections and I am only ruling based upon what I
23 believe the law of the State of South Carolina to be
24 concerning the evidence being presented.

25 Now, ladies and gentlemen, in determining what the

1 true facts are or the facts are in this case you must
2 decide whether or not the testimony of a witness is
3 believable. It will be my responsibility to rule as a
4 matter of law as to whether certain testimony is
5 admissible but once the testimony is admitted whether or
6 not you decide to believe it would be entirely up to you
7 to determine.

8 Ladies and gentlemen, in deciding whether to
9 believe a witness you have a right to consider the
10 interest of any witness, the bias of any witness, the
11 prejudice of any witness and the opportunity for the
12 witness to have actually observed the matters and things
13 about which the witness may testify, and you may consider
14 how the witness acts on the witness stand.

15 Ladies and gentlemen, you have a right to consider
16 anything that is in the record that will help you
17 evaluate the testimony of the witnesses. That means as
18 jurors it is your duty to pay close attention to the
19 witnesses, to observe the witnesses, to listen to the
20 witnesses and to pay close attention to the attorneys and
21 to the Court.

22 Ladies and gentlemen, please don't let your
23 thoughts wander but please give strict attention to the
24 testimony so that at the end of all the testimony and
25 after the argument of counsel and the charge on the law

1 by me you will then be in a position to determine what
2 the true facts are and to apply the law to those facts
3 and thus render a true and just verdict.

4 Mr. Foreman, in addition to your duties as a
5 regular juror it will also be your duty to preside in the
6 jury room and to be the jury spokesperson here in court.
7 Like I said, you'll also write down the verdict but I'll
8 give you specific instructions on that at the appropriate
9 time.

10 Now, in order to preserve everyone's rights I will
11 give the parties an opportunity to object to anything
12 that I have stated to you.

13 Does the State have any objections to anything I've
14 stated to this jury?

15 MR. CORVEY: No objection, Your Honor.

16 THE COURT: Does the defense have any objection to
17 anything I stated to the jury?

18 MR. GAILLIARD: None.

19 THE COURT: Thank you.

20 All right, ladies and gentlemen. We will now begin
21 the trial of this case.

22 Mr. Corvey, for the State -- excuse me.

23 MR. MAYNOR: Good afternoon, ladies and gentlemen.

24 First of all, thank you for being here. I'm sure you'd
25 much rather be somewhere else on this beautiful day. My

1 name is Scott Maynor. I'm an assistant solicitor with
2 the Ninth Circuit sitting with Ted Corvey, right here,
3 who's also an assistant solicitor for the Ninth Circuit.

4 We brought this case before you today because this
5 case is about public safety, it's about public welfare.
6 It's about you, it's about me, it's about the defendant,
7 Mr. John Cleveland, Jr. He's been charged with failing
8 to register. When I say failing to register, failing to
9 register as a sex offender.

10 The law in South Carolina says that each sex
11 offender has a duty to register with the Sheriff's
12 Office. Sometimes that duty is biannually, sometimes
13 quarterly, depending on the type of crime.

14 Mr. John Cleveland, Jr. was convicted in 1997 with
15 criminal sexual conduct with a minor second degree. We
16 are not here to relitigate that case. He's already been
17 convicted of it. He is here today about failing to
18 register as a sex offender.

19 Now, regarding the facts a little bit. Like I
20 said, January 13, 1987 he was convicted with criminal
21 sexual conduct with a minor in the second degree.
22 Subsequently, by the laws of South Carolina which require
23 you to register with the Sheriff's Office for a time he
24 did register. He registered enough to know that he was
25 supposed to register, how to do it and most importantly

1 when he was supposed to do it. Because he was convicted
2 of that type of crime he was required to register four
3 times a year.

4 One of those times was in September of 2013, and
5 another one of those times was in December of 2013. I'm
6 going to fast forward from '87 to 2013. September 18,
7 2013 he came to the Sheriff's Office and registered, just
8 like any other time that he was supposed to. He
9 acknowledged during that registration that he was
10 supposed to register then, when he was supposed to
11 register next and any differences that may have come or
12 gone in the time in between.

13 He signed during that registration in
14 acknowledgment forms stating that he knew he was supposed
15 to come in and register in December of 2013. So December
16 becomes critically important for this case whether or not
17 he came in and he registered. He didn't. December came
18 and it went.

19 Bob Stober from the Sheriff's Office even gave him
20 a courtesy call towards the end of the month on December
21 27. He left him a voicemail. He said, Mr. John
22 Cleveland, Jr., you know, you're required to register and
23 you will be breaking the law if you don't. He didn't
24 hear from him, and a month later on January 27th
25 Charleston County Sheriff's Office filed charges against

1 him for failing to register as a sex offender.

2 So I'm going to tell you about who you are going to
3 hear from. First, you're going to hear from the
4 Charleston County Clerk of Court, an individual who is
5 going to tell you that he was, in fact, convicted of the
6 crime that I said he was in 1987.

7 Then we're going to call Jason Bowen from the
8 Charleston County Sheriff's Office who works in sex
9 offender registry. He's going to tell you how the
10 registration process works. He's going to tell you about
11 this case. He's going to tell you about registering with
12 John Cleveland, Jr. at an earlier time.

13 Then you're going to hear from Bob Stober who also
14 works for the sex oftener registry. He was the one who
15 registered with Mr. Cleveland in September and was also
16 responsible for his registration process in December that
17 never happened. So as the State, we have the burden to
18 prove this to you beyond a reasonable doubt.

19 Now, that doesn't mean we have to prove it to you
20 beyond all certainty because as you probably know most
21 things in life can't be proved beyond all certainty, with
22 absolute certainty. But what it does mean is that we
23 must firmly convince you of the fact and that he did, in
24 fact, fail to register as a sex offender.

25 So I'd ask that you listen carefully to the

1 witnesses, listen carefully to Mr. Corvey and
2 Mr. Gailliard and also review the evidence when you get
3 it back into the jury deliberation room very carefully
4 because we believe that after you've heard everything and
5 seen everything you will be firmly convinced that
6 Mr. Cleveland, Jr. did fail to register as a sex
7 offender, and for that we would request that you find him
8 guilty at the end of this trial. Thank you.

9 THE COURT: Thank you.

10 Mr. Gailliard?

11 MR. GAILLIARD: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 MR. GAILLIARD: Mr. Foreman, ladies and gentlemen
15 of the jury, I represent the defendant, John Cleveland,
16 Jr., and as you've heard he was -- he actually pled
17 guilty to an offense back in 1987. I'm going to ask you
18 to listen to some particular information. In 1987 there
19 was no act that required --

20 MR. CORVEY: Objection, Your Honor.

21 THE COURT: Sustained. You want to come forward.

22 (WHEREUPON, a bench conference was had off the
23 record.)

24 THE COURT: Objection is sustained.

25 MR. GAILLIARD: Ladies and gentlemen of the jury,

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1 you are to determine whether or not my client actually
2 registered or did not register, and I'll ask you to
3 consider all the evidence before you to make up your
4 mind. Thank you.

5 THE COURT: Thank you.

6 The State may call its first witness.

7 MR. CORVEY: The State calls Sarah Lippe.

8 SARAH LIPPE, after having been duly sworn,
9 testified as follows:

10 THE CLERK: State your full name and then spell
11 your last name for the record.

12 THE WITNESS: Sarah Lippe, L-i-p-p-e.

13 DIRECT EXAMINATION

14 BY MR. CORVEY:

15 Q. Good afternoon, Ms. Lippe. Where do you work?

16 A. I work at the Clerk of Court's Office downstairs.

17 Q. What is your job at the Clerk of Court's Office?

18 A. I am the case management supervisor over General
19 Sessions.

20 Q. Could you please describe for the jury a little bit
21 about what your roles and duties are on a day-to-day
22 basis on this job?

23 A. Sure. Our office is responsible for maintaining
24 court records, specifically my department, General
25 Sessions, handles criminal cases that happen here in

SARAH LIPPE - DIRECT BY MR. CORVEY

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1 Charleston County, so that would be everything from an
2 arrest warrant to motions and various orders that are
3 filed in the case.

4 Q. And how are those records stored?

5 A. I'm sorry?

6 Q. How are those records stored?

7 A. They are stored physical -- the physical files are
8 in our office and anything older than currently 1996 is
9 on microfilm, and those are kept at a warehouse that we
10 pull them from.

11 Q. And with regard to this case, did you review any
12 records pertaining to this case?

13 A. I did.

14 Q. Did you review an indictment in this case from
15 1986?

16 A. Yes.

17 MR. CORVEY: Your Honor, may I approach?

18 THE COURT: You may.

19 Q. I'm handing you what's been premarked as State's
20 Exhibit 1. What is that, Ms. Lippe?

21 A. This is an indictment for John Cleveland. It's a
22 1987 indictment, and the charge is criminal sexual
23 conduct with a minor second degree, and it also has the
24 sentencing information.

25 Q. Did you also review documents pertaining to

1 Mr. Cleveland's sentence in 1987?

2 A. Yes.

3 MR. CORVEY: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q. Now I'm handing you what's been premarked as
6 State's Exhibit 3. What is that?

7 A. That is the sentencing sheet for the indictment
8 that you just handed me.

9 Q. How do you know that that indictment pertains to
10 that sentencing sheet?

11 A. Each case is given a specific indictment number and
12 the indictment numbers on these two match.

13 Q. And are both those documents in the same or
14 substantially similar condition as when you reviewed
15 them?

16 A. Yes.

17 MR. CORVEY: Your Honor, at this time, the State
18 moves to admit 1 and 3 into evidence.

19 THE COURT: Mr. Gailliard, any objection?

20 MR. GAILLIARD: No, Your Honor.

21 THE COURT: Without objection State's 1, 2 and 3?

22 MR. CORVEY: Just 1 and 3.

23 THE COURT: One and 3 are admitted. Thank you.

24 (WHEREUPON, State's Exhibit Numbers 1 and 3,

25 Documents, were admitted into evidence.)

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1 BY MR. CORVEY:

2 Q. Now, with regard to those documents combined what
3 does it indicate?

4 A. It indicates that the defendant listed as John
5 Cleveland pled guilty to the charge of criminal sexual
6 conduct with a minor second degree and was given a YOA
7 sentence not to exceed six years, and it was dated May 5,
8 1987.

9 MR. CORVEY: No further questions.

10 THE COURT: Mr. Gailliard, any cross-examination?

11 MR. GAILLIARD: None from this witness, Your Honor.

12 THE COURT: Thank you. You may step down.

13 Any objection to this witness being excused?

14 MR. CORVEY: None from the state.

15 MR. GAILLIARD: None from the defense, Your Honor.

16 THE COURT: Thank you. You may be excused. Have a
17 nice day, Ms. Lippe.

18 You may call your next witness.

19 MR. CORVEY: The State calls Deputy Jason Bowen.

20 ROBERT J. BOWEN, after having been duly
21 sworn, testified as follows:

22 THE CLERK: Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: Robert James Bowen, B-o-w-e-n.

25 DIRECT EXAMINATION

1 BY MR. CORVEY:

2 Q. Good afternoon, Deputy Bowen.

3 A. Good afternoon.

4 Q. Where do you work?

5 A. I work at the Charleston County Sheriff's Office.

6 Q. How long have you been with the Sheriff's Office?

7 A. I've been with the Sheriff's Office for about 14
8 years now.

9 Q. Did you work with any other law enforcement
10 agencies prior to that?

11 A. I did. I was a police officer briefly in
12 Smithfield, North Carolina for about six months prior to
13 moving here.

14 Q. Now, what type of training have you received to
15 become a law enforcement officer?

16 A. We receive our basic academy training and then once
17 we have completed several months at the academy we come
18 back and we are trained with a field training officer in
19 the field to learn essentially procedures of how to be a
20 law enforcement officer, and then beyond that there's
21 additional advanced training depending on what our
22 position is.

23 Q. And what is your position with the Sheriff's
24 Office?

25 A. I'm currently a detective.

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1 Q. In what unit, as far as what do you go about
2 investigating?

3 A. Currently, I investigate, I'm assigned to our
4 Special Victims Unit and also part of the State's
5 Internet Crimes Against Children Task Force. I primarily
6 investigate special victims sex crimes as well as crimes
7 against youth involving any type of technology.

8 Q. And in that role do you do any work with the Sex
9 Offender Registry Unit?

10 A. Previously I did. I was assigned to the sex
11 offender registry for about two years. The sex offender
12 registry is part of our investigations division, and I
13 was the detective assigned to the sex offender registry.

14 Q. And when you were working with the registry what
15 were your day-to-day roles as a detective with that unit?

16 A. Day-to-day was primarily registering offenders as
17 they came in, basically helping check them in, checking
18 the information that they provided against what was
19 already in the registry, updating and registering any new
20 offenders who may have moved to our area, and then my
21 primary role was if an offender failed to register or
22 there was some update that was found to have not been
23 made in their record it fell on me as the sworn deputy to
24 investigate that and make charges if appropriate.

25 Q. And were you working with the registry unit in

1 December of 2013?

2 A. Yes, I was.

3 Q. And in your role with that unit did you have
4 occasion to become involved in this case?

5 A. I did.

6 Q. Before we go into this case specifically, could you
7 just kind of generally describe the registration process
8 for the jury, just kind of from start to finish when the
9 offender comes in to check in with you all's office.

10 A. Sure. So typically we had open registration hours
11 and those are well published and published to the
12 offenders in advance. In fact, we also send them
13 reminder cards prior to their due date for registration.
14 They would come in, we had a waiting area, sign in to let
15 us know that they were here and waiting. Once they
16 signed in we would call them in the order that they came
17 in to register.

18 Once we called them in we got a photo ID, typically
19 their driver's license. As part of the process we would
20 run a criminal history check to see if any new crimes had
21 been added to their criminal history. Once all that was
22 completed we would have the offender come in and sit down
23 with us and go through the information in the registry to
24 determine if any changes had occurred since their last
25 registration.

1 Q. Now, with regard to when an offender actually comes
2 in how long does that process normally take as far as if
3 I'm coming in to register? How long would it take?

4 A. It typically takes in the area of about 15 minutes
5 if they are a registrant who had already registered with
6 us and it was more or less a routine reregistration. At
7 the end of that registration, I should add, after we've
8 gone through everything that's in the registry we would
9 print a copy of the registry and we would keep one in --
10 an actual physical copy in our file that we hold for each
11 registrant. We would have them sign and date indicating
12 that they were there and registered and that page also
13 included the next registration date that they were due to
14 come in and register, and so they were acknowledging that
15 we had told them that.

16 We also gave every registrant a copy of that. And
17 all of that, because the information was already in the
18 system and there's typically not any changes that we
19 weren't aware of, it took about 15 minutes or so.

20 Q. And how often do registrants need to come in and
21 check in with you all's office?

22 A. It depends on their conviction. As was mentioned
23 during opening arguments, some registrants register
24 biannually. Every registrant registers on their birth
25 month and if they were biannual they would register six

1 months after that, and if they were quarterly they would
2 register their birth month and then every three months
3 after that.

4 Q. Now, are any of the registration dates more
5 intensive than just your normal 15-minute check in?

6 A. The birth month registration was a little longer.
7 We would print out a full copy of the registration at
8 that time whereas on the in-between months it would be an
9 abbreviated copy that was primarily that date -- or that
10 page indicating their next date to come in for
11 registration. During their birth month we would print
12 the entire registration packet, again provide them with a
13 copy. We would keep a copy.

14 We would also take their photo in our office with a
15 digital camera and that was our way of updating the
16 online photo to ensure that what was being shown online
17 was an accurate image of the registrant. After that they
18 were required to go to the jail for a photo as well, on
19 that birth month registration.

20 Q. Now, let's talk a little bit about the steps you
21 would take during a registration to verify who an
22 individual is, briefly describe that, but what sort of
23 things did you do to ensure that if I came in that I was
24 who I was saying I was?

25 A. Right. So we would start by getting the copy of

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1 the driver's license and we would obviously look at that.
2 That would also be an indicator for me if there was any
3 address changes that -- you know, there may be a new
4 address on the driver's license that we didn't have
5 previously in the system. Obviously, we make sure the
6 photo matches the person that I'm looking at. Our
7 registration database has a copy of that digital photo
8 that I mentioned so that was another way of verifying it.

9 We ran the criminal history of the person and
10 because we saw most of our registrants every three months
11 it didn't take long for us to get familiar with the
12 person, and honestly, what they looked like and a little
13 bit of their history and background.

14 Q. And, now, during that time when you'd have them
15 kind of confirm information for you what type of
16 questions were you asking them?

17 A. So we would ask the questions basically who they
18 were, where they lived, what their address and things
19 were. My personal way of going about it was to ask open
20 ended questions instead of asking them do you still live
21 at 123 any street. I would ask what is your current
22 address, because they couldn't see my screen, and that
23 was my way of making sure that I was getting what I felt
24 like would be the most accurate information possible.
25 And I would just go through the database page by page,

1 field by field and ask each question; do you have any new
2 tattoos, do you have a new job, do you have any new cars,
3 all of the things that were required by the registry.

4 Q. And before going specifically into a little bit
5 about this case, with regard to the annual registration
6 is there a list of -- would you go over their
7 requirements with them annually?

8 A. Yeah. As part of the printout they are required to
9 initial each page and that is their indication that they
10 have looked at each page and verified that the
11 information is accurate. It has a list, a full list of
12 requirements of what's required for each registrant under
13 the registry to include telling them how soon after they
14 moved they must register, things like if they purchased a
15 new vehicle that they had to notify us of that.

16 And that wasn't a full registry. They just simply
17 had to come in and fill out a form. But that annual
18 registration did have a copy that was given to each
19 registrant of the full requirements for it to be
20 considered a complete registration and for them to stay
21 in compliance with the registry.

22 Q. And did they have to initial off on those forms?

23 A. They did. On the pages that just required the date
24 -- or the date of birth, the address and things initialed
25 at the bottom but on the pages that had the requirement

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1 they had to initial next to each requirement. It was
2 much akin to a contract.

3 Q. Now, with regard to this case, are you familiar
4 with how long Mr. Cleveland had been registering with
5 you all's office?

6 A. Not specifically but it had been a number of years
7 before prior to me.

8 Q. If I provide you with copy of the original
9 registration would that help your memory?

10 A. Yes, it would.

11 MR. CORVEY: Your Honor, may I approach?

12 THE COURT: Yeah.

13 (A document was handed to the witness.)

14 A. So Mr. Cleveland's original registration, if I'm
15 reading this right because this is not the document that
16 I saw day to day, it has been updated since, but it
17 appears to be January 22nd, 2001, was the date of his
18 original registration with us.

19 Q. And with regard to these documents are these the
20 type of documents people were using to register at that
21 period?

22 A. They were.

23 Q. And having reviewed that document does that appear
24 to be in the same or substantially similar condition as
25 in you all's files?

1 A. Yes, it does.

2 MR. CORVEY: Your Honor, the State moves State's
3 Exhibit 8 into evidence.

4 THE COURT: Any objection?

5 MR. GAILLIARD: None, Your Honor.

6 THE COURT: So number 8?

7 MR. CORVEY: Yes, State's 8.

8 THE COURT: Exhibit number 8 is admitted without
9 objection.

10 (WHEREUPON, State's Exhibit Number 8, a Document,
11 was admitted into evidence.)

12 By MR. CORVEY:

13 Q. Now, Deputy Bowen, I'm showing you what's been
14 entered as State's 8. This is the original registration
15 form that he filled out when first registering with the
16 Sheriff's Office?

17 A. That's correct. It likely would have been filled
18 out by the person working the registration for him but
19 with his information, yes.

20 Q. And then showing you the second page of State's 8,
21 did Mr. Cleveland sign?

22 A. He did.

23 Q. And directing your attention to the bottom part of
24 the form, does that detail some of his requirements as
25 far as the registry is concerned?

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1 A. It does. Number three shows that he's required to
2 register annually for life. Number four makes him -- or
3 relays that the registration is not complete until he has
4 his photo taken. Number five indicates that any time he
5 moves he must update his address within 10 days of
6 establishing the new address.

7 Q. And are those his initials next to each line?

8 A. It appears to be.

9 Q. Now, you mentioned that you guys notify each
10 registrant of their next registration date in several
11 ways but you also mentioned that you mailed them a card?

12 A. Yes.

13 Q. Would you recognize a copy of that card if I showed
14 it to you?

15 A. I would.

16 MR. CORVEY: Your Honor, may I approach?

17 THE COURT: You may.

18 Q. What is that?

19 A. This is the postcard that we mailed out, and
20 Mr. Stober typically handled it but I'm very familiar
21 with them. These are the postcards that we mailed out
22 usually the month prior to the registrant's scheduled
23 registration month. So if he was scheduled to register
24 in December he should have gotten a copy of this in
25 November.

1 We did have it set up so that the return service
2 was accepted, that way if it went to an address that the
3 post office knew the offender no longer lived at it
4 kicked back to us. That was another indicator to us that
5 there might be a problem either with the address or
6 something and we would clarify that with a phone call, if
7 we could. If we couldn't get the offender on a phone
8 call when they came in to register we would ask them,
9 Hey, why did your card come back to us and you not get
10 it.

11 Q. And is this an accurate representation of what
12 would have been sent to Mr. Cleveland?

13 A. It is.

14 MR. CORVEY: Your Honor, the State moves State's
15 Exhibit 4 into evidence.

16 THE COURT: Any objection, Mr. Gailliard?

17 MR. GAILLIARD: No, Your Honor.

18 THE COURT: Without objection, State Exhibit Number
19 4 is admitted.

20 (WHEREUPON, State's Exhibit Number 4, a Document,
21 was admitted into evidence.)

22 BY MR. CORVEY:

23 Q. What does that depict?

24 A. That is the card that Mr. Cleveland would have
25 received in the mail. The top line above his name was

1 mostly for our reference. That is his sex offender
2 registrant number in the database. You can see it would
3 have printed his name and whatever his current address
4 that we have on file. It had our contact information
5 over to the left so that they could call us at any time,
6 and, of course, the return address.

7 Q. Then on the backside of that card?

8 A. On the backside was so that the registrants would
9 have easy access to exactly what dates and times we were
10 registering during the month. Our typical registration
11 days as you can see were Tuesday, Wednesday and Thursday,
12 and in the morning from 9:00 until 11:30, and in the
13 afternoon from 1:30 to 4:00 each of those days, except
14 for Thursday.

15 Q. Now, were you the person in the registry office who
16 performed Mr. Cleveland's June 2013 annual registration?

17 A. Yes, I believe I was.

18 Q. Now, would you recognize a copy of that annual
19 registration if I showed to it you?

20 A. I would.

21 MR. CORVEY: Your Honor, may I approach?

22 THE COURT: You may.

23 Q. I'm handing you what's been premarked State's
24 Exhibit 5. You want to review that document?

25 A. Yes.

1 Q. Does that accurately -- fairly and accurately
2 reflect the document that you went over with
3 Mr. Cleveland in June 2013?

4 A. It does.

5 MR. CORVEY: Your Honor, at this time the State
6 moves Exhibit 5 into evidence.

7 THE COURT: Mr. Gailliard, any objection?

8 MR. GAILLIARD: No, Your Honor.

9 THE COURT: State's Exhibit Number 5 is admitted
10 into evidence.

11 (WHEREUPON, State's Exhibit Number 5, a Document,
12 was admitted into evidence.)

13 BY MR. CORVEY:

14 Q. Now, you already described for the jury the process
15 in general but I just want to go over a few of the
16 details of this packet with you. Now, you mentioned
17 earlier that registrants were either classified tier two
18 or tier three registrants. Can you go over the
19 difference between that again.

20 A. So it's defined by the particular crime that they
21 commit. Our tier two registration is simply a class of
22 crimes for which they would have to register biannually
23 or every six months, again, based on their date of birth,
24 and the tier three would be the quarterly registration.

25 Q. And with regard to tier three, is criminal sexual

1 conduct with a minor in the second degree a tier three
2 registration class?

3 A. Yes, it is.

4 Q. So then Mr. Cleveland would have had to report
5 quarterly to register?

6 A. Correct.

7 Q. Now, when I was asking you about the registration
8 generally you indicated that every time someone would
9 come in that you would go over a number of requirements
10 that they have, have them initial it and compared it to a
11 contract. I'm showing you the sixth page of his
12 registration packet. What does that reflect?

13 A. That is the page that I was referencing. As you
14 can see the offenders had to initial next to each
15 requirement. If they had any questions we never rushed
16 them. I always gave them time to read over it. Most,
17 because it was so routine, would initial it and not have
18 any questions. We always make sure if there had been any
19 law updates or changes to make sure that we pointed that
20 out to them. But we allowed them whatever time they
21 needed to look it over and also answer any questions for
22 them.

23 Q. And the initials you see on that page, would those
24 be Mr. Cleveland's?

25 A. They are.

1 Q. Showing you the next page. This is just kind of
2 more of the same?

3 A. Yes, it is.

4 Q. The following page, what does this reflect?

5 A. This is the page that both notified the offender of
6 their next registration time and also showed their
7 acknowledgement of that. So you can see this was from
8 his June registration. May I?

9 Q. Yeah.

10 A. You can see here the birth month shows for June
11 that he would register in September, December and March
12 (indicated) and since he was registering in June his next
13 registration was to be during the month of September.

14 This is the preprinted date printed by the database
15 that shows he was in our office on June 14th. He signed
16 it with his own signature. Now, we often printed in the
17 offender's name because depending on their handwriting it
18 may or may not be clear, and my signature is the one
19 below his.

20 Q. Then that would be his signature on the line --

21 A. Correct. This would be Mr. Cleveland's signature.

22 Q. And in signing that was that an acknowledgment of
23 him understanding when his next registration date was?

24 A. Yes, because my way of presenting it to each
25 registrant was your next time to come in is in the month

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1 of September. Do you have any questions? And sometimes
2 they would ask us if they had travel or doctor's
3 appointments or anything like that so that was our
4 opportunity to discuss that with them, and then they
5 would sign that indicating that we had had that
6 conversation and they had been given this page.

7 Q. And would that signature also have been an
8 acknowledgments of all the requirements that we went over
9 on the previous two pages?

10 A. It would because those two pages directly preceded
11 this page.

12 Q. And I want to redirect your attention to the first
13 page of the requirements. Above the first initial, what
14 does that line say?

15 A. It says I understand that I am required to register
16 and I must, in capital letters.

17 Q. Now, Deputy Bowen, within the Sheriff's Office how
18 did you guys kind of internally keep track regarding when
19 someone would come in, when they needed to come in or any
20 contact you have with the registrant?

21 A. So on each folder we kept -- each offender had a
22 folder, much like you might see at a doctor's office. It
23 had their name and it had their date of birth, and also a
24 number for each month that they were supposed to
25 register. To make it easier on ourselves we color coded.

1 The quarterly registration or tier three was purple and
2 the biannual were blue folders.

3 If we were in this case during the month of
4 November -- and Mr. Stober had put together quite a list,
5 a rotating list of the offenders using, I believe, excel
6 but we would go through and manually -- even with the
7 list we would verify against the list, actually open our
8 file drawers and pull every folder that was scheduled to
9 register for December.

10 Q. And then did you also in addition to that keep any
11 case notes regarding each case?

12 A. We did. So each offender has what we call case
13 notes and it was typically simply a one line entry of any
14 contact or any pertinent information involving that
15 offender and their registration. For example, each time
16 they came in to register we made an entry on that log
17 that said they registered and it also showed who the
18 technician or registration personnel that registered.

19 The other thing that it would show is if they were
20 late for registration and we made a phone call to remind
21 them or see if there was some problem and we would
22 document it on that log.

23 Q. Now, would you recognize -- well, I guess let me
24 ask this question. Is each case notes specific to an
25 individual registrant?

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1 A. Yes, it is.

2 Q. Would you recognize those notes if I showed them to
3 you?

4 A. I would.

5 MR. CORVEY: Your Honor, may I approach?

6 THE COURT: You may.

7 Q. Deputy Bowen, I'm handing you what's been premarked
8 as State's 7. What is that?

9 A. These are the case notes for Mr. John Cleveland,
10 Jr.

11 Q. And do those kind of track all of the Sheriff's
12 Office contact with regard to him needing to register?

13 A. They do. In fact, they start January 22nd, 2001
14 and it shows that he was a new registrant with us, and it
15 tracks his registration all the way through, and these
16 are current registrations. So this one goes all the way
17 through August 2015.

18 Q. And is that a fair and accurate representation of
19 the case notes?

20 A. It is.

21 MR. CORVEY: Your Honor, at this time the State
22 moves State's 7 into evidence?

23 THE COURT: Any objection, Mr. Gailliard?

24 MR. GAILLIARD: No, Your Honor.

25 THE COURT: Without objection State's Exhibit

1 Number 7 is admitted.

2 (WHEREUPON, State's Exhibit Number 7, a Document,
3 was admitted into evidence.)

4 BY MR. CORVEY:

5 Q. Now, I want to show you the case notes, paying
6 particular attention to the time period in question.
7 Starting in -- you indicated that you had done the
8 registration in June of 2013?

9 A. That's correct.

10 Q. Could you indicate just by drawing on your line or
11 where that registration shows up in the case notes?

12 A. So kind of under -- trying to underline it, here
13 you can see on the left it indicates June 14th he came
14 in. He came in for his quarterly registration. We
15 collect an annual registration fee from each registrant.
16 He didn't have it at this time so we made a note that he
17 would come in and pay that by the end of the month,
18 again, trying to work with the registrants, and it has my
19 name indicating that I'm the one that registered him.

20 Q. And then since his birth month is June when would
21 his next registration date have been?

22 A. It would have been during the month of September.

23 Q. Do the case notes indicate whether or not he made
24 that registration?

25 A. Yes. You can see one line up from that on

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1 September 18, and over to the right it indicates that
2 Mr. Stober registered him. It was his quarterly
3 registration. He also had still not paid his
4 registration fee for that year. So Mr. Stober was again
5 giving him another extension on that registration fee.

6 Q. And then since he registered in September his next
7 registration would have been in December?

8 A. That's correct.

9 Q. And did Mr. Cleveland show in December ever to
10 register?

11 A. He did not. You can see the entries one up. Each
12 year the Sheriff's Office is required by law to complete
13 an address verification to ensure that the information
14 that the registrant gives us is actually correct. We go
15 out and knock on the door and see if they actually live
16 there.

17 December 3rd an address verification was attempted.
18 You can see that was attempted by Deputy Chaves. That
19 number next to that is the incident number that he would
20 have called out on the radio, and the current resident
21 stated that he had not lived there for at least a year.
22 That actually would be a registry violation because he
23 came in in December. We would have likely tried to
24 rectify that during the registration. However, that did
25 actually put him out of compliance with the registry.

1 He had not shown up by the end of the month so
2 often times our main goal was to garner compliance, not
3 so much issue warrants and arrest people, primarily
4 because of sheer volume of registrants that we have. So
5 on December 27th we left a voicemail with the phone
6 number that we had on file for him to come in and
7 register by January 8th. He did not come in by January
8 23rd, as you can see the next line up.

9 One of the things that I do to prevent myself from
10 placing an arrest warrant on somebody who might have been
11 in jail was we would check jail records both locally and
12 for the State, and I did not see any indication that he
13 had been incarcerated, at least -- when it says at least
14 since the last registration, so that would have meant
15 since September 18th.

16 So on January 27th, the next line up, I issued a
17 warrant for failure to register. This number would be
18 the case number and this is the warrant number for the
19 arrest warrant that was issued.

20 Q. Now, with regard to -- you mentioned that your
21 office is really just interested in compliance. Would it
22 be fair to say that your office is just looking more for
23 accountability with their requirement?

24 A. Yes. The registry is for public information so we
25 feel it's incumbent upon us to get as accurate as -- have

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1 the information be as accurate as possible. In a show
2 of, I suppose grace, if you will, we try to be
3 understanding, and that was part of the use of the case
4 notes, to see how compliant an offender had been.

5 Obviously, if they had been coming in every time
6 for registration and never had any failure to register
7 convictions we could say, okay, look, you didn't make it.
8 You need to do better. And even in this case we
9 documented we tried to call, the cards had gone out. So
10 we document each attempt at compliance and if we can't
11 garner any compliance through that then we issue the
12 warrant for failure to register.

13 Q. Now, you had indicated that Mr. Cleveland had been
14 registering with your office since 2001. Would he have
15 been coming in quarterly since that time?

16 A. No. There had been changes in the registration
17 along the way.

18 Q. But he would have been made aware in June when his
19 next three registration deadlines were?

20 A. Yes. You remember that last page where it showed
21 his date of birth? It shows every month that he was to
22 register during the year, and to me that was always the
23 easiest because it was 3, 6, 9, 12, and it was that
24 simple.

25 Q. Is that the page you were talking about?

1 A. It is.

2 Q. Exhibit 5?

3 A. Yeah.

4 Q. Would a similar thing have been given to him in
5 September?

6 A. Yes, it would have.

7 Q. Now, with regard to his address, would updating his
8 address with the Sheriff's Office have been in the list
9 of musts that he initialed?

10 A. It would, and that would have -- that was always a
11 requirement from the initial registration. As you saw on
12 the initial 2001 registration he initialed the paragraph
13 that said you must update the Sheriff's Office with the
14 new address within 10 days.

15 Q. Now, with regard to compliance, you know, obviously
16 things come up. If a registrant was regularly checking
17 in, was having a problem making it a certain month, would
18 you issue a warrant for that?

19 A. No. We don't let it go too long because obviously
20 at any time anybody can abscond but if we are able to
21 reach them by telephone or they call in to us and say I
22 can't make it this month, I've been working a lot this
23 month, I'll be in the first week of the next month, we
24 gave them that grace period.

25 Q. Then we sort of saw on the case notes too even if

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1 they didn't appear and didn't make contact there was
2 still efforts to try to reach them before issuing a
3 warrant?

4 A. That's correct.

5 MR. CORVEY: A moment of the Court's indulgence,
6 Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. CORVEY:

9 Q. And, now, it seems like an obvious question but
10 with regard to his physical location, he was in
11 Charleston County and required to register in Charleston
12 County?

13 A. That's correct, and that's based on their address,
14 their home address.

15 Q. And so his registration location would have been at
16 the Sheriff's Office in Charleston County?

17 A. That's correct.

18 MR. CORVEY: No further questions.

19 THE COURT: Mr. Gailliard?

20 MR. GAILLIARD: Yes, Your Honor. Just a couple.

21 CROSS-EXAMINATION

22 BY MR. GAILLIARD:

23 Q. Now, Detective Bowen, you got this list here of
24 case notes, and this is the State's 7. It lists January
25 27, 2014 failure to register third. Tell us when the

1 second failure to register occurred. I can't seem to
2 figure that out.

3 A. Without having his criminal history in front of me
4 I didn't use this as the basis to determine that charge.
5 I'd need his criminal history in front of me to tell you
6 that.

7 Q. Okay. So --

8 A. I can't tell you that from just this document but
9 this was not the only document used to determine the
10 subsequent charges.

11 Q. So you can't tell me from that particular document;
12 is that right?

13 A. That's correct.

14 Q. Now, on number 5, which is an NCIC entry quality
15 check registration, you signed off on that; is that
16 correct, as the original operators name? Is that you, J.
17 Bowen?

18 A. I'd need to see it.

19 Yes.

20 Q. Okay. Does that indicate that the information in
21 that packet is accurate?

22 A. It does.

23 Q. It does. Would you turn to the second page and
24 tell us the age that you got listed for the victim.

25 MR. CORVEY: Objection, Your Honor, relevance.

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1 THE COURT: Sustained.

2 BY MR. GAILLIARD:

3 Q. Now, Officer Bowen, did the defendant's tier
4 registration change any time since he was required to
5 register?

6 A. It did.

7 Q. Tell us about that, when and when this occurred,
8 the subject change.

9 A. It would be best if I had the registration notes.

10 Q. Which one do you need?

11 A. Number 7, sir.

12 (A document was handed to the witness.)

13 A. Thank you. Yes, sir. On October 3rd, 2012 I
14 updated his file and his record to tier three. Prior to
15 that he had been incarcerated for at least a year. There
16 had been some changes in the registration during his
17 incarceration and so when he came back after he was
18 released and resumed his registration that's when his
19 file would have been updated to correctly follow the tier
20 system.

21 Q. But you said changes in the registration. You are
22 talking about the act itself; is that correct?

23 A. No, I'm not. The SLED regulations that govern the
24 registration.

25 Q. All right. Now, in this larger packet here,

1 State's Exhibit Number 5, is the defendant's address
2 anywhere in that packet?

3 A. Yes, it is. It's on page two.

4 Q. And what address is that?

5 A. [REDACTED], North Charleston, South
6 Carolina 29405.

7 Q. And is that the address that you all used to send
8 the postcard to him?

9 A. That would have been his address of record, yes.

10 Q. All right. Now, if a defendant, say, is in Medical
11 University or some other hospital what is his
12 requirements as far as registering?

13 A. If he's in the hospital we have registrants all the
14 time call us and say, hey, I'm not hospital. I'm not
15 going to make registration. We document that within
16 their file. They know that when their registration
17 months are so it's not uncommon for a family member or
18 the registrant to call from their own hospital room and
19 notify us that they are in the hospital. But the
20 registration requirement still stands because we have no
21 way of knowing they are in the hospital. There's not any
22 online or jail indicator of that.

23 MR. GAILLIARD: Your Honor, those are all the
24 questions for this witness.

25 THE COURT: Thank you.

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1 Any redirect, Mr. Covey?

2 MR. CORVEY: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. CORVEY:

5 Q. You indicated that his registration changed during
6 a period of incarceration to quarterly?

7 A. Yes.

8 Q. And that was in 2012?

9 A. Yes.

10 Q. So from, I guess, then December 2012 through the
11 period where he failed to register in December 2013 he
12 would have been made aware of each registration when he
13 needed to be there?

14 A. That's right. So he registered after his release
15 in October of 2012. He registered one, two, three, four
16 times quarterly since the update to quarterly
17 registration before December 2013 when he failed to
18 register.

19 Q. And then on each of those registration occasions
20 that grid that showed their registration months, would
21 something similar to that have been provided on each of
22 those occasions?

23 A. Every time.

24 Q. And every time would he have been told his next
25 registration date?

1 A. Yes, and he would have signed it each time as well.

2 Q. And then with regard to Mr. Cleveland's address, we
3 discussed this previously, which is to be clear, would
4 have been his responsibility to update his address with
5 your office?

6 A. That's correct, as required under actual law.

7 Q. And, in fact, that was in that list of must things
8 that he must do?

9 A. That's correct.

10 Q. And, in fact, he failed to do that?

11 A. He had failed to do that because when we attempted
12 to complete his address check for that year it was noted
13 that he had not lived at the address he had placed on
14 file with us for at least one year prior.

15 Q. And despite not having a correct address on file he
16 had still made several registration dates prior to
17 failing to come in December of 2013?

18 A. That's correct, and that's not uncommon again
19 because each registrant knows when they are supposed to
20 come in and register and if they are trying to not update
21 or hide their current address from us they'll come in and
22 register and that way it doesn't raise any red flags and
23 we'll catch it eventually during the annual address
24 check.

25 Q. And prior to the annual address check when he would

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1 come in previously, for example, when you met with him
2 June 2013, he would have given you his address at that
3 point?

4 A. That's correct.

5 Q. And so for it to still be wrong in December of
6 2013 --

7 MR. GAILLIARD: Your Honor, I'm going to object to
8 leading this witness --

9 THE COURT: Rephrase your question. Rephrase it.

10 Q. When Mr. Cleveland would have come in in June of
11 2013, would he have been required to give his current
12 address?

13 A. He would have, and so the address in the system
14 would have been based on the information that
15 Mr. Cleveland had given me.

16 Q. Are they required as a registrant to provide
17 correct information?

18 A. They are, and I believe it's noted in the packet
19 that they must be truthful as part of their registration.
20 Giving a false address is essentially a failure to
21 register because they failed to register the correct
22 address and there's actually -- if I remember correctly
23 without looking at statute, there is a specific statute
24 for providing false information for the registrant.

25 MR. CORVEY: No further questions, Your Honor.

1 THE COURT: Any recross?

2 MR. GAILLIARD: No, Your Honor.

3 THE COURT: Thank you. You may step down.

4 All right. Ladies and gentlemen, I think now is a
5 good time for a recess. We will take about a 15-minute
6 break. If you want to -- if you need to smoke they'll
7 make arrangements for you to do it outside. So please do
8 not discuss anything about the case while you are back
9 there. Ladies and gentlemen, see you in about 15
10 minutes. Thank you.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 3:45 p.m.)

13 THE COURT: Thank you. Court is in recess for 15
14 minutes.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: You're going to have one more witness
17 today?

18 MR. CORVEY: Yes, Judge.

19 THE COURT: All right. Then we will argue and
20 charge in the morning.

21 MR. CORVEY: Okay.

22 THE COURT: All right. Let's bring our jury in,
23 Gene.

24 (WHEREUPON, the jury enters the courtroom at
25 approximately 4:10 p.m.)

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1 THE COURT: Thank you. Please be seated.

2 All right. The State may call its next witness.

3 MR. MAYNOR: The State calls Bob Stober.

4 THE COURT: Come forward and be sworn.

5 ROBERT STOBER, after having been duly sworn,
6 testified as follows:

7 THE CLERK: If you'll state your full name and
8 spell your last name for the record.

9 THE WITNESS: Robert Stober, S-t-o-b-e-r.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MR. MAYNOR:

13 Q. Mr. Stober, can you tell the jury where you work.

14 A. I work for the Charleston County Sheriff's Office.

15 Q. And how long have you been working there?

16 A. Over eight years now.

17 Q. Did you have any prior law enforcement experience
18 before that?

19 A. No, sir.

20 Q. What did you do before that?

21 A. An interesting career. I did a number of things, a
22 marketing officer for a major New York City bank during
23 most of my years.

24 Q. And what do you do at the Charleston County
25 Sheriff's Office?

1 A. I'm a civilian investigator assigned to sex
2 offender registry.

3 Q. How long have you been with that unit?

4 A. About eight years.

5 Q. And can you explain your duties in the registry.

6 A. My part of the registry is one to register
7 offenders which you heard about earlier. I also do a lot
8 of administrative duties in the background, organizing
9 files making sure that those reminders get sent out to
10 the offenders and an awful lot of correspondence
11 electronically, verbally and in running with other law
12 enforcement agencies around the coast dealing with sex
13 offenders that move between jurisdictions.

14 Q. And I know you said you worked there the last eight
15 years but did you specifically work there during the
16 months of September 2013 through January 2014?

17 A. Yes, sir, I did.

18 Q. And did you have any involvement with this case
19 with John Cleveland, Jr.?

20 A. Yes, sir.

21 Q. And does your office keep records in the registry?
22 I assume they do.

23 A. Yes, sir, we do.

24 Q. Can you kind of explain the process by which you go
25 through those records with the offender.

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1 A. When an offender comes in to register one we verify
2 his identify. We also then go through all the
3 information. Much of it is pedigree information; name,
4 address, Social Security number, weight, height, physical
5 description, tattoos, where those tattoos are located.
6 We also look at employment, volunteer and education if an
7 offender is attending school. He or she is required to
8 disclose that fact to us, also.

9 We then take a look at vehicles, any vehicle that
10 an offender owns or operates must be disclosed to us. So
11 when we get to that phase of the registration we go
12 through each vehicle; are you still driving the Dodge
13 Charger, do you still own that Ford pick-up truck, do you
14 have any other new vehicles, have you added any or sold
15 any? That type of information.

16 Q. And when you were working this case, the John
17 Cleveland, Jr. case, did you happened to work with his
18 paperwork with him personally?

19 A. Yes, sir. I registered him as early as June 2008,
20 specifically I remember that one, and each registration
21 we go through the same step by step registration where we
22 go through -- today it's all organized on computer. I go
23 through a bunch of -- all the information is on the
24 screen. I bring up a screen, I go through the answers on
25 that screen, go to the next one, we go to the answers on

1 that screen until we get to the end.

2 Q. Do you sign that paperwork with him?

3 A. I do.

4 Q. What are you attesting to when you sign the
5 paperwork?

6 A. I am attesting that I saw that offender sign his
7 name above my signature on that page further down that we
8 saw earlier.

9 Q. And when he signs it what is he attesting to?

10 A. He's attesting to the fact that he has told me the
11 truth with all the questions we have discussed and that
12 he has reviewed the information on that form and that it
13 is true and correct.

14 Q. And did you do that paperwork in this case?

15 A. I registered him on several occasions, yes.

16 Q. Did you do any paperwork?

17 A. I have --

18 Q. I'm sorry. Go ahead.

19 A. I have not done all his registrations.

20 Q. Did you do his paperwork in September 2013?

21 A. Yes, sir, I did.

22 MR. MAYNOR: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 Q. Mr. Stober, I'm going to hand you what's been

1 marked as State's Exhibit 6. Can you tell me what that
2 is?

3 A. That is a copy of the registration document
4 completed by Mr. Cleveland on September 18 of 2013.

5 Q. And how do you know that's what that is?

6 A. I've looked at the offender's name at the top.
7 I've seen that his signature is on it and I see that my
8 signature is on it just below his.

9 Q. Is that a fair and accurate copy to your knowledge
10 of the records that you produced with Mr. Cleveland back
11 in September of 2013?

12 A. Yes, sir, it is.

13 MR. MAYNOR: Your Honor, the State moves to admit
14 State's Exhibit 6.

15 THE COURT: Any objection, Mr. Gailliard?

16 MR. GAILLIARD: No, Your Honor.

17 THE COURT: Without objection State's Exhibit
18 Number 6 is admitted into evidence.

19 (WHEREUPON, State's Exhibit Number 6, a Document,
20 was admitted into evidence.)

21 MR. MAYNOR: Permission to publish?

22 THE COURT: You may.

23 BY MR. MAYNOR:

24 Q. Mr. Stober, will you walk me through this form sort
25 of top to bottom and identify what this form is about and

1 what it means.

2 A. This form is what we call an NCIC check sheet, and
3 it's no NCI list. It is NCIC, National Crime Information
4 Center. Today the sex offender registry is regulated by
5 federal regulations, and if you look at the very top
6 right up on there it says NCIC, the next one says NCIC
7 next to regulations. The check marks in red going down
8 the left-hand column are my check marks. You may notice
9 that I'm left handed so I make left-handed check marks
10 and those items that are checked are items that I
11 actually reviewed with the offender on that day.

12 Q. And does your signature appear on this sheet?

13 A. It does, sir, at the bottom it says original
14 operator's name and that is my signature and the date.

15 Q. Is that --

16 A. 9-18-2013.

17 Q. Is that the red pen right there?

18 A. That is my red pen, sir.

19 Q. And I'm going to flip to the second page of this
20 exhibit. We've already seen something like this but can
21 you also explain this sheet as well.

22 A. This is the shorter form of the registration
23 document that we have. Detective Bowen showed you an
24 annual review where we do many, many pages. When it's
25 not the offender's birth month, unless something is

1 radically wrong, we do an abbreviated one. We go through
2 all the questions but we go to a one-page registration
3 document. In the middle there is the table that says
4 birth month and then redefines what months the offender
5 needs to register in as earlier explained.

6 The next bold line is my next registration will be
7 in the month of, and that is my printing, December 2013.
8 Moving down we have offender signature. I always put an
9 X there showing the offender where to sign. Next thing I
10 see is John Cleveland's signature which is consistent
11 with all the signatures that I can remember in his file,
12 and the next line is S-O-R, sex offender registry
13 personnel signature and that again is my signature.

14 Q. What date exactly was this document produced?

15 A. This document was produced on September 18, 2013.
16 I can tell that in this case because the date is machine
17 produced. I have no control over it. It comes out of a
18 computer already dated, so there's no question about what
19 date that offender and I were together in the office.

20 Q. And can you identify this sex offender registration
21 number in the top right corner?

22 A. Each offender is assigned a registration number
23 when they first register in the system. The system began
24 back in 1994, I believe, and I believe they started with
25 number one. This number, 7,247, indicates that the

1 offender has been registered for quite a while. We
2 changed our numbering system today. The numbers we are
3 using today are in the 2,332,000 numbers, but I don't get
4 excited about that. There are not that many of them. We
5 have about 800 active offenders in Charleston County, and
6 about 20,000 in the state active.

7 Q. Thank you. I'm going to flip to the next page of
8 this document. Is that same number, that registration
9 number appear on that document?

10 A. It certainly does. If you look at the top just to
11 the left of the picture you will see status active.
12 Below that the registration number, 7,247, the same
13 number that is on the registration document itself.

14 Q. And does Mr. Cleveland's date of birth also appear
15 on this report?

16 A. It certainly does. If you go down under offender
17 information you find his name, Cleveland Jr., John, his
18 place of birth, then his date of birth, [REDACTED] [REDACTED]

19 Q. And does it also provide the risk class of
20 Mr. Cleveland?

21 A. Yes, sir, it does. If you go to the bottom of that
22 first column about five lines below his date of birth it
23 says risk, slash, class, adult tier three offender.

24 Q. And let me go back to the last page that we just
25 looked at, and you said that his birth date was in?

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1 A. September, I believe.

2 Q. No. I'm sorry. Could you take another look back
3 at his date of birth?

4 A. June. I'm sorry. June.

5 Q. The month of June. And can you identify on here
6 this grid here where it has the month of June?

7 A. If you go halfway down on the birth month we have
8 the month of June. If you work horizontal to the right
9 they are required to -- he is required to register in his
10 births month then second quarter of September, third
11 quarter is December, fourth quarter is March, and that
12 brings him back to his birth month.

13 Q. And this document also provides that Mr. Cleveland
14 acknowledged and signed right below where it said my next
15 registration will be in the month of December?

16 A. Yes, sir.

17 Q. Thank you, Mr. Stober. A couple more questions for
18 you.

19 MR. CORVEY: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 Q. I'm going to show you what's already been moved
23 into evidence as State's Exhibit 7. Do you recognize
24 that?

25 A. I do.

1 MR. MAYNOR: Your Honor, permission to publish
2 State's Exhibit 7.

3 THE COURT: Certainly. It's in evidence.

4 Q. Just briefly, Mr. Stober. Can you identify where
5 on this document you may have indicated contact with
6 Mr. Cleveland, Jr.?

7 A. My earlier testimony, sir, on the next page I
8 indicated that I registered him in June of 2008. It is
9 the item just -- I can't see it now.

10 Q. Keep going.

11 A. Yes. Just below the big white box there's the date
12 June 12, 2008. It says warrant served, registration
13 registered by Stober. That's me. The number out in the
14 far right column is an incident number. We no longer use
15 those. At the time whenever we registered an offender we
16 got an incident number from the potential inspection from
17 that registration.

18 Q. And can you identify on this first page an entry
19 you made in September of 2013.

20 A. Yes, sir, I can. Now, it's up on the screen on
21 September 18 of 2013. It says quarterly registration and
22 fee by 10-1-13, and my name, Stober, indicates that on
23 that day that the offender was in the office, completed
24 the registration following the steps that I outlined
25 earlier, and I also made the note that he did not pay the

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1 150-dollar annual fee but that he and I agreed that he
2 would bring it back by October 1, 2013.

3 Q. Can you also explain your entry in the month of
4 December 2013?

5 A. In December 2013, at that point he had not
6 registered as required in the month of December. Again,
7 as explained earlier, our goal is compliance. Our goal
8 is to understand where these people are and we will do
9 everything possible to help them stay compliant, and in
10 order to address that issue I attempted to call him at
11 the last known phone number that we had.

12 Nobody answered the phone. It did have a
13 voicemail. I left a message advising him that he needed
14 to register with us not later than January 8, 2014. You
15 might notice that that is beyond the month that he was
16 required to register and again we will do our best to
17 keep people compliant. That's our responsibility in the
18 registry to you and to the other residents of Charleston
19 County.

20 Q. Mr. Stober, were you required to give Mr. Cleveland
21 a courtesy call, if I may call it that?

22 A. No, sir.

23 Q. So just to sort of backtrack, did John Cleveland,
24 Jr. register with you in the sex offender registry in
25 September 2013?

1 A. Yes, sir.

2 Q. Was he required to register in December of 2013?

3 A. Yes, sir.

4 Q. Did he register in 2013 on the month of December?

5 A. No, sir, he did not.

6 MR. MAYNOR: Court's indulgence?

7 THE COURT: Yes.

8 BY MR. MAYNOR:

9 Q. Mr. Stober, did you notify Mr. Cleveland, Jr. of
10 his registration in December?

11 A. Yes, sir. We would have performed a computer
12 generated postcard which you've seen earlier that would
13 have been mailed to all registrants required to register
14 in that month. Again, that is not required by law. That
15 is something we go above and beyond.

16 Q. Thank you, Mr. Stober. Answer any question
17 Mr. Gailliard has.

18 THE COURT: Mr. Gailliard?

19 MR. GAILLIARD: Your Honor, no questions for this
20 witness.

21 THE COURT: Thank you. You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 MR. CORVEY: The State rests, Your Honor.

24 THE COURT: All right. Thank you.

25 All right. Ladies and gentlemen, this is a good

1 time to break for the day. So I'm going to dismiss you
2 for the evening with instructions that you get a good
3 night's sleep and be back here at 9:30 tomorrow morning
4 and we will finish up the case.

5 Thank you, ladies and gentlemen. Please do not
6 discuss this case with anybody. Don't do any independent
7 research. Keep your minds clear, pure so you can come
8 back in here and you can hear the rest of the evidence.
9 Thank you, ladies and gentlemen.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 4:28 p.m.)

12 THE COURT: Thank you. You may be seated.

13 Mr. Gailliard, are there any motions to be made at
14 this time?

15 MR. GAILLIARD: No, Your Honor, not at this time.

16 THE COURT: Okay. All right. Thank you. I think
17 the State has rested. You don't want to make a motion at
18 this point?

19 You've rested; is that correct?

20 MR. CORVEY: That's correct, Judge. The State
21 rests.

22 THE COURT: Okay.

23 MR. GAILLIARD: I'll make a statutory motion to
24 dismiss at this point, Your Honor.

25 THE COURT: Okay. Thank you. Respectfully denied.

1 Thank you. Just want to make sure you're covered.

2 MR. CORVEY: 9:30 tomorrow, Your Honor?

3 THE COURT: 9:30.

4 MR. GAILLIARD: I suspected the Court denied my
5 motions?

6 THE COURT: Yes, sir. I respectfully denied.

7 MR. CORVEY: Your Honor, I have prepared a bench
8 warrant.

9 THE COURT: Yes. If you can get ahold of your
10 client, Mr. Gailliard, it's not over until it's over.

11 (WHEREUPON, the trial was recessed for the day.)

12 Thursday, October 15, 2015

13 THE COURT: Good morning, everyone. You can take
14 your seats. Has everyone had an opportunity review the
15 charge?

16 MR. CORVEY: I have no exceptions or additions from
17 the State.

18 THE COURT: Any objections?

19 MR. GAILLIARD: No exceptions, Your Honor.

20 THE COURT: Very well. I guess you are going to
21 rest when they come out?

22 MR. GAILLIARD: That's correct, Your Honor.

23 THE COURT: Well, what we'll do, do you want to go
24 ahead and renew your motion right now so when they come
25 out I don't have to send them back out?

1 MR. GAILLIARD: Yes, Your Honor. Certainly. I'm
2 going to renew my notion to dismiss that I made at the
3 beginning of the trial and renew that at the end of the
4 State's case.

5 THE COURT: And based upon there has been no
6 evidence changing that my ruling will be the same. So
7 when you come out and rest then I'll tell the jury that
8 that's all the evidence. You get last argument because
9 you put up no evidence. So are you all ready to begin?

10 MR. CORVEY: Ready to proceed.

11 THE COURT: All right. Let's bring them in.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 9:45 a.m.)

14 THE BAILIFF: All seated, Your Honor.

15 THE COURT: All right. Thank you.

16 Good morning, ladies and gentlemen. I hope you all
17 had a nice evening. It certainly feels nice out this
18 morning. I guess all on its way being the 15th of
19 October it would certainly be expected.

20 Is the State ready to proceed this morning?

21 MR. CORVEY: The State is ready, Judge.

22 THE COURT: The defense ready?

23 MR. GAILLIARD: Yes, Your Honor.

24 THE COURT: Mr. Gailliard?

25 MR. GAILLIARD: The defense rests at this time,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 All right. Ladies and gentlemen, the State rested
4 yesterday and the defense has now rested so all the
5 testimony that you're going to hear in this case has now
6 been heard and now the attorneys will give you their
7 closing arguments and I will then charge you the law that
8 is to be applied in this case, and then you will be sent
9 back to your jury room to begin your deliberations.

10 Mr. Corvey, for the State.

11 MR. CORVEY: Thank you, Judge. May it please the
12 Court.

13 Good morning, ladies and gentlemen. Again, my name
14 is Ted Corvey on behalf of the South Carolina, and Scott
15 Maynor on behalf of the Ninth Judicial Circuit. I
16 sincerely appreciate you all coming here and paying
17 attention to this. I know it's been a long week and we
18 sincerely appreciate the attention you give. We
19 certainly couldn't do our jobs without your assistance
20 and for that I'm very grateful.

21 As you all know we're here for the case of State of
22 South Carolina vs. John Cleveland for failing to register
23 as a sex offender. Now, before getting into a little bit
24 about the facts of this case I want to touch on something
25 that Mr. Maynor mentioned in his opening.

1 We are here because the State of South Carolina
2 established the sex offender registry in 1994 to protect
3 the community. In fact, the legislature said it better
4 than I could. The intent of this article is to promote
5 the State's fundamental right to provide for the public
6 health, welfare and the safety of its citizens. The sex
7 offender registry provide law enforcement with the tools
8 needed in investigating criminal offenses. Statistics
9 show that sex offenders often pose a high risk of
10 reoffending. Additionally, law enforcement's efforts to
11 protect communities, conduct investigations and apprehend
12 offenders who commit sex offenses are impaired by the
13 lack of information about these convicted offenders who
14 live within the law enforcement agency's jurisdiction.

15 Now, we are not here to punish Mr. Cleveland for
16 his past wrongdoings. We are here the decide whether or
17 not he committed a new wrongdoing in failing to abide by
18 the law of the State.

19 In establishing the sex offender registry the
20 legislature gave the State Law Enforcement Division the
21 right to promulgate regulations about how the registry
22 will conduct business, how it will be handled by the
23 sheriffs in each county, and what sort of informations
24 and what obligations those sheriff's offices can hold
25 offenders liable for.

1 State code 23-3-450 provides that the offenders
2 shall register with the sheriff in each county in which
3 he resides. An offender shall not be considered to be
4 registered until all information prescribed by SLED has
5 been provided to the sheriff.

6 Now, within that obligation to register with the
7 sheriff of each county there is a duty. There is a duty
8 that Mr. Cleveland has to contact the sheriff's office in
9 order to register. You heard from both Deputy Bowen and
10 Mr. Stober about how easy it is to register. It takes 15
11 minutes. Come in, provide the information, they go over
12 this list of pre-required questions, check in with you
13 and then you go home.

14 Now, with regards to this duty and with regards to
15 what the law says it is the duty of the offender to
16 contact the sheriff in order to register. If the
17 offender fails to register or provide notification of a
18 change in address then he is guilty for failing to
19 register as a sex offender.

20 Now, one caveat before touching on these two
21 points. This is the law as I see it but Judge Young will
22 shortly charge you on the law that is applicable in this
23 case and that's the law you must decide but for me I
24 found it easy to break it down into two steps. For the
25 State to prove its case all we had to show and all we

1 have to show is that Mr. Cleveland was on the sex
2 offender registry and that he failed to register in
3 December 2013.

4 Now, you heard testimony from Ms. Sarah Lippe with
5 Charleston Clerk of Court's Office and we entered into
6 evidence State's Exhibit 1 and State's Exhibit 3 through
7 her testimony. State's Exhibit 1 was the indictment that
8 brought Mr. Cleveland into the judicial system on the
9 charge of sexual misconduct with a minor in the second
10 degree in 1986. State's Exhibit 3 is his sentencing
11 sheet. He pled guilty to that offense.

12 As a result, after the sex offender registry was
13 established by our State as the law in this State he was
14 required to register quarterly for life as a tier three
15 sex offender. In 2001, he was notified of those
16 requirements and came into the Sheriff's Office. He
17 signed a document acknowledging that from here on out for
18 the rest of his life he had to come every three months to
19 the Sheriff's Office in Charleston County and register.
20 He signed, he acknowledged certain obligations that he
21 has. He acknowledged that this is a responsibility that
22 he now must conduct as being a citizen of the State of
23 South Carolina.

24 I understand that I'm required to register with the
25 sheriff of the county in which I reside annually for

1 life. In 2001 he was made aware of his obligations.
2 He's been made aware of those obligations at each
3 opportunity and each time he has come in to register with
4 the Sheriff's Office in Charleston County for quite
5 sometime.

6 In his June 2013 annual registration with Deputy
7 Jason Bowen they went over his information and they
8 confirmed it. He didn't provide his updated address,
9 which is a violation of the statute. They then also went
10 over a long list that you can see up there.

11 Mr. Cleveland acknowledged with his initials and
12 ultimately his signature as his understanding of all the
13 obligations and requirements upon him.

14 I think the most telling line of that whole
15 document is right there at the top, All offenders must
16 register biannually or quarterly for life, and
17 Mr. Cleveland acknowledged that I understand that I am
18 required to register and I must present myself in person
19 to register.

20 I don't think anything could be clearer. In an
21 effort to make sure that it was clear they go over these
22 things with him every single time he comes in.

23 The end of that June registration he was made aware
24 not only of what his registration dates or months were
25 for the rest of the year, June, September, December and

1 March, he was then told my next registration month is in
2 September 2013. He acknowledged that, he signed off on
3 that. He also acknowledged acceptance of the fact that
4 he would have to register in December of 2013 and March
5 of 2014 before the next year begins.

6 So he comes in in September, meets with Bob Stober.
7 They again go over much of the same information. He
8 still fails to update his address and he acknowledges
9 that he understands his obligations and he understands
10 that he must come in in December of 2013 to register with
11 the Sheriff's Office. He never shows.

12 As a result, the Sheriff's Office didn't
13 immediately on January 1st issue a warrant. They took
14 several steps, several steps they are not required to by
15 law. The only thing that is required by law and the only
16 obligations that are placed by the Sheriff's Office are
17 to have registries, and certain duties and obligations
18 and legal aspects of the registry that they must abide
19 by, but they don't have to provide extra contact.

20 They don't have to call. They don't have to send
21 letters notifying them of the best time to register, when
22 the line will be shortest in order to make it as easiest
23 as possible on those offenders which have to abide by
24 this requirement as being citizens of the State of South
25 Carolina. Not only that, they don't have to call him and

1 give him extra time.

2 They didn't have to take steps to allow him to come
3 in in December after Deputy Chaves with the Sheriff's
4 Office went to his home and found out that he hadn't been
5 living there for a year. For one year he hadn't notified
6 the Sheriff's Office. He hadn't been fulfilling his
7 obligations as being required to register.

8 Even then they wait. Bob Stober calls him shortly
9 after Christmas, says if you can get here in early
10 January no worries. We just want to make sure you are
11 compliant. We don't want you to fall out of compliance.
12 We want you to abide by your obligations and we want to
13 help you in any way we can to do so. Still even then
14 they give him more time.

15 It's not until late January that Deputy Bowen
16 starts his investigation and realizes that this
17 defendant, Mr. Cleveland, hasn't been locked up anywhere.
18 He's not anywhere. He's just not abiding by his
19 obligations. So then finally in January, late January,
20 January 27 Deputy Bowen issues the warrant for failure to
21 register.

22 Now, I know this has been a long week for you guys.
23 It's not easy to get drawn out of your daily lives to
24 come in and judge another person about what they do but
25 we are here because what the legislature said. We are

1 here because the requirements placed on those who have in
2 their past made mistakes, committed certain offenses that
3 place them on the sex offender register have obligations.
4 They have to come in and register, and we are here for
5 the safety of the community.

6 We are here because Mr. John Cleveland failed to do
7 what he acknowledged that he must quarterly for life. He
8 failed to do two simple things. He was on the registry
9 and he failed to register. Through the State's case we
10 have proved those two aspects, and because of that,
11 because we've proved that he was on the sex offender
12 registry for his conviction in 1987 for a sexual
13 misconduct with a minor in the second degree and because
14 we proved that he failed to register in December 2013 you
15 must find the defendant, John Cleveland, guilty.

16 THE COURT: Thank you.

17 Mr. Gailliard?

18 MR. GAILLIARD: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. GAILLIARD: Mr. Foreman, ladies and gentlemen
22 of the jury, the Judge will charge you later that the
23 defendant's absence is not to be taken against him, and
24 that the State has to prove beyond a reasonable doubt
25 every issue that they have raised, and after you've had a

1 chance to consider that we'd ask you to come back with a
2 verdict. Thank you.

3 THE COURT: All right. Thank you.

4 All right. Ladies and gentlemen, all the testimony
5 and the evidence to be presented to you in this case has
6 now been presented to you. The attorneys have given
7 their closing arguments. Now is the time where I will
8 charge you the law that is to be applied in this
9 particular case.

10 Ladies and gentlemen, I remind you that during this
11 trial you and I have certain duties to perform. As the
12 trial judge it is my responsibility to preside over the
13 trial of this case and I also have the duty to the rule
14 on the admissibility of evidence that is offered during
15 this trial. You are to consider only the competent
16 evidence that was presented from the witness stand or any
17 exhibits that are made part of the record, and if there
18 was any testimony ordered stricken from the record during
19 this trial you must disregard it because, like I said,
20 you are only to consider the testimony from the witness
21 stand and any exhibits or any stipulations of counsel.

22 Now, ladies and gentlemen, I have the additional
23 duty to charge you the law that is to be applied in this
24 case and as the presiding judge I am the sole judge of
25 the law of this case and it is your duty as jurors to

1 accept and apply the law exactly as I now state it to
2 you. If you already have some idea as to what the law is
3 or what the law ought to be and it does not agree with
4 what I now tell you the law is you must abandon that idea
5 because you were sworn to accept and apply the law
6 exactly as I now state it to you.

7 Now, ladies and gentlemen, in every case tried
8 before a jury, you, the jury, become the sole and
9 exclusive judges of the facts in the case. As the trial
10 Judge, I cannot infer, comment or in any way make any
11 statement to a trial jury about the facts of the case.

12 Since you are the jury, as I said, you are the sole
13 judges of the facts and you are not to infer by anything
14 that I have said during the progress of this trial in
15 ruling on the admissibility of evidence or otherwise, or
16 anything that I now say during the course of these
17 instructions that I have any opinion about the facts of
18 the case. The law simply does not allow me to have an
19 opinion about the facts of the case. That's a matter
20 solely for you as jurors to determine and as jurors it is
21 your duty to determine the effect, the value and the
22 weight, and the truth of the evidence which has been
23 presented during this trial.

24 Now, ladies and gentlemen, the indictment in this
25 case alleges one offense against the defendant, failure

1 to register as a sex offender under indictment
2 2015-GS-10-19. And I'll remind you, the fact that the
3 defendant was arrested, charged and indicted is not
4 evidence in this case and cannot be considered by you as
5 evidence of guilt nor does it create any presumption or
6 inference of guilt. The indictment is simply the formal
7 written instrument; while it contains the charges made
8 against the defendant and it is the formal document that
9 brings this case into court.

10 Now, ladies and gentlemen, the defendant has pled
11 not guilty to the charge in the indictment and that plea
12 puts the burden on the State to prove the defendant
13 guilty. A person charged with committing a criminal
14 offense in South Carolina is never required to prove
15 himself innocent and I charge you, ladies and gentlemen,
16 that's an important rule of law that a defendant in a
17 criminal trial no matter what the seriousness of the
18 charge might be will always be presumed to be innocent
19 for the crime for which the indictment was issued unless
20 it has been proved by evidence satisfying you of that
21 guilt beyond a reasonable doubt.

22 Presumption of innocence does not end when you
23 begin your deliberations but it accompanies the defendant
24 throughout the trial until you reach a verdict of guilt
25 based on evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 Presumption of innocence is like a robe of
3 righteousness that is placed about the shoulders of a
4 defendant and it remains with that defendant again until
5 it has been stripped by evidence satisfying you of that
6 defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory. It's not just a legal phrase but it is a
9 substantial right to which every defendant is entitled
10 unless, again, you, the jury, are satisfied from the
11 evidence of the defendant's guilt beyond a reasonable
12 doubt.

13 As I said earlier, the State has the burden of
14 proving the defendant guilty beyond a reasonable doubt.
15 Some of you may have served as jurors on civil cases
16 where you were told that it is only necessary to prove
17 that a fact was more likely true than not true such as by
18 the greater weight or the preponderance of the evidence.

19 In criminal cases, however, the State's proof must
20 be more powerful than that. As I said, it must be beyond
21 a reasonable doubt. Now, proof beyond a reasonable doubt
22 is proof that leaves you firmly convinced of the
23 defendant's guilt.

24 Ladies and gentlemen, there are very few things in
25 this world that we know with absolute certainty and the

1 law in a criminal case does not require that proof --
2 does not require proof that overcomes every possible
3 doubt. If based upon your consideration of the evidence
4 you are firmly convinced that the defendant is guilty of
5 the crime charged you must find the defendant guilty. If
6 on the other hand you think there's a real possibility
7 that the defendant is not guilty then you must give the
8 defendant the benefit of doubt and find him not guilty.

9 Ladies and gentlemen, there are two types of
10 evidence that are generally presented during a trial.
11 There's direct evidence and there's circumstantial
12 evidence. Direct evidence is the testimony of a person
13 who claims to have actual knowledge of a fact such as an
14 eyewitness. It is evidence which immediately establishes
15 the main fact to be proved.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating the existence of a
18 fact. And, again, crimes may be proved by circumstantial
19 evidence. The law makes absolutely no distinction
20 between the weight or value to be given to either direct
21 or circumstantial evidence, however, to the extent that
22 the State relies on circumstantial evidence all of the
23 circumstances must be consistent with each other and when
24 taken together point conclusively to the guilt of the
25 accused beyond a reasonable doubt.

1 If these circumstances merely portray the
2 defendant's behavior as suspicious the proof has failed
3 and the State has the burden of proving the defendant
4 guilty beyond a reasonable doubt, as I said, and this
5 burden rests on the State regardless of whether it relies
6 on direct evidence, circumstantial evidence or some
7 combination of the two.

8 Now, ladies and gentlemen, I instruct you and I
9 emphasize the fact that the defendant did not testify is
10 not to be considered by you in any way in your
11 deliberation and your consideration of the question of
12 guilt or innocence of the defendant. It must not be
13 considered by you in any manner whatsoever.

14 Ladies and gentlemen, the defendant has the
15 constitutional right to remain silent and the assertion
16 of this right must not be considered by you in your
17 deliberations. And I repeat, under your oath you are to
18 draw no conclusion whatsoever from the fact that the
19 defendant did not testify in this case and the fact that
20 the defendant did not testify should not even be
21 discussed in the jury room.

22 The burden of proof, as I've stated, is on the
23 State to prove the defendant guilty beyond a reasonable
24 doubt and the defendant never has to prove his innocence.

25 Now, ladies and gentlemen, under the laws of this

1 State a defendant may be tried even if the defendant does
2 not attend the trial but the fact that the defendant is
3 not present may not be considered against a defendant in
4 any manner whatsoever.

5 Now, as to the credibility of witnesses, ladies and
6 gentlemen, you must determine the credibility of those
7 witnesses who have testified in this case, and
8 credibility simply means believability. And it becomes
9 your duty as jurors to analyze and to evaluate the
10 evidence and determine which evidence convinces you of
11 its truth.

12 In determining the believability of witnesses who
13 have testified in this case you may believe one witness
14 over several witnesses or several witnesses over one
15 witness. You may believe a part of the testimony of a
16 witness and reject the remaining parts of the testimony
17 of that same witness. You may believe the testimony of a
18 witness in its entirety or reject the testimony of a
19 witness in its entirety.

20 And, ladies and gentlemen, you may consider whether
21 any witness has exhibited to you any interest, bias,
22 prejudice or other motive in this case. You may also
23 consider the appearance and the manner of a witness while
24 on the witness stand.

25 Now, ladies and gentlemen, the defendant in this

1 case is charged with failure to register for the sex
2 offender registry and the State must prove beyond a
3 reasonable doubt that the defendant did not register for
4 the sex offender registry.

5 This is a statutory offense and Section 23-3-400
6 et seq of the South Carolina Code of Laws requires that
7 any person residing in South Carolina that has been
8 convicted or pled guilty to the offense of among other
9 things criminal sexual conduct must register with the
10 sheriff for the sex offender registry.

11 Now, ladies and gentlemen, there are two possible
12 verdicts which you may find in this case on the charge of
13 failure to register as a sex offender. Under indictment
14 2015-GS-10-19 not guilty or guilty.

15 Ladies and gentlemen, there's no significance
16 whatsoever in the order that I state the verdicts. It's
17 just that one must be stated first.

18 Now, ladies and gentlemen, your verdict must be
19 unanimous. All 12 of you must agree, and your decision
20 must not be based on sympathy, passion, prejudice or any
21 other consideration that is not in evidence in this case.

22 And, Mr. Foreman, when the jury does reach a
23 verdict if you would please check the appropriate box,
24 sign your name at the bottom, date it and then knock on
25 the jury room door and let the bailiffs know that you

1 have reached a verdict, and then you will be brought back
2 into the courtroom for the publication of your verdict.

3 Now, ladies and gentlemen, I ask that you return to
4 the jury room but please do not begin your deliberations.
5 There's still some matters that I have to take up with
6 the attorneys.

7 Now, ladies and gentlemen, what I just read to you
8 I am going to send a copy back to the jury room in case
9 you need to refer to it and recollect anything that I
10 stated to you over the last 10 minutes. All right?
11 Thank you, ladies and gentlemen.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 10:10 a.m.)

14 THE COURT: Are there any objections to the charge?

15 MR. CORVEY: None from the State, Your Honor.

16 MR. GAILLIARD: No objections to the charge, Your
17 Honor.

18 THE COURT: All right. Thank you. If you all want
19 to get together and make sure the right evidence goes
20 back and we will send them back to begin their
21 deliberations. Court is at ease pending the call of the
22 Court.

23 (WHEREUPON, the evidence and verdict form was taken
24 to the jury at approximately 10:15, and they were
25 instructed to begin their deliberations.)

1 (WHEREUPON, court was in recess pending the verdict
2 from the jury.)

3 THE COURT: Thank you. Please take your seats.
4 The jury has got a verdict. Let's bring them in and find
5 out what it is.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 10:30 a.m.)

8 THE BAILIFF: All jurors are present, Your Honor.

9 THE COURT: All right. Thank you.
10 Mr. Foreman, has the jury reached a verdict?

11 THE FOREMAN: We have, Your Honor.

12 THE COURT: Is it unanimous?

13 THE FOREMAN: It is, Your Honor.

14 THE COURT: Please hand it to the bailiff.

15 (PAUSE.)

16 THE COURT: Please publish the verdict.

17 THE CLERK: Yes, sir. The verdict form in the
18 matter of State of South Carolina vs. John Cleveland,
19 Jr., defendant, we, the jury, by unanimous agreement find
20 the defendant, John Cleveland, Jr., on the charge of
21 failure to register as a sex offender guilty. Signed by
22 the foreperson of the jury on the 15th of October 2015.

23 Ladies and gentlemen of the jury, if this was your
24 verdict, please raise your right hand.

25 Thank you. Please let the record reflect that all

1 12 jurors raised their right hand.

2 THE COURT: Mr. Gailliard, do you request polling
3 of the jury?

4 MR. GAILLIARD: No, Your Honor, I do not.

5 THE COURT: All right. Then the verdict stands.

6 Ladies and gentlemen, let me take this opportunity
7 to thank you for reaching a verdict. Some jurors can't
8 do that and you all did what you were charged to do. You
9 listened to the evidence, you listened to the law and
10 whether or not I think your verdict is correct it doesn't
11 matter. It's your verdict, and again, I thank you all
12 for coming together and doing that.

13 Ladies and gentlemen, there's a lot of important
14 things going on in Charleston right now but nothing is
15 more important than making sure that justice is done and
16 the truth in this matter came forward.

17 Ladies and gentlemen, I've always told you you
18 can't talk about the case as you were going out. You can
19 talk with anybody you want to about the case as much as
20 you want to or as little as you want to.

21 Ladies and gentlemen, they are going to pay you
22 \$10 a day and that really doesn't hail in comparison to
23 the service that you've done to your County and State.

24 Ladies and gentlemen, I tell people that what makes
25 America great is not the politicians, it's not judges,

1 it's not the lawyers but it's people like you all who
2 come from your homes and everyday life to come here and
3 you don't know each other before you get here, you are
4 thrown together and it's amazing combined intelligence
5 that juries have sometimes.

6 Ladies and gentlemen, I thank you all. I tell
7 people I have the greatest job in the world because every
8 day I go to work I get to stand and sit between these two
9 flags. Now, these flags are really just pieces of cloth
10 but what they represent is so much greater. Thousands
11 and thousands of people have died and bled for the cause
12 that's America that says that free people determine their
13 own destiny and in America only free citizens determine
14 whether someone else is guilty or not. It's not the
15 State, it's not the prosecutors, it's not judges, it's
16 not the police but free citizens like you all.

17 So, ladies and gentlemen, you didn't have to die
18 and bleed for this today but you did all that you can do
19 and I want to tell you that because you did such a great
20 job you can't serve as a juror for the next year and you
21 don't have to for the next three years, if you don't want
22 to do it.

23 Now, ladies and gentlemen, it would my honor to
24 shake your hands as you all go out of here. You all are
25 finished for the week so you do not have to come back at

1 any other point in time.

2 Ladies and gentlemen, again, thank you. You've
3 been great citizens for not trying to wiggle out of jury
4 duty, and I hope you leave out of here and have a better
5 understanding of your judicial system and thank you very
6 much. You all have a great day.

7 (The jury was excused.)

8 THE COURT: Mr. Gailliard, any posttrial motions?

9 MR. GAILLIARD: No, Your Honor.

10 THE COURT: All right. Thank you. The Court is
11 adjourned.

12 (Off the record conversation.)

13 MR. MAYNOR: Your Honor, with regard to sentencing,
14 do we just come back for --

15 THE COURT: I'll do it and seal it. You want to
16 make an argument concerning sentencing because you all
17 need to give me the verdict form.

18 MR. GAILLIARD: We ask that the Court go towards
19 the three years rather than the five and give him credit
20 for the time served and pretrial confinement.

21 THE COURT: How much pretrial confinement did he
22 have?

23 MR. CORVEY: I have two days.

24 MR. GAILLIARD: Oh, no. It was 90 days, Your
25 Honor.

1 THE COURT: Okay. Well, they can verify that. He
2 wasn't in on something else, on another charge?

3 MR. CORVEY: He was in on assault and battery at
4 some point, Your Honor, but on the sex registry I only
5 have two or three days.

6 THE COURT: Okay.

7 MR. GAILLIARD: Of course, Your Honor, we would
8 contend that confinement is confinement and all of these
9 charges were pending at that time so.

10 THE COURT: What I'll do is I'm going to check
11 credit for time served then somebody will figure it out.
12 Is that the verdict form or the sentencing sheet?

13 MR. MAYNOR: It is, Your Honor.

14 MR. GAILLIARD: Do I need to sign this, Your Honor?

15 THE COURT: You don't. The jury took care of it.

16 MR. GAILLIARD: You all have a wonderful day.

17 THE COURT: You all, too. Thank you.

18 (WHEREUPON, the trial was concluded.)

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C E R T I F I C A T E

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I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 13th, 14th and 15th day of October 2015.

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

January 11, 2017

s/Sharon L. Vizer

SHARON L. VIZER

CIRCUIT COURT REPORTER

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF CHARLESTON) CASE NO. 2015-GS-10-019

3

4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
Plaintiff,)
6)
vs.)
7) Date: July 18, 2016
JOHN CLEVELAND,)
8 JUNIOR,)
9 Defendant.

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B E F O R E:

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The Honorable Deadra Jefferson

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Denise J. Lauder, RPR

24

Ninth Judicial Circuit

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A P P E A R A N C E S

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REPRESENTING THE STATE OF SOUTH CAROLINA:

5

6

TED CORVEY, ASSISTANT SOLICITOR

7

Ninth Circuit Solicitor's Office

8

101 Meeting Street

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Charleston, SC 29401

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11

REPRESENTING THE DEFENDANT:

12

13

SHIRENE HANSOTIA, ESQUIRE

14

PUBLIC DEFENDER'S OFFICE

15

101 Meeting Street

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Charleston, SC 29401

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10

11 (No exhibits were offered or
12 marked for identification.)

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1 (The following proceedings were had
2 July 18, 2016, in re State v. Cleveland, Charleston
3 County General Sessions Court, Charleston, South
4 Carolina.)

5 THE COURT: Case number 2015-GS-10-019,
6 State of South Carolina v. John Cleveland, Junior.
7 The offense is sex offender violation.

8 MR. CORVEY: I have the indictment
9 number, Judge, 2015-GS-10-00 --

10 THE COURT: Yeah, I have that. I was
11 looking at something else. He was charged with
12 failure to register, sex offender third offense.
13 He was tried in his absence by Judge Young, that
14 would be Jeffrey Young, on 10/15/15, and he was
15 sentenced to five years in the State Department of
16 Corrections. The jury found him guilty, the
17 verdict form is also enclosed in the sealed
18 sentence.

19 Having been tried in your absence, sir,
20 the only thing left for this Court's determination
21 is imposition of sentence, which was done by Judge
22 Young on October 15th of '15. So you are sentenced
23 to the State Department of Corrections for a period
24 of five years.

25 You will get credit for any time that

1 you've served pursuant to 24-13-40, and I'm sure
2 Ms. Hansotia will go over everything with you.

3 MS. HANSOTIA: Can he say anything on
4 the record, Your Honor?

5 THE COURT: For what purpose?

6 MS. HANSOTIA: He just wants to be able
7 to explain something.

8 THE COURT: There is nothing I can do.
9 The only purpose of this court is to impose
10 sentence when someone has been tried in their
11 absence. I have no authority to change Judge
12 Young's sentence. You will have to file an appeal.

13 Thank you.

14 THE DEPUTY: You can talk to him
15 downstairs.

16 MS. HANSOTIA: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 You can file a motion for
19 reconsideration with Judge Young if you want to,
20 Ms. Hansotia.

21 (These proceedings were concluded at
22 11:25 a.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of November, 2016 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17 S/Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

John Cleveland, Jr.,

Defendant.

) - IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)

Warrant No(s): 2014A1010900046

) Charge(s): Failure to Register As A Sex Offender,
) 3rd Offense
)

MOTION FOR
 RECONSIDERATION OF SENTENCE

PLEASE TAKE NOTICE that the above captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentence imposed upon the defendant on October 15, 2015 by the Honorable W. Jeffrey Young, pursuant to the above mentioned charge. The sentence was published on July 18, 2016 during a sentencing hearing held before the Honorable Dádra L. Jefferson.

Attorney for Defendant, Shirene C. Hansotia, requests a hearing to present mitigating factors. This motion being made upon the grounds that the Defendant was tried in his absence and the sentence imposed is unnecessarily severe under the circumstances, and upon such other and further grounds as may be hereinafter presented. Please see attached case law in support of the argument that the judge that unseals and publishes the sentence has jurisdiction to amend or reconsider the sentence. 290 S.C. 435; 355 S.C. 255, 276 S.C. 494.

Respectfully Submitted,

Shirene Hansotia

Shirene Hansotia
 Assistant Public Defender
 Attorney for Defendant

Charleston, South Carolina

Dated: 7/20/16

ATTEST: A TRUE COPY
 JULIE ARMSTRONG (SEAL)
 BY *[Signature]*
 DEPUTY CLERK

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290 S.C. 435, *; 351 S.E.2d 167, **;
1986 S.C. LEXIS 450, ***

The STATE, Respondent v. Arthur L. JACKSON, Appellant

No. 22637

Supreme Court of South Carolina

290 S.C. 435; 351 S.E.2d 167; 1986 S.C. LEXIS 450

October 20, 1986, Heard
December 8, 1986, Decided

PRIOR HISTORY: [***1] Appeal From Charleston County, Thomas Hughston ▾, Judge,
Jonathan Z. McKnown, Judge.

DISPOSITION: Reversed and remanded.**CORE TERMS:** new trial, notice, sentence, sentencing, reduction

COUNSEL: Asst. Appellate Defender Tara D. Shurling ▾ of S.C. Office of Appellate Defense,
Columbia, for appellant.

Atty. Gen. T. Travis Medlock ▾, Asst. Attys. Gen. Harold M. Coombs, Jr. ▾, and
Carlisle Roberts, Jr. ▾, Columbia, and Sol. Charles M. Condon ▾, Charleston, for respondent.

JUDGES: Gregory, J., not participating.**OPINION BY:** PER CURIAM**OPINION**

[*436] [**167] Appellant was tried in his absence and convicted of housebreaking. We reverse and remand for a new trial.

Neither appellant nor his counsel was present at trial. The State produced no evidence at trial that appellant had been given notice of his trial date. At the sentencing hearing six months

later, appellant moved for a new trial but was not permitted to state his grounds. Appellant argues on appeal that he is entitled to a new trial because the record does not support a finding that he knowingly and intelligently waived his right to be present. We agree.

Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an [***2] effective waiver of his right to be present. *Ellis v. State*, 267 S.C. 257, 227 S.E. (2d) 304 (1976). If the record, however, does not include evidence to support a finding that the defendant was afforded notice of his trial, the resulting conviction *in absentia* cannot stand. *State v. Simmons*, 279 S.C. 165, 303 S.E. (2d) 857 (1983); *Brewer v. [437] South Carolina State Highway Dept.*, 261 S.C. 52, 198 S.E. (2d) 256 (1973). Appellant therefore is entitled to a new trial.

Appellant also excepts to the sentencing judge's refusal to entertain his motion for a reduction of sentence. While we need not address this issue in light of our disposition in this case, we reiterate for the benefit of the trial bench our holding in *State v. Smith*, 276 S.C. 494, 280 S.E. (2d) 200 (1981), that when a sealed sentence is opened and read, the judge has the authority to consider a motion for reduction of sentence.

Accordingly, the judgment of the lower court is reversed and the case is remanded for a new trial.

Reversed and remanded.

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*355 S.C. 255, *; 584 S.E.2d 131, **;
2003 S.C. App. LEXIS 103, ****

The State, Respondent, v. Paul Thompson, Appellant.

Opinion No. 3659

COURT OF APPEALS OF SOUTH CAROLINA

355 S.C. 255; 584 S.E.2d 131; 2003 S.C. App. LEXIS 103

April 18, 2003, Submitted
July 7, 2003, Filed

PRIOR HISTORY: [***1] Appeal From Marlboro County. Edward B. Cottingham, Jr., Circuit Court Judge.

DISPOSITION: REVERSED AND REMANDED.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant was tried in absentia and without counsel. He was convicted in the Marlboro County Circuit Court (South Carolina) of discharging a firearm into a dwelling and malicious injury to personal property over \$ 1,000 but less than \$ 5,000. The trial judge sentenced him to five years on each count, to run concurrently. He appealed.

OVERVIEW: A witness testified that defendant and two other men shot firearms at her car and into her house. On the day of trial, neither defendant nor counsel for him were present, though the two codefendants were. Defendant was tried in absentia and was convicted. The codefendants were acquitted. The trial court determined that a lawyer would have been appointed for defendant if he had presented himself at trial. The appellate court noted that defendant never verbally requested to waive counsel, or was given a Faretta advisement as to the dangers and disadvantages of self-representation. In fact, he had sought appointment of a member of the public defender's office, and the record did not reveal any inference that he understood the dangers and disadvantages of self-representation (he had no prior record which would have familiarized him with the criminal court system). His failure to appear for trial was not a waiver of his right to counsel. Whether South Carolina should embrace the doctrine of forfeiture of the right to counsel did not have to be decided, because defendant's conduct was not sufficient to constitute forfeiture.

OUTCOME: The judgment was reversed and the case was remanded.

CORE TERMS: right to counsel, forfeiture, self-representation, waive, disadvantages, appointed, absentia, waived, forfeit, sentence, public defender, assistance of counsel, sealed, verbal, times, jury selection, fundamental right, per se, reasonable time, pro se, preliminary hearing, misconduct, sentenced, retaining, forfeited, indigent, appoint, advice, sit, door

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Criminal Law & Procedure > Sentencing > Imposition > General Overview 

HN1  A sealed sentence is not opened until the defendant is arrested and before the court. Pursuant to caselaw, the circuit judge opening the sealed sentence is under the law the sentencing judge. More Like This Headnote | *Shepardize*: Restrict By Headnote

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview 

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Counsel > Potential Imprisonment 

HN2  It is well established that a defendant may be tried in his absence. S.C. R. Crim. P. 16. However, to try a defendant without counsel is a completely different matter. The Sixth and Fourteenth Amendments of the U.S. Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. Moreover, an indigent criminal defendant may request the court to appoint an attorney to represent him. Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have. The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is per se reversible error. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. More Like This Headnote | *Shepardize*: Restrict By Headnote

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Criminal Law & Procedure > Counsel > Right to Counsel > Trials 

HN3  A defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. More Like This Headnote | *Shepardize*: Restrict By Headnote

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview 

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Counsel > Constitutional Right 

HN4  A defendant may waive his Sixth Amendment right to counsel. A waiver is an intentional and voluntary relinquishment of a known right. The courts indulge every

reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights. More Like This Headnote | *Shepardize: Restrict By Headnote*

Civil Procedure > Judicial Officers > Judges > General Overview 

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Governments > Courts > Judges 

HN5 Waiver is most commonly understood as an affirmative, verbal request. To effectuate a valid waiver of the right to counsel, the two-pronged Faretta test must be met in which the accused is (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of Faretta, the appellate court will look to the record to determine whether the defendant had sufficient background or was apprised of his rights by some other source. While a specific inquiry by the trial judge expressly addressing the disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied. More Like This Headnote | *Shepardize: Restrict By Headnote*

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview 

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Counsel > Constitutional Right 

HN6 A defendant may waive his right to counsel through his conduct. Most courts have held that the defendant must first be warned that his misconduct will thereafter be treated as a waiver. To the extent that the defendant's actions are examined under the doctrine of waiver, there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings. More Like This Headnote | *Shepardize: Restrict By Headnote*

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Criminal Law & Procedure > Counsel > Right to Counsel > Trials 

HN7 A waiver of the right to counsel can be inferred from a defendant's actions. More Like This Headnote | *Shepardize: Restrict By Headnote*

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Assistance of Counsel 

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview 

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Counsel > Constitutional Right 

HN8 A defendant does not validly waive his right to counsel where there is no inquiry on the record as to whether the defendant is aware of his rights or whether he knowingly waives them. This type of inquiry is quite obviously impossible when a defendant fails to appear in court. However, failure to appear is not tantamount to a knowing waiver. A defendant's fugitive status is not a per se waiver nor may it be punished by the negation of constitutional rights. His fugitive status is a

separate wrong with its own consequences. More Like This Headnote |
Shepardize: Restrict By Headnote

COUNSEL: Senior Assistant Appellate Defender Wanda H. Haile [¶], of Columbia, for Appellant.

Attorney General Henry Dargan McMaster [¶], Chief Deputy Attorney General John W. McIntosh and Assistant Deputy Attorney General Charles H. Richardson, all of Columbia; and Solicitor Jay E. Hodge, Jr. [¶], of Darlington, for Respondent.

JUDGES: ANDERSON [¶], J. GOOLSBY and HUFF [¶], JJ., concur.

OPINION BY: ANDERSON [¶]

OPINION

[*258] [[¶]*133] ANDERSON [¶], J.: Paul Thompson was tried in absentia and without counsel. He was convicted of discharging a firearm into a dwelling and malicious injury to personal property over \$ 1000 but less than [*259] \$ 5000. The trial judge sentenced him to five years on each count to run concurrently. We reverse and remand. ¹

FOOTNOTES

¹ This case was decided without oral argument pursuant to Rule 215, SCACR.

FACTS/PROCEDURAL BACKGROUND

Vanessa Pearson [[¶]*2] was at home with her adult daughter, Najwa, on October 30, 1999 when a man named Derrick came to her door and asked for "Junior." Pearson told him that no one by the name of "Junior" lived there. Thirty minutes later he came to her door again and asked for "Junior." She reiterated to him that no one by the name of "Junior" lived there. Pearson testified that Derrick, Paul Thompson, and Michael Graham then started shooting at her car and into her house. The damage to her car was about \$ 4000. Pearson identified Peggy Wright as sitting in the backseat of the vehicle that the men drove during the occurrence.

Graham, Wright, and Thompson were tried together for discharging a firearm into a dwelling and malicious injury to personal property over \$ 1000 but less than \$ 5000. The same counsel represented Graham and Wright. Thompson was not present nor did he have counsel present. The judge told the bailiff to call Thompson's name three times at the courthouse door before the jury selection began. After Thompson did not respond, he was tried in his absence. Graham and Wright presented alibi evidence, which resulted in their acquittals. Thompson was found guilty as charged.

A sealed sentence [[¶]*3] was given as required by law. ^{HN1} The sealed sentence is NOT opened until the defendant is arrested and before the court. After his arrest, Thompson was brought before the court for the opening of the sealed sentences. Pursuant to State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981), the circuit judge opening the sealed sentence is under the law the sentencing judge. Exercising his discretion, the judge sentenced Thompson to five years on each count, concurrently.

At sentencing, Thompson's attorney professed that Thompson appeared at four or five roll calls after his arrest on November 15, 1999. During that time, Thompson requested [[¶]*260] through the Clerk of Court representation from the Public Defender's Office. Thompson

contends he was told he did not meet the cut-off amount of money to qualify for a public defender. He explained to them that he had child support arrearage payments that virtually consumed his salary and offered to produce documentation. According to Thompson's attorney, no one would listen to him regarding his child support payments. The court refuted Thompson's assertion, explicating that if Thompson had said he did not have an attorney, one would [***4] have been appointed for him.

A Bench Warrant was issued for Thompson on September 11, 2000 and another was issued on May 17, 2001. During September 2001, Thompson went to a rehabilitation facility in Maryland for cocaine and alcohol addiction. He left the facility on November 19, 2001. He went to High Point, North Carolina and then to his uncle's house in Bennettsville. Thompson was tried on November 28, 2001. Thompson's brother testified that the family was only given fourteen hours notice of trial.

The judge determined that a lawyer would have been appointed for him if he had presented himself at trial:

THE COURT: Well, I can say here for the record if he would have been here like the other two defendants were, didn't have a lawyer, we would have appointed one for him.

[THOMPSON'S COUNSEL: Yes, sir, Your Honor.

THE COURT: But you can't appoint one for him if he runs and doesn't even come to court. [**134]

LAW/ANALYSIS

Thompson argues the judge erred in denying his motion for a new trial because he was denied the right to counsel at trial.

I. RIGHT TO COUNSEL

^{HN2}It is well established that a defendant may be tried in his absence. Rule 16, SCRCrimP ("Except in cases wherein capital [***5] punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his [*261] right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.")²

However, to try a defendant without counsel is a completely different matter. *Pennsylvania v. Ford*, 715 A.2d 1141, 1143 (1998) (citing *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963)).

FOOTNOTES

² Thompson's waiver of his right to be present at trial is not at issue on appeal.

^{*}The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." *Faretta v. California*, 422 U.S. 806, 807, 95 S. Ct. 2525, 2527, 45 L. Ed. 2d 562, 566 (1975); [***6] accord *Gideon v. Wainwright*, 372 U.S. 335, 339-40, 83 S. Ct. 792, 794, 9 L. Ed. 2d 799, 802-03 (1963). Moreover, an indigent criminal defendant may request the court to appoint an attorney to represent him. *Gideon*, 372 U.S. at 344, 83 S. Ct. at 796-97, 9 L. Ed. 2d at 802; see *Scott v. Illinois*, 440 U.S. 367, 367, 99 S. Ct. 1158, 1159, 59 L. Ed. 2d 383, 389 (1979) ("The Sixth and

Fourteenth Amendments require that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense . . .").

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." *United States v. Cronin*, 466 U.S. 648, 654, 104 S. Ct. 2039, 2044, 80 L. Ed. 2d 657, 664 (1984). The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is per se reversible error. *State v. Boykin*, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996) (citing *Chapman v. California*, 386 U.S. 18, 23 n.8, 87 S. Ct. 824, 828 n.8, 17 L. Ed. 2d 705 (1967)). [***7] "Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." *McKnight v. State*, 320 S.C. 356, 358, 465 S.E.2d 352, 353 (1995) (quoting *Strickland v. Washington*, 466 U.S. 668, 692, 104 S. Ct. 2052, 2067, 80 L. Ed. 2d 674, 696 (1984)).

[*262]

II. RELINQUISHMENT OF RIGHT TO COUNSEL

HN3 A defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996).

A. Waiver

HN4 A defendant may waive his Sixth Amendment right to counsel. A waiver is an intentional and voluntary relinquishment of a known right. *United States v. Goldberg*, 67 F.3d 1092, 1099 (3d Cir. 1995); *Maxwell v. Genez*, 350 S.C. 563, 571, 567 S.E.2d 496, 500 (Ct. App. 2002). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461, 1466 (1938); [***8] *Pitts v. North Carolina*, 395 F.2d 182, 188 (4th Cir. 1968).

1. Waiver by Affirmative, Verbal Request

HN5 Waiver is most commonly understood as an affirmative, verbal request. *United States v. Goldberg*, 67 F.3d 1092, 1099 (3d Cir. 1995); *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). To effectuate a valid waiver of the right to counsel, the two-pronged *Faretta* test must be met in which the accused is (1) advised of his right to counsel and (2) adequately warned of [***135] the dangers of self-representation. *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (citing *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)). The trial judge must determine whether there is a knowing and intelligent waiver by the defendant. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977) (citing *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938)). If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of *Faretta*, "this Court will look to [***9] the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." *Prince*, 301 S.C. at 424, 392 S.E.2d at 463; accord *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). While a specific inquiry by the trial judge expressly addressing the [*263] disadvantages of a pro se defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. *Gardner v. State*, 351 S.C. 407, 411-12, 570 S.E.2d 184, 186 (2002); *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied. *Id.*

Pellucidly by his absence, Thompson did not make an affirmative, verbal request to waive counsel.

2. Waiver by Conduct

^{HN6} A defendant may waive his right to counsel through his conduct. *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d Cir. 1995); *State v. Jacobs*, 271 S.C. 126, 128, 245 S.E.2d 606, 608 (1978); ^{***10} *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996). Most courts have held that the defendant must first be warned that his misconduct will thereafter be treated as a waiver. *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691. "To the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Fareta warnings." *Goldberg*, 67 F.3d at 1100. Any subsequent misconduct will be treated as a "waiver by conduct." *Boykin*, 324 S.C. at 556, 478 S.E.2d at 690.

In *State v. Cain*, 277 S.C. 210, 284 S.E.2d 779 (1981), the appellant was tried in absentia and without counsel. Cain was represented by counsel at a preliminary hearing and both he and his attorney were aware the case was coming up for trial. *Cain*, 277 S.C. at 210, 284 S.E.2d at 779. The court found Cain was cognizant of his duty to keep in contact with his attorney and the court. *Id.* The court held a waiver of the right to counsel was inferable from his omissions. *Cain*, 277 S.C. at 211, 284 S.E.2d at 779. ^{***11}

Although in the present case Thompson was tried in absentia and without counsel, the facts in *Cain* are quite different. Unlike Thompson, Cain was represented by counsel at a preliminary hearing. Cain edifies:

^[*264] The appellant was released on a general appearance bond and was represented by counsel at a preliminary hearing. Both the appellant and his attorney knew the case was coming up for trial. The appellant knew he had a duty to stay in touch with his attorney and with the court.

We held in *State v. Jacobs*, 271 S.C. 126, 245 S.E.2d 606 (1978) that ^{HN7} a waiver of the right to counsel can be inferred from a defendant's actions. In this case, the appellant failed to fulfill the conditions of his appearance bond and neglected to keep contact with his attorney, although he knew his trial was imminent. We think a waiver of the right to counsel is inferable [sic] from these omissions.

Cain, 277 S.C. at 210-11, 284 S.E.2d at 779 (footnote omitted).

The case of *State v. Jacobs*, 271 S.C. 126, 245 S.E.2d 606 (1978), analyzes a trial scenario where the appellant participated at trial, but did not have counsel. The appellant was not indigent. ^{***12} The trial judge urged him on several occasions to retain a lawyer. The case was continued at least once to enable the appellant to hire an attorney. *Jacobs*, 271 S.C. at 127, 245 S.E.2d at 607. The judge asked an attorney with the Public Defender's Office to sit with him at trial to offer him advice and assistance. *Id.* Although the appellant never expressly waived his right to counsel, the court held the appellant waived his right to ^{***136} counsel by his conduct because he was given reasonable time to secure counsel, he was financially capable of retaining counsel, and the court had done all it could to advise him to seek counsel. *Id.*

The facts in *Jacobs* are dissimilar to the case sub judice. *Jacobs* was present in the courtroom, he was financially capable of retaining counsel, the judge had repeatedly encouraged him to get an attorney, the judge continued the case at least on one occasion for him to retain an attorney, and he had the assistance of a public defender at trial. *Jacobs* is enlightening:

Appellant never expressly waived his right to counsel but the trial judge found that he was very capable of retaining counsel, that the court had done all it could do ^{***13} to urge him to do so, and that he had still not employed a lawyer. The trial judge asked an attorney from the Public Defender's Office to sit with him during his trial to give him advice and ^[*265]

assistance. The attorney advised the court that he was totally unprepared for trial but the trial judge said that appellant's inaction had caused the situation. Appellant agreed to allow the attorney to sit with him but indicated that he wanted him to do nothing further in the case. The trial then proceeded.

....

On the facts of this case, we feel that the trial judge allowed appellant, a non-indigent, a reasonable time in which to retain counsel and that appellant did not make a sufficient showing of reasons for his failure to have counsel present. He was on several occasions urged to retain counsel and a phone was made available to him and additional time was given him in order for him to make arrangements. When, on the day of trial, counsel was not present, appellant did not name his attorney, if one had been retained, nor did he indicate when counsel would be available. He gave no reasons for the absence of counsel other than that he had been expecting his brother to bring a lawyer.

[***14] We conclude that, by his conduct, appellant waived his right to counsel.

Jacobs, 271 S.C. at 127-28, 245 S.E.2d at 607-08.

An excellent academic explication of an appellant tried in absentia and without representation is *Pennsylvania v. Ford*, 715 A.2d 1141 (Pa. Super. Ct. 1998). The appellant was originally appointed counsel. *Ford*, 715 A.2d at 1143. He requested a continuance in order to find private counsel. *Id.* The court then approved the withdrawal of the court-appointed counsel. *Id.* Two weeks before jury selection was initiated, the appellant fled the jurisdiction after violating his probation in a prior unrelated case. *Id.* When the appellant did not appear for jury selection, his private counsel filed a motion to withdraw, arguing that the appellant had not paid a large portion of his fee and his absence impeded trial preparation. *Id.* The court granted the motion and proceeded to try the appellant in absentia and without counsel. *Id.* The court found the ^{HNS} appellant did not validly waive his right to counsel because there was no inquiry on the record as to whether the appellant was aware of his rights or whether he knowingly [***15] waived them. *Ford*, 715 A.2d at 1144. The court observed that this type of inquiry is "quite [*266] obviously impossible" when a defendant fails to appear in court. *Id.* However, the court ruled that "failure to appear . . . is not tantamount to a knowing waiver." *Id.* The appellant's fugitive status was not a per se waiver nor could it be punished by the "negation of constitutional rights." *Id.* His fugitive status was a separate wrong with its own consequences. *Id.*

While Thompson did not have counsel withdraw at the brink of trial, he similarly was not queried on the record as to whether he was aware of his rights or whether he knowingly waived them. The *Ford* court acknowledged the impracticability of asking the defendant on the record when he does not appear in court, but still found that a failure to appear does not equate a knowing waiver. Likewise, Thompson's failure to appear does NOT rise to the level of waiver.

The Indiana Court of Appeals thoroughly analyzed a trial in absentia involving a defendant unrepresented by counsel. *Slayton v. Indiana*, 755 N.E.2d 232 (Ind. Ct. App. [***137] 2001). Slayton appeared in court three times before [***16] trial in which the court mentioned counsel but never advised him of the dangers and disadvantages of self-representation. *Slayton*, 755 N.E.2d at 234. The State argued that Slayton never requested the court to appoint counsel and that his failing to appear at trial "prevented the trial court from providing him with counsel or from even determining his intention to have counsel." *Slayton*, 755 N.E.2d at 235. Hence, the State maintained Slayton waived his right because he never clearly exercised it one way or another. *Id.* The court found the State's argument was flawed. First, the court determined that Slayton wanted "standby" counsel. *Slayton*, 755 N.E.2d at 236. Next, the court acknowledged the failure to advise Slayton of the dangers and disadvantages of self-representation relating to the Faretta two-prong test. *Id.* Finally, the court recognized the presumption against a waiver of the right to counsel. *Id.* The court ruled "the State's argument for 'waiver' would turn this presumption on its head, requiring a defendant to clearly exercise

rights that were never explained to him." *Id.* Based upon the record being void of any implication that Slayton understood the [***17] dangers and disadvantages of self-representation, the court held the facts and circumstances of the case did not warrant a finding of a knowing and intelligent waiver of counsel. *Id.*

[*267] The case at bar is most similar to the facts in *Slayton*. Both defendants were tried in absentia, unrepresented by counsel, and had appeared in court several times before trial. Neither of the defendants was advised of the dangers and disadvantages of self-representation under *Faretta*. Furthermore, the record in the instant case does not reveal any inference that Thompson understood the dangers and disadvantages of self-representation. Thompson did not have a prior record which would have familiarized him with the criminal court system. Abiding by the presumption against a waiver of the right to counsel, we conclude Thompson did not waive his right to counsel through his conduct when he never was apprised of his right nor the dangers and disadvantages of self-representation.

B. Forfeiture

Some courts recognize forfeiture as a means to waive the Sixth Amendment right to counsel. A defendant can forfeit his right to counsel irrespective of his knowledge of either the consequences [***18] of his actions or the dangers of self-representation. *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d. Cir. 1995). "Because of the drastic nature of the sanction, forfeiture would appear to require extremely dilatory conduct. On the other hand, a 'waiver by conduct' could be based on conduct less severe than that sufficient to warrant a forfeiture." *Goldberg*, 67 F.3d at 1101. Situations where a defendant's own conduct forfeits his right to counsel are unusual, typically involving a manipulative or disruptive defendant. *State v. Coleman*, 2002 WI App 100, 644 N.W.2d 283, 288, 253 Wis. 2d 693 (Wis. Ct. App. 2002).

The Eleventh Circuit Court of Appeals in *United States v. McLeod* identified methods in which a defendant could forfeit counsel:

The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed pro se. See *U.S. v. Fowler*, 605 F.2d 181. Additionally, a defendant who misbehaves in the courtroom may forfeit his constitutional right to be present at trial. See e.g., *Illinois v. Allen*, 397 U.S. 337, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970); [***19] *Foster v. Wainwright*, 686 F.2d 1382, 1388-89 (11th Cir. 1982), cert. denied 459 U.S. 1213, 103 [*268] S. Ct. 1209, 75 L. Ed. 2d 449 (1983). A defendant who causes a witness to be unavailable for trial forfeits his right to confrontation. See *United States v. Thevis*, 665 F.2d 616, 630 (5th Cir. Unit B 1982), cert. denied, 459 U.S. 825, 103 S. Ct. 57, 74 L. Ed. 2d 61 (1982). A defendant who escapes from custody during his trial waives his Sixth Amendment rights to be present and to confront witnesses during the trial. See *Golden v. Newsome*, 755 F.2d 1478, 1481 (11th Cir. 1985).

By analogy, we conclude that under certain circumstances, a defendant who is abusive toward his attorney may forfeit his right to counsel.

53 F.3d 322, 325 (11th Cir. 1995) (footnotes omitted). *McLeod* had verbally abused and [***138] threatened to harm counsel in a telephone conversation, at least four times had threatened to sue him, and had attempted to persuade counsel to engage in unethical conduct. 53 F.3d at 325. His behavior was "repeatedly abusive, threatening, and coercive." 53 F.3d at 326. [***20] Consequently, *McLeod* forfeited his right to counsel.

Misconduct by a defendant directed toward counsel is the quiddity of *State v. Boykin*, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996). *Boykin* verbally abused and physically threatened defense counsel. The judge granted the request of counsel to be relieved. *Boykin*, 324 S.C. at 554-55, 478 S.E.2d at 689-90. *Boykin* elucidates:

Although we do not condone Boykin's actions, we do not believe they were so severe as to permanently deprive him of appointed counsel. Both cases which have held a defendant forfeited his right to counsel involved a course of conduct more egregious than the single incident alleged here. Accordingly, we need not decide whether South Carolina should embrace the doctrine of forfeiture because we find that Boykin's conduct in the one event related by Padgett was not sufficient to constitute forfeiture. While the trial judge was certainly justified in granting Padgett's motion to be relieved as counsel, substitute counsel should have been appointed for Boykin. Therefore, the decision of the trial court is reversed and the case remanded for a new trial.

[*269] We decline to place our imprimatur upon [***21] Thompson's conduct or absence. Our declination of approval of Thompson's activities does NOT mandate forfeiture of counsel.

CONCLUSION

Forfeiture of counsel is a drastic consequence, requiring more than absence from trial. We rule Thompson did NOT relinquish his right to counsel through forfeiture.

Based on the record in its entirety, we hold Thompson did NOT waive his right to counsel.

He was erroneously deprived of his fundamental right to assistance of counsel. This denial is per se reversible error. Therefore, the decision of the circuit court is

REVERSED AND REMANDED.

GOOLSBY and HUFF, JJ., concur.

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276 S.C. 494, *; 280 S.E.2d 200, **;
1981 S.C. LEXIS 445, ***

The STATE, Respondent, v. Alton SMITH, Appellant

No. 21504

Supreme Court of South Carolina

276 S.C. 494; 280 S.E.2d 200; 1981 S.C. LEXIS 445

July 6, 1981

DISPOSITION: [***1] Affirmed and remanded.**CASE SUMMARY**

PROCEDURAL POSTURE: Defendant challenged the judgment of the trial court (South Carolina), which convicted him in his absence for third offense driving under the influence. The trial court denied defendant's motion to modify or vacate his sentence. Defendant claimed that his sentence was unconstitutionally enhanced and also alleged that the trial court erred in ruling that it could not change his sentence because it did not have jurisdiction.

OVERVIEW: Defendant contended that his two prior convictions were uncounseled and could not be used to enhance the sentence for his subsequent conviction for the same offense. On appeal, the court held that because defendant forfeited bond for two previous driving under the influence offenses and voluntarily waived his right to counsel, he could not complain of the denial of counsel when it was caused by his own actions. The court ruled that defendant waived his right to counsel by forfeiting bond, which constituted a prior offense within the terms of S.C. Code § 59-5-2940 (1976) and subjected him to the punishment contained therein. The court also indicated that defendant's motion to vacate the sentence was made within the term of court at which the sentence became the judgment, and therefore the trial court had the jurisdiction to modify. The mere recital of the trial court's discretionary decision, the court determined, was not sufficient to bring into operation the determination that discretion had been exercised. The court concluded that the authority to change a sentence rested solely with the sentencing judge within the exercise of his discretion.

OUTCOME: The court affirmed defendant's conviction for third offense driving under the

influence. The court remanded for reconsideration defendant's motion to alter, amend, or change his sentence.

CORE TERMS: sentence, modify, amend, sentencing, used to enhance, subsequent conviction, voluntarily waived, right to counsel, discretionary, uncounseled, misdemeanor, marked

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Criminal Law & Procedure > Sentencing > Guidelines > Adjustments & Enhancements > Criminal History > Three Strikes 

HN1  An uncounseled conviction for a misdemeanor may not be used to enhance the sentence for a subsequent conviction for the same offense. [More Like This Headnote](#)

Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence > General Overview 

Criminal Law & Procedure > Counsel > Right to Counsel > General Overview 

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Presence at Trial 

HN2  A defendant in a misdemeanor prosecution may not defeat justice by absenting himself from the place of trial. [More Like This Headnote](#)

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Court's Authority 

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > Due Process 

HN3  A trial court judge is without authority to alter, amend or modify a sentence imposed by him (1) after the expiration of the term of court at which the sentence was imposed or (2) within the same term of court unless the State is afforded due notice. When court is ordered by the chief justice, each week constitutes a separate term. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN4  A sealed sentence does not become the judgment of the court until it is opened and read to the defendant. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN5  The authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

Criminal Law & Procedure > Trials > Judicial Discretion 

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview 

HN6 

It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. The mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised. More Like This Headnote | *Shepardize* Restrict By Headnote

COUNSEL: *Asst. Public Defender Martha B. Dicus, and Deputy Appellate Defender Vance J. Bettis* ✓, of S.C. Commission of Appellate Defense, Columbia, for appellant.

Atty. Gen. Daniel R. McLeod, Asst. Attys. Gen., Kay G. Crowe ✓, *Russell D. Ghent* ✓ and *Harold M. Coombs, Jr.* ✓, and *Sol., James C. Anders* ✓, Columbia, for respondent.

JUDGES: Ness, Justice. Lewis, C.J., and Littlejohn, Gregory and Harwell, JJ., concur.

OPINION BY: NESS

OPINION

[*496] [**201] Appellant, Alton Smith, was tried and convicted in his absence for third offense driving under the influence. He appeals from the trial court's refusal to modify or vacate his sentence. We affirm and remand.

Appellant's sentence was published on April 29, 1980 at which time his motions were marked heard and scheduled for a hearing on June 3, 1980.

The trial judge denied the motions holding he did not have jurisdiction to change the sentence.

Appellant first asserts his sentence was illegal because it was unconstitutionally enhanced. We disagree.

He argues his two prior convictions were uncounseled and may not be used to enhance the sentence for a subsequent conviction of the same offense, [***2] relying on *Baldasar v. Illinois*, 446 U.S. 222, 100 S. Ct. 1585, 64 L. Ed. (2d) 169 (1980). This case holds ^{HN1}an uncounseled conviction for a misdemeanor may not be used to enhance the sentence for a subsequent conviction for the same offense.

We hold the provisions of S.C. Code § 56-5-2940 (1976) which provides for enhancement of sentences is not offensive to the tenets of *Baldasar* under the facts of this case.

Here, Smith forfeited bond for two previous DUI offenses and voluntarily waived his right to counsel. Therefore, he cannot now complain of the denial of counsel when it was caused by his own actions. See *State v. Jacobs*, 271 S.C. 126, 245 S.E. (2d) 606 (1978). Moreover, ^{HN2}a defendant in a misdemeanor prosecution may not defeat justice by absenting himself from the place of trial. *State v. Langston*, S.C. , 272 S.E. (2d) 436 (1980).

[*497] Appellant conceded at oral argument that bond forfeiture is a conviction and the evidence reveals that appellant knowingly and voluntarily waived his right to be present at this and previous trials. Compare *State v. Green*, 269 S.C. 657, 239 S.E. (2d) 485 (1977).

We conclude Smith waived his right [***3] to counsel by forfeiting bond, this constitutes a prior offense within the terms of S.C. Code § 59-5-2940 (1976) and subjected him to the punishment contained therein.

Smith next asserts the trial judge erred in ruling he could not change the sentence because he

did not have jurisdiction. We agree.

The trial judge held:

"I recognize that the sentence is severe. It has been dealt with severely. The solicitor does not want the sentence changed. The attorney general does not want the sentence changed and under those circumstances, I cannot change the sentence so the motion for a resentence is denied."

The authority of a trial judge to alter, amend or modify a sentence after the same has been imposed is discussed in four decisions of this Court. *State v. Best*, 257 S.C. 361, 186 S.E. (2d) 272 (1972); *State ex rel. McLeod v. County Court of Richland County*, 261 S.C. 478, 200 S.E. (2d) 843 (1973); *State v. Moulds*, 264 S.C. 404, 215 S.E. (2d) 445 (1975); and *State v. Patterson*, 272 S.C. 2, 249 S.E. (2d) 770 (1978). These cases hold ^{HN3} a judge is without authority to alter, amend or modify a sentence imposed by him (1) after the expiration of the term of court **[***4]** at which the sentence was imposed or (2) within the same term of court unless the State is afforded due notice. We have held generally when court is ordered by the Chief Justice, each week constitutes a separate term. *State v. Attardo*, 272 S.C. 1, 249 S.E. (2d) 771 (1978).

^{HN4} A sealed sentence does not become the judgment of the court until it is opened and read to the defendant. *Lytle v. Miller*, 157 S.C. 332, 154 S.E. 225 (1930).

[*498] Here the sentence was published to the appellant on April 29, 1980 and although the motions were not heard until much later, they were marked heard by the trial judge on that date. The motion was made within the term of court at which the **[**202]** sentence became the judgment of the court, to the sentencing judge, and he had jurisdiction to alter, amend or modify. *State v. Best*, *supra*, 257 S.C. at 369, 186 S.E. (2d) 272; 24 C.J.S. Criminal Law 1587b; *State v. Cagle*, 241 N.C. 134, 84 S.E. (2d) 649, 653 (1954).

We hold ^{HN5} the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion. *State v. Cagle*, *supra*.

It is apparent here the sentencing **[***5]** judge did not exercise any discretion but based his ruling on an erroneous view of the law. ^{HN6} It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. We call to the attention of the bench and bar that the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised. *Calloway v. Ford Motor Co.*, 281 N.C. 496, 189 S.E. (2d) 484 (1972); *State Highway Commission v. Hemphill*, 269 N.C. 535, 153 S.E. (2d) 22 (1967).

We affirm in part and remand for reconsideration of the motion to alter, amend or change the sentence.

Affirmed and remanded.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS

DOCKET NO. 2015-GS-10-0019

STATE OF SOUTH CAROLINA

VS.

JOHN CLEVELAND, JR.

Defendant

TRANSCRIPT OF RECORD

September 16, 2016
Charleston, South Carolina

B E F O R E:

THE HONORABLE WILLIAM JEFFREY YOUNG, JUDGE

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

TED CORVEY, ESQ.
Attorney for the State

SHIRENE C. HANSOTIA, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

State v John Cleveland
Motion to Reconsider
September 16, 2016

PROCEEDINGS

THE COURT: The State versus John Cleveland.

MS. HANSOTIA: Good morning.

THE COURT: Yes ma'am, you may proceed. This is your motion.

MS. HANSOTIA: Good morning, Your Honor. Thank you, may it please the court? We're here on a motion to reconsider. Just a little bit of background procedurally Mr. Cleveland was tried in his absence. I'm going to get into a little bit of the reasons behind that. His attorney at the time was Mr. Robert Gailliard. He was absent at the time and was brought into custody I believe a few months back and I was assigned to the case as a public defender basically to have the sentencing unsealed. And I am now handling the motion to reconsider; but just to give you a little background.

THE COURT: Okay.

MS. HANSOTIA: He is just -- now getting back to his case he was sentenced in 1987 to a youthful offender act program according to Mr. Cleveland ---

THE COURT: --- I'm not concerned about that. I'm concerned about the hearing that happened last year. I don't need to go all the way back because I didn't take it all the way back. He wasn't here for his trial last year.

State v John Cleveland
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1 MS. HANSOTIA: Right.

2 THE COURT: So what's your point on that?

3 MS. HANSOTIA: Okay. Just to give you a little
4 background on that Your Honor the reason he did miss the
5 trial is he was going through a very difficult divorce
6 and he had some -- he has been hospitalized for some
7 mental health issues. He has lived here all his life.
8 He's got two grown kids; 22 and 30. He does have his
9 high school diploma and he's worked as a barber. He's
10 got a year of training in that field.

11 He's also struggled, Your Honor, with an addiction
12 to crack. He did get help in rehab and completed a life
13 skills program in York County that was 14 weeks long and
14 he's currently in a program at SCDC called ARP; a rehab
15 program. He does want to speak with you, Your Honor. He
16 has some things that he would like to say if you're
17 willing to hear him out.

18 THE COURT: I will. But let me hear from the State
19 first.

20 MR. CORVEY: Yes, Your Honor. ---

21 THE COURT: --- if I remember he was given notice
22 of the hearing.

23 MR. CORVEY: Well Judge it's even worse than that.
24 I don't remember the exact timing of how the trials fell
25 that week but we came in one afternoon and I believe it

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1 was a Thursday. We had picked a jury and we had some
2 pretrial motions. They were denied. We were then due to
3 start back either later that afternoon or the next
4 morning.

5 THE COURT: And he was here for that is that ---

6 MR. CORVEY: --- and he was here for that ---

7 THE COURT: --- yes, that's right.

8 MR. CORVEY: And just failed to arrive for the
9 trial. And it's somewhat ironic given what the charge
10 was. I mean failure to register to me is somewhat of a
11 strict liability defense, as much of one as we have in
12 criminal law in South Carolina, for him to then not
13 appear for the trial I think speaks volumes.

14 THE COURT: Yes, I knew there was something -- so
15 he was here?

16 MR. CORVEY: Yes, sir.

17 THE COURT: He had notice of the hearing. We
18 actually struck a jury. We went through pretrial
19 hearings which may not have turned out the way he wanted
20 but then the next day when he was on notice to be here
21 for trial he decided to do something else is that
22 correct?

23 MR. CORVEY: That's correct, Judge.

24 THE COURT: Is that your understanding of what
25 happened?

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1 MS. HANSOTIA: I was not here, but yes I think.

2 THE COURT: Okay.

3 MS. HANSOTIA: And I believe, Your Honor he just
4 would like to speak briefly. I think that we've gone
5 over these issues but what bothers him I believe most is
6 that he believes he shouldn't have been put on the sex
7 registry in the beginning ---

8 THE COURT: --- that's not before me ---

9 MS. HANSOTIA: --- I understand ---

10 THE COURT: --- he had to appeal that.

11 MS. HANSOTIA: I understand ---

12 THE COURT: --- all I'm concerned about is he
13 wasn't here when he had been here and then decided for
14 whatever reason that he didn't want to come before this
15 court that day. But I'll give him an opportunity to
16 speak. Yes, sir?

17 MR. CLEVELAND: Yes sir, Your Honor. I understand
18 because you gave me a direct order that I ---

19 THE COURT: --- I did ---

20 MR. CLEVELAND: --- that I was supposed to be in
21 court the next day ---

22 THE COURT: --- I really talked to you.

23 MR. CLEVELAND: Yes sir; and I accepted that. At
24 that point in time I really thought I was coming for a
25 motion for -- I didn't know we was going for trial. I

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1 had two different attorneys in the midst of this case and
2 Mr. Gilliard had me fire my public defender on this case.
3 And then when I had come into court with Mr. Gilliard now
4 he telling me I'm facing a jury trial today. We never
5 prepared for nothing. And so in the whole case today was
6 the first day, Your Honor, I finally got a clear
7 understanding of why I'm even on the registry first and
8 foremost. It's not before you. I disrespected your
9 court by not being here that day.

10 THE COURT: You did.

11 MR. CLEVELAND: I really did. And I'm explaining to
12 you why. Mentally I wasn't competent to stand no trial.
13 I wasn't competent to do nothing. I was messed up. And
14 so here today now I've got another lady who is
15 representing me to the best of her abilities and she
16 don't even know what's going on.

17 Me and Mr. Gilliard spoke. I told Mr. Gailliard I
18 said Mr. Gailliard listen I don't know what is going on
19 but it was something about money from the first start.
20 Mr. Gailliard was trying to sue the Department of
21 Corrections for me being on the registry. So here today
22 now he's not here to help represent me or say anything on
23 the behalf of why I'm even standing before you today,
24 which is like crazy because I spoke to Mr. Gailliard that
25 morning and I said Mr. Gailliard listen I can't beat 12

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1 people. There is no way. I signed the document. The
2 State -- listen sir, you did your job. I signed the
3 document saying that I want to register as a sex offender
4 for the rest of my life. But in 1987 when I was
5 sentenced to this charge sir I was a youthful offender.
6 We had promiscuous young people sex. The same victim in
7 this charge, Your Honor, was a member of the church that
8 I was a minister in that ministry. He called her, the
9 State did call her to verify her age.

10 Mr. Gailliard comes in here with a motion on him for
11 some sweetheart law when the age differential so that
12 morning when he found out about what was going on Mr.
13 Gailliard really threw me under the bus. So here it is
14 now I'm asking Mr. Gailliard if he would talk to the
15 State and say, hey I violated, I'm wrong, I'm guilty,
16 I'll do me. If I did wrong I'll do wrong, Your Honor.

17 But I asked Mr. Gailliard if he could actually
18 possibly talk to the State where I could be sentenced to
19 the second offense which would give me a year day for day
20 sentence. Right now I'm standing before you with five
21 years at 47 years olds day for day. I could never get
22 probation. I could never get any kind of nothing in the
23 state for five years.

24 THE COURT: But you realize the way you could
25 address that would have been to come to court. You

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1 thumbed your nose at this court. You said I don't like
2 what's going on and guess what? I'm going out of here
3 and I ain't coming back.

4 MR. CLEVELAND: Your Honor ---

5 THE COURT: --- I mean tell me what message does
6 that send to young people that if you don't like the way
7 it's going you just run?

8 MR. CLEVELAND: Your Honor, the message that it
9 gives me ---

10 THE COURT: --- I mean you ---

11 MR. CLEVELAND: --- the message that it gives me I'm
12 going to tell you the message for me I've been doing time
13 for so long. I'm tired ---

14 THE COURT: --- well, that's because you keep
15 messing up.

16 MR. CLEVELAND: Your Honor, I understand your point
17 of view. I'm tired; I'm 47 years old. I'm tired. I've
18 done time and time and time. And this actually
19 transpired when I was a kid. I've never really ---

20 THE COURT: --- no you weren't. This was last
21 year; you weren't a kid last year. You were 46 years old
22 last year. You had been in court. You knew you had to
23 be here and you just decided you had something else do
24 to. So this is not about when you were a kid. This was
25 last year. This was less than a year ago. You made the

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1 conscious choice to do what you wanted to do rather than
2 what I told you to do. Now tell me where does that leave
3 me?

4 MR. CLEVELAND: I have to respect that sir, and just
5 go to the next procedure that I can possibly go to.

6 THE COURT: And that's what you're going to have to
7 do because I did everything right that day, the State did
8 everything right, you did everything wrong and there is a
9 penalty for that. Motion to reconsider is denied. Thank
10 you. You have ten days to appeal my order.

11 *****END OF TRANSCRIPT OF RECORD*****
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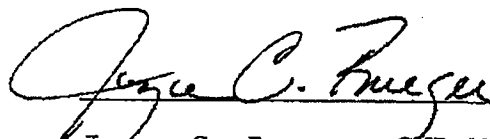
State v John Cleveland
Motion to Reconsider
September 16, 2016

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 16th day of September, 2016.

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

October 18, 2016



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN CLEVELAND, JR.,

APPELLANT

APPELLATE CASE NO 2016-001978

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in improperly trying appellant in his absence at trial.

STATEMENT OF THE CASE

Appellant John Cleveland was convicted of failure to register as a sex offender (third offense) during a jury trial held in his absence at the October 2015 term of the Charleston County General Sessions Court before Judge William J. Young. Robert Gailliard represented appellant at trial. Assistant Solicitors Scott Maynor and Ted Corvey appeared on behalf of the state. A sealed sentence was imposed. On July 18, 2016, the sealed sentence was published by Judge Deadra L. Jefferson. Appellant was sentenced to imprisonment for a period of five years. Shirene Hansotia represented appellant at the sentencing proceeding and Assistant Solicitor Ted Corvey appeared on behalf of the state at trial at that time. A reconsideration motion hearing was held in the case on September 16, 2016, before Judge William J. Young. Shirene Hansotia and Solicitor Corvey both appeared for that hearing also.

Appellant appealed his trial court conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in improperly trying appellant in his absence at trial.

In 1987, appellant was convicted of second degree criminal sexual conduct with a minor. Tr. 49, l. 21 – p. 50, l. 2. On October 15, 2015, appellant was convicted of failing to register as a sex offender.

At trial, Robert J. Brown, who was in charge of investigating sex offender registry matters for Charleston County testified that petitioner failed to register in December, 2013 as required and that he did not register in January, 2014 either. On January 26, 2014, Brown issued a warrant issued against appellant for this violation. Tr. 51, l. 20 – p. 75, l. 17.

Prior to trial, the trial judge noted that appellant was not present for trial. The solicitor presented the bail proceeding form signed by appellant noting that his failure to appear for trial would result in a trial in his absence. Also, the solicitor presented a letter dated September 11, 2015, sent to appellant and counsel advising that the trial would be held during the week of October 13-15, 2015. Tr. 33, l. 2 – p. 34, l. 11. Before proceeding with appellant's trial in his absence, the trial judge made the following findings:

[Trial counsel]...stated he talked to [appellant], informing [appellant] to be here today....As the trial judge, I spoke with [appellant] yesterday and told him to be here today or we would try the case in his absence, so I find that the defendant had adequate knowledge ...absolute knowledge to be here today. Tr. 34, l. 12-19.

In State v. Ravenell, 387 S.C. 449, 692 S.E.2d 554 (2010), the Court held that a defendant may voluntarily waive his right to be present at trial and be tried in his absence upon a trial judge's finding that the defendant received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend court. A

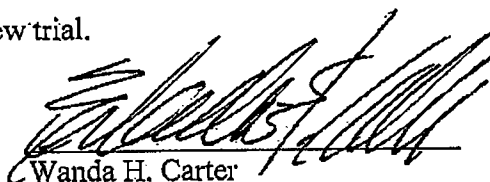
trial judge must determine if a criminal defendant voluntarily waived his right to be present at trial by making a finding on the record that the defendant received notice of his right to be present and was warned he or she would be tried in his absence should he fail to appear. State v. Ravenell, supra.

In the case at bar, the trial judge made a finding that appellant had “knowledge” of this right in question rather than a finding that he indeed received “notice” of his right to be present at trial. The error in referring to appellant’s “knowledge” rather than “notice” regarding his right to be present at trial meant that appellant was improperly tried in his absence. Also, the bailiff did not call three times in the courtroom to check as to whether petitioner was present for his trial. See State v. Ravenell, supra.

The Sixth Amendment guarantees every accused the right to be present at every stage of his trial. Illinois v. Allen. The trial judge improperly tried appellant in his absence.

CONCLUSION

Based on the foregoing argument, appellant’s conviction and sentence should be reversed and his case remanded to the lower court for a new trial.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of April, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Charleston County

 Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN CLEVELAND, JR.,

APPELLANT

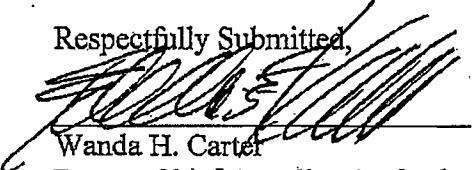
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Cleveland states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on September 16, 2016, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for John Cleveland.

Respectfully Submitted,


 Wanda H. Carter

 Deputy Chief Appellate Defender
 ATTORNEY FOR APPELLANT

This 12th day of April, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN CLEVELAND, JR.,

APPELLANT

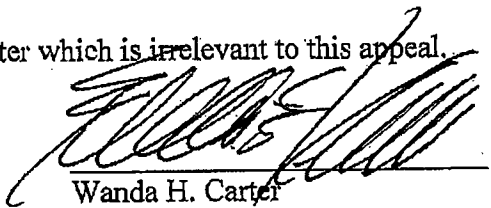
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Transcript dated October 13-15, 2015
- (2) Entire Transcript dated July 18, 2016
- (3) Entire Transcript dated September 16, 2016
- (4) True-billed indictment:

I certify that this designation contains no matter which is irrelevant to this appeal.

April 12, 2017



Wanda H. Carter
Deputy Chief Appellate Defender

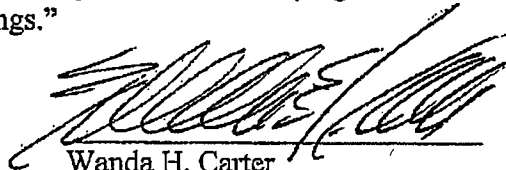
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and 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."

April 12, 2017.



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

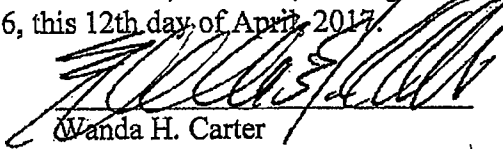
V.

JOHN CLEVELAND, JR.,

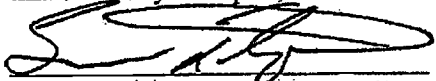
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Ben Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on John Cleveland, #291078, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 12th day of April, 2017.


Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of April, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

John Cleveland, Jr., Appellant.

Appellate Case No. 2016-001978

Appeal From Charleston County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2017-UP-369
Submitted September 1, 2017 – Filed October 11, 2017

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 30, 2017

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. John Cleveland, Jr.
Lower Court Case No. 2015GS1000019
Appellate Case No. 2016-001978

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jenny A. Kitchings
CLERK

Enclosure

cc: John Cleveland, Jr., 291078
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Wanda H. Carter, Esquire

RECEIVED

OCT 30 2017

APPELLATE DEFENSE

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)John Cleveland, Jr.)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Respondent.)

2017-CP-10-4421
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2017 DEC 27 PM 3:46
CLERK OF COURT

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland Corr., Inst., P.O. Box 2039,
SC 29936
2. Name and location of Court which imposed sentence Charleston County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-10-0019
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) **Date of sentence: 7-18-15**
- (b) **Term of sentence: 5 years**
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty *********
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. **South Carolina Court of Appeals**
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **Appeal dismissed**
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. **Submitted: 9-1-17**
- ii. **Filed: 10-11-17**
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. **Unpublished opinion: 2017-UP-369**
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial, post-trial, and appeal counsel
- (b) Statutory and constitutional violations
- (c) Statutory exemption/subject matter jurisdiction
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel's failed to raise statutory exemption under 23-3-430
- (b) Deprivation of statutory right to exemption from registration law
- (c) Trial nor sentence Court had jurisdiction of matter exempted
12. Prior to this application have you filed with respect to this conviction: _____
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for reconsideration of sentence order
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of General Sessions
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Date: 9-16-16

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: - - - - -

i. Lower Court Order

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Collateral Exhaustion (see 17-27-10)
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Robert L. Gaillard (see Bar site for address)
 ii. Shirene Hansota (see Bar site for address)
 iii. Wanda H. Carter (see Bar site for address)
 (b) the proceedings at which each such attorney represented you:
 i. Gaillard: Trial and sentence
 ii. Hansota: Post-trial and sealed sentence
 iii. Carter: Direct Appeal

19. State clearly the relief you seek in filing this application:

The Applicant moves for a hearing and an order vacating the
conviction and sentence based on any or all grounds set forth

20. Are you now under sentence from any other court that you have not challenged?

Yes

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, John Cleveland, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John Cleveland Jr.

SWORN to and subscribed before me this 19th
 day of December, 2017.

Virginia Robinson (L.S.)
 Notary Public

My Commission Expires: May 20, 2021

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John Cleveland, Jr., hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

John Cleveland Jr.
Applicant

SWORN or affirmed to and subscribed before me this

19th day of December, _____.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Cleveland, Jr.,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2017-CP-10-6621

**RETURN AND PARTIAL MOTION
TO DISMISS**

Respondent, making its Return to the application for post-conviction relief ("PCR") filed December 27, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the January 2015 term of the Charleston County Grand Jury for failure to register as a sex offender, 3rd offense. In October 13-15 2015, a jury trial was held in Applicant's absence before the Honorable William J. Young. Robert Gailliard, Esquire, represented Applicant. Assistant Solicitors Scott Maynor, Esquire and Ted Corvey, Esquire, appeared on behalf of the State. Judge Young sentenced Applicant to five years' imprisonment. Applicant was to be given credit for time served.

On April 12, 2017, Wanda H. Carter, Esquire, Deputy Chief Appellate Defender with the South Carolina Commission on Indigent Defense filed an Anders brief on Applicant's behalf with the South Carolina Court of Appeals. On October 11, 2017, the Court of Appeals issued the order dismissing Applicant's appeal, and granting Appellate Counsel's motion to be relieved.

State v. Cleveland, Op. No. 2017-UP-369 (2017). The Remittitur was sent down on October 30, 2017.

II.

In his pro se Application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Ineffective assistance of trial, post-trial, and appeal counsel."
 - a. "Counsel failed to raise statutory exemption under 23-3-430."
2. "Statutory and constitutional violations."
 - a. "Deprivation of statutory right to exemption from registration law."
3. "Statutory exemption/ Subject matter jurisdiction."
 - a. "Trial nor sentence Court had jurisdiction of matter exempted."

Attached and incorporated herein are the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant information.

III.

Respondent submits Applicant's allegations of ineffective assistance of trial counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Edwards v. State, 372 S.C. 493, 642 S.E.2d 738 (2007). A circuit court or court of general sessions has subject matter jurisdiction to try criminal cases. Therefore, the circuit court had jurisdiction to convict and sentence Applicant. Therefore, Respondent moves for summary judgement on this

allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

V.

Additionally, Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

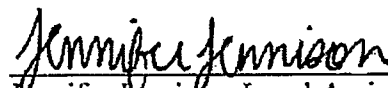
Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2017-CP-10-6621
	)	
JOHN CLEVELAND	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this the 11th day of April, 2018.


Jennifer Jennison, Legal Assistant
For Respondent

E X A M I N A T I O N S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
John Cleveland	5	12	--	--
Robert Lee Gailliard	18	21	--	--
Shirene Hansotia	26	28	29	--

1 (May 24, 2018.)

2 THE COURT: All right. This is John
3 Cleveland?

4 MS. OPPENHEIMER: That's correct, Your Honor.

5 THE COURT: Are you ready to go forward?

6 MR. MURPHY: We are, Your Honor.

7 THE COURT: All right. What would the State
8 like to tell me about this?

9 MS. OPPENHEIMER: This is John Cleveland, Jr.
10 versus the State of South Carolina, docket number
11 2017-CP-10-6621. During its January 2015 term, the
12 Charleston County grand jury indicted applicant for
13 failure to register as a sex offender third offense.
14 Robert L. Gailliard, Esquire represented him on this
15 charge. The assistant solicitor was -- Ted Corby and
16 Scott Maynor, both of the Ninth Circuit Solicitor's
17 Office, prosecuted the case.

18 On October 13, 2015, applicant proceeded to a
19 jury trial before the Honorable W. Jeffrey Young. The
20 following day, applicant failed to appear for his trial,
21 and he was tried in his absence. On October 15, 2015,
22 the jury convicted applicant as indicted. Judge Young
23 sentenced applicant to a term of imprisonment of five
24 years, and he sealed the sentence.

25 Thereafter, on July 18, 2016, applicant

1 appeared before the Honorable Deadra L. Jefferson with
2 new counsel, Shirene Hansotia, Esquire. Judge Jefferson
3 imposed the sentence of Judge Young. Subsequently,
4 applicant filed a motion to reconsider, and a hearing
5 into the matter was convened before Judge Young on
6 September 16, 2016.

7 THE COURT: That's Jeff Young, not me, right?

8 MS. OPPENHEIMER: That's correct.

9 Following argument, Judge Young denied the
10 motion to reconsider. Applicant filed a timely notice of
11 appeal, and deputy chief appellate defender Wanda H.
12 Carter of the South Carolina Commission on Indigent
13 Defense office of appellate defense perfected an appeal
14 on applicant's behalf. Following the submission of the
15 Anders brief, the South Carolina Court of Appeals
16 dismissed applicant's appeal by unpublished opinion on
17 October 11, 2017. The remittitur was issued on October
18 30th, 2017.

19 On December 27th, 2017, applicant filed an
20 application for post-conviction relief alleging
21 ineffective assistance of counsel, both trial counsel and
22 appellate counsel, statutory and constitutional
23 violations, and subject matter jurisdiction. The State
24 made its return and partial agreement to dismiss on April
25 11, 2018, requesting an evidentiary hearing be held on

JOHN CLEVELAND - DIRECT EXAMINATION

1 applicant's allegations of ineffective assistance of
2 counsel, and requesting summary judgment of applicant's
3 subject matter jurisdiction allegation.

4 Applicant is represented by Christopher
5 Murphy, and both are present today.

6 THE COURT: Mr. Murphy?

7 MR. MURPHY: Yes. Thank you, Your Honor.
8 May it please the Court: We would call Mr. Cleveland.

9 JOHN CLEVELAND,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MURPHY:

14 Q. Thank you. Mr. Cleveland, you were convicted in
15 Charleston County of failure to register as a sex
16 offender?

17 A. Yes, sir.

18 Q. And the attorney general said the case was tried.
19 Were you present at the trial?

20 A. No, I wasn't.

21 Q. You were tried in your absence; is that correct?

22 A. Yes, sir.

23 Q. Now, prior to that trial, you had retained
24 Mr. Gailliard to represent you; is that correct?

25 A. Yes, sir.

JOHN CLEVELAND - DIRECT EXAMINATION

1 Q. And did you know you were going to be tried in
2 your absence?

3 A. Yes, sir.

4 Q. That was a decision you made not to appear?

5 A. Yes, sir.

6 Q. Now, once you got convicted, did you talk to
7 Mr. Gailliard about your options?

8 A. After being convicted?

9 Q. Yes.

10 A. No, sir.

11 Q. Did you know you had a right to file an appeal?

12 A. Yes, sir.

13 Q. And you actually filed an appeal; is that correct?

14 A. Yes.

15 Q. And there was an Anders brief. Do you know what
16 an Anders brief?

17 A. I'm pretty --

18 Q. Your belief, what does an Anders brief mean?

19 A. It means being held liable or accountable for the
20 judgment with the judge, by me not being in court having
21 a right to have legal counsel, you know, that --

22 Q. Well, let me ask you this: You understand that --
23 you're here today. You got sentenced to five years,
24 correct?

25 A. Yes, sir.

JOHN CLEVELAND - DIRECT EXAMINATION

1 Q. And you understand that you are scheduled to be
2 released from state prison in October of this year,
3 correct?

4 A. Yes, sir.

5 Q. And despite that, you still want to go forward
6 with --

7 A. Yes, sir.

8 Q. -- this application?

9 A. Yes, sir.

10 Q. Now, we are alleging, or you are alleging, that
11 your attorney, Mr. Gailliard, committed an error. Do you
12 understand that?

13 A. Yes.

14 Q. And what errors are you alleging he committed?

15 A. First and foremost, addressing the Court, I feel
16 as though Mr. Gailliard took me with a jury of 12,
17 picking this trial of 12 people when I don't think that
18 was the proper situation for the case that we had going
19 on in that by picking 12, the jury of 12, there was no
20 way that the motions or that the issues that we had
21 pertaining to the sexual offender registry because the
22 State wouldn't even allow any of the motions to be
23 presented.

24 Q. What motions are you talking about?

25 A. For example, Mr. Gailliard -- we didn't have

~~JOHN CLEVELAND - DIRECT EXAMINATION~~

1 proper enough time to be prepared for this case. I had
2 two -- I had two different attorneys throughout this
3 whole process. Originally, I was retained by the public
4 defender's office, Mrs. Murray, and due to the fact of
5 going through a divorce, being hospitalized,
6 Mr. Gailliard and I at some time we made a connection,
7 and when we made that connection, we only had maybe a
8 three-month period of trying to be prepared for the case,
9 but with the back and forth in the hospital, we never had
10 time to actually prepare for the case.

11 My issue there is Mr. Gailliard came with a motion
12 for this case to be dismissed under the sweetheart
13 exemption law, and what happened during that morning or
14 afternoon of the case, when he raised that motion, the
15 State said there was no need for this to be raised
16 because the sweetheart was not afforded to me because of
17 the age of the victim.

18 When I first retained Mr. Gailliard -- I was under
19 the impression, as well as he was under the impression,
20 that her age was at 16, or 15, whatever the age was.
21 When the State presented that, Mr. Gailliard's demeanor
22 was, oh, you didn't tell me, da-da-da, so there came a
23 conflict. I really feel as though Mr. Gailliard at that
24 point in time, when he really found out her age, he
25 wasn't willing to represent me to the fullest of his

1 abilities. Not here today to try to slander or to
2 degrade, but I really feel as though Mr. Gailliard --
3 because if you look into the transcripts, during the
4 case, he wasn't really fully prepared with statutes on
5 laws or closings, and it's clearly documented, so that's
6 why I came to present that there's some issues in his
7 defense for me.

8 Q. And what do you think Mr. Gailliard should have
9 done?

10 A. I believe, first and foremost, we shouldn't have
11 never had picked a jury. My understanding -- because I
12 was out of town prior to that, trying to get my mental
13 back together because I was mentally messed up, as well
14 as chemical addiction. What happened was Mr. Gailliard
15 said that we were going to have what they considered a
16 suppression hearing.

17 When I came for this suppression hearing, there
18 was never a suppression hearing. What we ended up doing
19 is picking a jury. Neither one of us was prepared for
20 that.

21 Q. All right. And, again, sir, I'm asking you, you
22 had mentioned that the age of the victim was unknown to
23 Mr. Gailliard?

24 A. Yes.

25 Q. And had he known the age, what would have been

1 different, in your mind?

2 A. I think he would have never even come up with the
3 motion of the sweetheart law. I think that he would have
4 done what we spoke in his office at one point in time,
5 which never came up in the case, about the ex post facto,
6 which is relevant in this case. I also feel as though
7 under the equal protection act that would have been more
8 grounds to support on those grounds.

9 I think Mr. Gailliard, had he -- was he prepared
10 today or we were even in a different situation, we would
11 go about it a totally different way.

12 Q. All right. Now, those issues you raised with the
13 ex post facto, or the equal protection rulings, were not
14 raised by Mr. Gailliard; is that correct?

15 A. He made a motion for one of them, which was the
16 equal protection law. Nowhere in the transcripts did I
17 find out because of my not being in there that Judge
18 Young granted, or whatever, but he did make a motion for
19 it prior to the trial, yes.

20 Q. All right. And, obviously, the ruling was against
21 Mr. Gailliard?

22 A. Yeah, because Judge Young took in those matters.

23 Q. Is there anything else you allege Mr. Gailliard
24 did incorrectly or anything he should have done in your
25 defense?

JOHN CLEVELAND - DIRECT EXAMINATION

1 A. I still feel as though, even after being
2 sentenced -- Mr. Gailliard didn't come for the
3 sentencing, when I was actually -- when the CO sentence
4 was released because I had to retain someone from the
5 public defender's office as well as when it came time to
6 submit it for the appeal, because I had to go around the
7 whole other -- we started this together, you know what
8 I'm saying, and I feel like in the middle of this
9 process, Mr. Gailliard was, like, I'm not going to have
10 nothing to do with this.

11 Q. All right. And let me ask you this: You
12 understand that Mr. Gailliard would be charged with
13 preserving any errors for an appeal, correct? He would
14 have to object and make the proper objection to preserve
15 that for appeal?

16 A. I don't understand what you're saying. If you
17 could explain that to me.

18 Q. You're not alleging that your appellate counsel
19 did anything wrong in this case?

20 A. I really -- to be honest, I really feel from the
21 motion that was -- for the Anders, the motion for the
22 appellate, the Anders, I believe that under this kind of
23 charge that I'm being charged with, I believe that no one
24 out of the attorneys actually took in consideration what
25 the law is pertaining to these cases, so I believe that

JOHN CLEVELAND - CROSS-EXAMINATION

1 the briefing for the Anders was just in there, they dealt
2 with that, and they said I don't want to deal with this.

3 Q. But let me ask you this: Procedurally, before we
4 even get to the appeal, the issues have to be raised
5 before the trial judge. Do you understand that?

6 A. Yes, sir.

7 Q. And if the attorney does not raise those issues to
8 the trial judge, there's nothing an appellate Court can
9 do for you. Do you understand that?

10 A. Yes, sir.

11 Q. So you're basically saying that Mr. Gailliard did
12 not raise these issues, which would have ended it, or
13 resulted in a dismissal of the charges against you?

14 A. I believe so.

15 Q. All right. And is there any other errors that you
16 allege he did that we did not talk about today?

17 A. Not -- no, sir.

18 MR. MURPHY: Thank you. That's all I have.

19 THE COURT: Cross?

20 MS. OPPENHEIMER: May it please the Court,
21 Your Honor:

22 CROSS-EXAMINATION

23 BY MS. OPPENHEIMER:

24 Q. Do you recall discussing possible defenses with
25 Mr. Gailliard?

~~JOHN CLEVELAND - CROSS-EXAMINATION~~

1 A. Could you repeat that.

2 Q. Did you discuss possible defenses with
3 Mr. Gailliard?

4 A. Outside of the ex post facto, like I said, we
5 really didn't have time adequately to be even prepared
6 for a trial.

7 Q. But he did move to dismiss the case based on the
8 sweetheart exception, correct?

9 A. Yes.

10 Q. And you just don't like the outcome that happened?

11 A. I mean, it wasn't -- it had no merit for the case.

12 Q. Well, let me ask you this: You were convicted of
13 criminal sexual conduct with a minor, correct?

14 A. Yes, ma'am.

15 Q. Back in '87?

16 A. Yes, ma'am.

17 Q. And you had been registering prior to this,
18 correct?

19 A. Forcibly, yes, ma'am.

20 Q. You had appeared to law enforcement to register as
21 sex offender, correct?

22 A. Forcibly, yes, ma'am.

23 Q. And on a quarterly basis, you appeared and
24 registered, right?

25 A. Forcibly, yes, ma'am.

~~JOHN CLEVELAND - CROSS-EXAMINATION~~

1 Q. And at some point, you decided that you didn't
2 want to register anymore, right?

3 A. No, that's not what happened.

4 Q. You didn't show up to register, correct?

5 A. No, no. That's not what happened. Under South
6 Carolina Department of Corrections rules and regulations,
7 they are to inform a person that, hey, SLED or Charleston
8 County Sheriff Department says that now you are to
9 register as a sex offender. In 2001, I was incarcerated
10 for a drug-related offense. From 1989, leaving prison,
11 until 2001 there was never a record statement that I had
12 to register as a sex offender.

13 What happened was South Carolina Department of
14 Corrections classification system said now you have to
15 register as a sex offender, and when I continue to say
16 forcibly is because I said I'm not signing no papers for
17 something that I shouldn't even have been on. I was
18 charged under the youthful offender program where the
19 judge, Luke Brown, says after six years this will be off
20 my record.

21 Q. But you did have a criminal sexual conduct --

22 A. In 1987, prior to the enactment of the law, which
23 came into effect in 1994.

24 Q. And you did sign -- and you did appear to law
25 enforcement and indeed sign the paperwork necessary to

JOHN CLEVELAND - CROSS-EXAMINATION

1 register as a sex offender, correct?

2 A. Here we go --

3 Q. Well, you signed the papers, right?

4 A. I signed the paper in the department of
5 corrections.

6 Q. Now, do you recall Judge Young telling you that it
7 was imperative that you show up for trial?

8 A. Oh, yes, ma'am. Yes, ma'am, I really do.

9 Q. And you made the decision not to come?

10 A. Yes, ma'am.

11 Q. Because it wasn't important enough for you to show
12 up; is that right?

13 A. That's not the reason why.

14 Q. You just didn't show up for trial?

15 A. I didn't show up to trial because I knew, after
16 every motion that Judge Young just threw away, dismissed,
17 I would not have a fair case. Nobody wants to go to
18 prison.

19 Q. But your attorney did make those motions on your
20 behalf, correct?

21 A. He made that one about -- the only argument he
22 made, only argument he made, was about the sweetheart
23 laws.

24 Q. And you just weren't happy that the judge decided
25 that he wasn't going to dismiss the case, right?

JOHN CLEVELAND - CROSS-EXAMINATION

1 A. No. I wasn't happy that I was going to end up in
2 prison for five years without having the proper
3 opportunity to explain my case.

4 Q. But you didn't show up to help Mr. Gailliard
5 defend you, did you?

6 A. Well, I physically didn't come here, but me and
7 Mr. Gailliard spoke on the morning of that. Several
8 times over the phone, me and Mr. Gailliard spoke prior to
9 me supposed to be coming to court, and I got to the point
10 where, as I said, Mr. Gailliard is there. We can just
11 stop this trial, and I'll just go ahead and take the
12 sentence and we will fight for it another day. It never
13 happened.

14 Q. So then you appeared for sentencing with
15 Ms. Hansotia, correct?

16 A. Yes, ma'am.

17 Q. And at that time she told you there was really not
18 much she could do, right?

19 A. No, ma'am. She didn't tell me that.

20 Q. Well, she told you that because you decided to
21 ignore Judge Young and Mr. Gailliard's advice that that
22 hurt you at trial, correct?

23 A. No. That's not how the conversation with her
24 went.

25 Q. By the time she got on, the only thing she could

~~JOHN CLEVELAND - CROSS-EXAMINATION~~

1 do was sentencing. That was the only thing left, right?

2 A. Yes, ma'am.

3 Q. But she did file a motion to reconsider, right?

4 A. Yes, ma'am.

5 Q. And you told Judge Young during that hearing that
6 she was representing you to the best of her ability,
7 correct?

8 A. She did the best she could do at that point in
9 time.

10 Q. And you did say that Mr. Gailliard did make an
11 equal protection argument at your trial, correct?

12 A. That was one of the motions that he made, yes.

13 Q. So he made two motions on your behalf, which were
14 denied, correct?

15 A. Yes, ma'am.

16 MS. OPPENHEIMER: No further questions.

17 MR. MURPHY: Nothing further, Your Honor.

18 THE COURT: You can step down. Do you have
19 another witness?

20 MR. MURPHY: Beg the Court's indulgence.

21 Your Honor, we would rest.

22 THE COURT: Anything from the State?

23 MS. OPPENHEIMER: State calls Robert
24 Gailliard.

25 ROBERT LEE GAILLIARD,

ROBERT GAILLIARD - DIRECT EXAMINATION

1 having been first duly affirmed,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. OPPENHEIMER:

5 Q. Good afternoon, Mr. Gailliard. How long have you
6 been practicing law?

7 A. I was first admitted November 9th, 1977, so I
8 guess that's a total of 40 years at this point.

9 Q. And where are you employed?

10 A. I'm self-employed as an attorney.

11 Q. And about what percentage of your practice is
12 criminal law?

13 A. That's hard to say. I would say between 10 and 20
14 percent.

15 Q. And were you appointed or retained in this case?

16 A. I was retained. I was paid some money by
17 Mr. Cleveland at some point.

18 Q. Do you recall the approximate date?

19 A. I do not.

20 Q. Would you have had ample time to prepare for
21 trial?

22 A. We had ample time.

23 Q. How many times did you meet with the applicant
24 prior to trial?

25 A. Oh, I can't tell you that, but he and I met, and

ROBERT GAILLIARD - DIRECT EXAMINATION

1 we went over the issues thoroughly.

2 Q. Do you recall what defenses you were going to
3 raise or what motions you were going to raise?

4 A. We talked extensively about two areas: One, that
5 the whole reporting thing came up after his conviction.
6 He got convicted back in the '80's, and he was a youthful
7 offender and the whole law about reporting came in
8 sometime after that. That was one of the issues that we
9 looked into.

10 The second one was that he told me that the
11 child was -- that the young lady was over 16 years of age
12 and that she consented to the sex, so that certainly
13 would have given him the exemption under the current
14 statute, so he's correct, I was shocked when we
15 discovered that she was not 16 or above.

16 Q. And did you make any motions based on your
17 research and based on your discussions with the applicant
18 at trial?

19 A. Well, I made the motion, of course, on the
20 sweetheart exemption. I thoroughly reviewed all the law
21 on the ex post facto, and there was substantial case law
22 saying that we couldn't use that, and I don't know that
23 that would have done any good at that point when the case
24 law had already established that they could go back and
25 require the registration.

1 Q. But you did argue the sweetheart exception?

2 A. I did.

3 Q. And what was the result of that motion to dismiss?

4 A. That was denied by the Court.

5 Q. And do you recall why?

6 A. I think it was basically because the child was --
7 the young lady was under 16 years of age, and if you're
8 under 16, I don't know that you can consent to sex. If
9 you could, you would not have the charge of statutory
10 rape. All you'd need to do is be under a certain age and
11 it's done.

12 Q. So the information Mr. Cleveland had given you
13 about the victim's age was incorrect?

14 A. It was.

15 Q. Beg the Court's indulgence.

16 Do you have any information that Mr. Cleveland was
17 registering prior to this charge?

18 A. Apparently he was registering up to a point, and I
19 went back and looked at the records and stuff and went
20 through the Rule 5 that I had on him. He had been
21 registering up to a point.

22 Q. And do you recall the circumstances in which he
23 began to fail to register?

24 A. I do not know what those circumstances were.

25 MS. OPPENHEIMER: No further questions, Your

~~ROBERT GAILLIARD - CROSS-EXAMINATION~~

1 Honor.

2 MR. MURPHY: Thank you, Your Honor. May it
3 please the Court:

4 CROSS-EXAMINATION

5 BY MR. MURPHY:

6 Q. Mr. Gailliard, do you have your file with you?

7 A. I do not.

8 Q. And is there any reason why you did not bring your
9 file?

10 A. I'm familiar with it. I don't know that bringing
11 the actual file would help.

12 Q. And did you write any letters to Mr. Cleveland
13 explaining the charges against him and the elements that
14 the State needed to prove?

15 A. You said write letters to him?

16 Q. Yes.

17 A. We met personally in my office.

18 Q. And did you keep a log of the time you spent on
19 this case at all?

20 A. I did not keep a log of the time that I spent on
21 the case.

22 Q. Your file, does it have any writings in it showing
23 work that you did on this case?

24 A. Certainly.

25 Q. And what would those be?

1 A. Well, the case law, for one thing, on the ex post
2 facto issue; of course the statute about the sweetheart
3 exemption.

4 Q. And can you name any cases that you looked up
5 regarding the ex post facto and the sweetheart exemption?

6 A. No.

7 Q. Can you name any cases that you looked up in his
8 defense at all?

9 A. You said you want the names of the cases?

10 Q. You said you have a memory of your file, which we
11 don't have, so I'm asking you, what actually did you do?
12 Give us the name of a case that you looked up.

13 A. I cannot give you the name of a case.

14 Q. You talked about that you did not know the age of
15 the victim. Is that from the 1987 conviction?

16 A. That's the only conviction he had for criminal
17 sexual conduct.

18 Q. And other than -- obviously, you would have read
19 the sweetheart exception statute prior to going to trial?

20 A. Certainly.

21 Q. And did you have any other defenses other than the
22 age of the victim?

23 A. No. There weren't any other defenses other than
24 that.

25 Q. And did you explain that to Mr. Cleveland at all?

1 A. Certainly.

2 Q. Now, at trial, Mr. Cleveland, he was there for the
3 pretrial motions; is that correct?

4 A. He was there for the first day, yes.

5 Q. And he did not show up for the second day?

6 A. That's correct.

7 Q. And did you have any conversation with him about
8 advising him to show up or not show up?

9 A. He called me from a number that I was not familiar
10 with that I could not call him back, and we discussed
11 several things. He never told me that he was not going
12 to come to the trial. You know, he called and we talked,
13 and I, of course, was surprised when he did not show up,
14 and I would call him and he would not answer the call,
15 and, certainly, the phone wasn't registered to him. It
16 was someone else's phone.

17 Q. And let me ask you this: Did you talk to the
18 solicitor, the assistant solicitor, about any type of
19 deals, plea deals or negotiations?

20 A. All that came up -- I had extensive discussions
21 with the assistant solicitor. We went over the ex post
22 facto matter, the case law. We went over the sweetheart
23 exemption. He is the one that, you know, was able to
24 determine that the young lady was under 16 years of age.

25 Q. I understand that, but in terms of -- did you try

1 to say, All right. We've got this young lady that's
2 under 16. Let's try and work out a deal, or try to get
3 him a better deal than what he was facing under the
4 statute?

5 A. There was no offer from the solicitor. They
6 weren't willing to do anything other than have him go to
7 trial on the -- there was never any discussion of an
8 offer to a lesser penalty.

9 Q. And in terms of the ex post facto, you made a
10 couple of motions at pretrial?

11 A. I did make some motions.

12 Q. And, ultimately, those motions were denied?

13 A. All the motions that we made were denied.

14 Q. And did you preserve the record accordingly?

15 A. When you say preserve the record accordingly,
16 there's a record showing the motion being made and it
17 being denied. I don't know that I needed to --

18 Q. Let me ask you this, sir: You're familiar with
19 what an Anders brief is?

20 A. If you explain it to me, I'm certain I'm familiar
21 with it.

22 Q. An Anders brief is when the appellate attorney
23 says there's no issues to raise before the appellate
24 Court.

25 A. Certainly.

1 Q. All right. And that was filed in this case?

2 A. Uh-huh.

3 Q. So my question is, is the Anders brief would have
4 been filed because either, one, you didn't preserve any
5 issues for appeal, or, number two, you didn't raise any
6 issues?

7 MS. OPPENHEIMER: Objection. He can't speak
8 as to why appellate counsel filed an Anders brief or what
9 she found was preserved for appeal.

10 THE COURT: Sustained.

11 BY MR. MURPHY:

12 Q. Are you familiar with the requirement to preserve
13 any issues for objection at trial?

14 A. Certainly.

15 Q. All right. And do you believe you did that?

16 A. I do.

17 Q. And the motions that you made, do you believe they
18 had merit when you made them?

19 A. Certainly.

20 MR. MURPHY: That's all I have, Your Honor.

21 THE COURT: Redirect?

22 MS. OPPENHEIMER: Nothing further, Your
23 Honor.

24 THE COURT: You can step down. Does the
25 State have another witness?

SHIRENE HANSOTIA - DIRECT EXAMINATION

1 MS. OPPENHEIMER: The State would call
2 Ms. Hansotia.

3 SHIRENE HANSOTIA,
4 having been first duly sworn,
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. OPPENHEIMER:

8 Q. Good morning, Ms. Hansotia. I apologize for
9 mispronouncing your name earlier.

10 A. That's okay.

11 Q. How did you become involved into this case?

12 A. I was a public defender at the time, and it was
13 assigned to me. I had never had a case where I was just
14 assigned for the sentencing; however, I guess in this
15 case, it was given to our office for one reason or
16 another. The existing attorney was not available -- I
17 don't know what the history was there, but it was given
18 to me to handle the sentencing portion. I did not handle
19 the trial.

20 Q. And at that point, Mr. Cleveland had already been
21 convicted and sentenced, correct?

22 A. Yes.

23 Q. And what was left for you to do at this point?

24 A. Well, as I went through with him, not being at the
25 trial was going to be a difficult hurdle to overcome in

SHIRENE HANSOTIA - DIRECT EXAMINATION

1 that typically I could try and make some arguments, which
2 I tried to do with the judge, but as occurred, the judge
3 really cut me off and basically said the sentence has
4 been made. That's what I'm limited to doing.

5 So it went in front of Judge Jefferson first. She
6 said you need to do a motion to reconsider. Then it
7 subsequently went in front of Judge Jeffrey Young, and,
8 again, I tried to make the arguments after talking with
9 my client, but unfortunately, at that point -- I felt for
10 the client. I understood his frustration and that he had
11 some mental -- you know, some mental issues prior to that
12 and some addiction issues he was struggling with, but
13 that -- we went over the fact that not being at trial was
14 going to be a big problem.

15 Q. And what arguments did you try and make before
16 Judge Jefferson?

17 A. We talked about, again, his issues with addiction,
18 some mental health concerns, and then I was basically
19 going to let him explain because we went back and forth
20 on whether or not it was going to be a valid defense that
21 he was a YOA and so forth. I was basically going to
22 defer to him and say, Your Honor, there's another issue,
23 but we didn't get to that.

24 Q. Did you feel like that issue had merit?

25 A. No, but I understood his frustration.

~~SHIRENE HANSOTIA - CROSS-EXAMINATION~~

1 Q. Okay. And what did you -- what arguments did you
2 present to Judge Young at the motion to reconsider?

3 A. I'm sorry. I jumped to those first. That's
4 basically what we went through, was things he was
5 struggling with at the time and the reason why he didn't
6 come to trial, and that's as far as we got.

7 Q. So did you see any reason to argue that
8 Mr. Cleveland was statutorily exempt from registering?

9 A. I understand his frustration that the law came
10 afterwards, but there was very little I could do at that
11 point, and the judge was not interested in hearing those
12 arguments because the sentence had been made.

13 MS. OPPENHEIMER: I have no further
14 questions, Your Honor.

15 MR. MURPHY: Very briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MURPHY:

18 Q. Do you have any idea why Mr. Gailliard wasn't
19 helping him at sentencing?

20 A. As far as I understood, he just didn't want to be
21 involved with the case anymore, but I didn't really know.

22 Q. Did you have any conversations with Mr. Gailliard
23 about why he wasn't there?

24 A. I did call him, yes.

25 Q. And did he return the call?

~~SHIRENE HANSOTIA - REDIRECT EXAMINATION~~

1 A. I don't remember. I believe that I made several
2 calls. I think we had a short discussion, but I don't
3 remember for sure.

4 MR. MURPHY: That's all I have. Thank you.
5 Beg the Court's indulgence.

6 BY MR. MURPHY:

7 Q. Do you know if you asked Mr. Gailliard to turn
8 over his file at all?

9 A. Okay. Yes, I think I did, and I don't believe I
10 got it.

11 MR. MURPHY: All right. Thank you. That's
12 all I have.

13 THE COURT: Anything else?

14 MS. OPPENHEIMER: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q. You don't really know why Mr. Gailliard did not
18 represent Mr. Cleveland at sentencing, correct?

19 A. No.

20 MS. OPPENHEIMER: No further questions, Your
21 Honor.

22 MR. MURPHY: That's it.

23 THE COURT: You can step down. Thank you all
24 right. Anything else?

25 MR. MURPHY: Nothing, Your Honor.

1 MS. OPPENHEIMER: Your Honor, we do have
2 Wanda Carter available by phone testimony if Your Honor
3 feels it's necessary.

4 MR. MURPHY: We're not alleging any issues
5 with appellate -- any error with appellate, so --

6 THE COURT: Okay. Well, then, we won't need
7 to. All right. Argument?

8 MR. MURPHY: Thank you, Your Honor. We would
9 move for a new trial based on the failure to properly
10 prepare this case for trial. It appears that
11 Mr. Gailliard relied solely on information that was
12 erroneous and made no attempts to try and mitigate any
13 deals or try to get a deal.

14 In addition, the arguments he made at trial
15 either were not preserved or lacked any merit, as
16 evidenced by the Anders brief, where the appellate
17 attorney would be saying I have no issues to raise on
18 appeal, meaning PCR is his only option. For that reason,
19 Judge, we would ask for a new trial.

20 THE COURT: State?

21 MS. OPPENHEIMER: Your Honor, Mr. Gailliard
22 testified he had ample time to prepare for this case. He
23 discussed with the solicitors at length about any
24 potential negotiations. The State was not willing to
25 offer anything. They wanted to go to trial. They also

1 discussed these potential exemptions, the sweetheart
2 exemption as well as the ex post facto, and Mr. Gailliard
3 did indeed raise those in front of Judge Young. They
4 were denied.

5 He presented the best argument he could at
6 that time, and despite his best efforts, it was denied,
7 and he was going off of what his client told him, which
8 was misinformation. Mr. Cleveland had been registering
9 prior to the point in time in which he began to fail to
10 appear to register, so he knew that he had to register.
11 He was aware that this law applied to him regardless of
12 the 1987 conviction. He just decided to stop showing up,
13 much like he decided not to show up for trial, just
14 wasn't important enough to him.

15 For all these reasons, we ask that you deny
16 the application for post-conviction relief.

17 THE COURT: All right. Well, I find that the
18 applicant has failed to show any ineffectiveness on his
19 counsel. Mr. Gailliard pretty much had his hands tied by
20 Mr. Cleveland willfully not showing up. He made the
21 arguments that the client asked him to make. They were
22 denied. There was an appeal. It looks like the Court
23 found there was no merit to those appeals, and so I am
24 denying the application and ask the State to prepare an
25 order.

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MS. OPPENHEIMER: Yes, Your Honor.

THE COURT: Good luck.

- - -

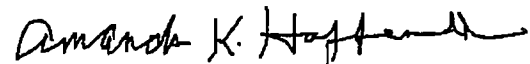
(Whereupon, at 12:24 p.m., the proceedings
were concluded.)

- - -

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 24th of May 2018.

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

November 4, 2018



Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Cleveland, Jr., #291078,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-6621

ORDER OF DISMISSAL

FILED
2018 JUL -3 PM 12:24
JULIE J. CLERK, CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed December 27, 2017, by John Cleveland, Jr. (Applicant). The State (Respondent) made its Return and Partial Motion to Dismiss on April 11, 2018, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and requesting summary judgment on Applicant's allegation regarding subject-matter jurisdiction. An evidentiary hearing into the matter was convened on May 24, 2018, at the Charleston County Courthouse before the Honorable Roger M. Young, Sr. Applicant was present at the hearing and was represented by Christopher L. Murphy, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its January 2015 term, the Charleston County Grand Jury indicted Applicant for failure to register as a sex offender, third offense (2015-GS-10-00019). Robert L. Gailliard, Esquire, represented him on this charge. Assistant Solicitors Edward R. Corvey, III, and G. Scott Maynor, both of the Ninth Circuit Solicitor's Office, prosecuted the case. On

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October 13, 2015, Applicant proceeded to a jury trial before the Honorable W. Jeffrey Young. The following day, Applicant failed to appear for his trial, and he was tried in his absence. On October 15, 2015, the jury convicted Applicant as indicted. Judge Young sentenced Applicant to a term of imprisonment of five years and sealed the sentence. Thereafter, on July 18, 2016, Applicant appeared before the Honorable Deadra L. Jefferson with new counsel, Shirene C. Hansotia, Esquire, for sentencing. Judge Jefferson imposed the sentence of Judge Young. Subsequently, Applicant filed a motion to reconsider, and a hearing into the matter was convened before Judge Young on September 16, 2016. Following argument, Judge Young denied the motion to reconsider.

Applicant filed a timely Notice of Appeal, and Deputy Chief Appellate Defender Wanda H. Carter, of the South Carolina Commission of Indigent Defense, Office of Appellate Defense, perfected an appeal on Applicant's behalf. Following the submission of an *Anders*¹ brief, the South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion on October 11, 2017. *State v. Cleveland*, Op. No. 20147-UP-369 (S.C. Ct. App. filed Oct. 11, 2017). The remittitur was issued on October 30, 2017.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations:

1. "Ineffective assistance of trial, post-trial, and appeal counsel;"
 - a. "Counsel's [sic] failed to raise statutory exemption under 23-3-430."
2. "Statutory and constitutional violations;" and
 - a. "Deprivation of statutory right to exemption from registration law."
3. "Statutory exemption/subject matter jurisdiction."
 - a. "Trial nor sentence Court had jurisdiction of matter exempted."

At the evidentiary hearing, Applicant proceeded forward on the allegations of ineffective assistance of trial and sentencing counsel raised in his application, as well as the allegation raised

¹ *Anders v. California*, 388 U.S. 924 (1967).

concerning subject-matter jurisdiction. Applicant waived all allegations regarding ineffective assistance of appellate counsel.

STATEMENTS OF FACTS ADDUCED AT TRIAL

In 1987, Applicant pled to second-degree criminal sexual conduct with a minor, for which he was sentenced under the Youthful Offender Act to a term of imprisonment not to exceed six years. Trial Tr. 51. As a result of this conviction, Applicant was required to register as a sex offender quarterly for life. Trial Tr. 61, 64-65. Applicant's original registration date was January 22, 2001, where he filled out a form indicating he understood he was required to register annually for life and to update his address within ten days of moving. Trial Tr. 59, 61. Initially, however, Applicant was not required to register quarterly, but due to changes in the South Carolina Law Enforcement Division (SLED) regulations in 2012, he was later required to register each March, June, September, and December. Trial Tr. 65, 73, 77, 79.

In June 2008, as well as June 2013, Applicant appeared for his annual registration. Trial Tr. 63. He also appeared on September 18, 2013 in order to register. Trial Tr. 71. Applicant was required to register again in December 2013, but he did not appear. Trial Tr. 71, 94. On December 3, 2013, law enforcement attempted to verify Applicant's address, but he had not lived at the address they had listed for him for at least one year prior. Trial Tr. 71, 80. Thereafter, on December 27, 2013, law enforcement left Applicant a voicemail, indicating he needed to appear in order to register by January 8, 2014. Trial Tr. 72, 93. By January 23, 2014, Applicant still had not appeared. Tr. 72. Therefore, on January 27, 2014, a warrant was issued for Applicant. Trial Tr. 72.



TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Robert L. Gailliard, Esquire, (hereinafter "Trial Counsel") and Shirene C. Hansotia, Esquire (hereinafter "Sentencing Counsel"). This Court also had before it a copy of Applicant's trial transcript, Applicant's appellate records, the records of the Charleston County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he retained Trial Counsel to represent him. He also testified he was tried in his absence and convicted of failure to register as a sex offender. He elaborated he knew he was going to be tried in his absence and made the decision not to appear for trial, even though the trial court advised him it was imperative to appear for his trial.

He testified prior to his conviction he had "forcefully" appeared to register as a sex offender. He elaborated he was incarcerated in 2001 on a drug charge, and SCDC required him to register based on their classification system and his prior conviction. Applicant also testified he did not sign any papers, through which he would have registered. He further testified the 1994 Sex Offender Registry Act was passed after his 1987 conviction.

Applicant testified he and Trial Counsel discussed the possibility of raising an *ex post facto* defense, but that was the only defense they discussed. He also testified Trial Counsel made a motion to dismiss under the sweetheart exception of the statute² but did not argue the retroactivity of the statute nor made an argument under equal protection. On the other hand, Applicant also testified Trial Counsel did make an argument under equal protection, which the trial court denied. He further testified the State argued the sweetheart exception could not be raised because of the victim's age. He testified he believed the victim was between the ages of

² See S.C. Code Ann. § 23-3-430(C)(5).



fifteen and sixteen. He elaborated when Trial Counsel heard the State's argument, he no longer wanted to represent Applicant. He further elaborated Applicant's motion to dismiss was denied; and, therefore, Trial Counsel proceeded to a jury trial. Applicant also testified it was improper for Trial Counsel to take his case to trial, and Trial Counsel was not adequately prepared to do so. He elaborated Trial Counsel was not fully prepared with regards to the sex offender registry statute, the law, or his closing argument. He further elaborated Trial Counsel did not raise issues at trial, which would have resulted in Applicant's acquittal.

Applicant also testified Trial Counsel did not appear for his sentencing, but rather got someone from the Public Defender's Office to represent Applicant. He elaborated at that time, Trial Counsel wanted nothing to do with Applicant's case. Applicant also testified he appeared at sentencing with Sentencing Counsel, who advised there was nothing left to be done except for sentencing. However, Applicant testified Sentencing Counsel made a motion to reconsider the sentence.

Similarly, Applicant testified appellate counsel filed an *Anders* brief, thereby signaling she wanted nothing to do with his case. He elaborated none of his attorneys took the law into consideration during the course of their representation of him.

Following Applicant's testimony, Trial Counsel testified. Trial Counsel testified he was admitted to practice law in 1977, and has been practicing for forty years. He also testified he is self-employed, and approximately ten to twenty percent of his practice is criminal law. Trial Counsel testified he was retained to represent Applicant, and he had sufficient time to prepare for trial. He testified he did not have his case file, but he was familiar with the file.

He further testified he met with Applicant personally and discussed possible issues with him, including the fact Applicant had been reporting, up to a point, after his conviction and the



sweetheart exception. He elaborated Applicant informed him the minor victim from the 1987 conviction was over sixteen years old, and the sex was consensual; so he moved to dismiss under the sweetheart exception. He further elaborated that motion was denied, as the child was, indeed, under sixteen years old and did not consent. Trial Counsel also testified the information Applicant had provided him was incorrect. Trial Counsel testified he did not move to dismiss on the basis it was in violation of the *ex post facto* clause based on his research of the case law. He elaborated he had no other defenses other than the sweetheart exception and the age of the victim, which he explained to Applicant. Trial Counsel also testified he had extensive conversations with the solicitor regarding a potential plea offer, the sweetheart exception, and retroactivity, but they were unwilling to make any offers.

Trial Counsel also testified Applicant did not appear for the second day of the trial, and Applicant did not tell him he was not going to appear. He elaborated when he attempted to call Applicant, he did not answer. He further elaborated he was surprised by Applicant's decision not to appear.

Following Trial Counsel's testimony, Sentencing Counsel testified. Sentencing Counsel testified she was working at the Public Defender's Office when she was assigned Applicant's case. She further testified she was only assigned the case for sentencing purposes, as Trial Counsel was unavailable. She elaborated she called Trial Counsel when she was assigned the case, and they had a brief discussion regarding the case.

She also testified she met with Applicant prior to sentencing and explained to him his absence at trial would be a difficult hurdle to overcome. She further testified she was aware of Applicant's mental health and addiction issues and attempted to argue those to the court in an effort to justify his absence at trial. She elaborated she also attempted to argue the statutory

exemption before the court but was unable to do so. She testified, however, she was very limited in the arguments she could make.

Sentencing Counsel testified she made a motion to reconsider before the trial court as well. In that motion, she attempted to argue Applicant's addiction and mental health issues and also attempted to allow Applicant to explain his YOA sentence for this 1987 conviction. She further testified, however, this argument was not meritorious.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsels' alleged failure to raise statutory exemption

Applicant alleges both Trial Counsel and Sentencing Counsel failed to raise and argue the sweetheart exception under the sex offender registry statute. Applicant further contends Trial Counsel should have argued he was exempt from registering based on the *ex post facto* clause and under equal protection.

With respect to the sweetheart exception, this Court finds Applicant has failed to establish either Trial Counsel or Sentencing Counsel was deficient. Both Trial Counsel and Sentencing Counsel did, indeed, attempt to argue Applicant was exempt from registering under the sweetheart exception. In fact, Trial Counsel moved to dismiss the case based on this exemption, arguing because the victim was sixteen years old, the sweetheart exception applied. Trial Tr. 24-25. Furthermore, Sentencing Counsel attempted to make the same argument before

the trial court during her motion to reconsider, but the trial court would not allow her to make that argument, specifically stating "that's not before me." Motion to Reconsider Tr. 6. Because both Trial Counsel and Sentencing Counsel attempted to argue Applicant was exempt under the exemption, this Court finds Applicant has failed to establish either was deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice therefrom. Section 23-3-430 of the South Carolina Code provides any person who has been convicted of or pled guilty to second-degree criminal sexual conduct with a minor shall register as a sex offender. S.C. Code Ann. § 23-3-430(C)(5). However:

If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(B)(2) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register.

Id. Section 16-3-655(B)(2) further provides:

A person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in sexual battery with a victim who is *at least* fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

S.C. Code Ann. § 16-3-655(B)(2) (emphasis added). Here, evidence was presented during Applicant's motion to dismiss the victim was twelve years old at the time of the abuse by Applicant. See Trial Tr. 25-26. Accordingly, the sweetheart exception did not apply to Applicant, and he has failed to establish he suffered any prejudice from this alleged deficiency. This allegation must be denied and dismissed with prejudice.

With regards to Applicant's allegation Trial Counsel should have argued the applicability of the statute based on the *ex post facto* clause, this Court finds Applicant has failed to establish

any deficiency on the part of Trial Counsel. Trial counsel must be given leeway to make reasonable strategic decisions. Indeed, "no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Here, Trial Counsel testified he did not challenge the statute under the *ex post facto* clause based on his research and relevant case law he found. Therefore, this Court finds Trial Counsel employed a valid strategy, and Applicant has failed to establish any deficiency on the part of Trial Counsel.

This Court further finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. The South Carolina Supreme Court has held the Sex Offender Registry Act does not violate the *ex post facto* clause. *See State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002) (finding although the Act applies retroactively, the General Assembly did not intend to punish sex offenders in passing the Act, but rather intended to protect the public from those offenders who may re-offend; and therefore, the intention was to create a non-punitive act). Based on the foregoing, this allegation must be denied and dismissed with prejudice.

Finally, regarding Applicant's allegation Trial Counsel was ineffective for failing to argue the statute was invalid under equal protection, this Court finds Applicant has failed to establish any deficiency on the part of Trial Counsel. Trial Counsel argued Applicant's case



should be dismissed under equal protection. *See* Trial Tr. 30-31. Specifically, Trial Counsel argued: "The State only, only requires persons who are convicted and sentenced before they go back and look into their past. For someone who was with [Applicant] committed the same offense and according to the solicitor would be required to register they never notify, and they don't." Trial Tr. 30. He further argued:

[T]he only people who we are going to require to register are those who managed to get into some criminal trouble and we have them in the Department of Corrections and now we can say, okay, now we know that you committed -- they could-- that's selecting out a class of person and saying, okay, we are going to apply the law to you and no one else.

Trial Tr. 31. Because Trial Counsel did, indeed, make this argument, this Court finds Applicant has failed to establish Trial Counsel was deficient. Accordingly, this allegation must be denied and dismissed with prejudice.

Subject Matter Jurisdiction

An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Charleston County Grand Jury for failure to register as a sex offender, third offense, and the indictments allege the criminal offenses occurred in Charleston County. Moreover, Applicant was prosecuted for these charges in Charleston County Court of General Sessions. Accordingly, this Court finds Applicant has failed to present any facts or evidence which would establish the convictions he challenges in this application are of a class

over which the circuit court does not have the authority to preside. This allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 7/7 day of July, 2018.

ROGER M. YOUNG, SR.
Presiding Judge
Ninth Judicial Circuit

CLB, South Carolina

AMH20140909773

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2014001673B

ARREST WARRANT NUMBER

2014A1010900046

DATE OF ARREST

September 4, 2014

ACTION OF GRAND JURY

Nancy H. K...
Foreperson of Grand Jury
Date:

JAN 13 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1000019

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2015

THE STATE

vs.

JOHN CLEVELAND, JR.

DOB: [REDACTED]

B/M

Indictment for

Failure to Register Sex Offender
- 3rd Offense

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

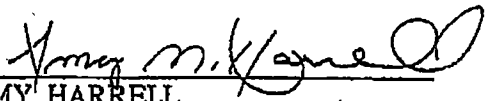
INDICTMENT

At a Court of General Sessions, convened on January 12, 2015 the Grand Jurors of Charleston County present upon their oath:

Failure to Register Sex Offender- 3rd Offense

That in Charleston County, South Carolina, on or about December 31, 2013, the Defendant, JOHN CLEVELAND, JR., did fail to register as a sex offender with the Charleston County Sheriff's Department after being instructed to do so, as required by Section 23-3-400, et. seq. of the South Carolina Code of Laws (1976) as amended, to wit: failed to report for registration; in violation of Section 23-3-470 of the South Carolina Code of Laws (1976) as amended.

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


AMY HARRELL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

JOHN CLEVELAND, JR

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: North Charleston, SC 29405-8197DL# [REDACTED]SID# SC00570843*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Failure To Register As A Sex Offender 3rd OffenseIn violation of § 23-03-0470(A) of the S.C. Code of Laws, bearing CDR Code # 2435☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Edward R. Corvey, III, Assistant Solicitor SC Bar # 101454

Defendant

Attorney for Defendant

SC Bar # 61

WHEREFORE, the Defendant is committed to the ☒ 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 _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 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: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

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: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2156Sentence Date: 15 Dec 15