

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

May 22 2020

SC Court of Appeals

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALVIN GREGORY MITCHELL, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001352

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:52 a.m.)

MR. WHETSEL: The State calls Alvin Mitchell. This is a defense motion to reconsider sentence. As Your Honor remembers, this is the case that we tried last General Sessions term the week of July 30th. These are two indictments, 2017-GS-27-352 and 353, charges of murder and possession of a weapon during the commission of a violent crime. Mr. Mitchell was found guilty at jury trial and then Your Honor sentenced him to life on the murder and then five years for possession of a weapon.

THE COURT: All right. Mr. Deysach, what did I not consider last time?

MR. DEYSACH: Your Honor, certainly the -- I think everybody was in a little bit of difficulty processing. His mother did not address the Court at that time. She's here today and would like to address the Court. I certainly have more mitigation to offer than what I offered the first, and so if you'd give us our chance to be heard on that, I do believe I have different information than what I told you on the first regarding not only his work history but his history, you know, as a father and what I've learned from his mother about his reputation in the community prior to this. So if you'd

1 let us present that, I would ask that you would.

2 THE COURT: Okay.

3 MR. DEYSACH: Okay. Some of this you have heard.
4 Obviously, Alvin is 28 now. He was 25 back when this
5 happened. He is a landscaper/machine operator, had
6 recently moved back from Columbia where he worked at
7 Belk's distribution back to the Beaufort area, Point South
8 area where he was working as a mower for Ocean Woods who
9 did -- mowed along Palms and Sea Pines. Before that he
10 had set up amusements. And so he has a significant work
11 history.

12 He had moved back recently from Columbia and was
13 staying part time with Felicia Robinson, who was a witness
14 in the case, a woman with whom he had a child. Sadly,
15 that child passed away in 2015 as an infant due to a
16 genetic spinal cord problem, and that was the cause of
17 that child not surviving. That was something I did not
18 know about Mr. Mitchell really until after his sentence
19 was handed down.

20 But it's not really his stats, but what people say
21 about them. And I've got his mom here to tell you about
22 the type of person that Mr. Mitchell is and what she can
23 tell you from knowing him all his life, what she can say
24 about Mr. Mitchell. I'd ask her to stand and address the
25 Court. If she could just stand up at the railing here.

1 THE COURT: Absolutely.

2 MR. DEYSACH: And tell the judge your name and tell
3 her what you can about your son Alvin.

4 MS. MITCHELL: My name is Deborah Mitchell, and I'm
5 here to tell the Court that my son is not a killer. He's
6 not a murderer. I've known him all his life. He's never
7 done anything wrong to anybody, and this is such a shock.
8 I'm just sorry about it. And I know my son. I know he
9 wouldn't kill anyone, and for him to be going away for
10 life. I mean, I understand Darrell is dead and he's gone
11 for life, but my son didn't do this. He didn't do this.
12 And I truly believe it. But I know him better than
13 anybody.

14 He lost his father. A woman killed his father in
15 Florida. He lost his baby. He lost his cousin. He's
16 been going through a lot, but I know he's not a killer
17 through all that. I've never had any trouble out of him.
18 He's always hanging around people that's 60 and 70 years
19 old. They loved him to death. Never has been in trouble
20 at all. For him to get tied to this, messing with drugs
21 and just hanging in the wrong place at the wrong time,
22 this is unbelievable.

23 MR. DEYSACH: And, Your Honor, you know, what we're
24 arguing is not to take issue with the jury's verdict. I
25 think it just goes to show that his mother, the person who

1 knows him best -- and I know all our mothers, you know,
2 think the world of us -- doesn't see how what he's been
3 convicted of fits in with the behavior that -- you know,
4 of his life leading up to this point.

5 And I haven't found anybody -- he has no record. I
6 mean, it's one thing to say he has no record, but it's
7 more than that. I haven't found anybody that's had to say
8 anything negative other than what the trial is about about
9 Alvin. And that's been my experience also.

10 And that's not -- you know, I've had the opportunity
11 to interact with a number of people, and so the -- you can
12 tell a person's kind of natural state. You know, you
13 never know how people act in certain different situations,
14 but to me and to his mom and to the family members that
15 I've met, somebody who cares for old people. In fact, if
16 you remember in the case, there was a puppy that he was
17 caring for that was part of the facts.

18 And so what I would like to point out to Your Honor
19 is that the trial pointed out a very combustible
20 situation, ingredients for drugs, hanging out all night,
21 guns, and Mr. Hamilton with a large amount of cash, right,
22 and all of those ingredients -- I mean, Mr. Mitchell was
23 there for that, but all of those ingredients were actually
24 put into play by Mr. Hamilton. They were his guns, it was
25 his money, he was known to be the provider of the drugs.

1 And so here we've got Mr. Mitchell who's a person who
2 does not have a history of being -- of hurting people or
3 doing anything that we know that's outside of the law and,
4 in fact, helping people, being caring, put into that
5 situation and -- you know, even looking at the case as the
6 jury found it, we've got him in a toxic situation,
7 something impulsive. I can't imagine this was planned.
8 How could you plan something where you don't even provide
9 the gun and, you know, the puppy being there and all that
10 stuff? And so this impulsive, bad judgment scenario that
11 happens after a night of partying with, like I said, the
12 drugs provided by Mr. Hamilton, the gun provided by
13 Mr. Hamilton and Mr. Hamilton flashing all kinds of cash,
14 which is sort of the ingredients that obviously what they
15 found is that Mr. Mitchell was guilty of murder, but
16 whether or not that's a situation where a person who
17 hasn't been in trouble before would deserve life.

18 Obviously, we understand what the law provides for,
19 but we would ask Your Honor to reduce his sentence to
20 something -- I mean, I know what the minimum is, too, but
21 we're asking that you reduce his sentence and hopefully
22 you would deem a substantial reduction would be
23 appropriate.

24 THE COURT: Yes, Mr. Whetsel.

25 MR. WHETSEL: Your Honor, I know that Mr. Hamilton's

1 sister is present. She would like to address the Court as
2 well, if she may.

3 THE COURT: Yes, ma'am.

4 MR. WHETSEL: Ma'am, if you'll just state your name
5 for the record.

6 MS. PETTY: Lori Petty.

7 THE COURT: Yes, ma'am.

8 MR. PETTY: Like I said, Darrell is gone, you know.
9 This guy has never showed any remorse. He murdered my
10 brother. I really never met him, but I'm pretty sure this
11 is not the first time he's been in trouble. First time
12 he's gotten caught.

13 Like I said, my brother is gone forever, and he
14 should be gone forever. Thank you.

15 THE COURT: Thank you, ma'am.

16 MR. WHETSEL: Your Honor, if I may have brief
17 argument.

18 THE COURT: Certainly.

19 MR. WHETSEL: Your Honor, the State's position is
20 this is an appropriate sentence. Your Honor knows the
21 facts as presented to the jury.

22 Mr. Mitchell murdered him for money. He left him
23 there to die. He never tried to call for help. He
24 changed his appearance. He ran. This isn't an accident.
25 This isn't a mistake. He waited until Alfred Butler,

1 who's the third person the truck was dropped off, and then
2 he took that as his opportunity to murder his friend, and
3 all for money.

4 Again, this isn't an accident. This isn't something
5 that just happened. This is something that took some
6 thought, and this is something that is pretty
7 cold-blooded. I think the sentence is appropriate.

8 THE COURT: All right. Well, I'm going to think
9 about it and I'll let y'all know. I'll just do a short
10 order regardless of what I do.

11 MR. DEYSACH: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (WHEREUPON, proceedings concluded at 10:01 a.m.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth 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 Jasper County, South Carolina, on the 21st day of August, 2019.

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

October 18, 2019

Cheryl A. Smith

Cheryl A. Smith, CVR-M
Court Reporter

2181

STATE OF SOUTH CAROLINA

County of Jasper

SEARCH WARRANT

~~CONFIDENTIAL~~
COPY
Date: May 5th, 2017
CASE# 17-01037
Officer: Detective Jared Phillips
Judge: M. D. ...

PENGAD 800-631-6939
COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT.# _____
DATE: _____

**STATE OF SOUTH CAROLINA
COUNTY OF JASPER**

[Handwritten signature]
[Handwritten text]

SEARCH WARRANT AFFIDAVIT:

COPY

Personally appeared before me, the affiant, Detective Jared Phillips _____ who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended and is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Documents to include but not limited to: documents identifying ownership and/or occupancy of the place to be searched, journals, ledgers, and or notebooks. Firearms, firearm components and/or fired/unfired ammunition/ammunition cartridges, unlawful weapons. Latent, patent and/or plastic prints; hair, fibers, blood, and/or bodily fluids, deoxyribonucleic acid (DNA); blood or otherwise soiled articles of clothing; and instrumentalities capable of being utilized in shooting and/or the crime of Murder; cellular phones, computers, electronic storage media devices, security cameras/video surveillance footage, and/or systems. The search and inspection will include obtaining digital images, and/or trace evidence pertinent to the investigation.

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

The address, residence, property, and curtilage, to include all vehicle(s), person(s), outbuilding(s), shed(s)/barns, conex boxes, kennels, and containers, and other such storage contraptions, pull behind trailers, located at 2306 Point South Drive Yemassee, SC 29945, County of Jasper, the residence is further described as being a single story by structure mobile home with a dark in color roof and a white in color metal siding, and dark in color underpinning. The front of the residence has an uncovered mobile home steps with a wheel chair ramp leading to the front door. The shutter around the windows are also dark in color. Located in the front yard is a red in color single cab Dodge truck. To the right of the residence is a large multi-story barn like structure, with an overhang and red doors. Also to the right of the structure is a large billboard sign that stats "Merritt's Garage". The mailbox is located near the entrance to the property out by the roadway, and is identified as being 2306 in gold in color numbers. The power meter to the residence identification numbers are identified as being SCE&G 1632911.

#3
ADN

RETURN

COPY

I received the attached Search Warrant MAY 5, 2017, and have executed it as follows:

On MAY 5, 2017 at 2300 o'clock P M, I searched (the person and/or premises) described in the warrant.

I left a copy of the warrant with Residence (name of person or "at the place of search") together with a receipt for the items seized. (For electronic storage devices: Due to the intense nature and exhaustive amount of information that may be stored in the device(s) seized and the necessary amount of time required to complete the search of this(ese) device(s), the results of the forensic analysis will be maintained by law enforcement for any subsequent legal proceedings.)

^{AP} The following is an inventory of property taken pursuant to the warrant:

- 1. ~~Items~~ (17) Blood spots Swabs Placards 1-17
- 2. Hair Placard 18
- 3. GoPro

Nothing ELSE

This inventory was made in the presence of: Det. G Morris
Det. T Phillips

I swear this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 04 day of May, 2017.

[Signature] (L.S.)
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

512 WITNESSES

Natasha Merrell--SLED

DOCKET NO. 2017GS2700352

The State of South Carolina

County of Jasper

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

August Term 2017

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2017A2710200192

THE STATE

vs.

Alvin Mitchell

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

Defendant

TRUE BILL
NO BILL

Foreperson of Grand Jury

Date: 8/24/17

Witness:

VERDICT

Barbara Ready
8/1/19
Guilty

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

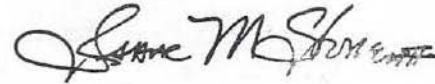
INDICTMENT
2017GS2700352

At a Court of General Sessions, convened on August 24, 2017, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about May 5, 2017, the Defendant, Alvin Mitchell, did, with malice aforethought, kill Darrell Lewis Hamilton and Darrell Lewis Hamilton did die as a proximate result of Alvin Mitchell's actions in Jasper County, to wit: The defendant did kill the victim by shooting him, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Natasha Merrell--SLED

DOCKET NO. 2017GS2700353

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina
County of Jasper

Defendant

COURT OF GENERAL SESSIONS

August Term 2017

I _____

hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2017A2710200193

THE STATE

vs.

Alvin Mitchell

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

Defendant

Witness:

TRUE BILL

Foreperson of Grand Jury

Date: 8/20/17

VERDICT

Guilty

8/21/17

Barbara Rusby

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

)

INDICTMENT

COUNTY OF JASPER

)

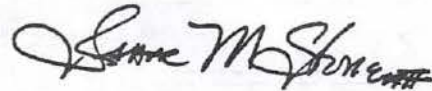
2017GS2700353

At a Court of General Sessions, convened on August 24, 2017, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about May 5, 2017, the Defendant, Alvin Mitchell, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder and Alvin Mitchell was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, to wit: Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Jasper

STATE _____

INDICTMENT/CASE#: 2017-GS-27-00352

AKA: Alvin Mitchell vs.

AW#: 2017A2710200192

Race: B Sex: M Age: 28

Date of Offense: 5/5/2017

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-3-16

Address: _____

CDR Code #: 0116

City, State, Zip: _____

SENTENCE SHEET

DL# _____ * SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor _____ SC Bar # _____ Defendant X State Department of Corrections _____ Attorney for Defendant _____ SC Bar # _____
WHEREFORE, the Defendant is committed to the _____ County Detention Center, for a determinate term of Life 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 Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

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 (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: _____
 Set by SCDPPPS

Obtain GED
Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling

*Fine:	\$	<u>0</u>
§14-1-206 (Assessments 107.5%)	\$	<u>0</u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u>0</u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u>0</u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u>0</u>
Proviso (Public Def/Probation)	\$500	\$ <u>0</u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)		\$ <u>3.75</u>

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

TOTAL \$ 128.75

Other: _____

Clerk of Court/Deputy Clerk MONA MANLEY
Court Reporter: Max A. Boston

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
Presiding Judge _____
Judge Code: 2592
Sentence Date: 8-1-19

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Jasper
STATE _____

INDICTMENT/CASE#: 2017-GS-27-00353

AKA: Alvin vs. Mitchell

A/W#: 2017A2710200193

Race: B Sex: M Age: 28

Date of Offense: 5/5/2017

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-23-490

Address: _____
City, State, Zip: _____

CDR Code #: 0549

SENTENCE SHEET

DL# _____ SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Pass Weapon During Comm. Violent Crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS MANDATORY GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
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 Services standard conditions of probation, which are
incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

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 (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: _____
 Set by SCDPPPS Obtain GED
Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning
Substance Abuse Counseling

*Fine:	\$	<u>0</u>
§14-1-206 (Assessments 107.5%)	\$	<u>0</u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u>0</u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u>0</u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u>0</u>
Proviso (Public Def/Probation)	\$500	\$ <u>0</u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>0</u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ <u>0</u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>0</u>
3% to County (if paid in installments)		\$ <u>3.75</u>

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk _____
Court Reporter: MONA MURPHY

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge _____
Judge Code: 2142
Sentence Date: 8-1-19

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.”

This 22nd day of May, 2020.

Respectfully Submitted,

s/David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

May 22 2020

SC Court of Appeals