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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID DWYER COCKRELL,

APPELLANT

APPELLATE CASE NO. 2020-001070

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

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 COUNTY OF GREENVILLE)
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 STATE OF SOUTH CAROLINA,)
)
)
 vs.)
)
 DAVID DWYER COCKRELL,)
)
 DEFENDANT.)
 _____)

COURT OF GENERAL SESSIONS
 2017-GS-23-01633
 2020-GS-23-02254

TRANSCRIPT OF RECORD

ORIGINAL

April 9, 2020
 Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE.

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

L. MARK MOYER, ESQ.
 Assistant Solicitor

MORGAN E. CLEARY, ESQ.
 Attorney for the Defendants

HOLLIE M. JENKINS
 Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: Mr. Hemlock, you are here today to plead to
3 malicious injury to property. That carries up to five
4 years.

5 Is that your understanding?

6 DEFENDANT HEMLOCK: Yes, ma'am.

7 THE COURT: And, Mr. Cockrell, you're here today to
8 plead to fraudulent check. That carries up to two years,
9 two counts of that.

10 Is that your understanding?

11 DEFENDANT COCKRELL: Yes, Your Honor.

12 THE COURT: Have you discussed these charges with
13 your lawyer, Mr. Hemlock?

14 DEFENDANT HEMLOCK: Yes, Your Honor.

15 THE COURT: And Mr. Cockrell?

16 DEFENDANT COCKRELL: Yes, Your Honor.

17 THE COURT: Are you okay that your lawyer is not
18 there at the jail with you today? And are you okay that
19 we're doing this plea by video, Mr. Hemlock?

20 DEFENDANT HEMLOCK: Yes, Your Honor.

21 THE COURT: And Mr. Cockrell?

22 DEFENDANT COCKRELL: Yes. Yes, Your Honor.

23 THE COURT: Are you okay that your lawyer has signed
24 these sentencing sheets for you, Mr. Hemlock?

25 DEFENDANT HEMLOCK: Yes, Your Honor.

1 THE COURT: And Mr. Cockrell?

2 DEFENDANT COCKRELL: Your Honor, I'm not sure on the
3 sentencing. I know that I'm pleading guilty. She said
4 the plea would be in the future. So I'm not sure.

5 THE COURT: Okay. It is -- this -- this is -- this
6 is the plea here today. And she -- she just didn't give
7 you the sentencing sheets because of, you know, everything
8 that's going on with the virus, and all.

9 DEFENDANT COCKRELL: Right. Yes.

10 THE COURT: And so -- and you could have looked at
11 this sentencing sheet and signed it yourself, but she
12 signed it for you.

13 Are you all right with that?

14 DEFENDANT COCKRELL: Yes, I am, Your Honor.

15 THE COURT: Okay. Are you under the influence of
16 drugs or alcohol here today, Mr. Hemlock?

17 DEFENDANT HEMLOCK: No, ma'am.

18 THE COURT: And Mr. Cockrell?

19 DEFENDANT COCKRELL: No, Your Honor.

20 THE COURT: Has -- has anybody forced you to plead
21 guilty or promised you anything to get you to plead
22 guilty, Mr. Hemlock?

23 DEFENDANT HEMLOCK: No, Your Honor.

24 THE COURT: And Mr. Cockrell?

25 DEFENDANT COCKRELL: No, Your Honor.

1 THE COURT: Are you under the influence of drugs or
2 alcohol here -- I've already asked you that. I'm sorry.

3 You're giving up your right to remain silent and your
4 right to a jury trial on these charges.

5 Do you know that, Mr. Hemlock?

6 DEFENDANT HEMLOCK: Yes, Your Honor.

7 THE COURT: And Mr. Cockrell?

8 DEFENDANT COCKRELL: Yes, Your Honor.

9 THE COURT: Mr. Cockrell, you're pleading to one
10 charge that hasn't been indicted. Do you want to give up
11 that right and plead guilty today anyway, Mr. Cockrell?

12 DEFENDANT COCKRELL: That I'd be pleading guilty to
13 both charges?

14 THE COURT: Right. But one of them's indicted by the
15 Grand Jury.

16 DEFENDANT COCKRELL: I plead guilty to that one.

17 THE COURT: Okay. And how do you plead, guilty or
18 not guilty, Mr. Hemlock?

19 DEFENDANT HEMLOCK: Guilty.

20 THE COURT: And Mr. Cockrell?

21 DEFENDANT COCKRELL: Guilty.

22 THE COURT: You've got 10 days from today's date to
23 appeal this plea, if you so choose. But you must do so in
24 writing to this Court.

25 Yes, sir.

1 MR. MOYER: Your Honor, Mr. Hemlock -- the Defendant
2 broke a band [phonetic] window in the parking lot of the
3 apartment complex where he lived after his roommate
4 refused to give him the keys because he was intoxicated.
5 He went to the clubhouse and began smashing doors and
6 windows and breaking furniture. He caused over \$2,000 in
7 damage to the clubhouse. He told police he was upset
8 because he couldn't see his girlfriend.

9 The recommendation is time served and anger
10 management.

11 THE COURT: All right. I'll go along with it.

12 MS. CLEARY: Judge, I'm standing in for Stuart
13 Sarratt. He did want me to bring up a couple of other
14 points.

15 THE COURT: Sure.

16 MS. CLEARY: This incident occurred in 2015. He was
17 picked up on an FTA bench warrant. He stayed out of
18 trouble --

19 Please correct me if I'm wrong on this.

20 -- for five years and doesn't have a prior record.

21 He, also, paid back the damage to the apartment --

22 THE COURT: Oh, good.

23 MS. CLEARY: The case solicitor has confirmed that.

24 And he wants to go home to North Carolina. So we're

25 respectfully asking the Court to take all that into

1 consideration and just give him time served.

2 THE COURT: Time served.

3 Good luck to you.

4 MS. CLEARY: Thank you, Judge.

5 That one's for you, Jenny.

6 THE PROBATION AGENT: Thank you.

7 DEFENDANT HEMLOCK: Thank you, Your Honor.

8 THE COURT: Good luck.

9 MR. MOYER: Your Honor, Mr. Cockrell -- the incident
10 was May 5th, 2016. The Defendant presented a check to
11 Woodrick -- Wood Forest National Bank on a Corbin Court
12 account and -- and for rent. The -- both checks were
13 returned not sufficient funds. And a certified letter was
14 sent. A warrant was issued. The State's dismissing
15 another fraud check. And that -- that amount was included
16 in the order of restitution.

17 The recommendation is probation. And, again, a
18 restitution hearing to be held within 90 days.

19 THE COURT: I'll do it.

20 MS. CLEARY: We're good with that.

21 Thanks, Judge.

22 THE COURT: Two years suspended with probation for
23 three. Credit for 16 days. Hold for a restitution
24 hearing within 90 days, or if we have to extend that, then
25 that's fine. Probation to terminate upon payment of

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restitution. And two years suspended during probation.

Good luck to you.

*****END OF TRANSCRIPT OF RECORD*****

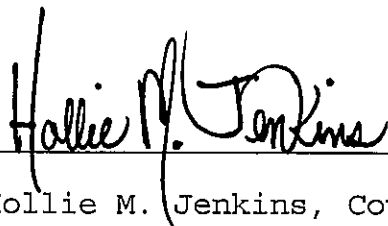
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9th day of April, 2020.

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

October 8, 2020



Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 DAVID DWYER COCKRELL,)
)
 DEFENDANT.)
 _____)

2017-GS-23-01633
2020-GS-23-02254

TRANSCRIPT OF RECORD

JULY 23, 2020
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SYLVIA HARRISON
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DEMI MESSER, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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WITNESS

PAGE NO.

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 **MS. HARRISON:** Your Honor, this is a restitution hearing
2 for two fraud checks. This is under indictment 2017-GS-23-
3 1633. The restitution being sought is ten thousand, sixty
4 dollars (\$10,060.00). And, Your Honor, to be honest, I'm not
5 sure why we're here. He's pled guilty to both fraud checks.

6 **MS. MESSER:** Good morning, Your Honor. To begin with,
7 Mr. Cockrell does not dispute that he does owe that ten
8 thousand dollars (\$10,000.00). And, again, he pled to this
9 today -- or a few weeks back.

10 Where our dispute is, I don't believe that that ten
11 thousand dollars (\$10,000.00) belongs as part of restitution.
12 Mr. Cockrell owed the landlord ten thousand dollars
13 (\$10,000.00) and then he wrote a check for paying that debt.
14 After writing the check was where the sixty dollars (\$60.00)
15 came in for the fees of cashing a poor check.

16 So with restitution is, you know, the restitution is
17 given where, excuse me, where a crime or whether a loss has
18 resulted from that crime. This loss would have been there
19 with or without him writing the check at all.

20 And that is the basis of our argument is that the ten
21 thousand dollars (\$10,000.00) is not part of restitution
22 because it was not a result of the crime. It was -- the sixty
23 dollars (\$60.00) was a result of the crime of uttering the
24 fraudulent check.

25 **MS. HARRISON:** Your Honor, I'd like to hand up the

1 statute. I think she would be correct if we were still in
2 1999, but this statute was amended in 1999 -- in 1991 to
3 include rent and pre-existing debt.

4 And this was -- these checks were given for rent that was
5 owed for an entire year where he didn't pay. As a matter of
6 fact, he owes Corbin eighteen thousand dollars (\$18,000.00),
7 and this was ten thousand (10,000) of that. I could pass up
8 the statute if you need, Your Honor.

9 **MS. MESSER:** Judge, that statute does say what the
10 solicitor has stated it says, however, it doesn't discuss
11 restitution and where the restitution will be owed based on
12 that. The restitution statute is the 17-25-322, which states
13 that where the defendant is convicted of a crime which has
14 resulted in pecuniary damages or loss to the victim, then the
15 restitution would go toward a hearing.

16 The statute does discuss that it is illegal to write a
17 check fraudulently for purposes of paying rent or a debt. And
18 we're not disputing that what he did was a crime. What we're
19 disputing is that that money was owed no matter what with or
20 without this crime.

21 We were -- in our discussions with Sylvia we were fine
22 with a civil judgment in this case. He's not disputing that
23 he owes it. He's not disputing that he did it. Where we
24 dispute is that it belongs as part of restitution.

25 **MS. HARRISON:** Your Honor, I'm going to be honest, I just

1 can't follow the logic.

2 **THE COURT:** She's saying it was a pre-existing debt.

3 **MS. HARRISON:** Your Honor, she'd be correct if it were
4 receiving stolen goods, but this is not a receiving stolen
5 goods case.

6 **THE COURT:** What she's saying is if he hadn't written the
7 check, he'd still owe the money. He didn't get any goods or
8 benefit from the receipt or from the ...

9 **MS. HARRISON:** Your Honor, he got continued -- being
10 allowed to live in the apartment.

11 **MS. MESSER:** And, Judge, if that was the money that we
12 were discussing today, the continuance from that, then that
13 would be a result of the crime. However, the result of the
14 crime from what I was given is the sixty dollars (\$60.00)
15 where he went with the landlord, excuse me, went to cash those
16 checks, and then he was given those fees. So he was out sixty
17 dollars (\$60.00) based on the crime that Mr. Cockrell
18 committed, but the ten thousand dollars (\$10,000.00) was
19 always there and would have always been there even if he had
20 not committed this crime.

21 **MS. HARRISON:** But if he had not written the checks, the
22 landlord would not have let him continue to live in the
23 apartment for an extended amount of time.

24 **THE COURT:** Well, how much -- how much after he wrote the
25 check? How much had accrued after that?

1 **MS. HARRISON:** Your Honor, Mr. Atkins is here. We can
2 ask him.

3 **THE COURT:** Well, I'm not going to ask him. You ask him.

4 **MS. HARRISON:** Mr. Atkins, would you stand up, please.
5 Mr. Atkins -- do we need to swear him?

6 (No verbal response)

7 **MS. HARRISON:** Mr. Atkins, how much -- I'm going to take
8 the mask off slightly. He's a little hard of hearing. How
9 much in the entirety did Mr. Cockrell charge to Corbin and
10 Associates for rent? How much did he not pay you the whole
11 time he was there?

12 **MR. ATKINS:** Eighteen thousand, five hundred and eighteen
13 (18,518), I believe it is.

14 **MS. HARRISON:** Okay. Did he give you those bad checks
15 while he was staying during that time?

16 **MR. ATKINS:** Yes.

17 **MS. HARRISON:** Okay. Did those checks allow him to stay
18 there a little longer?

19 **MR. ATKINS:** Well, yes. We eventually had just to evict
20 him.

21 **MS. HARRISON:** You eventually had to evict him? Thank
22 you.

23 **THE COURT:** How much? How much rent accrued after he
24 wrote the check? That's what I asked.

25 **MS. HARRISON:** I'm sorry. Okay. How much -- do you have

1 your ledgers with you?

2 **MR. ATKINS:** Yes.

3 **MS. HARRISON:** Okay. After he wrote the check how much
4 -- how much longer did he stay in the apartment?

5 **MR. ATKINS:** Well, we did not continue to -- we did not
6 continue to make any charges for staying there.

7 **MS. HARRISON:** What you mean? How much longer did he
8 stay there ---

9 **MR. ATKINS:** When he wrote the checks, he was still in
10 the apartment.

11 **MS. HARRISON:** For how long?

12 **MR. ATKINS:** For about a month before he got out.

13 **MS. HARRISON:** Okay. How much -- okay. So how much --
14 how much was that rent-wise?

15 **MR. ATKINS:** Eight hundred and sixty dollars (\$860.00).

16 **MS. HARRISON:** Okay. So he continued to stay there.

17 **MS. MESSER:** So, Judge, this is new information to me, so
18 I apologize for not bringing that up. However, we would
19 understand that, per the crime, he stayed for an extra month
20 of eight hundred and sixty dollars (\$860.00) is what he
21 received the benefit from and then plus the sixty dollars
22 (\$60.00), of course. However, again, the ten thousand dollar
23 (\$10,000.00) debt, we still disagree belongs as part of
24 restitution.

25 **THE COURT:** It's interesting. You got the copy of the

1 restitution statute?

2 **MS. MESSER:** I certainly do. I have the -- what I'm
3 referring to is the restitution statute governing the
4 restitution hearings.

5 **MS. HARRISON:** But, Judge, that doesn't cover restitution
6 for a fraud check.

7 (Pause)

8 **THE COURT:** It's an interesting little theory you got.

9 (Pause)

10 **THE COURT:** Well, maybe -- I'm going to grant the
11 restitution in the amount of ten thousand, sixty dollars
12 (\$10,060.00). You can appeal it and see what they say. Since
13 she didn't get notice of the other eight hundred (800) and
14 whatever, I'm not going to include that. Okay.

15 **MS. HARRISON:** Thank you, Your Honor.

16 **MS. MESSER:** Thank you, Judge.

17 (Hearing Ended at 1:03 pm)

18 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 23rd day of July 2020.

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

October 9, 2020


Circuit Court Reporter

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OCT 13 2020
OFFICE OF THE CLERK

THE STATE OF SOUTH CAROLINA
In the Appellate Court

RECEIVED

AUG 13 2020

APPEAL FROM GREENVILLE COUNTY SC Court of Appeals
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case No(s): 2017GS2301633; 2020GS2302254;
2016A2310800286; 2016A2310800273

The State,

Respondent.

v.

David Dwyer Cockrell,

Appellant.

R.203 EXPLANATION OF ISSUE

Pursuant to R. 203 of the South Carolina Appellate Court Rules, when appealing a guilty plea, a written explanation showing that there is an issue which can be reviewed on appeal is required.

David Dwyer Cockrell entered a guilty plea to two counts of uttering a fraudulent check on April 9, 2020, and the Honorable Letitia Verdin sentenced him to two years suspended to sixteen days' time served and three years' probation, with a restitution hearing to be held within ninety days. A contested restitution hearing was held on July 23, 2020, after which the Honorable Edward W. Miller ordered Mr. Cockrell to pay all restitution requested by the State in the amount of \$10,060.00. Mr. Cockrell appeals the circuit court's order of restitution.

Mr. Cockrell submits the circuit court erred in ordering the restitution requested by the solicitor because the criminal act committed by Mr. Cockrell did not result in the \$10,000 loss to the victim. Mr. Cockrell owed Corbin Court LLC (the landlord) \$10,000 in past due rent. Mr. Cockrell wrote two fraudulent checks in the amount of \$5,000 each to pay the rent owed to the landlord. The landlord was charged a \$60 fee when he attempted to cash the fraudulent checks.

At the contested restitution hearing held on July 23, 2020, Mr. Cockrell argued that the \$60 loss was a result of the crime committed and would be the only appropriately ordered restitution as a condition of his sentence. Mr. Cockrell argued to the circuit court that, pursuant to section 17-25-322 of the South Carolina Code, the \$10,000 debt was not a result of the crime and should not be added to the restitution owed. The circuit court granted the State's request and ordered \$10,060.00 in restitution as a condition of Mr. Cockrell's sentence. There are preserved, appealable issues from the contested restitution hearing.

Date: August 10, 2020

A handwritten signature in black ink, appearing to read "Demi L. Messer", written over a horizontal line.

Demi L. Messer, Esq.
305 East North Street, Suite 123
Greenville, SC 29601
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Appellate Court

RECEIVED

AUG 13 2020

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case No(s): 2017GS2301633; 2020GS2302254;
2016A2310800286; 2016A2310800273

Appellate Case No.: 2020-001070

The State,

Respondent.

v.

David Dwyer Cockrell,

Appellant.


PROOF OF SERVICE

I certify that I have served the R.203 Explanation of Issue on the below listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on August 10, 2020, addressed to:

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Greenville, SC 29601

Alan Wilson, Esq.
Attorney General
P.O. Box 11549
Columbia, SC 29211

Date: August 10, 2020



Demi L. Messer, Esq.
305 East North Street, Suite 123
Greenville, SC 29601
Attorney for Appellant

DOCKET NO. 2017-GS-23-001633

SPH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2017

THE STATE

vs.

DAVID D COCKRELL

Indictment for

0800

FRAUDULENT CHECK

VIOLATION § 34-11-0060

FILED

MAR - 8 2017

Clerk of Court
Greenville County

WITNESSES

P Carpenter

Solicitor's Office

12/7/2016

ARREST WARRANT NUMBER

2016A2310800273

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FRAUDULENT CHECK

JUN 27 2017

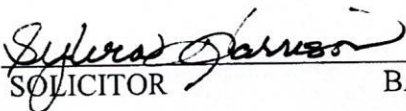
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That DAVID D COCKRELL did in Greenville County, on or about the 5th day of May 2016, with intent to defraud, willfully and unlawfully draw, utter, or deliver to CORBIN COURT LLC a check, draft or written order, in exchange for goods, money, services or anything of value which is not paid upon presentment or following appropriate notice, to wit: a check numbered 1082 in the amount of Five Thousand and No/100 Dollars (\$5,000.00) drawn on WOODFOREST NATIONAL BANK. The check was returned for insufficient funds and/or other related insufficiencies. A certified letter was sent to David D Cockrell notifying him of the returned check with no response, and a warrant was issued within 180 days of the check being presented. This being in violation of §34-11-0060 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR BAR # 64840

2254

DOCKET NO. 2020-GS-23-SPH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2017

THE STATE

vs.

DAVID D COCKRELL

WITNESSES

P Carpenter

Solicitor's Office

12/7/2016

ARREST WARRANT NUMBER
2016A2310800286

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0800

FRAUDULENT CHECK

VIOLATION § 34-11-0060

Foreperson of Petit Jury

Date:


STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FRAUDULENT CHECK

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That DAVID D COCKRELL did in Greenville County, on or about the 5th day of May 2016, with intent to defraud, willfully and unlawfully draw, utter, or deliver to CORBIN COURT LLC a check, draft or written order, in exchange for goods, money, services or anything of value which is not paid upon presentment or following appropriate notice, to wit: a check numbered 1083 in the amount of Five Thousand and No/100 Dollars (\$5,000.00) drawn on WOODFOREST NATIONAL BANK. The check was returned for insufficient funds and/or other related insufficiencies. A certified letter was sent to David D Cockrell notifying him of the returned check with no response, and a warrant was issued within 180 days of the check being presented. This being in violation of §34-11-0060 of the South Carolina Code of Laws (1976) as amended.

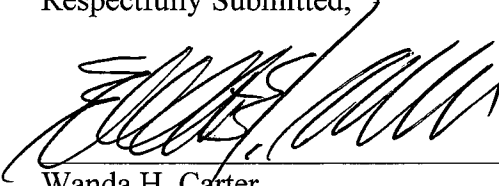
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR BAR # 64840

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 1st day of July, 2021.

RECEIVED
Jul 01 2021
SC Court of Appeals