

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LUTHER BRIAN MARCUS,

APPELLANT

APPELLATE CASE NO. 2017-002622

RECORD ON APPEAL

**RECEIVED**

OCT 16 2018

Court of Appeals

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P R O C E E D I N G S

1  
2  
3 (WHEREUPON, the jury panel entered the courtroom at  
4 12:41 p.m.)

5 THE COURT: Okay. Ladies and gentlemen, welcome  
6 upstairs to the courtroom. Sorry I didn't get to meet you  
7 downstairs, but to introduce myself, my name is Ned  
8 Miller. I am one of your 13th Circuit judges.

9 I apologize to those of you who are blocked out by  
10 this machine. You're the lucky ones, probably. But in  
11 any event, I'm glad to be here in Pickens. My main base  
12 is in Greenville, but I come to Pickens just as often as  
13 they let me, so I'm glad to be here.

14 I want to tell you that I am holding a term of  
15 General Sessions court, also or commonly known as criminal  
16 court, and while you all have been qualified to serve  
17 generally for the week as jurors, we're now going to begin  
18 the process of qualifying you all to serve for this  
19 particular case. So in order for us to do that, let me  
20 introduce the case to you. This is the case of the State  
21 of South Carolina vs. Luther Brian Marcus.

22 This is an indictment for indecent exposure. This  
23 indictment alleges that Luther Brian Marcus did, in  
24 Pickens County, on or about the 13th day of December 2016,  
25 willfully, maliciously and indecently expose his person in

1 a public place on property of others or to the view of any  
2 person on a street or a highway in violation of our  
3 statutes and laws.

4 Now, to this indictment, Mr. Marcus has pled not  
5 guilty, and as such, certain rights attach to every person  
6 charged with an offense, and that is that he is presumed  
7 to be innocent unless and until the charging body, in this  
8 case the State of South Carolina, can prove to a jury  
9 beyond a reasonable doubt each and every element of the  
10 offense that he is charged with. Please keep that in mind  
11 throughout the course of these proceedings.

12 I would also tell you that this document which I read  
13 to you, this indictment is nothing more than it appears to  
14 be, which is a piece of paper that contains the  
15 allegations made against the defendant, and you should  
16 take no inference or make any presumption from the fact  
17 that this document has issued. It's just the vehicle that  
18 allows this case to wind its way through the court system  
19 to arrive here in court for disposition. So please keep  
20 that in mind as well.

21 JURY QUALIFICATION

22 THE COURT: Now, before I begin the questioning,  
23 which will be pretty brief, I would ask the attorneys to  
24 stand and introduce themselves and their client when the  
25 time is appropriate.

1 THE COURT: Okay. Well, you all make sure we got all  
2 the evidence together. Here's the verdict form. Tell  
3 them to get going.

4 (WHEREUPON, a recess is taken at 11:04 a.m., and the jury  
5 starts their deliberations.)

6 THE COURT: I've got a question from the jury that  
7 just says definition of "indecent exposure." I'd suggest  
8 making some copies of my charge and send it to them. Any  
9 objection?

10 MR. CANTRELL: None, Your Honor.

11 (WHEREUPON, Court's Exhibit No. 2 was marked for  
12 identification, and a recess is taken at 11:46 a.m.)

13 (WHEREUPON, the jury entered the courtroom at 12:05 p.m.)

14 THE COURT: Madam Forelady, I understand you've  
15 reached a verdict.

16 JURY FOREPERSON: We have.

17 THE COURT: Okay. Would you hand it to the clerk for  
18 me, please.

19 All right. Would you please publish.

20 VERDICT

21 THE CLERK: This is Case Number 2017-GS-39-0183, the  
22 State of South Carolina vs. Luther Brian Marcus. As to  
23 the charge of indecent exposure, we the jury find the  
24 defendant guilty.

25 This is your verdict and still your verdict, so say

1 THE COURT: All right. The jury has spoken and I  
2 won't disturb their wisdom.

3 All right. Come on around.

4 How many days in jail does he have?

5 MS. ODOM: 363.

6 MR. CANTRELL: I have 364. Tomorrow will be one  
7 year. Was he arrested the day after?

8 MS. ODOM: He was arrested on the 15th.

9 MR. CANTRELL: 363 then.

10 THE COURT: All right. What do you want to tell me?

11 MR. CANTRELL: Well, Your Honor, simply the jury has  
12 rendered their verdict so I won't address that. You've  
13 heard our position and our information as far as to the  
14 charges.

15 Mr. Marcus, as the Court is also well aware, he had  
16 been out of SCDC only a fairly brief period of time but  
17 was already employed, had a good job. He was here because  
18 two primary things: one is he has a young daughter that  
19 lives in this area that he was in position of supporting  
20 at that point in time, he also has his father who is in  
21 bad health that he tends to and lives with part of the  
22 time, so he was taking care of him, as well as being  
23 gainfully employed.

24 So as to the sentence on the indecent exposure, Your  
25 Honor, I realize it can be up to three years. I would ask

1 -- he served a year, basically, and I would ask the Court  
2 to take that into account. Obviously, we would love time  
3 served, but we understand that he is susceptible to a  
4 three-year sentence, and we ask the Court to take all that  
5 into account. He is prepared to get back out and work and  
6 support his daughter and help his father.

7 THE COURT: All right. He was on probation. This is  
8 a violation of that probation. Do you understand that?

9 MR. CANTRELL: Yes, sir. We do have some issues with  
10 the probation itself that I would ask to be heard on as to  
11 circumstances surrounding the probation.

12 THE COURT: Well, you can tell me about it. He just  
13 got convicted of a crime while he's on probation. So tell  
14 me whatever it is you want to tell me.

15 MR. CANTRELL: Part of the issues are some of the  
16 complications involving probation, as to the status of the  
17 probation. He was sentenced in Pickens County and then  
18 subsequently sentenced in Oconee County. The sentences in  
19 Oconee County were all concurrent with the Pickens County  
20 sentences. His overall sentences in both were 15 -- the  
21 largest overall sentencing in both were 15 years, in  
22 Pickens County suspended to five years and then probation.  
23 In Oconee County, some were suspended to seven years and  
24 then probation. But once entering SCDC, Your Honor, he  
25 ended up serving a combined or a total time of seven years

1 and 11 months, which maxed him out on the 15-year  
2 sentences, would be our position. So even though he was  
3 sentenced to serve seven years, he served more than that.  
4 He served more than the suspended amount of sentence. So  
5 we believe that that would, in fact, max out his sentence  
6 on the 15-year sentence, therefore, he should not be  
7 continued to be on probation and would have -- and he  
8 would have maxed out on the five-year sentences in 2012  
9 and continued to serve time until 2016. So there was  
10 additional time served there. And he remained in custody  
11 of SCDC until his release in 2016.

12 We believe he would be entitled to all credit for all  
13 of those times and that that would -- should be credited  
14 to any active sentences, and that that maxed him out on  
15 all the sentences.

16 And, in fact, his sentence in Pickens County -- I'm  
17 sorry -- his probation in Pickens County was terminated.  
18 He was served with a warrant for violation of Pickens  
19 County -- probation in Pickens County, but then that  
20 warrant was dismissed because it was indicated that it was  
21 invalidly issued, that his case should have been closed in  
22 February of 2016, which is while he was still in the  
23 custody of SCDC.

24 THE COURT: Well, that's all not in my jurisdiction,  
25 as you are aware.

1 Ms. Ford, anything you can tell me?

2 PROBATION AGENT: No, sir. I mean, he's on the  
3 probation case for the Oconee charges. He was released  
4 September 30th of 2016. He owed restitution, which he did  
5 make. He did pay \$474 and some change and then he was  
6 arrested on these charges a short time later.

7 THE COURT: And what's his criminal history?

8 MS ODOM: Thank you, Your Honor. He has from 1993,  
9 eight grand larcenies, three petit larcenies, eight B&E  
10 autos and a burglary, and it looks like he did 120 days  
11 and then a probationary sentence; in 1994 he has two  
12 charges of criminal sexual conduct with a minor that he  
13 received a 12-year sentence on, and he is on the sex  
14 offender registry; 2005, a fraudulent tax return that he  
15 did 18 months on; and then from 2010, three burglary  
16 seconds, two grand larcenies and a safe cracking.

17 THE COURT: All right. Anything you want to tell me?

18 DEFENDANT MARCUS: Yes, Your Honor. I just feel like  
19 I maxed a total of 15 years out from those suspended  
20 sentences that was ran concurrent with my Pickens. I feel  
21 like I gave my time to the State. I exceed those  
22 15 years. I was ---

23 THE COURT: You understand that's not up to me.

24 DEFENDANT MARCUS: I understand that.

25 THE COURT: Okay.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

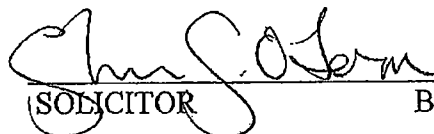
INDICTMENT FOR  
INDECENT EXPOSURE

At a Court of General Sessions, convened on **MAY 16 2017** the Grand Jurors of Pickens

County present upon their oath:

That LUTHER BRIAN MARCUS did in Pickens County, on or about the 13th day of December, 2016, willfully, maliciously and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway. This is in violation of §16-15-130 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.



SOLICITOR

BAR # 77891

WITNESSES

Noe Sudduth

Pickens Police Department

12/15/2016

ARREST WARRANT NUMBER

2016A3920700232

ACTION OF GRAND JURY

TRUE BILL

Date MAY 16 2017

*Melanie Davis*  
Foreperson of Grand Jury

VERDICT

Guilty

*Dorcas Caldwell* 12-12-17  
Foreperson of Petit Jury  
Date:

DOCKET NO. 2017-GS-39-<sup>SSO</sup> 0183

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAY 16 2017

TERM 2017

THE STATE

vs.

LUTHER BRIAN MARCUS

Indictment for

0091


INDECENT EXPOSURE

VIOLATION § 16-15-0130

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Victor R Seeger  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 16th day of October, 2018.

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This 16th day of October, 2018.

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**SC Court of Appeals**