

# The Supreme Court of South Carolina

DANIEL E SHEAROUSE  
CLERK OF COURT

BRENDA F SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA SOUTH CAROLINA 29211

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April 23, 2012

Deputy Chief Appellate Defender Wanda H Carter  
Appellate Defender Tristan Shaffer  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Attorney General Alan Wilson  
Chief Deputy Attorney General John W McIntosh  
Assistant Deputy Attorney General Donald J Zelenka  
Assistant Attorney General Brendan J McDonald  
Office of the Attorney General  
P O Box 11549  
Columbia, SC 29211

Re The State v Daniels, Gregory

Dear Counsel

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows

Appellant	10 minutes
Respondent	10 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Thursday, May 3, 2012 at 10 30 a m

Very truly yours,

Daniel E Shearouse, Clerk

By *Debbie M Hopkins*

Administrative Assistant

DES/dmh



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Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender

April 10 2012

RECEIVED

APR 10 2012

SC Supreme Court

Honorable Daniel E Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re State v Gregory Daniels

Dear Mr Shearouse

The above case is scheduled for oral argument on May 3, 2012 at 10 30a m I am currently listed as the attorney assigned to this appeal, however, it was Mr Tristan M Shaffer who wrote the brief in this case Mr Shaffer, who is no longer employed with Appellate Defense, has received approval from Chief Appellate Defender Robert Dudek to argue this case I have confirmed with Mr Shaffer the date and time of the oral argument in this case

Sincerely,

Wanda H Carter  
Deputy Chief Appellate Defender

WHC/kam

cc Brendan J McDonald, Esquire  
Tristan M Shaffer, Esquire (via electronic delivery)



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734 1080

To Appellate Defender Tristan Shaffer  
Deputy Chief Appellate Defender Wanda H. Carter  
From Daniel E. Shearouse  
Date March 21, 2012  
RE May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Daniels, Gregory



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734 1080

To Attorney General Alan Wilson  
Chief Deputy Attorney General John W. McIntosh  
Assistant Deputy Attorney General Donald J. Zelenka  
Assistant Attorney General Brendan J. McDonald

From Daniel E. Shearouse

Date March 21, 2012

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Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Daniels, Gregory

# The Supreme Court of South Carolina

The State,

Respondent

v

Gregory Daniels,

Appellant

The Honorable Thomas A Russo  
Florence County  
Trial Court Case No 2009-GS-21-00427

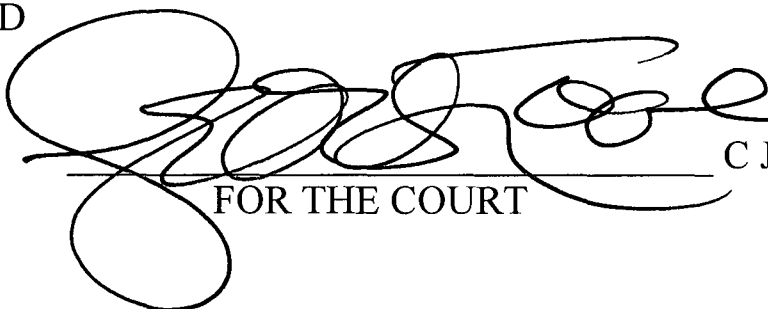
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## ORDER

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Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED



CJ  
FOR THE COURT

Columbia, South Carolina

March 20<sup>th</sup>, 2012

cc / Deputy Chief Appellate Defender Wanda H Carter  
Assistant Deputy Attorney General Donald J Zelenka  
Assistant Attorney General Brendan J McDonald  
The Honorable Tanya Gee



ALAN WILSON  
ATTORNEY GENERAL

March 28, 2012

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re The State v. Gregory D. Daniels  
Appeal from Florence County

Dear Mr. Shearouse

I have received your letter that the above referenced case may be scheduled for oral argument during the May 2012 term of the Supreme Court of South Carolina. While I have no conflicts during the May term, please be advised that I am planning on attending the Capital Punishment CLE by South Carolina Prosecution Coordination from May 20-23. I would respectfully request that the case not be scheduled for that time.

Thank you for your cooperation in this matter.

**RECEIVED**

MAY 10 2012

**S.C. SUPREME COURT**

Sincerely,

*Brendan McDonald*  
*DJZ*

Donald J. Zelenka  
Senior Assistant Deputy Attorney General for  
Brendan J. McDonald, Assistant Attorney General

Enclosures

cc Wanda H. Carter, Deputy Chief Appellate Defender



# SCCID

SOUTH CAROLINA COMMISSION ON INDECENT DEFENSE

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Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender

March 27 2012

**RECEIVED**

MAR 27 2012

S.C. Supreme Court

Honorable Daniel E Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re State v Gregory Daniels

Dear Mr Shearouse

I received your letter stating that the above case may be scheduled for oral argument during the May 2012 term of court While I am currently listed as the attorney assigned to this appeal, it was Mr Tristan M Shaffer who wrote the brief in the case Mr Shaffer, who is no longer employed with Appellate Defense, has received approval from Chief Appellate Defender Robert Dudek to argue this case I have confirmed with Mr Shaffer that the potential oral argument dates will not conflict with his schedule

Sincerely,

Wanda H Carter  
Deputy Chief Appellate Defender

WHC/kam

cc Brendan J McDonald, Esquire  
Tristan M Shaffer, Esquire (via e-mail)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Florence County

The Honorable Thomas A Russo, Circuit Court Judge

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THE STATE,

RESPONDENT,

v

GREGORY D DANIELS,

APPELLANT

---

**DESIGNATION OF MATTER TO BE  
TO BE INCLUDED ON APPEAL**

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Respondent agrees with Appellant's initial proposal to include the following in the Record on Appeal

- (01) True billed indictment(s),
- (02) Tr 1, 73-108, 112-191, 200-278, 283-377, 379-625, 627-628, 631-637

Additionally, the Respondent requests to include the following in the Record on Appeal

- (01) Tr pages 194-199,
- (02) Tr pages 282,
- (03) Tr pages 626

I certify that this designation contains no matter that is irrelevant to this appeal

December 14, 2011

Respectfully Submitted,

ALAN WILSON  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

DONALD J ZELENKA  
Assistant Deputy Attorney General

BRENDAN J McDONALD  
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---

Brendan J McDonald  
ATTORNEY(S) FOR RESPONDENTS

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

Appeal from Florence County  
The Honorable Thomas A Russo, Circuit Court Judge

---

The State of South Carolina,

Respondent,

v

Gregory D Daniels,

Appellant

---

**PROOF OF SERVICE**

---

I, Brendan J McDonald, Counsel for Respondent, certify that I have this date served the *Initial Brief of Respondent and Designation of Matter*, dated December 14, 2011, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record

Wanda H Carter, Deputy Chief Appellate Defender  
South Carolina Office of Indigent Defense  
Post Office Box 11589  
Columbia, South Carolina 29201

This 14<sup>th</sup> day of December, 2011



---

BRENDAN J McDONALD  
Assistant Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

December 14, 2011

The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RECEIVED  
DEC 19 2011  
SC Court of Appeals

Re The State v. Gregory D. Daniels  
Appeal from Florence County

Dear Ms. Gee:

Enclosed please find the original *Initial Brief of Respondent and Designation of Matter* dated, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Brendan J. McDonald  
Assistant Attorney General

Enclosures

cc Wanda H. Carter, Deputy Chief Appellate Defender  
The Honorable E. L. (Ed) Clements, III  
Sandi Wofford, Victims' Services

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Florence County

Thomas A Russo, Circuit Court Judge

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THE STATE,

**RECEIVED**  
DEC 19 2011  
SC Court of Appeals

RESPONDENT

V

GREGORY D DANIELS,

APPELLANT

---

**INITIAL BRIEF OF RESPONDENTS**

---

ALAN WILSON  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

DONALD J ZELENKA  
Assistant Deputy Attorney General

BRENDAN J McDONALD  
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ATTORNEY(S) FOR RESPONDENTS

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**APPELLANT'S QUESTION PRESENTED**

Should the jury have been instructed that they were acting “for the community” and that their verdict would represent truth and justice for the parties?

(

## **INTRODUCTION**

Corey Byrd (“Victim”) was shot and killed in the streets of Florence (Tr 307, 227-28, 131) Following an extensive investigation, Gregory D Daniels (“Appellant”), who was seen arguing with Victim earlier in the night, was charged with, and subsequently convicted of, murder along with possession of a firearm during the commission of a violent crime (Tr 240-41, 607, 627-28)

## **STATEMENT OF THE CASE**

Appellant was indicted on one count of murder (#2009-GS-21-0427) and one count of possession of a firearm during the commission of a violent crime (#2009-GS-21-0427) (Tr 1) On April 12, 2010, Appellant stood trial in Florence County before the Honorable Thomas A Russo and a jury (Tr 1) The State was represented by Deputy Solicitor John Jepertinger and Assistant Solicitor, Steven Deberry, while Appellant was represented by Chief Public Defender Jack Lawson, and Assistant Public Defender, Grayson Smith Four days later, on April 16, 2010, Appellant was convicted on both counts, receiving a natural life sentence on the murder count and five years on the firearm count (Tr 627-28, 637)

## **STATEMENT OF THE FACTS**

On September 5, 2008, sometime after 5 00 AM, authorities were dispatched to the corner of Dargan and Marlboro Streets in Florence (Tr 306-07) Upon their arrival, authorities found Victim’s lifeless body in the street (Tr 307) Tiesha Brown, who was friends with Victim and awaiting his arrival pursuant to an earlier phone conversation, informed authorities that just before she discovered the body, she heard a gunshot and observed an individual wearing black flee the scene (Tr 91, 98-99, 100)

The subsequent investigation revealed that both Victim and Appellant had been at a nearby cookout hosted by Victim's cousin, Shavonne Gass<sup>1</sup> (Tr 250-51, 106) During the cookout, Victim and Appellant got into an argument prompting Appellant to try and fight Victim throughout the rest of the night (Tr 175, 252, 179, 240-41, 247, 253) Appellant, who lived near Gass, left the cookout sometime after midnight<sup>2</sup> (Tr 255) When Appellant left the cookout, he was wearing black clothing (Tr 255)

Meanwhile, Victim remained at the cookout with Brown, who had arrived around midnight (Tr 96, 255) Shortly before 4 00 AM, Victim and Gass decided to leave the cookout to purchase cigarettes (Tr 96) When Victim and Gass returned to the cookout, Victim discovered Brown had left with a friend (Tr 96-97) Upon finding Brown left the cookout, Victim called Brown and asked if she wanted to return (Tr 97) Brown told Victim she would return and the two agreed to meet at the corner of Dargan and Marlboro Street (Tr 97, 98-99) According to Brown, this conversation took place around 4 15 AM (Tr 98)

Following his conversation with Brown, Victim attempted to get a ride to Marlboro Street with Clifton "Ryan" Evans, who had recently arrived at the cookout (Tr 99, 156-57, 158-59, 188) While Evans initially agreed to give Victim a ride, Evans changed his mind, presumably because Victim took too long to retrieve a cell phone charger left in Gass' house (Tr 158-59, 179, 257) When Evans and Gabriel Petterson, who was riding with Evans, left Victim at the cookout around 4 35 AM, Petterson observed Appellant, in the area, on his moped (Tr 181-82, 241)

Shortly after Evans and Petterson left the cookout, Victim began walking towards Dargan and Marlboro to meet Brown (Tr 258, 99) After he left, Victim called Gass (Tr 258) The

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<sup>1</sup> At the cookout Appellant told Gass Victim had previously robbed him (App 254)

<sup>2</sup> Gass also noted that Appellant frequently hung around Fraser Street near her house (Tr 256)

phone call was placed at 4 55 AM, lasted fourteen (14) minutes thirty-three (33) seconds and ended at 5 09 AM (Tr 320-21) The call ended when Victim's phone went dead (Tr 270) Immediately before the line went dead, Victim told Gass, "the n---a I was arguing with at the cookout is behind me, do you want to talk to him?" (Tr 270) When Gass called back at 5 15 AM, Brown had already discovered Victim's dead body (Tr 321-22, 105-06, 106-07) Later that day, Appellant would tell his associate, Andre Bradley, and Bradley's girlfriend, Jasmine Barrett, that he killed Victim (Tr 432, 451) Appellant was arrested for Victim's murder on September 11, 2008 (Tr 484-85)

At trial, the State theorized Appellant was paid to kill Victim by one of Appellant's associates, Gary Bostic, in retaliation for a fraudulent drug deal (Tr 570-72, 574, 581-82, 584, 589-90) To that end, the State introduced evidence that (1) approximately a month prior to Victim's shooting, Bostic, who lost \$3,500 as a result of the fraudulent drug deal, offered Appellant \$1,000 to kill Victim (Tr 425-26), (2) pursuant to the arrangement, Appellant would receive \$500 up front and another \$500 after Victim was killed (Tr 426), (3) prior to the murder, Appellant told Bradley he was going to kill Victim multiple times (Tr 427), (4) Bostic's phone number was in Appellant's phone by his nickname, "G A" (Tr 333, 493), (5) the picture assigned to Bostic's number was a stack of money (Tr 350-51), (6) Bradley believed Appellant had gone through the first \$500 and killed Victim to receive the additional \$500 (Tr 428), (7) in the four days after the murder, Appellant called Bostic forty-one (41) times (Tr 493), and (8) Appellant wrote his then-girlfriend, Nyrena Goodman from jail and instructed her to contact Bostic on his behalf to raise money for his bond (Tr 506)

The State also presented testimony from Goodman explaining on the evening of September 4, 2008, she received a phone call from Appellant (Tr 415) Over the course of the

phone call, Appellant informed Goodman he was at a cookout down near her house and there was an individual at the cookout who had previously attempted to rob him (Tr 415) Continuing, Goodman explained she did not see Appellant until approximately 5 30 AM when he and a man named Gary<sup>3</sup> picked her up in a van and the trio proceeded to a local hotel<sup>4</sup> (Tr 388-89) Goodman added that after she checked into the hotel, Appellant briefly joined her in the hotel room before leaving again (Tr 390) She further explained that while the two were in the hotel room, Appellant received a phone call during which he began talking to the other person on the line about “the dude from the cookout[ ]” (Tr 414)

On cross-examination, Goodman, when asked by defense counsel why the couple decided to stay at a hotel that night, explained that Appellant wanted to use her as an alibi (Tr 405) This proposition was subsequently corroborated in the form of letters written by Appellant to Goodman in which he urged Goodman to tell police he was with her in a hotel on the night in question (Tr 501-04)

At the close of the state’s case, Appellant moved for a directed verdict on all charges (Tr 539) The motion was denied (Tr 540-41) Following the charge conference, the defense rested, closing arguments were conducted and the jury was charged (Tr 562, 563-606, 606-627) Appellant was subsequently convicted on both counts of the indictment (Tr 627-28)

## **PRESENTATION OF ISSUE AT TRIAL**

### **A The trial court’s alleged burden shifting language**

During the charge conference, defense counsel, after reviewing the trial court’s proposed jury charge, objected to language within the charge which stated “everyone is entitled to

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<sup>3</sup> Appellant later told Goodman the man named Gary was Gary Bostic (Tr 506)

<sup>4</sup> A receipt from the hotel indicated Goodman checked in at 5 34 AM (Tr 355)

justice[ ]” (Tr 549) In particular, defense counsel argued the language was burden shifting citing to Cage v Louisiana, 498 U S 39 (1990) (Tr 549)

Explaining its objection, defense counsel noted, “we don’t feel like the State is necessarily entitled to justice. Instead, they have the burden of proving defendant guilty beyond a reasonable doubt.” (Tr 549) In response, the State argued the trial court’s charge, when taken as a whole, placed the burden on the State to prove guilt beyond a reasonable doubt. (Tr 549) Additionally, the State noted that both parties are entitled to a fair and just trial. (Tr 549)

Referencing the State’s point that both parties are entitled to a fair trial, the trial court asked defense counsel how one’s being entitled to justice would remove or lessen the State’s burden of proof. (Tr 549) Defense counsel explained the concern was premised upon the fact the jury was not comprised of “folks that worked in the legal field” and may misinterpret the language of the charge. (Tr 550) After briefly considering the matter, the trial court ruled stating, “tell you what I’m going to do. Surely, they accept the burden, that’s part of the system of justice that we work under. But I will take that out and just put your verdict in this case cannot be based on sympathy, compassion or prejudice[.]” (Tr 550) Following the trial court’s ruling, defense counsel failed to register any further objection on the issue.

#### B The trial court’s purported Golden Rule violation

After the trial court struck the “everyone is entitled to justice” language from its charge, defense counsel raised an additional objection to the trial court’s proposed jury charge. (Tr 551-52) Specifically, defense counsel objected to language contained within the proposed jury charge which stated, “[y]ou and I are acting for the community and that is why we must see to it that this trial is fair and this verdict is just.” (Tr 551-52) Elaborating, defense counsel explained the language was “similar to a golden rule violation.” (Tr 551-52)

Addressing defense counsel's objection, the State argued the language in question was not a Golden Rule violation as it did not ask the jury to put themselves in the shoes of the victim or ask the jury to fight crime on behalf of the community (Tr 552-53) The trial court agreed with the State and overruled defense counsel's objection finding, "what I think it says is that we are acting for the community, so that every trial here is fair and just it is not making a plea on behalf of a victim or on behalf of the State" (Tr 553)<sup>5</sup>

### C Closing arguments

In its closing argument, the State explained to the jury *inter alia*, that in order to convict Appellant, it must prove his guilt beyond a reasonable doubt (Tr 564) The State reiterated this proposition, in some form or fashion, five more times during its closing (Tr 564, 566, 585, 590, 591) Subsequently, in its closing argument, the defense also informed the jury the State must prove guilt beyond a reasonable doubt (Tr 593) Like the State, defense counsel repeated this theme, in a variety of ways, throughout its closing (Tr 593, 600, 605, 606)

### D The trial court's jury charge

In its charge to the jury, the trial court instructed the jury on the presumption of innocence and noted a defendant is never required to prove himself innocent (Tr 608) Next, the trial court instructed the jury on reasonable doubt stating

So what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act The State has the burden of proving the defendant guilty beyond a reasonable doubt

Now, some of you may have served as jurors in civil cases where you were told that the only—that it is only necessary to proved that a fact is more likely true than not true such as by the greater weight or preponderance of the evidence In criminal cases, the State's proof must be more powerful than that It must be beyond a reasonable doubt Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt

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<sup>5</sup> After this ruling defense counsel failed to lodge and other objections during the charge conference

Now, there are very few things in this world that we know with absolute certainty And in criminal cases, the law does not require proof that overcomes every possible doubt If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty If on the other hand, you think there is a real possibility that the defendant is not guilty, you must then give the defendant the benefit of the doubt and him not guilty

(Tr 609) Throughout the duration of its charge, the trial court subsequently reminded the jury of the State's burden of proof (Tr 612, 616) Additionally, the trial court emphasized the importance of the jury's role in the adversarial process charging the jury

Now, madam forelady and ladies and gentlemen, as you retire to begin your deliberations, I wish to express to you the hope that each of you will be mindful of the importance of your responsibility You are not called to serve as jurors very often And the proper performance of the duty requires each of you to reach the hithe of freeing your mind of all improper influences *You and I are acting for the community and that is why we must see to it that this trial is fair and that the verdict is just*

(Tr 618) (emphasis added) Continuing, the trial court charged the jury on its role as the sole finders of fact explaining

You have observed that the presiding officer of this court is always addressed as Your Honor Well, the reason is not because of the person wearing the robe, but that this court is entrusted with the honor of this community, the honor of this state, and honor of this country in seeking that every case that is tried here receives fair and impartial justice And do not get the idea that I'm trying to intimate to you how I might think you should decide this case As I've already told you under the laws of the State of South Carolina, you, the jury, are the sole judge of all questions of fact It will be highly improper for me to influence you in the performance of that duty But as the presiding officer of this court, I am vitally concern[ed] that whatever your verdict that you find will be the result of your going into the jury room, confining your consideration to the evidence, and to the law that you have in this courtroom weighing it fairly and impartially as I have every confidence you will do

Your verdict in this case is not to be based on sympathy, compassion, prejudice or some other emotion or other consideration that is not in the evidence *This Court is of the confirmed opinion that whatever verdict you reach will represent truth and justice for all parties that are involved in this case* Madame forelady, remember that the jury's verdict must be unanimous, all of you must agree on the verdict

(Tr 619) Following the jury charge, the trial court asked if there were “[a]ny [objections] other than what we discussed during the [charge conference ]” (Tr 621) Neither party registered any further objections (Tr 621)

### STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review errors of law and are bound by the factual findings of the trial court unless they are found to be clearly erroneous State v. Hernandez, 386 S C 655, 659, 690 S E 2d 582, 584 (Ct App 2010) Generally, the trial court is required only to charge the current and correct law of South Carolina Sheppard v State, 357 S C 646, 665, 594 S E 2d 462, 472 (2004) In reviewing a jury instruction, the instruction must be read in light of the entire charge and the facts of the case State v Aleksey, 343 S C 20, 27, 538 S E 2d 248, 251 (2000) If the charge as a whole is reasonably free from error, isolated portions of the charge which might be misleading do not constitute reversible error Id

### ARGUMENT

I Appellant’s burden shifting discussion is irrelevant to the disposition of this appeal and in the context of the trial court’s challenged instructions, is not preserved for appellate review

Appellant maintains the trial court erred when it charged the jury as follows (1) “[y]ou and I are acting for the community and that is why we must see to it that this trial is fair and that the verdict is just[,]” and (2) “[t]his Court is of the confirmed opinion that whatever verdict you reach will represent truth and justice for all parties that are involved in this case ” (Tr 617, 619) In its brief, Appellant argues these instructions are both burden shifting and constitute a golden rule violation The State disagrees

Initially, the State notes Appellant’s burden shifting objection is irrelevant to the disposition of this appeal as the language giving rise to Appellant’s Cage objection was never

charged to the jury See McClurg v Deaton, -- S C --, --, 716 S E 2d 887, 891 (2011) (citing McCall v Finley, 294 S C 1, 4, 362 S E 2d 26, 28 (Ct App 1987) (“Appellate courts recognize- or at least they should recognize-an overriding rule of civil procedure which says whatever doesn’t make any difference, doesn’t matter”) Specifically, as noted above, Appellant’s Cage objection referenced language from the trial court’s *proposed* jury charge which stated “everyone is entitled to justice” (Tr 549) In the ensuing discussion on Appellant’s Cage objection, the trial court, after reviewing the language, elected to eliminate it stating, “tell you what I’m going to do Surely, they accept the burden, that’s part of the system of justice that we work under But

I will take that out and just put ‘your verdict in this case cannot be based on sympathy, compassion or prejudice[ ]’” (Tr 550) Appellant failed to object to the trial court’s new proposed language (Tr 550) In light of this fact, the State submits Appellant’s burden shifting objection, while technically preserved for appellate review on this issue, is irrelevant since Appellant actually received the relief requested, namely elimination of the allegedly offensive language from the trial court’s jury charge See McKissick v J F Cleckley & Co., 325 S C 327, 350, 479 S E 2d 67, 79 (Ct App 1996) (noting where an appellant objects and the objection is sustained he has gotten what he asked for and cannot be heard to complain on appeal)

Similarly, to the extent Appellant’s brief argues the portion of the trial court’s charge stating “you and I are acting for the community” is a burden shifting instruction, such an argument is unpreserved for appellate review See State v Sheppard, 391 S C 415, -- , 706 S E 2d 16, 20 (2011) (“Our law is clear that an issue may not be raised for the first time on appeal”), I’On, L L C v Town of Mt Pleasant, 338 S C 406, 422, 526 S E 2d 716, 724 (2000) (holding an appellant must present both his issues and arguments to the lower court and obtain a ruling before presenting the issues and arguments on appeal) Here, as highlighted above,

defense counsel never argued the “acting for the community” language represented a burden shifting instruction as Appellant now suggests on appeal. On the contrary, defense counsel, after calling the language “improper” explained the language “was similar to a golden rule violation[.]” (Tr 551-52). Ruling on this objection the trial court found, “I think [the instruction] says we are acting for the community, so that every trial here is fair and just it is not making a plea on behalf of a victim or on behalf of the State” (Tr 553). Thus, because defense counsel never raised a burden shifting objection to the trial court’s “you and I are acting for the community” charge and the trial court never ruled on such an argument, the issue is unpreserved. See *I’On*, 338 S C at 422, 526 S E 2d at 724 (“Imposing [the] preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered *all relevant facts law and arguments*”).

Likewise, the State notes Petitioner’s contention that the “truth and justice for all parties” language is burden shifting, is not preserved for appellate review. Specifically, there was no objection of any type related to this instruction either during the charge conference or after the conclusion of the jury charge, and as such, this issue is unpreserved. See *State v Dunbar*, 356 S C 138, 142, 587 S E 2d 691, 693-94 (2003) (requiring an issue be raised to and ruled upon by the trial court in order to be preserved for appellate review), *I’On*, 338 S C at 422, 526 S E 2d at 724 (concluding appellants must present both the issues and arguments to the lower court and obtain a ruling before presenting the issues and arguments on appeal).

II The trial court’s instruction “[y]ou and I are acting for the community and that is why we must see to it that this trial is fair and that the verdict is just” does not constitute a “Golden Rule” violation

In light of the fact Appellant’s burden shifting issue is not preserved for appellate review, the only question left for the court to consider is whether the trial court’s instruction “[y]ou and I

are acting for the community and that is why we must see to it that this trial is fair and that the verdict is just” amounts to a Golden Rule violation. The State submits it does not and further highlights that Appellant, despite arguing “it is improper for the court to suggest that the jurors ‘stand in the shoes’ of a party[,]” has failed to provide the court with any authority supporting the proposition that a *jury instruction* can give rise to a Golden Rule violation. App Br at 10. The State further contends that even assuming a jury instruction could theoretically give rise to a Golden Rule violation, the charge, when taken as a whole, properly instructs the jury of the importance of its role in the adversarial process and does not ask the jury to step into the victim’s shoes.

#### A Defining a Golden Rule violation

The Golden Rule argument is a jury argument in which a lawyer asks the jurors to reach a verdict by imagining themselves or someone they care about in the place of the injured plaintiff or crime victim. Am Jur Trial § 547, see also State v. Reese, 359 S C 260, 271, 597 S E 2d 169, 174 (Ct App 2004) (overruled on other grounds) (quoting John W. Reiss, Improper Jury Argument: Gilding the Lustre of the Golden Rule, 69-JAN Fla B J 60, 60 (1995) (“The traditional notion of the Golden Rule, though not contained in any rule of evidence or procedure, holds that a lawyer shall not urge the jury members, either in a civil or criminal case, to imagine themselves or their family members or friends in the place of the offended litigant or victim and to render their verdict from that perspective.”)) Furthermore, in State v. Reese, 370 S C 31, 633 S E 2d 898 (2006), the South Carolina Supreme Court explained “[a] Golden Rule argument asking the jurors to place themselves in the victim’s shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice.” 370 S C at 38, 633 S E 2d at 891. Indeed, as noted by Appellant, South Carolina courts will reverse a

conviction in which a Golden Rule violation occurs where, in the context of the whole record, “the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process” Brown v State, 383 S C 506, 516, 680 S E 2d 909, 915 (2009) (quoting Humphries v State, 351 S C 362, 373, 570 S E 2d 160, 166 (2002)), see also App Br at 10 (citing State v Liberte, 336 S C 648, 654, 521 S E 2d 744, 747 (Ct App 1999) (concluding the trial court erred in failing to grant a mistrial based upon a solicitor’s closing argument suggesting the reasonable doubt standard is a threat to law and order)

Here, despite Appellant’s citation to a variety of sources which indicate a *prosecutor s argument* can result in a Golden Rule violation, Appellant has cited no authority for the proposition that a *jury instruction* could do the same. Accordingly, the State questions whether Appellant’s briefing of this issue complies with Rule 208(b)(1)(D), SCACR. See Rule 208(b)(1)(D), SCACR, (stating an argument must be supported by citations to authority), Doe v Roe, 379 S C 291, 300, 665 S E 2d 182, 186-87 (Ct App 2008) overruled on other grounds (holding conclusory arguments not supported by authority are considered abandoned for purposes of appellate review)

**B When read as a whole, the trial court’s charge is not a Golden Rule violation**

Assuming Appellant has sufficiently raised the issue of whether the challenged jury instruction amounts to a Golden Rule violation, the State submits the charge, when read as a whole, and in light of the facts of the case, properly instructs the jury on the importance of its role in the adversarial process and does not ask the jury to step into the victim’s shoes. As noted above, the Golden Rule *argument* asks the juror to step into the victim’s shoes and render a verdict which is sympathetic to the victim. Reese, 370 S C at 38, 633 S E 2d at 891. Thus, for relief, Appellant must demonstrate there is a reasonable likelihood the trial court’s *instruction*,

when viewed as a whole and against the facts of the case, resulted in the jury rendering an impartial verdict See State v Aleksey, 343 S C 20, 27, 538 S E 2d 248, 251 (2000) (explaining that when reviewing a jury instruction, the instruction, when read as a whole must be reasonably free from error and any isolated portions which might be misleading must be read in light of the entire charge and the facts of the case) Here, a review of the trial court's charge is dispositive

In its charge to the jury, the trial court instructed the jury on the presumption of innocence and noted a defendant is never required to prove himself innocent (Tr 608) Next, the trial court instructed the jury on reasonable doubt stating

So what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act The State has the burden of proving the defendant guilty beyond a reasonable doubt

Now, some of you may have served as jurors in civil cases where you were told that the only—that it is only necessary to proved that a fact is more likely true than not true such as by the greater weight or preponderance of the evidence In criminal cases, the State's proof must be more powerful than that It must be beyond a reasonable doubt Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt

Now, there are very few things in this world that we know with absolute certainty And in criminal cases, the law does not require proof that overcomes every possible doubt If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty If on the other hand, you think there is a real possibility that the defendant is not guilty, you must then give the defendant the benefit of the doubt and him not guilty

(Tr 609) Throughout the duration of its charge, the trial court subsequently reminded the jury of the State's burden of proof (Tr 612, 616) Additionally, the trial court, towards the conclusion of its charge, emphasized the importance of the jury's role as fact finders charging the jury

Now, madam forelady and ladies and gentlemen, as you retire to begin your deliberations, I wish to express to you the hope that each of you will be mindful of the importance of your responsibility You are not called to serve as jurors very

often And the proper performance of the duty requires each of you to reach the  
hithe of freeing your mind of all improper influences *You and I are acting for the  
community and that is why we must see to it that this trial is fair and that the  
verdict is just*

(Tr 618) (emphasis added) Continuing, the trial court charged the jury on its role as the sole  
finders of fact explaining

You have observed that the presiding officer of this court is always addressed as  
Your Honor Well, the reason is not because of the person wearing the robe, but  
that this court is entrusted with the honor of this community, the honor of this  
state, and honor of this country in seeking that every case that is tried here  
receives fair and impartial justice And do not get the idea that I'm trying to  
intimate to you how I might think you should decide this case As I've already  
told you under the laws of the State of South Carolina, you, the jury, are the sole  
judge of all questions of fact It will be highly improper for me to influence you in  
the performance of that duty But as the presiding officer of this court, I am vitally  
concern[ed] that whatever your verdict that you find will be the result of your  
going into the jury room, confining your consideration to the evidence, and to the  
law that you have in this courtroom weighing it fairly and impartially as I have  
every confidence you will do

Your verdict in this case is not to be based on sympathy, compassion, prejudice or  
some other emotion or other consideration that is not in the evidence This Court  
is of the confirmed opinion that whatever verdict you reach will represent truth  
and justice for all parties that are involved in this case Madame forelady,  
remember that the jury's verdict must be unanimous, all of you must agree on the  
verdict

(Tr 619)

Quite simply, the State submits this charge, when read as a whole, merely asks the jury to  
free its mind of "improper influences" as it is the "sole judge of the facts" and "it would be  
highly improper" for the judge "to influence" the jury in the performance of its duty (Tr 618-  
19) Moreover, the trial court's charge explains the jury must "fairly and impartially" weigh the  
evidence in reaching a verdict (Tr 619) Additionally, when read in conjunction with the last  
paragraph, stating the "verdict in this case is not to be based on sympathy, compassion, prejudice  
or some other emotion or other consideration that is not in evidence" the State believes the trial

court's charge clearly and unequivocally demonstrates the jury's role in the adversarial process and expressly cautions the jury from making a decision based upon anything other than the evidence (Tr 619) Accordingly, the State submits the trial court's charge did not amount to a Golden Rule violation and therefore, Appellant's conviction must be affirmed

### CONCLUSION

For the aforementioned reasons, the State respectfully asks this court to affirm the ruling of the trial court as well as Appellant's underlying convictions

Respectfully Submitted,

ALAN WILSON  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

DONALD J ZELENKA  
Assistant Deputy Attorney General

BRENDAN J McDONALD  
Assistant Attorney General

Edgar L Clements, III  
Solicitor, Twelfth Judicial Circuit

South Carolina Office of Attorney General  
P O Box 11549  
Columbia, SC 29211-1549  
(803) 734-3188



Brendan J McDonald  
ATTORNEY(S) FOR RESPONDENTS

December 14, 2011



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA SOUTH CAROLINA 29201  
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November 16, 2011

Assistant Attorney General Brendan J McDonald  
Office of the Attorney General  
P O Box 11549  
Columbia, SC 29211

Re The State v Daniels, Gregory  
2010159728

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Respondent And Designation Of Matter in the above entitled case on appeal

"Granted

John Cannon Few, C J  
For the Court

By s/ V. Claire Allen  
Deputy Clerk

November 16, 2011 "

For good cause shown, the request for an extension to file the Respondent's Initial Brief and Designation of Matter is granted until December 14, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required and be signed by the appropriate attorneys

Very truly yours,

*V. Claire Allen.*

DEPUTY CLERK

VCA/dw

cc Appellate Defender Tristan Shaffer

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from Florence County  
The Honorable Thomas A. Russo, Circuit Court Judge

The State of South Carolina,

Respondent,

v

Gregory D. Daniels,

Appellant

**MOTION FOR THIRD EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's third request for an extension of time in which to file the brief. In support of the request, undersigned counsel would respectfully show the Court

1. Undersigned counsel for Respondent has been scheduled for a number of state and federal matters in the last thirty (30) days, that include, but are not limited to, the following: (1) completed and filed a Response to Motion to Dismiss in a federal habeas action (*James Tinsley*), (2) completed and filed post-hearing briefing in a capital PCR proceeding (*Freddie Owens*), (3) completed and filed a Return and Memorandum of Law in Support of Motion for Summary Judgment in another federal habeas action (*Ray Shepard*), (4) completed and filed a Return and Memorandum of Law in Support of Motion for Summary Judgment in an additional federal habeas action (*Jesse McCarthan*), (5) completed and filed a Status Report in a federal habeas action (*Cory Credell*) and (6) is currently working on a Return and Memorandum of Law in Support of Summary Judgment another federal

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habeas action (*Retrice Funderburk*)

2 Due to his heavy case load, undersigned counsel for Respondent has not been able, in a timely fashion, to complete the initial brief in this appeal

3 Further, pursuant to the March 18, 2009 Order of the Supreme Court of South Carolina, moving counsel's immediate supervisor has reviewed the motion, and agrees the extension request is warranted based on the foregoing

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the Initial Brief of Respondent and Designation of Matter

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

DONALD J ZELENKA  
Assistant Deputy Attorney General

BRENDAN J McDONALD  
Assistant Attorney General


EDGAR L CLEMENTS, III  
Solicitor, Judicial Circuit

BY   
BRENDAN J McDONALD

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

November 14, 2011

I have reviewed and approved this request

  
\_\_\_\_\_  
DONALD J. ZELENKA  
Assistant Deputy Attorney General

GRANTED  
JOHN CANNON FEW, C J  
FOR THE COURT

By V. Claire Allen  
(Clerk) (Clerk)

**FILED**  
Dr 11.16.11

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

Appeal from Florence County  
The Honorable Thomas A Russo, Circuit Court Judge

---

The State of South Carolina,

Respondent,

v

Gregory D Daniels,

Appellant

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SC Court of Appeals

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**PROOF OF SERVICE**

---

I, Brendan J McDonald, certify that I have served Respondent's Third Motion for an Extension of Time on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows

Wanda H Carter, Deputy Chief Appellate Defender  
South Carolina Office of Indigent Defense  
Post Office Box 11589  
Columbia, South Carolina 29201

This 14<sup>th</sup> day of November, 2011



---

BRENDAN J McDONALD  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

November 14, 2011

The Honorable Tanva A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re The State v. Gregory D. Daniels  
Appeal from Florence County

Dear Ms. Gee:

Enclosed please find the original and six (6) copies of the Respondents' **Motion for Third Extension of Time to file Initial Brief of Respondent and Designation of Matter** dated November 14, 2011, together with a **Proof of Service** in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Brendan J. McDonald  
Assistant Attorney General

BJM/arb

cc Wanda H. Carter, Deputy Chief Appellate Defender

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NOV 14 2011  
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# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

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October 14, 2011

Assistant Attorney General Brendan J McDonald  
Office of the Attorney General  
P O Box 11549  
Columbia SC 29211

Re The State v Daniels, Gregory

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File Initial Brief Of Respondent And Designation Of Matter in the above entitled case on appeal

"Granted

John Cannon Few, C J  
For the Court

By s/ V Claire Allen  
Deputy Clerk

October 14 2011 "

For good cause shown, the request for an extension to file Respondent's Initial Brief and Designation of Matter is granted until November 14 2011 Pursuant to the Supreme Court's order dated March 18, 2009 any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys

Very truly yours,

*V Claire Allen*  
DEPUTY CLERK

VCA/dw

cc Appellate Defender Tristan Shaffer

STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from Florence County  
The Honorable Thomas A. Russo, Circuit Court Judge

2011  
10/12/11  
11-14-4  
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OCT 12 2011  
SC Court of Appeals

The State of South Carolina,

Respondent,

v

Gregory D. Daniels,

Appellant

**MOTION FOR SECOND EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER**

Respondent, the State, moves this Court for an additional thirty (30) day extension of time in which to file the Initial Brief of Respondent and Designation of Matter. This is Respondent's second request for an extension of time in which to file the brief. In support of the request, undersigned counsel would respectfully show the Court

1. Undersigned counsel for Respondent has been scheduled for a number of state and federal matters in the last thirty (30) days, that include, but are not limited to, the following: (1) completed and filed a Return and Memorandum of Law in a federal habeas action (*Sherrick Halsey*), (2) prepared and filed a Return and Memorandum of Law in Support of Motion for Summary Judgment in another federal habeas action (*Ronnie Hough*), (3) completed and filed a Return and Memorandum of Law in Support of Motion for Summary Judgment in an additional federal habeas action (*Jay Walter Tate*), (4) completed and filed a Final Brief of Respondent in a non-capital direct murder appeal (*Brian Spears*), (5) completed and filed a Return and Memorandum of Law in a federal habeas action (*Levon Mintz*), (6) completed and filed a Response in Opposition to Petitioner's Motion to Stay

Habeas Petition and Hold in Abeyance in the same federal habeas action (*Levon Mintz*), (7) attended the South Carolina Solicitor's Conference, (8) is preparing post-hearing briefing in a capital PCR proceeding (*Freddie Owens*), and (9) recently returned from watching oral arguments before the Supreme Court of the United States where the State of South Carolina was part of the *amici* (*Maples v Thomas, Martinez v Ryan*)

2 Due to his heavy case load, undersigned counsel for Respondent has not been able, in a timely fashion, to complete the initial brief in this appeal

THEREFORE, undersigned counsel for Respondent respectfully requests an additional extension of thirty (30) days to complete the Initial Brief of Respondent and Designation of Matter

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W McINTOSH  
Chief Deputy Attorney General

DONALD J ZELENKA  
Assistant Deputy Attorney General

BRENDAN J McDONALD  
Assistant Attorney General

EDGAR L CLEMENTS, III  
Solicitor, Judicial Circuit

BY   
BRENDAN J McDONALD

GRANTED  
JOHN CANNON FEW, C J  
FOR THE COURT

By V. Claire Allen  
(Clerk) (Deputy Clerk)

**FILED**  


Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

October 12, 2011  
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

/

3

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

Appeal from Florence County  
The Honorable Thomas A Russo, Circuit Court Judge

---

The State of South Carolina,

Respondent,

v

Gregory D Daniels,

Appellant

---

**PROOF OF SERVICE**

---

I, Brendan J McDonald, certify that I have served Respondent's Motion for a Second Extension of Time on counsel for Appellant, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows

Tristan M Shaffer, Appellate Defender  
South Carolina Office of Indigent Defense  
Post Office Box 11589  
Columbia, South Carolina 29201

This 12<sup>th</sup> day of October, 2011



---

BRENDAN J McDONALD  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-6305

**RECEIVED**

OCT 12 2011

**SC Court of Appeals**

ATTORNEY FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

October 12, 2011

The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re The State v Gregory D Daniels  
Appeal from Florence County

Dear Ms. Gee

Enclosed please find the original and six (6) copies of the Respondents' **Motion for Second Extension of Time to file Initial brief of Respondent and Designation of Matter**, dated October 12, 2011, together with a **Proof of Service** in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Brendan J. McDonald  
Assistant Attorney General

BJM/arb

cc Tristan Shaffer, Appellate Defender

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OCT 12 2011  
SC Court of Appeals

# The South Carolina Court of Appeals

The State,

Respondent

v

Gregory Daniels,

Appellant

The Honorable Thomas A. Russo  
Florence County  
Trial Court Case No 2009-GS-21-00427

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## ORDER

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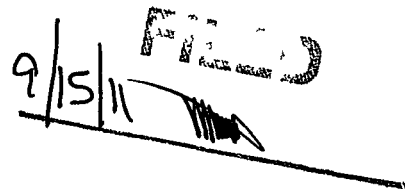
The request for an extension to serve and file Respondent's Initial Brief and Designation of Matter is granted until October 12, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc Appellate Defender Tristan Shaffer  
Assistant Attorney General Brendan J. McDonald

9/15/11  
FILED  




ALAN WILSON  
ATTORNEY GENERAL

September 12, 2011

1st  
RIB  
9/12/11  
10-12-11

The Honorable Tanya A. Gee  
Clerk South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re The State v. Gregory D. Daniels  
Appeal from Florence County

Dear Ms. Gee

The Initial Brief of Respondent in the above-entitled action is due to be filed and served today, September 12, 2011. Due to my heavy caseload, I will not be able to complete the Initial Brief in a timely fashion. For this reason, I respectfully request an extension of thirty (30) days within which to file the Initial Brief.

By copy of this letter I am informing opposing counsel of this request. Thank you for your consideration.

Sincerely,

Brendan J. McDonald  
Assistant Attorney General

BIM/arb

cc Tristan Shaffer, Assistant Appellate Defender

**RECEIVED**

SEP 12 2011

**SC Court of Appeals**



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Florence County

Thomas A Russo, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V

GREGORY D DANIELS,

APPELLANT

\_\_\_\_\_  
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal

- (1) True-billed indictment(s),
- (2) Tr 1, 73-108, 112-191, 200-278, 283-377, 379-625, 627-628, 631-637

I certify that this designation contains no matter which is irrelevant to this appeal

July 29th, 2011

\_\_\_\_\_  
Tristan M Shaffer  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Florence County  
Thomas A Russo, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V

GREGORY D DANIELS,

APPELLANT

---

CERTIFICATE OF SERVICE

---

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29<sup>th</sup> day of July, 2011



---

Tristan M Shaffer  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 29<sup>th</sup> day of July, 2011

 (L S )  
Notary Public for South Carolina

My Commission Expires October 2, 2013

**RECEIVED**  
JUL 29 2011  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Florence County

Thomas A Russo, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V

GREGORY D DANIELS,

APPELLANT

---

INITIAL BRIEF OF APPELLANT

---

TRISTAN M SHAFFER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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ATTORNEY FOR APPELLANT

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<i>Estelle v McGuire</i> , 502 U S 62, 112 S Ct 475 (1991)	8
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<i>State v Aleksey</i> , 343 S C 20, 538 S E 2d 248 (2000)	8
<i>State v Anderson</i> , 153 Was, App 417, 220 P 3d 1273 (Wash Ct App 2009)	8, 9
<i>State v Bostick</i> , 392 S C 134, 708 S E 2d 774 (2011)	5
<i>State v Brown</i> , 383 S C 506, 680 S E 2d 909 (2009)	9
<i>State v Liberte</i> , 336 S C 648, 521 S E 2d 744 (Ct App 1999)	10
<i>State v Northcutt</i> , 372 S C 207, 641 S E 2d 873, (2007)	9, 10
<i>State v Reese</i> , 359 S C 260, 597 S E 2d 169 (Ct App 2004)	9

### **Constitutional Provisions**

U S Const amend XIV	7
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STATEMENT OF ISSUES ON APPEAL

Should the jury have been instructed that they were acting “for the community” and that their verdict would represent truth and justice for the parties?

## STATEMENT OF THE CASE

On April 2, 2009, Appellant was indicted by the Florence County Grand Jury for the offenses of Murder and possession of a firearm during the commission of a violent offense. On April 12, 2010, Appellant was called to trial before the Honorable Thomas Russo and a jury. Tr 1 Appellant was represented by Jack Lawson and Grayson Smith. The State was represented by John Jepertinger and Steven Deberry.

The jury found Appellant guilty on both charges. Tr 627, l 19 – Tr 628, l 4 Appellant was sentenced to life. Tr 637, ll 3-10

## ARGUMENT

The jury should not have been instructed that they were acting “for the community” and that their verdict would represent truth and justice for the parties

### **Introduction**

“[T]here is *no* physical evidence linking [Appellant] to this crime, *no* eyewitnesses”, said Deputy Solicitor John Jepertinger during the State’s opening argument Tr 83, ll 21-22 In fact, outside of an alleged confession made to a snitch looking for a federal sentence reduction, there was no direct or substantial circumstantial evidence<sup>1</sup> presented showing that Appellant committed the murder The majority of the State’s evidence was presented to show suspicious behavior or a possible motive However, the evidence of motive was so weak that the State had to present at least two completely different theories of why Appellant might have committed the offense

In the midst of this trial that was plagued by the State’s vacuous lack of proof, the trial court instructed the jurors that they are “acting for the community” and that their verdict “will represent *truth and justice for all parties* that are involved” This charge demanded that the jurors to do more than merely weigh the evidence, but required them to seek justice in the interest of the community In doing so, this charge also diluted the reasonable doubt standard

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<sup>1</sup> *But for* a few lines in the transcript from the least credible witness called, this trial might have ended in a directed verdict *Cf State v Bostick*, 392 S C 134, 142, 708 S E 2d 774, 778 (2011) (“The evidence presented by the State raised, at most, a mere suspicion that

## **Relevant Facts**

On September 4, 2005 Appellant attended a cookout with some fifty to a hundred other people in North Florence. The party goers consisted of people from the rival neighborhoods of Woodmont and North Florence. Tr 248, ll 6-25

The decedent was also at the cookout. At the cookout there was a dispute between the decedent and Bernard Cooper. Appellant was trying to fuel this dispute by talking to about the decedent to Cooper. Tr 253, ll 2-16. At some point, Appellant and the decedent allegedly got into a verbal argument. Appellant allegedly asked the decedent to come down the street to presumably fight him. Tr 177, ll 4-5. The decedent declined, and later Appellant left the party. However around 3:30 a.m. the next morning, Appellant was allegedly seen walking around the neighborhood. Appellant was wearing dark clothing. Tr 178, ll 3-4

Around 5 a.m. that morning the decedent was walking to meet up with his girlfriend. The decedent was on the phone with Shovonne Gass. Right before his death the decedent told Gass “That n\*\*\*\* I was arguing with at the cookout is behind me you want to talk to him.” Tr 270, ll 4-5. Appellant was killed by a gunshot wound to the back of the head. Around the time of the gunshot his girlfriend claims to have seen a man dressed in dark clothing running from the scene. Tr 100, ll 3-10. Appellant was arrested for the murder of decedent.

Three months prior to trial, Andre Bradley, an acquaintance of Appellant was facing federal drug charges. Bradley decided to give a proffered statement to the United States

---

Bostick committed this crime. Under settled principles, the trial court should grant a directed verdict motion when the evidence merely raises a suspicion of guilty.”)

Attorney In that Statement Bradley Claimed that Appellant had been paid to kill the decedent by Gary Bostic Tr 434, ll 2-7 Bradley agreed to testify against Appellant in hopes of receiving a sentencing reduction Tr 423, ll 2-6

At trial, the State presented differing versions of the alleged argument between decedent and Appellant The State presented different theories concerning Appellant's motive to kill the decedent He either had an argument at the cookout which escalated into the killing or Appellant was paid to kill him The State's key evidence were letters that Appellant had written to his girlfriend In these letters Appellant rightly informs her that the state can not convict him without "substantial" evidence against him Tr 587, ll 2-3

Prior to closing arguments, the trial court held a charge conference During this conference Appellant was able to review the trial court's proposed jury instructions Citing to *Cage v Louisiana*<sup>2</sup>, Appellant objected to the proposed charge to the jury that everyone is entitled to justice because it shifted the burden from the State Tr 549, ll 5-12, Tr 550, ll 3-17 In overruling Appellant's objection, the trial court announced that he intended to instruct the jury that "everyone is entitled to justice " Tr 549, ll 20-24, Tr 550, l 18 – Tr 551, l 6 Appellant also argued that instructing the jury to act "for the community" to return a just verdict essentially was a "golden rule violation " Tr 547, l 21 – Tr 548, l 7, Tr 552, ll 8-12 The trial court overruled Appellant's "golden rule" objection Tr 553, ll 2-8

During his charge on the law, the trial court instructed the jury, "You are acting for the community and that is why we must see to it that this trial is fair and that the verdict is just " Tr 618, ll 14-17 The jury was also instructed, "this court is of the confirmed opinion

that whatever verdict you reach will represent *truth and justice for all parties involved* in this case” Tr 619, ll 15-18 When the trial court finished his charge, Appellant did not raise any objections “other than what was [previously] discussed” Tr 621, ll 16-18

### **Burden Shifting Discussion**

“In state criminal trials, the Due Process Clause of the Fourteenth Amendment ‘protects the accused against conviction except upon proof beyond a reasonable doubt’” *Cage*, 498 U S at 39, 111 S Ct at 329 (citing *In re Winship*, 397 U S 358, 364, 90 S Ct 1068, 1073 (1970)) A jury’s job is to weigh the evidence and determine if the State has proven its case beyond a reasonable doubt Courts should not impute truth or justice to a verdict because it is essentially asking the jury to make their decision on something other than the reasonable doubt standard *Cf State v Aleksey*, 343 S C 20, 26-27, 538 S E 2d 248, 251 (2000) (“Jury instructions on reasonable doubt which charged the jury to seek the truth are disfavored because they run the risk of unconstitutionally shifting the burden of proof to the defendant”) “A jury’s job is *not* to solve a case It is *not*, as the State claims, to declare what happened on the day in question Rather, the jury’s duty is to determine whether the State has proved its allegations against a defendant beyond a reasonable doubt” *State v Anderson*, 153 Was, App 417, 429, 220 P 3d 1273, 1280 (Wash Ct App 2009) (emphasis added) (internal citations omitted)<sup>3</sup>

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<sup>2</sup> *Cage v Louisiana*, 498 U S 39, 111 S Ct 328 (1990) (the test used in *Cage* was later disapproved of in footnote four of *Estelle v McGuire*, 502 U S 62, 73, 112 S Ct 475, 482 (1991))

<sup>3</sup> In *Anderson*, the Washington Court of Appeals found that the prosecutions demands to “declare the truth” were improper However, that court found the prosecutions comments about justice were not error because “they were clearly made in the context of jury instructions that explained what ‘justice’ would be in this case” *See Anderson*, 153 Wash App at 429, 220 P 3d at 1280

When the trial court told the jury that in his “*confirmed* opinion” their verdict would “represent *truth and justice* for all parties,” the jury *likely* interpreted their job as to return a verdict that represented the *truth* of what happened and *justice* for the decedent *Cf Aleksey*, 343 S C at 28, 538 S E 2d at 252 (“As an abstract concept, seeking the truth suggests the jury determine whose versions of events is more likely true, the government’s or defendant’s, and thereby intimates a preponderance of the evidence standard”) In actuality, truth and justice have little to do with a juror’s inquiry in a criminal case *See Anderson, supra*

Due to the extremely weak case that the State presented, Appellant was prejudiced by this burden shifting language In its opening argument, the State admitted that, “there is *no* physical evidence linking [Appellant] to this crime, *no* eyewitnesses” Tr 83, ll 21-22 The State had little evidence of Appellant’s guilt therefore any shift in the burden of proof would have been prejudicial Additionally, Appellant was prejudiced by this language by the many comments made by the Solicitor during closing arguments that expressed personal views concerning the sufficiency of the State’s evidence<sup>4</sup> Tr 584, ll 12-13,, Tr 585, ll 11-19, Tr 590, ll 10-13, Tr, 591, 1 2 Essentially, the Solicitor was personally endorsing the position that the State had met its burden Furthermore, the Solicitor echoed the burden shifting charges in the State’s closing argument, and even commanded the jury to “give a true verdict in this case” Tr 585 ll 18-22 Tr 590, ll 10-13

---

<sup>4</sup> These comments were not objected to at trial but might later give rise to an ineffective assistance of counsel claim *See State v Northcutt*, 372 S C 207, 222-223, 641 S E 2d 873, 881 (2007) (*holding* Northcutt should be granted a new sentencing hearing based on the Solicitor interjecting personal opinions)

### **“Golden Rule” Discussion**

It is improper for the court to suggest that the jurors “stand in the shoes” of a party because “it encourages the jurors to depart from neutrality and to decide the case on the basis of personal interest rather than evidence” *Cf State v Brown*, 383 S C 506, 516, 680 S E 2d 909, 915 (2009) (*citing State v Reese*, 359 S C 260, 271, 597 S E 2d 169, 175 (Ct App 2004) A juror should not convict a criminal defendant “in order to protect community values, preserve civil order, or deter future lawbreaking” *See State v Liberte*, 336 S C 648, 654, 521 S E 2d 744, 747 (Ct App 1999) (*commenting* “The amelioration of society’s woes is far too heavy a burden for the individual criminal defendant to bear”)

When the trial court told the jury that they were acting “for the community” and must seek a just verdict, the court was essentially asking them to stand in the shoes of the State whose job is to seek justice *See Northcutt*, 372 S C at 222, 641 S E 2d at 881 (“While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done”) Therefore this charge was a golden rule violation because it asked the jury to act for the community in seeking justice rather than to determine if the State has met its burden of proof

In sum, justice, truth, or a duty to act for the community are not valid considerations for a jury in a non-capital case The jury’s sole purpose was to examine the State’s evidence, weigh credibility, and decide if the State has proven its case beyond a reasonable doubt In this case the trial court’s instruction asked the jury to do more Therefore this Court should reverse the trial court and Appellant a new trial

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court grant him a  
new trial

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tristan M. Shaffer', written over a horizontal line.

Tristan M. Shaffer  
Appellate Defender

ATTORNEY FOR APPELLANT

This 29<sup>th</sup> day of July, 2011



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

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July 26, 2011

Appellate Defender Tristan Shaffer  
South Carolina Commission  
on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re The State v Daniels, Gregory  
2010159728

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal

"Granted

John C. Few, C J  
For the Court

By s/ V. Claire Allen  
Deputy Clerk

July 26, 2011 "

The Appellant's Initial Brief and Designation of Matter is now due on July 29, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys

Very truly yours,

*V. Claire Allen*  
DEPUTY CLERK

VCA/dw

cc Assistant Deputy Attorney General Donald Zelenka

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

bsh  
7.22.11  
7.29.11

\_\_\_\_\_  
Appeal from Florence County  
Thomas A Russo, Circuit Court Judge

RECEIVED

JUL 22 2011

THE STATE,

SC Supreme Court

RESPONDENT,

V

GREGORY D DANIELS,

APPELLANT

\_\_\_\_\_  
**PETITION FOR EXTENSION TO FILE  
INITIAL BRIEF OF APPELLANT AND  
DESIGNATION OF MATTER**  
\_\_\_\_\_

The undersigned counsel would respectfully request a **final one week extension, until July 29, 2011**, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1 The initial brief of appellant and designation of matter in this case are due to be served and filed today having been extended by prior orders of this Court.

2 Counsel had anticipated and worked toward submitting the initial brief of appellant today. Unfortunately, Counsel became ill yesterday and is out sick and therefore unable to complete the brief today. Counsel will work diligently to complete the initial brief of appellant and designation of matter in this murder case within a week.

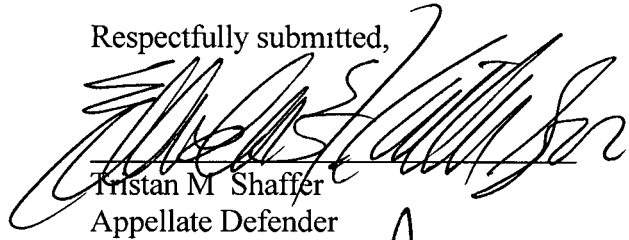
3 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Marcus Green* on July 20, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Quentin Holt* July 8, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Reginald Nance* on July 7, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v William Kelly* on June 28, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Ricardo Acevedo* on June 22, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Ricky Cheeks* on June 20, 2011 Counsel filed the initial briefs of appellant and designations of matter in the cases of *State v Thomas Smart* and *State v Ruben Silva-Aguilar* on June 16, 2011 Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *State v Shirley Mae Geer* (in the COA) on June 10, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Shelly Mauney* on June 9, 2011 Counsel filed the petition for rehearing in the case of *State v Desmond Sams* on June 3, 2011 In May, 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of *State v Jimmy Gallishaw, Jr* , *State v Jeremiah Turner*, *State v Legerald Dickerson*, *State v Jason Turmon*, *State v Zerell McClurkin*, and *State v Bobby Davis* Also in May 2011, Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *Lorenzo A Curry v State*

4 This request is made in good faith, and not for purposes of delay

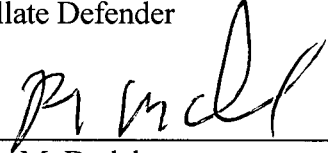
5 As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request

WHEREFORE, the undersigned counsel would respectfully request a **final one week extension, until July 29, 2011** in which to file the initial brief of appellant and designation of matter in this case. Counsel requests that the time limits for filing the initial brief of appellant and designation of matter be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Tristan M. Shaffer  
Appellate Defender

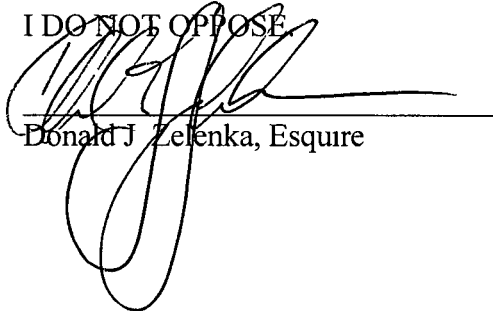


Robert M. Dudek  
Chief Appellate Defender

T. Patton Adams, IV  
Executive Director or  
J. Hugh Ryan, III  
General Counsel

July 22, 2011

I DO NOT OPPOSE



Donald J. Zelenka, Esquire

GRANTED  
JOHN CANNON FEW, C.J.  
FOR THE COURT

By V. Clave Allen  
(Clerk) (Deputy Clerk)

7/26/11  
**FILED**  


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Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender

July 22, 2011

RECEIVED

JUL 22 2011

Honorable Daniel E Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

SC Supreme Court

Dear Mr Shearouse

In absence of Patton Adams, Executive Director of the South Carolina Commission on Indigent Defense and Hugh Ryan, Deputy Attorney and General Counsel for the South Carolina Commission on Indigent Defense and pursuant to instructions from Mr Ryan, I ask that you accept this cover letter as an attempt to comply with the Court's order dated March 18, 2009, in regard to extension requests

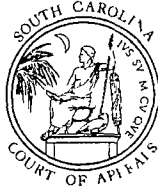
In the attached motion for an extension of time, Appellate Defender, Tristan M Shaffer, seeks a one-week extension of time to file the initial brief of appellant and designation of matter Based on that and his extremely heavy case load, as outlined in the motion, he was unable to complete the initial brief of appellant and designation of matter

Thank you for allowing me to bring this to your attention If you have any questions or concerns, please do not hesitate to contact me

Sincerely,



Lisa Campbell  
Assistant Director  
South Carolina Commission on  
Indigent Defense



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

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July 14, 2011

Appellate Defender Tristan Shaffer  
South Carolina Commission  
on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re The State v Daniels Gregory  
2010159728

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal

"Granted

John C. Few C J  
For the Court

By s/ Tanya A. Gee  
Clerk

July 14 2011 "

The Appellant's Initial Brief and Designation of Matter are now due on July 22, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required and be signed by the appropriate attorneys

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

VCA/dw

cc Assistant Deputy Attorney General Salley W Elliott

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Original  
5th  
7.1.11  
7.22.11

**RECEIVED**

JUL 01 2011

**SC Court of Appeals**

\_\_\_\_\_  
Appeal from Florence County  
Thomas A Russo, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V

GREGORY D DANIELS,

APPELLANT

\_\_\_\_\_  
**PETITION FOR EXTENSION TO FILE  
INITIAL BRIEF OF APPELLANT AND  
DESIGNATION OF MATTER**  
\_\_\_\_\_

The undersigned counsel would respectfully request a **final three week extension, until July 22, 2011**, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

1 The initial brief of appellant and designation of matter in this case are due to be served and filed today having been extended by prior orders of this Court.

2 Counsel has previously requested a "final" 30 day extension on this case. Counsel had anticipated and worked toward submitting the initial brief of appellant today. Unfortunately, Counsel needs more time to adequately address the meritorious issues in this murder case. Counsel will work diligently ensure no further extensions are necessary.

3 Counsel filed the initial brief of appellant and designation of matter in the case of *State v William Kelly* on June 28, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Ricardo Acevedo* on June 22, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Ricky Cheeks* on June 20, 2011 Counsel filed the initial briefs of appellant and designations of matter in the cases of *State v Thomas Smart* and *State v Ruben Silva-Agular* on June 16, 2011 Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *State v Shirley Mae Geer* (in the COA) on June 10, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Shelly Mauney* on June 9, 2011 Counsel filed the petition for rehearing in the case of *State v Desmond Sams* on June 3, 2011 In May, 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of *State v Jimmy Gallishaw Jr* , *State v Jeremiah Turner*, *State v Legerald Dickerson*, *State v Jason Furmon*, *State v Zerell McClurkin*, and *State v Bobby Davis* Also in May 2011, Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *Lorenzo A Curry v State*

4 This request is made in good faith, and not for purposes of delay

5 As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request

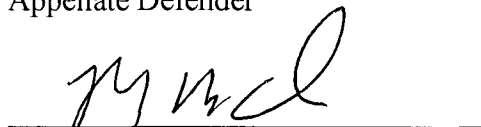
WHEREFORE, the undersigned counsel would respectfully request a **final three week extension, until July 22, 2011** in which to file the initial brief of appellant and designation of matter in this case Counsel requests that the time limits for filing the initial

brief of appellant and designation of matter be held in abeyance pending a ruling on this motion

Respectfully submitted,



Tristan M. Shaffer  
Appellate Defender



Robert M. Dudek  
Chief Appellate Defender



T. Patton Adams, IV  
Executive Director or  
J. Hugh Ryan, III  
General Counsel

July 1, 2011

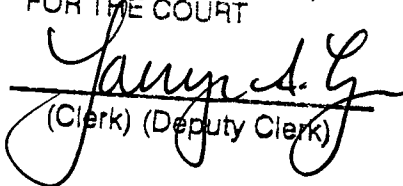
I DO NOT OPPOSE



Donald J. Zelenka, Esquire


GRANTED  
JOHN CANNON TEAM, C I  
FOR THE COURT

By



(Clerk) (Deputy Clerk)

**FILED**

2/14/11 



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

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June 3, 2011

Appellate Defender Tristan Shaffer  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia SC 29211

Re The State v Daniels, Gregory  
2010159728

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal

"Granted

John Cannon Few, C J  
For the Court

By s/ V. Claire Allen  
Deputy Clerk

June 3, 2011 "

For good cause shown, the request for an extension to file the Appellant's Initial Brief and Designation of Matter is granted until July 1, 2011 Pursuant to the Supreme Court's order dated March 18 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

VCA/dw

cc Assistant Deputy Attorney General Salley W Elliott

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Florence County  
Thomas A Russo, Circuit Court Judge  
\_\_\_\_\_

 ORIGINAL  
**RECEIVED**  
JUN 01 2011  
SC Court of Appeals

THE STATE,

RESPONDENT,

v

GREGORY D DANIELS,

APPELLANT

\_\_\_\_\_  
**PETITION FOR EXTENSION TO FILE  
INITIAL BRIEF OF APPELLANT AND  
DESIGNATION OF MATTER**  
\_\_\_\_\_

The undersigned counsel would respectfully request a **final thirty day** extension in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following exigent circumstances:

- 1 The initial brief of appellant and designation of matter in this case are due to be served and filed today having been extended by three prior orders of this Court.
- 2 Counsel is out of the office today due to family illness.
- 3 Counsel will be filing the petition for rehearing in the case of *State v Desmond Sams* on Friday, June 3, 2011. Counsel filed the initial brief of appellant and designation of matter in the case of *State v Jimmy Gallishaw Jr* yesterday, May 31,

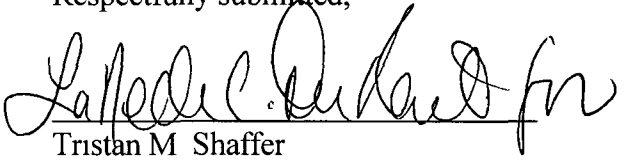
2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Jeremiah Turner* on May 26, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Legerald Dickerson* on May 25, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Jason Turmon* on May 13, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Zerell McClurkin* due on May 11, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Bobby Davis* on May 4, 2011 Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *Lorenzo A Curry v State* on May 2, 2011 In April 2011, Counsel filed the petitions for writ of certiorari and accompanying appendices in the cases of *Eric Joshua Turner v State* and *State v Nathaniel Bradley* (in the COA) Additionally, in April 2011, Counsel filed the initial briefs of appellant and designations of matter in the cases of *State v Jacob Breda*, *State v Alexander Partain* and *State v Steven Burton* Counsel also filed the brief of petitioner in the case of *State v James Michael Lucas* and the reply brief in the case of *State v Kevin Gilliard* in April, 2011

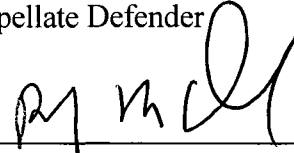
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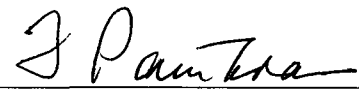
5 As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request

WHEREFORE, the undersigned counsel would respectfully request a **final thirty day** extension in which to file the initial brief of appellant and designation of matter in this case Counsel requests that the time limits for filing the initial brief of appellant and designation of matter be held in abeyance pending a ruling on this motion

Respectfully submitted,

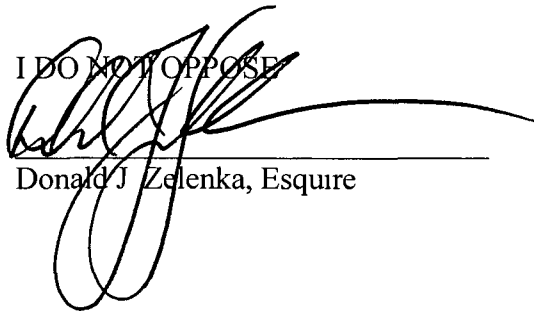
  
Tristan M. Shaffer  
Appellate Defender

  
Robert M. Dudek  
Chief Appellate Defender

  
T. Patton Adams, IV  
Executive Director or  
J. Hugh Ryan, III  
General Counsel

June 1, 2011

I DO NOT OPPOSE

  
Donald J. Zelenka, Esquire

GRANTED  
JOF - CANING (FEW) CJ  
FOR THE COURT

By V. Claire Allen  
(211) (20, City Clerk)

6/3/11  FILED



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734 1890  
FAX (803) 734 1839  
www.sccourts.org

May 5, 2011

Appellate Defender Tristan Shaffer  
South Carolina Commission on Indigent Defense  
P O Box 11589  
Columbia, SC 29211

Re The State v Daniels, Gregory  
2010159728

Dear Counsel

The following Order has been endorsed on your Petition For Extension Of Time In Which To File The Initial Brief Of Appellant And Designation Of Matter in the above entitled case on appeal

"Granted

John Cannon Few, C J  
For the Court

By s/ V. Claire Allen  
Deputy Clerk

May 5 2011 "

For good cause shown, the request for an extension to file the Appellant's Initial Brief and Designation of Matter is granted until June 1, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

VCA/dw

cc Assistant Deputy Attorney General Salley W Elliott

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Florence County

Thomas A Russo, Circuit Court Judge  
\_\_\_\_\_

3rd  
5/2/11  
RECEIVED  
MAY 02 2011  
SC Court of Appeals

THE STATE,

RESPONDENT,

v

GREGORY D DANIELS,

APPELLANT

\_\_\_\_\_  
**PETITION FOR EXTENSION TO FILE  
INITIAL BRIEF OF APPELLANT AND  
DESIGNATION OF MATTER**  
\_\_\_\_\_

The undersigned counsel would respectfully request a thirty day extension in which to file the initial brief of appellant and designation of matter in the above-referenced case In support of this motion, counsel would respectfully show the Court the following exigent circumstances

1 The initial brief of appellant and designation of matter in this case are due to be served and filed today having been extended by two prior orders of this Court

2 Counsel will be filing the petition for writ of certiorari and accompanying appendix in the case of *Lorenzo A Curry v State* today Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *Eric Joshua Turner v State*, as well as the brief of petitioner in the case of *State v James Michael Lucas* on Friday, April 29, 2011 Counsel filed the reply brief in the case of *State v Kevin Gillhard* on April 21, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Jacob Breda* yesterday, April 20, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Alexander Partain* April 15,

2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Steven Burton* on April 6, 2011 Counsel filed the petition for writ of certiorari and accompanying appendix in the case of *State v Nathaniel Bradley* (in the COA) Friday, April 1, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v David A Goins* on March 30, 2011 Counsel filed the initial brief of appellant and designation of matter in the case of *State v Mykel Watkins* on March 21, 2011 Counsel filed the initial briefs of appellant and designations of matter in the cases of *State v Terrelle Chandler* and *State v Adrian Eaglin* on March 3, 2011

3 This request is made in good faith, and not for purposes of delay

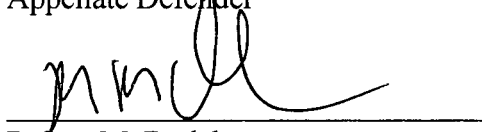
4 As indicated by his consent below, counsel for the state graciously consents to or does not oppose this request

WHEREFORE, the undersigned counsel would respectfully request a thirty-day extension in which to file the initial brief of appellant and designation of matter in this case Counsel requests that the time limits for filing the initial brief of appellant and designation of matter be held in abeyance pending a ruling on this motion

Respectfully submitted,



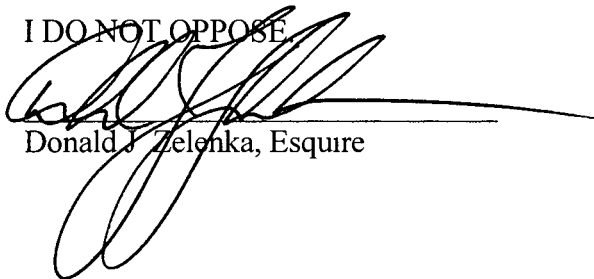
Tristan M Shaffer  
Appellate Defender



Robert M Dudek  
Chief Appellate Defender

May 2, 2011

I DO NOT OPPOSE



Donald J Zelenka, Esquire

GRANTED  
JOHN JOHANNON FEW, C.J.  
FORT TARRANT  
By V. Claire Allen  
(Clerk) (Deputy Clerk)

# The South Carolina Court of Appeals

The State,

Respondent

v

Gregory Daniels,

Appellant

The Honorable Thomas A Russo  
Florence County  
Trial Court Case No 2009-GS-21-00427

---

## ORDER

---

The request for an extension to serve and file Appellant's Initial Brief and Designation of Matter is granted until May 2, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claude Allen, Deputy  
CLERK

Columbia, South Carolina

cc Chief Appellate Defender Robert M Dudek  
Assistant Deputy Attorney General Salley W Elliott

**FILED**

4/4/11

**White, Della**

---

**From** COA Extensions  
**Sent** Thursday March 31 2011 1 54 PM  
**To** White Della  
**Subject** FW Gregory D Daniels  
**Attachments** Pie Charts Bkgrd JPG

22  
3 31 11  
5 2 11

---

**From** Kimberly McCall [mailto:kmccall@sccid.sc.gov]  
**Sent** Thursday, March 31, 2011 9 19 AM  
**To** COA Extensions  
**Cc** Sharon A Graham, agdzelenka@scag.gov, aglbrawley@ag.state.sc.us  
**Subject** Gregory D Daniels

Clerk's Office

South Carolina Court of Appeals

Re The State v Gregory D Daniels

Dear Ms Gee

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief. The Court has granted one previous extension.

By copy of this email, I am asking that Donald J Zelenka, Esquire, of the Attorney General's office consent to my request.

Sincerely,

Tristan M Shaffer

Appellate Defender

TMS/kam

*Kimberly McCall  
South Carolina Commission on Indigent Defense  
Appellate Division  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29201 1589  
(803) 734 1330 Telephone  
(803) 734 1397 Fax*

## White, Della

---

**From** COA Extensions  
**Sent** Thursday March 31 2011 1 54 PM  
**To** White Della  
**Subject** FW Gregory D Daniels

Original Message ---

From Don Zelenka [mailto:AGDZELENKA@scag.gov]  
Sent Thursday, March 31, 2011 9 35 AM  
To Kimberly McCall, COA Extensions  
Cc Lonnie Brawley, Sharon A Graham  
Subject Re Gregory D Daniels

I have no objection to this request

Sincerely,

Donald J Zelenka  
Assistant Deputy Attorney General  
South Carolina Attorney General's Office P O Box 11549 Columbia, South Carolina 29211  
803 734-3601  
803 734 4035(FAX)  
[agdzelenka@scag.gov](mailto:agdzelenka@scag.gov)

>>> "Kimberly McCall" <[kmccall@sccid.sc.gov](mailto:kmccall@sccid.sc.gov)> 3/31/2011 9 19 AM >>>  
Clerk's Office

South Carolina Court of Appeals

Re The State v Gregory D Daniels

Dear Ms Gee

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief. The Court has granted one previous extension.

By copy of this email, I am asking that Donald J Zelenka, Esquire, of the Attorney General's office consent to my request.

Sincerely,

Tristan M Shaffer

Appellate Defender

TMS/kam

Kimberly McCall  
South Carolina Commission on Indigent Defense Appellate Division  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29201-1589  
(803) 734 1330 - Telephone  
(803) 734 1397 Fax

-- Scanned by M+ Guardian Messaging Firewall ---

# The South Carolina Court of Appeals

The State,

Respondent

v

Gregory Daniels,

Appellant

The Honorable Thomas A Russo  
Florence County  
Trial Court Case No 2009-GS-21-00427

---

## ORDER

---

The request for an extension to serve and file Appellant's Initial Brief and Designation of Matter is granted until March 31, 2011 Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause

V. Claude Allen, Deputy CLERK  
For the Court

Columbia, South Carolina

cc Chief Appellate Defender Robert M Dudek  
Assistant Deputy Attorney General Salley W Elliott

3/2/11  
**FILED**  
THA

White, Della

---

**From** COA Extensions  
**Sent** Wednesday March 02 2011 4 13 PM  
**To** White Della  
**Subject** FW Gregory D Daniels  
**Attachments** Pie Charts Bkgrd JPG

1st  
3-1-11  
3-3-11

---

**From** Kimberly McCall [mailto:kmccall@sccid sc gov]  
**Sent** Tuesday, March 01, 2011 10 09 AM  
**To** COA Extensions  
**Cc** Sharon A Graham, agdzelenka@scag gov, Lonnie Brawley  
**Subject** Gregory D Daniels

Clerk's Office

South Carolina Court of Appeals

Re The State v Gregory D Daniels

Dear Ms Gee

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief

By copy of this email, I am informing Donald Zelenka, Esquire, of the Attorney General's office of my request

Sincerely,

Tristan M Shaffer

Appellate Defender

TMS/kam

*Kimberly McCall*  
*South Carolina Commission on Indigent Defense*  
*Appellate Division*  
*1330 Lady Street, Suite 401*  
*PO Box 11589*  
*Columbia, SC 29201 1589*  
*(803) 734 1330 Telephone*  
*(803) 734 1397 Fax*



# SCCID

SOUTH CAROLINA COMMISSION ON INDICENT DEFENSE

Division of Appellate Defense  
1330 Lady Street Suite 401  
Columbia South Carolina 29201 3332

Post Office Box 11589  
Columbia South Carolina 29211 1589  
Telephone (803) 734 1343  
Facsimile (803) 734 1397

Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender  
Joseph L Savitz III Senior Appellate Defender

January 4, 2011

**RECEIVED**  
JAN 04 2011

**SC Court of Appeals**

The Honorable Tanya A Gee  
Clerk, S C Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Dear Ms Gee

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side

The State v Gregory D Daniels

12/31/2010

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me

Thank you for your assistance in this matter

Sincerely,

Sharon A Graham  
Administrative Coordinator



SOUTH CAROLINA COMMISSION ON INDICENT DEFENSE

Division of Appellate Defense  
1330 Lady Street Suite 401  
Columbia South Carolina 29201 3332

Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender  
Joseph L Savitz III Senior Appellate Defender

Post Office Box 11589  
Columbia South Carolina 29211 1589  
Telephone (803) 734 1343  
Facsimile (803) 734 1397

December 15, 2010

RECEIVED  
DEC 15 2010  
SC Court of Appeals

Ms Desiree Allen  
S C Court Administration  
1015 Sumter Street, 2nd Floor  
Columbia, South Carolina 29201-3739

Dear Ms Allen

The transcript listed below was requested by this office Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms Kiesha T Reed	10/3/10	Gregory D Daniels

Trial Date April 16, 2010

I would appreciate your confirming in writing as to the status of the above-referenced transcript If you should have any questions, please do not hesitate to contact me

Sincerely

*Lorlene French*  
Lorlene French  
Legal Services Coordinator

cc S C Court of Appeals  
Attorney General's Office



SOUTH CAROLINA COMMISSION ON INDICENT DEFENSE

Division of Appellate Defense  
1330 Lady Street Suite 401  
Columbia South Carolina 29201 3332

Post Office Box 11589  
Columbia South Carolina 29211 1589  
Telephone (803) 734 1343  
Facsimile (803) 734 1397

Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender  
Joseph L Savitz III Senior Appellate Defender

RECEIVED

November 9, 2010

NOV 09 2010

SC Court of Appeals

Ms Desiree Allen  
S C Court Administration  
1015 Sumter Street, 2nd Floor  
Columbia, South Carolina 29201-3739

Dear Ms Allen

The transcript listed below was requested by this office Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms Kiesha T Reed	10/3/10	Gregory D Daniels

Trial Date April 16 2010

I would appreciate your confirming in writing as to the status of the above-referenced transcript If you should have any questions, please do not hesitate to contact me

Sincerely,

  
Lorraine French  
Legal Services Coordinator

cc S C Court of Appeals  
Attorney General's Office



# SCCID

SOUTH CAROLINA COMMISSION ON INDICTMENT DEFENSE

Division of Appellate Defense  
1330 Lady Street Suite 401  
Columbia South Carolina 29201 3332  
Post Office Box 11589  
Columbia South Carolina 29211 1589  
Telephone (803) 734 1330  
Facsimile (803) 734 1397

Robert M Dudek Chief Appellate Defender  
Wanda H Carter Deputy Chief Appellate Defender  
Joseph L Savitz III Senior Appellate Defender

April 29, 2010

**RECEIVED**

APR 29 2010

**SC Court of Appeals**

Ms Kiesha T Reed  
Circuit Court Reporter  
P O Box 12190  
Florence, SC 29504-2190

Dear Ms Reed

Our office has been requested to perfect the appeal arising out of

The State v Gregory D Daniels Case # 09 GS-21 0427

County Florence Date of Trial April 16, 2010

Presiding Judge Thomas A Russo

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms Kiesha F Reed  
April 29, 2010  
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

  
Lorie French  
Legal Services Coordinator

cc S C Court of Appeals  
Attorney General's Office



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA SOUTH CAROLINA 29201  
TELEPHONE (803) 734 1890  
FAX (803) 734 1839  
www.sccourts.org

May 7, 2010

Jack W Lawson, Jr, Esquire  
12th Judicial Circuit Public Defender  
180 N Irby St  
MSC-N  
Florence, SC 29501

Re The State v Daniels, Gregory

Dear Mr Lawson

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

**Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 23, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.**

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1015 Sumter Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5) SCACR also please advise the Court in writing upon receipt of the transcript.

**NOTE** If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8 200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,



Tanya A. Gee  
CLERK

TAG/dw

cc Chief Appellate Defender Robert M. Dudek  
Assistant Deputy Attorney General Salley W. Elliott  
John Charles Jepertinger, Esquire



# The South Carolina Court of Appeals

TANYA A GEE  
CLERK

V CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734 1890  
FAX (803) 734 1839  
www.sccourts.org

May 7, 2010

Jack W Lawson, Jr, Esquire  
12th Judicial Circuit Public Defender  
180 N Irby St  
MSC-N  
Florence, SC 29501

Re The State v Daniels, Gregory  
2010159728

Dear Mr Lawson

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

*V Claire Allen, Deputy*  
CLERK

TAG/dw

cc Chief Appellate Defender Robert M Dudek  
Assistant Deputy Attorney General Salley W Elliott  
John Charles Jepertinger, Esquire

NOTICE OF INTENT TO APPEAL  
THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM FLORENCE COUNTY

RECEIVED  
APR 28 2010  
SC Court of Appeals

THE HONORABLE THOMAS A RUSSO, PRESIDING JUDGE

NO 2009-GS-21-0427

POS 4-26-10  
pm 4-26-10

The State of South Carolina,

Respondent

against

Gregory D Daniels,

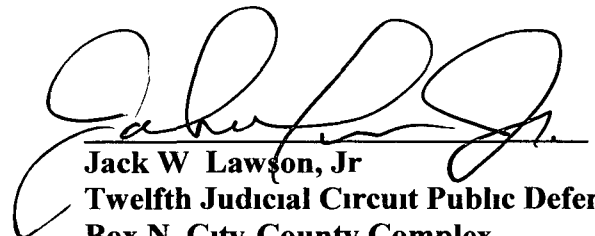
Appellant

---

NOTICE OF INTENT TO APPEAL

---

Gregory D Daniels appeals from the Murder and Possession of Weapon During the Commission of Violent Crime sentence rendered April 16, 2010, in the Court of General Sessions for Florence County, South Carolina



Jack W Lawson, Jr  
Twelfth Judicial Circuit Public Defender  
Box N, City-County Complex  
Florence, South Carolina 29501  
(843) 665-3055

Attorney for Appellant

April 26, 2010

Other Counsel of Record

John C Jupertinger, Esquire  
Office of Solicitor  
Box Q, City-County Complex  
Florence, South Carolina 29501  
(843) 665-3091

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NO 2009-GS-21-0427

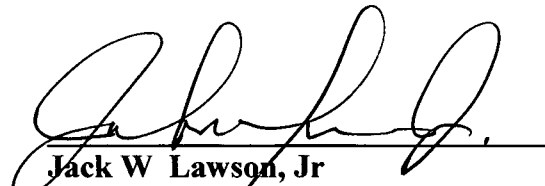
The State of South Carolina, )  
 )  
Versus )  
 )  
Gregory D Daniels, )  
 )  
Appellant )

**AFFIDAVIT OF SERVICE**

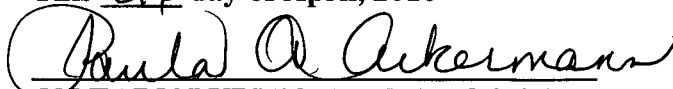
**PERSONALLY APPEARED** before me JACK W LAWSON, JR , who being first duly sworn, states that

- 1 I am the attorney representing the Appellant in the above-captioned action
- 2 I have previously served a copy of the Notice of Intent to Appeal in the above-captioned matter on the following person by hand delivering a copy of the same to his office on the 26th day of April, 2010

John C Jupertinger, Esquire  
Office of Solicitor  
Box Q, City-County Complex  
180 N Irby Street  
Florence, South Carolina 29501

  
\_\_\_\_\_  
Jack W Lawson, Jr  
Public Defender  
Twelfth Judicial Circuit

SWORN TO and subscribed before me  
This 26 day of April, 2010

  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR SC  
My Commission Expires 4-29-2018

**RECEIVED**  
APR 28 2010  
SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

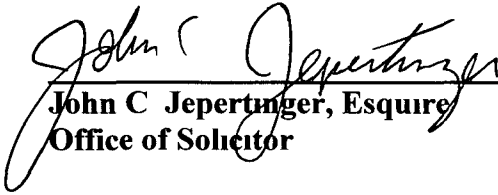
IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NO 2009-GS-21-0427

The State of South Carolina, )  
 )  
Versus )  
 )  
Gregory D Daniels, )  
 )  
Appellant )

---

**PROOF OF SERVICE**

**Due and legal service of the attached Notice of Intent to Appeal is hereby  
acknowledged and a copy retained for our file this 26th day of April, 2010**

  
John C Jepertinger, Esquire  
Office of Solicitor

**RECEIVED**  
APR 28 2010  
SC Court of Appeals

OFFICE OF

TWELFTH CIRCUIT PUBLIC DEFENDER

**JACK W LAWSON, JR**  
12th CIRCUIT PUBLIC DEFENDER  
**MICHAEL S BELL**  
CHIEF PUBLIC DEFENDER  
FOR FLORENCE COUNTY  
PHONE (843) 665 3055  
FAX (843) 665 4041

CITY COUNTY COMPLEX ROOM 703  
180 NORTH IRBY STREET MSC N  
FLORENCE SOUTH CAROLINA 29501



**RECEIVED**  
APR 28 2010  
SC Court of Appeals

April 26, 2010

The Honorable Kenneth A Richstad, Clerk  
Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

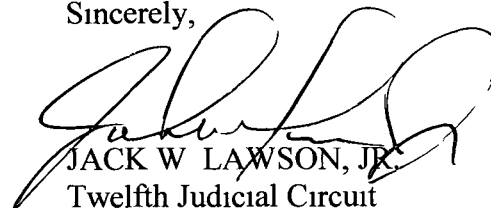
RE The State of South Carolina vs Gregory D Daniels  
Indictment No 2009-GS-21-0427

Dear Mr Richstad

Enclosed please find our Notice of Intent to Appeal, Certificate of Service and Proof of Service in the above matter to be filed in your Court

Thank you for your cooperation in this matter

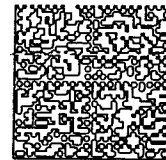
Sincerely,


  
JACK W LAWSON, JR.  
Twelfth Judicial Circuit  
Public Defender

JWLjr paa

Enclosures

Twelfth Circuit Public Defender  
180 N Irby Street MSC-N  
Florence South Carolina 29501



UNITED STATES POSTAGE  
 PITNEY BOWES  
02 1M \$ 00 44<sup>0</sup>  
0004253442 APR 27 2010  
MAILED FROM ZIP CODE 29501

The Honorable Kenneth A Richstad, Clerk  
Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

97-1 108 112

