

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Garrison D. Hill, Circuit Court Judge

Case No. 2013-GS-23-2124

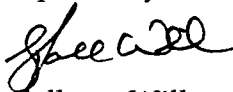
State of South Carolina, Respondent,
v.
Johnie Allen DeVore, Jr., Appellant.

AMENDED NOTICE OF APPEAL

Johnie Allen DeVore, Jr., hereby appeals from the conviction and sentence entered on March 14, 2013, by the Hon. Garrison D. Hill, Circuit Judge. (A pro-se filing requesting reconsideration was mailed to the trial judge on March 21, 2013. No order appears to have been issued from that filing and a second pro-se filing was served on the Solicitor on April 1, 2013. A copy of Applicant's pro se filings are attached hereto.)

Appellant hereby amends his prior filings to conform to the form and other requirements as set forth in the South Carolina Appellate Court Rules.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellant

April 19, 2013.

RECEIVED
APR 22 2013

SC Court of Appeals

Other counsel of record:

c.

Elizabeth Major, Assistant Solicitor
Greenville County Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
Fax: (864) 467-8601

Salley W. Elliott, Assistant Deputy General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Fax: (803) 253-6283

Steve W. Sumner
1088 N. Church Street
Greenville, SC 29601
(864) 233-8781 (facsimile)

March 21, 2013

Dear Judge Hill:

Re: Request to re-examine Case# GS2302124-01

On March 14, 2013, I pled innocent but was found guilty of DUI in your courtroom (Case# GS2302124-01).

It is my sincere belief and observation that many occurrences during the trial and primarily during the deliberation continually tipped the scales of justice unfairly against me, an innocent man. The following instances were unfair, caused a miscarriage of justice, and should either dis-qualify the jury or re-establish the trial finding as a miss-trial.

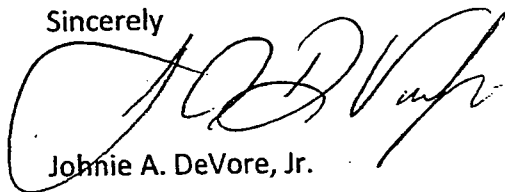
- 1) After over two hours of deliberation and four rounds of questionable questions, the jury asked: "what happens if we have a split decision?" Rather than answering the question with what I assume proper, "then it will be declared a mistrial", the court instead brought the jury foreman in and asked if the jury would deliberate further or come back tomorrow or deliberate further. This basically said to and forced the jury to come to a unanimous decision based not on their convictions but rather on the threat of having to come back tomorrow, after two hours of obviously confused deliberation. The jury foreman had already reported that they were at a split decision after the two hours and numerous bizarre questions. As presumed innocent, I feel that split decision should have been accepted.
- 2) In the 3rd round of questions, the jury asked; "can you define DUI?" This was already explicitly defined during and immediately after the trial period. Now the jury was confused on what they were deciding. Although the implications were tremendous on my life, the court incredibly sent a confusing, two-page definition to the jury room for a self-explanation by an admittedly already confused jury. Due to the serious implications, I think the jury should have been brought back to the courtroom and had DUI redefined verbally and explicitly by the judge.
- 3) The road-side film, though produce digitally, was fully compromised by the analog playback in the courtroom, thus was nearly 90% inaudible. The muffled playback and poor quality projector presented an hour long, inaudible and visually compromised video that subjected the jury to long periods of inattention and even dozing off. This portion of the video was a compromised presentation of our in-car conversation and I

think it should have been dis-allowed from the trial unless shown in the digital quality it was created in.

- 4) Lack of a jury of my peers was a major imbalance of justice. No one on the jury looked like me. From the pool of 40 jurors, one African American man was brought in and was not selected. A pool of 11 white jurors and 1 black female is tantamount to me being in a foreign country. The City of Greenville is nearly 40% black and the County is 18% black; I was given a jury that was 8% black, an opposing gender? That's not justice. If you or the prosecutor were on trial and had a 92% black jury and with one Caucasian of opposing gender, would you consider that a jury of your peers? I do not.
- 5) Finally, for a 3rd time, the jury asked to see the road-side film. By a 3rd time, both my and the officers testimony also should have been allowed again as the jury is now prejudiced. However, to further prejudice, the court sent the lap-top computer to the jury room for self-playback. As this was the prosecutor's computer, I don't know what other information was accessed or made available on that computer while in the jury-room accessible to all jurors with absolutely no over-site. After the computer was sent back during the fourth round of questions, the jury finally got a unanimous verdict...guilty? This was improper.

It is 2013; please understand that I understand the establishment of this verdict should be taken serious. I am not a lawyer, but just a citizen still pleading innocent. I am currently carrying out my sentence as prescribed and without contortion. However, I feel and currently live the after-effects of this confused and improperly quantified jury, which are proving tragic to my career, family, and long-term goals. I have worked hard and studied harder for success. My long years of work tough accomplishments should not be derailed unfairly by a faulty jury, poorly replayed film, improper instructions, or basic miscarriage of justice. Please reconsider this verdict and find this jury disqualified or accept their initial split decision for declaration of a miss-trial.

Sincerely



Johnnie A. DeVore, Jr.

864-848-6444 home, 864-787-7205 cell

302 Victor Hill Road, Greer SC 29651

Cc: GS Court, Prosecutor, personal attorney

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
Garrison D. Hill, Circuit Court Judge

Case No. 2012-GS-23-2124

State of South Carolina, Respondent,
v.
Johnie Allen DeVore, Jr., Appellant.

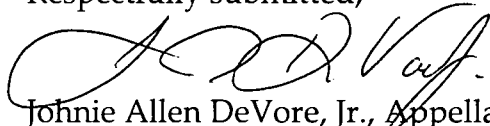
CERTIFICATE

I certify that on March 21, 2013, I mailed a request for post trial relief by letter to the trial judge, Hon. Garrison D. Hill, addressed to 305 East North Street, Greenville, South Carolina, 29601, with a copy also mailed to the Solicitor, addressed 305 East North Street, Greenville, South Carolina, 29601.

I certify that on April 1, 2013, I mailed a follow-up letter to the Solicitor, Walter Wilkins, addressed to 305 East North Street, Greenville, SC 29601, and a copy to the trial judge, Hon. Garrison D. Hill, addressed to 305 East North Street, Greenville, South Carolina, 29601. All letters sent by United States Mail, first class postage prepaid.

A copy of each letter is attached hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. A. DeVore, Jr.", written in a cursive style.

Johnie Allen DeVore, Jr., Appellant

April 19, 2013.

April 1, 2013

Judge W. Walter Wilkins
13th Judicial Circuit Solicitor
305 E North Street #325
Greenville, SC 29601

Re: Request for Appeal or Re-examination of Case # GS2302124-01 (J. DeVore, Jr.)

Dear Solicitor Wilkins;

Attached is a request I sent to Judge Hill seven days following my case? I intended for this attachment to be a request for appeal, review, or consideration for changing my trial results to a mistrial. Apparently my letter has been ignored and has remained unanswered.

I too am a government employee, and disappointed that a matter of such importance to my life is being ignored while I as a public servant strive daily to even-handedly answer every call, letter, or email as swiftly as I can. Eminently, the current decision in my case will terminate my employment and career.

I am requesting an appeal to my case primarily not only because I am innocent but also because it was decided by a confused and improperly instructed jury. After halting deliberations a series four times with eleven confusing questions, many of which even confused Judge Hill; the confused, but split jury was hurried to a decision by the threat of returning for a second day. It was never explained that a split decision would be accepted.

I have offered a number of reasons for my requesting an appeal in the attachment sent to Judge Hill. Please read my concerns, respond and schedule the appeal or consider changing my trial results to a mistrial, etc.

Johnie A. DeVore Jr.
302 Victor Hill Road
Greer, SC 29651

March 21, 2013

Dear Judge Hill:

Re: Request to re-examine Case# GS2302124-01

On March 14, 2013, I pled innocent but was found guilty of DUI in your courtroom (Case# GS2302124-01).

It is my sincere belief and observation that many occurrences during the trial and primarily during the deliberation continually tipped the scales of justice unfairly against me, an innocent man. The following instances were unfair, caused a miscarriage of justice, and should either dis-qualify the jury or re-establish the trial finding as a miss-trial.

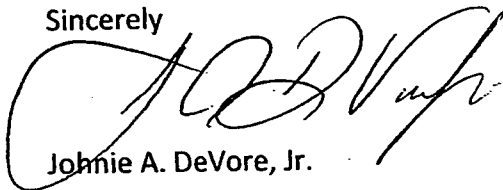
- 1) After over two hours of deliberation and four rounds of questionable questions, the jury asked: "what happens if we have a split decision?" Rather than answering the question with what I assume proper, "then it will be declared a mistrial", the court instead brought the jury foreman in and asked if the jury would deliberate further or come back tomorrow or deliberate further. This basically said to and forced the jury to come to a unanimous decision based not on their convictions but rather on the threat of having to come back tomorrow, after two hours of obviously confused deliberation. The jury foreman had already reported that they were at a split decision after the two hours and numerous bizarre questions. As presumed innocent, I feel that split decision should have been accepted.
- 2) In the 3rd round of questions, the jury asked; "can you define DUI?" This was already explicitly defined during and immediately after the trial period. Now the jury was confused on what they were deciding. Although the implications were tremendous on my life, the court incredibly sent a confusing, two-page definition to the jury room for a self-explanation by an admittedly already confused jury. Due to the serious implications, I think the jury should have been brought back to the courtroom and had DUI redefined verbally and explicitly by the judge.
- 3) The road-side film, though produce digitally, was fully compromised by the analog playback in the courtroom, thus was nearly 90% inaudible. The muffled playback and poor quality projector presented an hour long, inaudible and visually compromised video that subjected the jury to long periods of inattention and even dozing off. This portion of the video was a compromised presentation of our in-car conversation and I

think it should have been dis-allowed from the trial unless shown in the digital quality it was created in.

- 4) Lack of a jury of my peers was a major imbalance of justice. No one on the jury looked like me. From the pool of 40 jurors, one African American man was brought in and was not selected. A pool of 11 white jurors and 1 black female is tantamount to me being in a foreign country. The City of Greenville is nearly 40% black and the County is 18% black; I was given a jury that was 8% black, an opposing gender? That's not justice. If you or the prosecutor were on trial and had a 92% black jury and with one Caucasian of opposing gender, would you consider that a jury of your peers? I do not.
- 5) Finally, for a 3rd time, the jury asked to see the road-side film. By a 3rd time, both my and the officers testimony also should have been allowed again as the jury is now prejudiced. However, to further prejudice, the court sent the lap-top computer to the jury room for self-playback. As this was the prosecutor's computer, I don't know what other information was accessed or made available on that computer while in the jury-room accessible to all jurors with absolutely no over-site. After the computer was sent back during the fourth round of questions, the jury finally got a unanimous verdict...guilty? This was improper.

It is 2013; please understand that I understand the establishment of this verdict should be taken serious. I am not a lawyer, but just a citizen still pleading innocent. I am currently carrying out my sentence as prescribed and without contortion. However, I feel and currently live the after-effects of this confused and improperly quantified jury, which are proving tragic to my career, family, and long-term goals. I have worked hard and studied harder for success. My long years of work tough accomplishments should not be derailed unfairly by a faulty jury, poorly replayed film, improper instructions, or basic miscarriage of justice. Please reconsider this verdict and find this jury disqualified or accept their initial split decision for declaration of a miss-trial.

Sincerely



Johnie A. DeVore, Jr.

864-848-6444 home, 864-787-7205 cell

302 Victor Hill Road, Greer SC 29651

Cc: GS Court, Prosecutor, personal attorney

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS
Garrison D. Hill, Circuit Court Judge

Case No. 2012-GS-23-2124

State of South Carolina, Respondent,
v.
Johnie Allen Devore, Jr., Appellant.

CERTIFICATE

I certify that on April 19, 2013, I served the Appellant's Amended Notice of Appeal on the Respondent and others by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below, and by facsimile:

Elizabeth Major, Assistant Solicitor
Greenville County Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
Fax: (864) 467-8601

Salley W. Elliott, Assistant Deputy General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Fax: (803) 253-6283

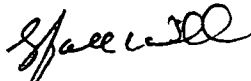
RECEIVED
APR 22 2013
SC Court of Appeals

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
Fax: (803) 734-1839

Paul B. Wickensimer, Clerk
Greenville County Court of Common Pleas
305 E. North Street
Greenville, SC 29601-2120
Fax: (864) 467-8540

Steve W. Sumner
1088 N. Church Street
Greenville, SC 29601
(864) 233-8781 (facsimile)

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellant

April 19, 2013.

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

April 19, 2013

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

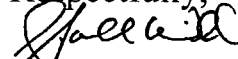
Re: State v. Johnie Allen DeVore, Jr.
C.A. No.: 2012-GS-23-2124
Appellate Case No.:

Dear Ms. Kitchings,

I represent Mr. DeVore in the above case. Mr. DeVore filed several papers after his trial which appear to be sufficient to constitute either motions for post trial relief or to act as notice of appeal. I do not see where a post trial ruling was made but out of abundance of caution, am proceeding with the filing as an Amended Notice of Appeal to protect Mr. DeVore's rights. I do not believe copies of the pro se filings were sent to your office and I am therefore including those along with an Amended Notice of Appeal. This will put the Notice in proper form.

I am also forwarding a copy of the letter requesting a transcript from the trial. If you need anything else from me immediately please let me know.

Respectfully,



J. Falkner Wilkes

Attorney for Appellant

C:
Elizabeth Major, Assistant Solicitor
Greenville County Solicitor's Office
Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
Fax: (864) 467-8601

RECEIVED

APR 22 2013

SC Court of Appeals

Salley W. Elliott, Assistant Deputy General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Fax: (803) 253-6283

Paul B. Wickensimer, Clerk
Greenville County Court of Common Pleas
305 E. North Street
Greenville, SC 29601-2120
Fax: (864) 467-8540

Steve W. Sumner
1088 N. Church Street
Greenville, SC 29601
(864) 233-8781 (facsimile)



ALAN WILSON
ATTORNEY GENERAL

April 17, 2013

RECEIVED
APR 18 2013
SC Court of Appeals

Steve Sumner, Esquire-
1088 N. Church Street
Greenville, South Carolina 29601

RE: The State v. Johnie Allen Devore, Jr.
(Greenville County)

Dear Counsel:

Our Office has received a Notice of Appeal in the above case. This case will be assigned to a lead attorney once the Initial Brief of Appellant and Designation of Matter are filed and served. I would appreciate you sending any correspondence pertaining to the above matter directly to me. You will be notified of lead counsel once assignment has been made.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General

SWE:ab

cc: The Honorable W. Walter Wilkins
The Honorable Jenny A. Kitchings
Ms. Trisha Allen

J. FALKNER WILKES

Attorney at Law

114 Whitsett Street
Greenville, South Carolina 29601

Telephone: (864) 282-1292
Facsimile: (864) 271-6035

April 19, 2013

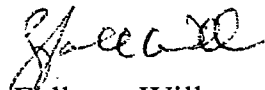
Hollie M. Jenkins
Post Office Box 16506
Greenville, SC 29606

Re: State v. Johnie Allen DeVore, Jr.
C.A. No.: 2012-GS-23-2124
Appellate Case No.:

Dear Hollie,

I represent Mr. DeVore in the above case. This case was tried before a jury on March 14, 2013, the Hon. Garrison D. Hill, presiding. Please let me know the anticipated cost and I will forward you a check for same.

Respectfully,



J. Falkner Wilkes
Attorney for Appellant

c.
Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Rosalyn W. Frierson
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201-3739

Elizabeth Major, Assistant Solicitor
Greenville County Solicitor's Office

RECEIVED

APR 22 2013

SC Court of Appeals

Greenville County Courthouse
305 East North Street, Suite 325
Greenville, SC 29601
Fax: (864) 467-8601

Salley W. Elliott, Assistant Deputy General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Fax: (803) 253-6283

Paul B. Wickensimer, Clerk
Greenville County Court of Common Pleas
305 E. North Street
Greenville, SC 29601-2120
Fax: (864) 467-8540

Steve W. Sumner
1088 N. Church Street
Greenville, SC 29601
(864) 233-8781 (facsimile)