

STATEMENT OF THE CASE

Comes now, withstanding all other prior filings in the case titled "Jay Walter Tate v. State of South Carolina", to respectfully move this South Carolina State Supreme Court based on "it's prior order on October 23, 2002". To connote such order required "all South Carolina State Solicitors, under the Unified Judicial System for South Carolina". Which has taken such "OATH" pursuant to SCACR, Rule 502.1. To adhere to the "ORDER(S)" of its Superior Court. In which was not discretionary, but instead very mandatory in accordance to Petitioner's Due Process, and Equal Protection Rights, as will be discussed herein.

OCTOBER 23, 2002 ORDER BY THE SUPREME COURT
TITLED: Filing Indictments with The Clerk of Court.

Rule 3(c), SCR Crim. P., requires solicitors to file indictments with the Clerk of Court. In some counties, solicitors are retaining the original indictments which have been returned by the grand jury until the proceedings are concluded. This local practice leads to problems leads to problems and confusion in some cases.

"Accordingly, effective the date of this order, all original indictments which have been returned by the grand jury shall immediately filed with the Clerk of Court". Id.

STATEMENT OF THE CASE CONTINUED.

On or about June 4, 1994, Petitioner was accused for the stabbing death of his wife and the assault of his stepson. Although arrested for the above allegations, "no indictment in this case was formally filed, alleging either the date and time in which the grand jury of Cherokee County determined the case should be "true billed". (1994-GS-11-928 & 929).

On January 17-18, 1995, this case proceeded to trial before the Honorable Sidney T. Floyd, Circuit Judge and jury. After conviction, Judge Floyd, sentenced Petitioner to life for the murder of his wife, and nine years for assault and battery of his stepson.

Although Petitioner "did not request nor retain his trial attorney Richard Warder", to perfect his appeal. Warder's sua sponte, in a rush to conceal the merits of a appeal on Petitioner's behalf, filed a Anders Brief, without Petitioner's consent.

Accordingly, the South Carolina Court of Appeals dismissed the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). During Petitioner's initial PCR application, in which ineffective assistance of counsel was raised as to trial and appeal counsel, which was one in the same. The State conceded; "Petitioner was entitled to a direct appeal and Judge Cole permitted the re-filing of Petitioner's appeal issues".

On or about June 22, 2000, Petitioner "again" took issue with the lack of subject-matter-jurisdiction, where the pieces of paper which contained the markings of an indictment, never passed

through "the business of the Court", "i.e., the Clerk of Court, stamped nor filed".

In all repeated and subsequent filing from the above recorded date up until this instant petition. The State cannot even suggest its Unified Judicial Court System, according to Due Process of law, "ever retained or had jurisdiction over the parties or subject matter in this case".

QUESTION ONE.

WHETHER THE COURT RETAINED SUBJECT MATTER
MATTER JURISDICTION IN THIS SPECIFIC CASE?

In accordance with questions of subject matter jurisdiction, under South Carolina Jurisprudence, such is defined as "the power of a court to hear and determine cases of a general class to which the proceeding in question belongs". See State v. Crocker, 366 S. C. 394, 621 S.E.2d 890 (S.C. 2005); also see State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (S.C. 2005).

Petitioner here inquired early on, to the Clerk of Court to forward evidence from that proper authority "the date and time to which his case was formally initiated through 'the business of the court', being the Clerk of Court's Office, containing a stamped and filed true billed indictment". For which the Clerk of Court in this case responded; "was never done".

SUPPORTING ARGUMENT TO QUESTION ONE.

Here, as to housekeeping matters as cited in Gentry v State, 363 S.C. 93, 610 S.E.2d 494 (S.C. 2005), and turning to South Carolina jurisprudence, we note that this Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000), and that issues relating to subject matter jurisdiction may be raised at any time. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). That the lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice by this Court.

In State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987), citing 41 Am. Jur. 2d Indictments and Informations, §299 (1968), we stated that defects in the indictment that are of such fundamental character as to make the indictment wholly invalid are not subject to waiver by the defendant. We concluded that, subject to certain minor exceptions, "the trial court lacks subject matter jurisdiction to convict the defendant for an offense where there's no indictment charging him with that offense when the jury was sworn".

Pursuant to S.C. Code Ann. §17-19-10; "No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury", in relevant part.

Opposing "the local practice of solicitors in the State of South Carolina". Instead of when the grand jury true bills an in-

dictment, as conferring subject matter jurisdiction. For this concept is wholly flawed for several reasons as will be discussed. Instead "jurisdiction of the subject matter is satisfied when the appropriate charges **"ARE FILED IN A COMPETENT COURT"**, while jurisdiction of the person is acquired when the party is arrested or voluntarily appears in court and submits himself to its jurisdiction". See Criminal Offenses in South Carolina §14.19, Chapter 14 Defenses.

This Court's Chief Justice Jean H. Toal, on October 23, 2002, laid out the foundation of "Due Process" requirement. That all state solicitors, according to "problems and confusion which had already risen". And to prevent future jurisdictional concerns with "unfiled indictment with the clerk of courts". Again, Justice Toal ordered as follows:

"Rule 3(c), SCR Crim. P., requires solicitors to 'file indictments with the Cler of Court! In some counties, solicitors are retaining the original indictments which have been returned by the grand jury until the pleading are concluded". The local practice leads to problems and confusion in some case. Accordingly, effective the date of this order, all original indictments which have been returned by the grand jury shall 'immediately' be filed with the Clerk of Court".

Pursuant to S.C. Code §14-17-260; "the clerk shall issue execution, bench warrant or other process issuable or directed to be issued by the courts of general session, in the name of the Attorney General or solicitor of the circuit, (b) issue all rules and notices ordered in the common pleas, (c) attest in his own name under the seal of the court, all writs of process issued in the

common pleas or sessions and (d) sign officially "all judgments and state the time when each is signed and entered". Hardly could have meant a court of general sessions retains jurisdiction without "service process through the clerk of court". For such a process of omission would clearly open the door and invite "abuse of power" by overzealous solicitors ramping up their indicted case averages, by bringing "these pieces of paper which appears to be indictments, without any clerk stamping to connote these cases were properly filed establishing subject matter jurisdiction".

DUE PROCESS OF LAW.

Unlike the argument this Court is all too familiar with, Culbreath v. State, 282 S.C. 38 (S.C. 1984); in that Culbreath moved the Court pursuant to Rule 3(c) of South Carolina Rules of Criminal Procedure. Arguing, inter alia, "that the failure of the county solicitor within 90 days to take action on the arrest warrant, required invalidation of the warrant itself".

The Supreme Court held that; "Rule 3(c) is an administrative rule and not jurisdictional and thus, does not deprive the Court of its jurisdiction". Culbreath never raised such issue under Due Process, and the Court never considered whether Culbreath's Due Process rights were violated by the failure to follow the administrative rule.

Turning to South Carolina Jurisprudence regarding Due Process, it is a flexible concept that calls for such procedural protections as the situation demands. See Mathews v. Eldridge, 424 U.S. 319 96 S. Ct. 893 (1976). Procedural Due Process contemplates a fair hearing before legally constituted tribunal. Daniels v. Williams, 474 U.S. 327, 106 S. Ct. 662 (1986). "[A] guarantee of fair procedure, sometimes referred to as "procedural due process"; the State may not execute, imprison, or fine a defendant without giving him a fair trial". See Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254 (1980); State v. Houey, 375 U.S. 106, 651 S.E.2d 314, 318 (2007).

Under Due Process entitlement, Rule 3(c) specifically required the State, in this case to take appropriate action on Petitioner's arrest warrant by securing a formal indictment. And having such filed with the Clerk of Court, stating a date and time for its action. This would be "the procedure" mandatorily followed in order for a criminal defendant to have received "a fair trial". Such is the procedure required before the State may execute, imprison, or fine a criminal defendant. Yet, the Clerk of Court explained in a letter, "no such proceeding was done".

South Carolina's Constitution, at Article I., Section 3 accords the following. That "The privileges and immunities of citizens of this State and of the United States under this Constitution "shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws".

QUESTION TWO.

WHETHER PETITIONER RETAINED A FOURTH AMENDMENT
TO PRIVACY AT THE RESIDENT ON THE DATE OF THE INCIDENT?

On or about June 1, 1994, in Cherokee County, Cherokee County Sheriff's Department responded to a 911 call. Officers Darryl Duncan and Officer Manning arrived on the scene, at 519 James Street.

Upon discovering two stabbing victims, Officer Duncan, also discovered "a set of keys on the ground in the backyard of the residence and asked the Appellant's Stepson 'was anyone inside of the residence'". The stepson advised the officers that "his stepfather (The Appellant) had already left the residence". That nobody was inside.

Officer Duncan then took the set of keys and gained access to the residence. At trial Officer Duncan testified; "I tried the key and the door opened and we went inside to more or less secure the scene". Tr. tr. p. 183.

ARGUMENT:

A search is a governmental intrusion onto private property for the purpose of obtaining information, United States v. Perea-Rey, 680 F.3d 1179 (9th Cir. 2002); or a governmental invasion of a person's privacy "is a violation of the United States Constitution Fourth Amendment. See Oliver v. U.S., 466 U.S. 170-177 (1984).

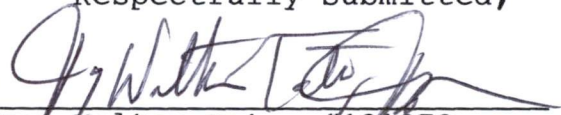
The Supreme Court has adopted a two-part test to determine whether a person's expectation of privacy is legitimate. First, the individual must have a subjective expectation of privacy in a place or thing. See State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004). Second, society must be prepared to recognize that expectation as objectively reasonable. See Katz, 389 U.S. at 361. Id.

Here, there's no dispute officers entered 519 James Street, a place in which Appellant resided at the time for the purpose of obtaining evidence and/or information which could later be used to criminally prosecute him. And did do such in violation of Appellant's Fourth Amendment rights. And without placing that evidence under judicial scrutiny, "there is absolutely no method at this late hour to gauge the impact the information played in the minds of jurors, in which was illegally obtained".

For these reasons, Appellant is clearly entitled as a matter of law, "to a new untainted fair trial", with evidence that meets constitutional safeguards. And for any further relief this Honorable Court deems just and proper. Seeing Appellant has been imprisoned over 28 years without a formal indictment, and with evidence of information which was obtained illegally.

Respectfully Submitted,

/s/


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Kershaw, S.C. 29067

cc: S.C. Att. Gen
filed
6/28/2023