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Jun 26 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Post-Conviction Relief

R. Scott Sprouse, Circuit Court Judge

Case No.: 2017-CP-02-0129
Appellate Case No.: 2018-001674

John Upson #229134,, Respondent

v.

State of South Carolina,Petitioner,

REQUEST FOR GUIDANCE REGARDING SCRIVENER'S ERROR AND MOTION TO
TEMPORARILY HOLD THE APPEAL IN ABEYANCE AND TO REMAND TO THE
LOWER COURT TO SPECIFICALLY ADDRESS THE ISSUE OF THE SCRIVENER'S
ERROR

PROCEDURAL HISTORY

An Order Granting Post Conviction Relief was signed by the Honorable R. Scott Sprouse on July 13, 2018.

The Petitioner filed a Motion to Alter or Amend pursuant to Rule 59 (e) on or about August 20, 2018. This Motion was denied by Judge Sprouse on August 24, 2018. The Petitioner filed a Notice of Appeal on September 17, 2018.

The Petition for Writ of Certiorari in the Supreme Court was filed on June 27, 2019. The Return to Petition for Writ of Certiorari was filed by the Respondent on September 18, 2019. On

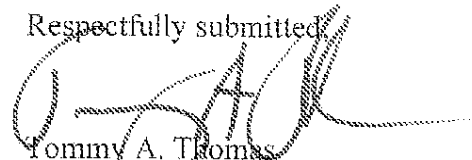
October 1, 2019, this matter was transferred from the South Carolina Supreme Court to the South Carolina Court of Appeals.

The Lower Court's Order Granting Post Conviction Relief states in part that "In making the identification, the State relied upon the testimony of a witness who pulled a photograph from Facebook before speaking with Law enforcement." (Emphasis added)

The factual basis regarding this issue is addressed in the Respondent's Return to Petition for Writ of Certiorari. (page 7, lines 1-27, page 8 and page 9)

The Respondent believes that there is a scrivener's error with the word **after** which should read **before**. (App. p. 482) Based upon my client's concern and in the spirit of zealous representation, I am asking for guidance as to any potential remedy regarding a possible scrivener's error and/or that the Appeal be held in abeyance that the case be remanded to the Lower Court to specifically address the Scrivener's error. Out of an abundance of caution, I am not providing any further facts or information about this issue other than what is contained in the Briefs and Appendix.

Respectfully submitted,



Tommy A. Thomas
Attorney for Respondent
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

June 25 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jun 26 2020

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

R. Scott Sprouse, Circuit Court Judge

CASE NO.: 2018-001674

JOHN UPSON,..... Respondent,

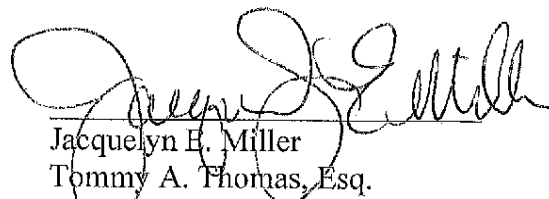
vs.

THE STATE,..... Petitioner.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Esq., certify that I have served a copy of a Request for Guidance regarding Scrivener's Error and Motion to Temporarily Hold the Appeal in Abeyance and to Remand to the Lower Court to Specifically Address the Issue of the Scrivener's Error by emailing to:

Mark R. Farthing, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
mfarthing@scag.gov



Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

June 26, 2020

Jackie Miller

From: Jackie Miller
Sent: Friday, June 26, 2020 12:20 PM
To: Mark Farthing
Subject: John Upson v. State
Attachments: Upson v state.pdf

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Jun 26 2020

SC Court of Appeals

Jackie Miller

Paralegal to Tommy Thomas, Esq.

Tommy A. Thomas, PC

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THOMAS LAW

June 26, 2020

VIA FACSIMILE

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Jun 26 2020

SC Court of Appeals

V. Clare Allen, Deputy Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

FAX NO.: 803-734-1839

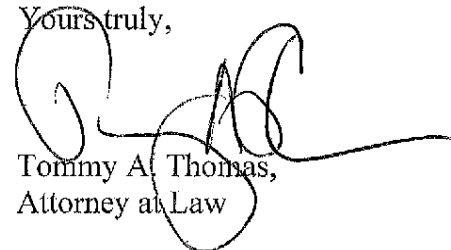
RE: John Upson #229134 v. State
Appellate Case No.: 2018-001674

Dear Sir or Madam:

Attached please find a Request for Guidance Regarding Scrivener's Error and Motion to Temporarily Hold the appeal in Abeyance and to Remand to the Lower Court to Specifically Address the Issue of the Scrivener's Error and a Certificate of Service by email for filing in the above referenced matter.

Thank you. Should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Mark R. Farthing, Esq.
John Upson #229134