

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**Jan 18 2024**

**S.C. SUPREME COURT**

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**APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Heath P. Taylor, Circuit Court Judge**

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**Appellate Case No. 2023-001400  
Lower Case № 2019-CP-46-3761**

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**Reginald Raynard White, Jr. SCDC No. 353172, ..... Petitioner,**

**vs.**

**State of South Carolina ..... Respondent.**

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**APPENDIX  
VOLUME II**

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**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from York County

Roger L. Couch, Circuit Court Judge

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FEB 12 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

REGINALD RAYNARD WHITE  
A/K/A REGINALD RAYNARD WHITE, JR

APPELLANT

APPELLATE CASE NO. 2015-000171

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FINAL BRIEF OF APPELLANT

---

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in ruling that evidence of a prior drug distribution by appellant at a trailer two days before the other drug charges for which appellant was being tried for from the same trailer would be admissible because it was a prior bad act and unduly prejudicial as propensity evidence?

II. Whether the trial court erred in denying counsel's directed verdict motion when the State failed to present any substantial evidence beyond a reasonable doubt that appellant had dominion and control over the drugs or the premises in which they were found?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in cocaine, third offense, and possession with intent to distribute crack cocaine, third offense, after a jury trial held before the Honorable Roger L. Couch in York County from January 12-14, 2015. Appellant was sentenced to life imprisonment without parole on each conviction. William A. McKinnon, Esq. was defense counsel. Matthew W. Shelton, Esq. and Christopher Epting, Esq. were the assistant solicitors.

This appeal follows.

### Argument I

The trial court erred in ruling that evidence of a prior drug distribution by appellant at a trailer two days before the other drug charges for which appellant was being tried for from the same trailer would be admissible because it was a prior bad act and unduly prejudicial as propensity evidence.

A hearing was held on the admissibility of certain statements appellant made and the prejudice of allowing a prior bad act to come into evidence. Just prior to that hearing, Detective Carson Neely testified about a search warrant that was drawn up to search a residence in reference to drug activity. (R. p.14, ll.10-12) The residence was a mobile home on 809 Silver Creek Drive in York County. (R. p.18, l.8- p.19, l. 6) Jessica Collins testified that she resided at the mobile home on February 26, 2014, when the search warrant was executed and she was present when the police came. The electric bill was in her name and her mail came there. (R. p.22, l. 3- p.23, l. 24)

Investigator McGarity testified that on February 27, 2014, he advised appellant of his rights during the investigation of this case. (R. p.29, l. 20-24) Appellant agreed to speak with him. (R. p.35, ll.15-17) McGarity said appellant indicated he lived at the mobile home. He said he and Ms. Collins had a child together. In response to a question of what the police would find if they searched the premises, appellant replied that they would find crack cocaine, cocaine, and oxycodone pills. (R. p.35, l. 10 - p.36, l. 23)

Detective Neely testified that he also spoke with appellant and appellant told him that on February 24, 2014, at the mobile home he gave two people crack cocaine and they smoked it. (R. p.59, l. 20 - p.60, l. 9)

Defense counsel argued that the above was a prior bad act under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and there was no connection with that act and the drugs that were found in the mobile home on February 26. On the trafficking charge, intent was not an element of the offense so intent was not relevant. On the possession with intent charge, appellant was above the one gram limit so the State could rely on the statutory presumptive intent. The real question for the jury in this case was whether the cocaine and crack cocaine found in the air vent in the mobile home belonged to appellant based on the theory of constructive possession. Any reliance on "intent" by the State should be far outweighed by the prejudice of the prior bad act. (Tr. p. 126, line 1- p. 127, line 13)<sup>1</sup>

The assistant solicitor argued that the fact appellant gave crack cocaine to two people two days earlier went to prove that the drugs found on February 26 were appellant's drugs. (Tr. p. 129, lines 7-14)

Defense counsel argued that the State did not have to prove intent because of the amount of drugs found. To bring up the prior bad act would be extraordinarily prejudicial. The State just wanted to prejudice the jury and to get the jury to believe the drugs found during the search belonged to appellant. (Tr. p. 132, lines 7-19)

The trial court found the prior bad act to be more probative than prejudicial and allowed it to come into evidence. (Tr. p. 134, line 14- p. 135, line 9) That ruling was in error.

In State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984) the court wrote:

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<sup>1</sup> At the directed verdict motion the prior bad act was brought up multiple times as if it should prove the substantive charges for which appellant was on trial. (Tr. p. 285; Tr. p. 286; Tr. p. 298; Tr. p. 303; Tr. p. 325; Tr. p. 331; Tr. p. 335; Tr. p. 336; Tr. p. 340; Tr. p. 348)

In State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984) the court wrote:

Under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than prior criminal or immoral acts. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Furthermore, where bad acts did not result in a conviction, guilty plea, indictment, or arrest of the appellant, this Court has limited the State's use of the evidence. State v. Smith, 279 S.C. 440, 308 S.E.2d 794 (1983). (Appellant's lover improperly related instance of the appellant's unconvicted sexual battery upon her in his trial for murder of another woman); State v. Rivers, 273 S.C. 75, 254 S.E.2d 299 (1979). (In trial for criminal sexual conduct with the prosecutrix the court erred in receiving testimony from the appellant's wife regarding his prior unconvicted acts of sexual misconduct on her); State v. Conyers, 268 S.C. 276, 233 S.E.2d 95 (1977). (Allegations that the appellant poisoned her first husband not admissible because the evidence was not clear and convincing); State v. Drew, 283 S.C. 118, 316 S.E.2d 367 (S.C.1984). (Cross-examination and reply testimony regarding unconvicted act of burning a combine not proper in criminal conspiracy trial for burning a business.)

We conclude that, under circumstances of this case, solicitor's cross-examination regarding the prior fire was prejudicial. When, as here, the previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced. Additionally, we believe that the circumstantial evidence nature of the case makes the mention of an alleged similar misdeed by the appellant particularly damning in the jury's eyes.

As the court noted in State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) and under Rule 403, SCRE, "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis..." In State v. Carter, 323 S.C. 465, 476 S.E.2d 916 (Ct. App. 1996) the court held that evidence of a drug transaction involving the defendant four days before the transaction giving rise to the charge against the defendant was not admissible for any proper purpose.

The prior bad act also placed appellant's character into issue. In Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989) the Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280, S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146

S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person.

In State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978), the Court noted: “Character evidence is so highly prejudicial that it is usually excluded under hard and fast rules.” (citation omitted). In State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), the Court elaborated on the subject:

It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. See, e.g., State v. Gregory, 191 S.C. 212, 4 S.E.2d 1 (1939).

The prior bad act was irrelevant to the trafficking charge because “intent” was not an element of that offense. It only served to prejudice appellant’s case because it served as propensity evidence. The prior bad act was not necessary for the possession with intent to distribute crack cocaine charge because the amount of crack cocaine involved was 5.11 grams. (R. p.196, ll.12-14) This was well above the statutory presumptive intent charge. So the State’s reliance on the prior bad act for the crack cocaine charge should have been outweighed by its prejudice. Finally, the trial court failed to give a limiting instruction on the affect of the prior bad act. The rule is that when evidence of other crimes is admitted for a specific purpose, the trial court is required to instruct the jury to limit their consideration of this evidence for the particular purpose for which it was offered. State v. Timmons, 327 S.C. 48, 488 S.E.2d 323 (1997) Hence, the jury was free to view the prior bad act as propensity evidence which was prejudicial to appellant.

## Argument II

The trial court erred in denying counsel's motion for a directed verdict when the State failed to present any substantial evidence beyond a reasonable doubt that appellant had dominion and control over the drugs or the premises on which they were found.

During the actual trial, Investigator McGarity testified that a search warrant was executed on February 26, 2014, around 6:00 PM at the mobile home on Silver Creek Drive. Detectives Beck and Neely were with him along with some other officers. (R. p.90, l. 3-20) He said Jessica Collins who lived at the residence showed up as they were executing the warrant. Appellant was not there. There were children living at the residence. (R. p.95, l. 6 - p. 96, l.11) As a result of the search, the detective said they found a glass jar that appeared to contain one bag of crack cocaine and three bags of cocaine in the back bedroom inside the floor vent. A digital scale was found on the kitchen table. What appeared to be a pill grinder containing white powder was found in the back bedroom under the bed. (R. p.101, ll.1-9). Some men's clothing and shoes were found along with some photos of appellant and some bank statements. (R. p.101, l. 25 - p.102, l.19) Jessica Collins was arrested on the evening of the search and appellant was a suspect. (R. p.108, l. 24- p.109, l.10) Later in the evening, appellant was found at the residence off of Hudson Street and was taken into custody. (R. p.114, ll.5-15) Investigator McGarity said appellant indicated that he and Jessica Collins lived at the mobile home on Silver Creek Drive and that they had a child in common. Appellant also indicated that if the residence was searched, the police would find cocaine and crack cocaine. (R. p.118, l.5-20)

On cross-examination McGarity admitted that the address listed on both appellant's driver's license and license plate registration was 367 East Jefferson Street. And none of the forensic testing at Silver Creek Drive linked appellant to that address. (R. p.124, l.10- p. 127, l. 4)

Detective Neely testified that he spoke with appellant after he was brought into custody and appellant indicated that he was living at Silver Creek Drive. Appellant also said that he provided some crack cocaine to two individuals on February 24 at the Silver Creek Drive residence. (R. p.173, ll. 6-25)

Kimberly Kinley testified that both Jessica and appellant lived at the mobile home. (R. p.179, l. 25 - p.180, l. 6) It was Jessica who rented the trailer. (R. p.181, ll. 21-24)

At the conclusion of the State's case, defense counsel moved for a directed verdict to the charges because the State failed to provide any substantial evidence over the issue of dominion and control. There was evidence that appellant stayed at the house from time to time but there was no evidence to show that he had dominion and control over the drugs that were found in the floor air vent. (R. p.198, l. 18 - p. 199, l.10)<sup>2</sup>

The trial court ruled as follows:

"In this particular case there are several factors which--and I am reviewing it from the totality of the circumstances. I'm making an effort not to weigh the evidence, but to determine the existence of evidence, but I think that the exercise requires that I weight the evidence to a certain degree.

And in this particular case the evidence is that the defendant had children that lived in the residence in question. The mother of those children lived there as well. There wasn't evidence as to who actually--whether he had--his name on the lease or he was an actual tenant. There was evidence from a neighbor, however, that he lived there quite often. He would come and go and stay there. While he was not there for periods of time at that address.

Evidence inside of that location would indicate that he was present and living there as well, such as the pill bottle that was found on the

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<sup>2</sup> The motion discussion covered almost 70 pages of the transcript. (R. p.198 - p.257)

nightstand or dresser in the bedroom which the drugs were found that had his name on it, as well as the bank records that were found in the home that had his name on, which were fairly recent of the date, indicating that they had recently been placed there.

In his statement given to police he admitted having been at that premises two days prior to the search. That at that time he had had people there at the home with him and he had distributed drugs to those people at that time and at that location.

Also in his statement when he was asked about what drugs might be found in that location if it was searched, the defendant was able to describe exactly the drugs that were found hidden in the location by—without fail. There was no error in his description of what would be found in that location.

Here I think that I'm looking at whether or not the defendant exhibited a right to exercise dominion and control over this premises. It appears that he did come and go quite often. The fact that he simply lived there is not determinative of itself, but he did take the liberty of inviting people to that location. He did take the liberty of distributing drugs from that location, which would indicate to me that he was exercising a certain degree of dominion or control.<sup>3</sup>

The evidence doesn't indicate whether the other person involved, the mother of his children, was involved in that transaction or not, so I have to just take it as it is. The only evidence is that he was present with two other people and drugs were distributed. That's all it says.

Now, in taking the totality of the circumstances, and I realize that it's a circumstantial case, but the cases all say that constructive possession can be proven by circumstantial evidence. In fact, it may be the only way that you prove constructive possession in this matter. And, again, attempting not to weigh the evidence but attempting to determine if there is evidence. And also I am constrained by the fact I must view the evidence in the light most favorable to the State, not in the light most favorable to the defendant in this matter.

Based on all of those factors, I am going to deny the motion and allow the case to go forward to the jury."

(R. p.258, l. 11 - p. 260, l.14)

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<sup>3</sup> Earlier the trial court expressed concern over the issue of dominion or control. (R. p.219, ll.3 -10; R. p.221, ll. 3-25; R. p.223, ll. 14-19)

The ruling denying the directed verdict motion was in error. Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and

guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10<sup>th</sup> Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10<sup>th</sup> Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4<sup>th</sup> Cir 1994).

In this case, the State was required to prove that appellant had dominion and control over the drugs or the premises where the drugs were found as well as knowledge of the drugs being present. State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). This was a circumstantial evidence case as the assistant solicitor admitted and the trial court recognized that as such. Because it was circumstantial evidence case the State was required to show substantial circumstantial evidence before the case could be submitted to the jury. State v. Bostic, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011)

In State v. Heath, 370 S.C. 326, 635 S.E.2d18 (2006) the defendant was 22 years old at the time of his arrest. He lived in a house with his mother and a young child. The mother owned the house. The police got a search warrant to search in and around the house for crack cocaine. When they arrived at the house, the defendant and his brother were outside in front of the house. The defendant appeared to have just finished washing his car in front of the house. The police found crack cocaine, \$2,500 in cash, and scales inside the house. In addition, the police found 43.48 grams of crack cocaine in a car-washing mitt in a recycling bin near the back door of the house. The defendant was convicted of trafficking in the crack cocaine found in the car-washing mitt. The issue was whether the defendant was knowingly in constructive possession of that crack cocaine. On appeal the court reversed the conviction and wrote as follows:

The State presented no direct or circumstantial evidence linking Appellant to the 43.48 grams of crack. As a result, the question becomes whether Appellant had dominion and control over the property where the crack was found.

We hold that the State failed to present evidence that Appellant could exercise dominion and control over the area where the crack was found. However, the home is owned by Appellant's mother. As a result, it is arguable that Appellant merely had a right to access the area where the crack was found, not actual dominion and control of the property. (emphasis supplied)

In Goldsmith v. Witkowski, 981 F.2d 697 (4<sup>th</sup> Cir. 1992) the State only presented "an evidentiary picture of an accused sitting at a table laden with narcotics and narcotic paraphernalia in an apartment where other drugs and paraphernalia were later discovered." 981 F.2d at 702. The court also wrote:

Essentially, the government only proved Goldsmith's presence in the apartment and his awareness of the drugs. Under South Carolina law, the mere presence of a person in an area containing drugs, absent evidence of his dominion and control over them, is insufficient to prove his possession of the drugs. *State v. Tabor*, 260 S.C. 355, 196 S.E.2d 111, 113 (1973). Again, even presence coupled with knowledge of the drugs is insufficient to sustain a possession conviction; the State must also prove dominion and control. See *Kimbrell*, 362 S.E.2d at 631. Even if this were not state law, the due process protections of *Jackson*<sup>4</sup>, in our view, would require the invalidation of convictions based solely on evidence of mere presence, as was established in this case.

981 F.2d at 701.

As in Heath, appellant merely had a right to access the area where the drugs were found. He did not have dominion and control.

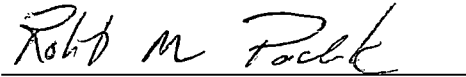
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<sup>4</sup> Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979)

CONCLUSION

Appellant should be granted a directed verdict on Argument II, or in the alternative, a new trial on Argument I.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert M. Pachak". The signature is written in black ink and is positioned above a horizontal line.

Robert M. Pachak  
Appellate Defender

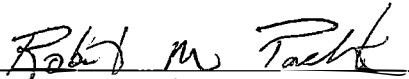
ATTORNEY FOR APPELLANT

This 12th day of February, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

February 12, 2016

  
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SC Court of Appeals

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**FINAL BRIEF OF RESPONDENT**

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    II.   The trial court properly denied Appellant’s motion for a directed verdict because the State presented ample evidence Appellant knew of the existence of the drugs and had dominion and control over the drugs in question.....6

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## STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly allowed testimony regarding a prior bad act in which Appellant distributed crack cocaine to two individuals at the location in which crack cocaine and cocaine were found two days later and he contested dominion and control over the drugs at trial. Further, the issue is blatantly not preserved for review on appeal because Appellant's counsel first presented the facts to the jury during opening statement and later failed to object when the prior bad act testimony was admitted in front of the jury.
  
- II. The trial court properly denied Appellant's motion for a directed verdict because the State presented ample evidence Appellant knew of the existence of the drugs and had dominion and control over the drugs in question.

## **STATEMENT OF THE CASE**

The State agrees with Appellant's procedural Statement of the Case.

## ARGUMENT

- I. **The trial court properly allowed testimony regarding a prior bad act in which Appellant distributed crack cocaine to two individuals at the location in which crack cocaine and cocaine were found two days later and he contested dominion and control over the drugs at trial. Further, the issue is blatantly not preserved for review on appeal because Appellant's counsel first presented the facts to the jury during opening statement and later failed to object when the prior bad act testimony was admitted in front of the jury.**

Appellant contends the trial court erred in allowing testimony regarding a prior bad act of distributing crack cocaine. First, the issue is blatantly not preserved and was clearly waived by Appellant. Further, the testimony was properly admitted. Appellant has challenged ownership of the drugs and the evidence he was distributing crack cocaine from the location the drugs were seized is significant probative evidence establishing his dominion and control over the drugs. Appellant is charged with possession with intent to distribute crack cocaine, and as a result the evidence also establishes his intent to distribute the crack cocaine. Accordingly, the trial court did not err in admitting the testimony.

### **Preservation**

First, the issue of the admission of testimony is clearly not preserved for review on appeal. Appellant raised the issue in a pre-trial motion. Detective Neely, who testified to the prior bad act testimony, was not the first officer to testify after the pre-trial hearing. As a result, Appellant was required to object to the admission of the testimony when it was actually presented to the jury. See State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (“In most cases, ‘[m]aking a motion in limine to exclude evidence at the

beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.”); State v. Kirton, 381 S.C. 7, 43, 671 S.E.2d 107, 125 (Ct. App. 2008) (same). He failed to raise any objection to the testimony. (T.256-257; R. 173-174). As a result, he failed to preserve the issue for review on appeal.

Further, Appellant waived his right to contest the admission of the evidence before the jury because he first addressed the evidence during his opening statement. Appellant’s counsel during opening statement said: “You will even hear probably that Mr. White a few days before this gave someone some kind of smokeable drug a few days before this.” (T.166; R. 88). By raising the evidence to the jury, Appellant has waived any issue with regards to its admission.

### **Merits**

Even if the issue could conceivably be considered preserved, the trial court properly admitted the testimony to establish Appellant’s dominion and control over the drugs as well as his intent to distribute the crack cocaine. In the instant case, in order to support the conviction for both drug offenses, the State had to prove Appellant possessed the drugs and intended or knew he had possession of the drugs. See State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). As the South Carolina Supreme Court explained:

Conviction of possession of [illegal drugs] requires proof of possession-either actual or constructive, coupled with knowledge of its presence. Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession. To prove constructive possession, the State must show a defendant had dominion

and control, or the right to exercise dominion and control, over the [drugs]. Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared.

State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774–75 (1981).

Appellant, throughout trial, contested the State's evidence regarding whether he had dominion and control over the drugs found in the trailer rented by the mother of several of his children.<sup>1</sup> The testimony presented by the State through Detective Neely established Appellant provided two individuals with crack cocaine to smoke while they were at the same residence searched two days later in which crack cocaine and powder cocaine were found. (T.256-257; R. 173-174). The fact Appellant was able to provide two individuals with crack cocaine at that same residence is certainly highly probative circumstantial evidence establishing his constructive possession over the drugs found two days later. The testimony was not unduly prejudicial because it established the required element of his possession by showing his dominion and control over the drugs within that residence.

Additionally, Appellant was charged with possession with intent to distribute crack cocaine, which clearly requires the State to establish he had an intent to distribute the drugs. His prior distribution of the crack cocaine clearly indicates an intent to distribute and not one of mere possession. Accordingly, the testimony was highly probative to this element of the offense and certainly not unduly prejudicial.

---

<sup>1</sup> Appellant's directed verdict motion was based on whether the State provided sufficient evidence of his dominion and control to establish constructive possession and this issue has been raised as Appellant's second issue on appeal. The State had the right to present the testimony demonstrating Appellant's dominion and control to establish this highly contested fact.

**II. The trial court properly denied Appellant's motion for a directed verdict because the State presented ample evidence Appellant knew of the existence of the drugs and had dominion and control over the drugs in question.**

Appellant maintains the trial court erred in denying his motion for a directed verdict because the State failed to establish Appellant had dominion and control over the drugs such that he was in constructive possession of the drugs. The State presented ample evidence including testimony and evidence Appellant lived at the residence where the drugs were located, knew of the existence of the drugs and types of drugs at the residence, and had dominion and control over the drugs at the residence.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). “When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state.” Id. A directed verdict motion should be denied if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 12, 723 S.E.2d 589, 591 (2012).

As discussed previously, the State must prove Appellant possessed, either through actual or constructive possession, the drugs found in the residence. See State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). Appellant was not in actual possession of the drugs, so the State presented ample evidence demonstrating Appellant's constructive possession of the drugs.

To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the [drugs]. Constructive

possession can be established by circumstantial as well as direct evidence, and possession may be shared.

State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774–75 (1981). “Possession requires more than mere presence.” State v. Jackson, 395 S.C. 250, 717 S.E.2d 609 (Ct. App. 2011) (quoting State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 465 (Ct. App. 2005)). Possession, however, can be shared among two or more people. See Hudson, 277 S.C. at 202, 284 S.E.2d at 774–75; State v. Muhammed, 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct. App. 1999). Further, “actual knowledge of the presence of the drug is strong evidence of intent to control its disposition or use, knowledge may be equated with or substituted for the intent element.” State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (citing State v. Lane, 271 S.C. 68, 245 S.E.2d 114 (1978)); see also, State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (finding the jury may consider the actual knowledge as evidence of intent to control and the legal proposition may be appropriate for a court to consider in a sufficiency of the evidence case, even if not appropriate for a jury charge).

In his interviews with multiple law enforcement officers, Appellant admitted he lived at the residence where drugs were located. Appellant explained to Investigator McGarity that he lived at the residence with the mother of his children, Ms. Collins. (T.196; R. 118). Investigator McGarity asked Appellant what they would find if they searched the house. Appellant responded: “cocaine, crack, and pills Oxycodone pills.” (T.196; R. 118).

Appellant further informed Detective Neely he lived at the Silver Creek Road address where the drugs were found. (T.256; R. 173). He specifically told Detective Neely about an occurrence two days prior to the execution of the search warrant in which

Appellant provided crack cocaine to two individuals at the Silver Creek residence where the crack cocaine and cocaine were later found. (T.256-257; R. 173-174).

In addition, officers found numerous personal items of Appellant's at the residence to establish he lived at the residence on a regular basis. The officers found Appellant's bank statements on a bedroom dresser; men's clothing and shoes, prescription pill bottles beside the master bed with the prescription in Appellant's name, and a post-it note with Appellant's name on it stuck to the refrigerator. (T.178-180; 183-184; R. 100-102;105-106). The bank statements and pill bottles containing Appellant's prescription were found in the same bedroom with the drugs. (T.214-215; R. 131-132).

Finally, a neighbor testified she used to live in the trailer beside Ms. Collins and Appellant. She testified both Ms. Collins and Appellant lived in the trailer on Silver Creek. (T.262-263; R. 179-180). When asked how she knew he was not just visiting his kids, she responded: "Because his car would be there sometimes during the day every day sometime and at night sometimes, but like I said, I have known him to be playing the field, so to speak." (T. 265; R. 182).<sup>2</sup>

The evidence presented including Appellant's personal items located in the vicinity of the drugs; the testimony by a neighbor regarding Appellant living at the address; and the testimony from the officers, especially regarding the statements by Appellant that he lived at the address and provided individuals with cocaine from the address, demonstrate he had such dominion and control over the drugs to be in constructive possession of the drugs.

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<sup>2</sup> The State established several addresses Appellant frequented where mothers of his children lived. (T. 218-219; R. 135-136).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
S.C. Bar No. 15608

KEVIN S. BRACKETT  
Solicitor, Sixteenth Judicial Circuit

BY:



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ATTORNEYS FOR RESPONDENT

February 5, 2016

STATE OF SOUTH CAROLINA

**RECEIVED**

IN THE COURT OF APPEALS

FEB 05 2016

**SC Court of Appeals**

Appeal from Richland County  
Honorable Roger L. Couch, Circuit Court Judge  
Appellate Case Tracking No. 2015-000171

The State,

Respondent,

vs.

Reginald R. White,

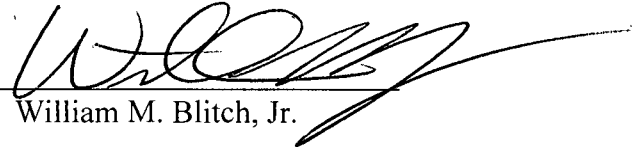
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General

BY:   
William M. Blich, Jr.

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ATTORNEYS FOR RESPONDENT

February 5, 2016



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11829  
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COLUMBIA, SOUTH CAROLINA 29201  
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December 07, 2016

The Honorable David Hamilton  
PO Box 649  
York SC 29745-0649

## REMITTITUR

Re: The State v. Reginald R. White a/k/a Reginald R. White, Jr.  
Lower Court Case No. 2014GS4601499, 2014GS4601500  
Appellate Case No. 2015-000171

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire  
Robert M. Pachak, Esquire  
William M. Blicht, Jr., Esquire  
Kevin Scott Brackett, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Reginald Raynard White a/k/a Reginald Raynard White,  
Jr., Appellant.

Appellate Case No. 2015-000171

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Appeal From York County  
Roger L. Couch, Circuit Court Judge

---

Unpublished Opinion No. 2016-UP-441  
Submitted September 1, 2016 – Filed October 26, 2016

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**AFFIRMED**

---

Appellate Defender Robert M. Pachak, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General William M. Blich, Jr., both of  
Columbia; and Solicitor Kevin Scott Brackett, of York,  
for Respondent.

---

**PER CURIAM:** Reginald Raynard White appeals his convictions for trafficking  
in cocaine and possession with intent to distribute crack cocaine, arguing the trial

court erred in (1) admitting evidence of his prior drug distribution because it was a prior bad act and unduly prejudicial and (2) denying his motion for a directed verdict when the State failed to present any substantial evidence he had dominion and control over the drugs or the premises where they were found. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *State v. Gagum*, 328 S.C. 560, 564-65, 492 S.E.2d 822, 824 (Ct. App. 1997) ("Because a ruling in an *in limine* motion is not final, the losing party must renew his objection at trial when the evidence is presented in order to preserve the issue for appeal.").

As to issue 2: *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (stating the appellate "[c]ourt's review is limited to considering the existence or nonexistence of evidence, not its weight"); *id.* at 236-37, 781 S.E.2d at 354 ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" (quoting *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955))); *State v. Pradubsri*, 403 S.C. 270, 282, 743 S.E.2d 98, 105 (Ct. App. 2013) ("To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the [drugs]." (alteration by *Jackson*) (quoting *State v. Jackson*, 395 S.C. 250, 255, 717 S.E.2d 609, 611 (Ct. App. 2011))); *State v. Heath*, 370 S.C. 326, 329-30, 635 S.E.2d 18, 19 (2006) ("The defendant's knowledge and possession may be inferred if the substance was found on premises under his *control*."); *State v. Muhammed*, 338 S.C. 22, 25, 28, 524 S.E.2d 637, 638, 640 (Ct. App. 1999) (holding the trial court did not err in denying the defendant's motion for a directed verdict when he had unrestricted access to a friend's house, had attached a lock to the room where the drugs were found, and held the key to the lock).

**AFFIRMED.**<sup>1</sup>

**LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA )

COUNTY OF YORK )

REGINALD R. WHITE, Jr. )

Plaintiff(s) )

vs. )

THE STATE OF SOUTH CAROLINA )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 44 - 1435

Submitted By: William G. Yarborough, III
Address: 522 N. Church Street
Greenville, SC 20601

SC Bar #: 10571
Telephone #: 864-331-1612
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Other:
E-mail: wgyarborough@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case #, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

William G. Yarborough

Date: 05/12/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

20124046-1435

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Reginald Raynard White, Jr 00353172 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED-RECEIVED  
 MAY 17 AM 11:30  
 YORK COUNTY  
 CLERK OF COURT

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legally handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institute
2. Name and location of Court which imposed sentence York General Sessions
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-GS-46-01500- Man/Dist Crack 3rd
  - (b) 2014-GS-46-01499- Trafficking Cocaine
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 14, 2015
  - (b) January 14, 2015

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
  - (b) after a plea of not guilty X
  - (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered “yes” to (7), list:
- (a) the name of each Court to which you appealed:
    - i. South Carolina Court of Appeals
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. Affirmed
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. October 26, 2016
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. Unpublished Opinion No. 2016-UP-441
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
9. If you answered “no” to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant claims that in reference to Indictment 2014-GS-46-01499, he is being

held in violation of his fifth and fourteenth Amendment rights of the U.S. Constitution, and the S.C. Constitution, Section 3, Due Process Clause to a fair trial; as well as in reference to Indictment 2014-GS-46-01500 for Trafficking Cocaine and possession of cocaine with the intent to distribute.

(b) Applicant claims he is being held in custody in violation of his fifth and fourteenth Amendment rights, and the S.C. Constitution, Article 1 Section 3, the Due Process Clause guaranteeing a fair and impartial trial in reference to ineffective assistance of counsel

(c) The trial court erred in ruling that evidence of a prior drug distribution by appellant, at a trailer two days before the other drug charges for which appellant was being tried for from the same trailer, would be admissible because it was a prior bad act and unduly prejudicial as propensity evidence.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Applicant contends that on January 14, 2015, the trial judge, during a jury trial, instructed the jury as follows, "...the Defendant is charged with trafficking in cocaine, and in that case the State must prove beyond a reasonable doubt that the Defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into the state, provided financial assistance, or otherwise aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into the state, was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession. The State must prove beyond a reasonable doubt that the amount of the cocaine or in any mixture thereof containing cocaine was 10 grams or more. (The Court gives definitions of possession), and then resumes, "...I will tell you that mere presence at a scene where drugs are found is not enough to prove possession." Applicant further contends that in charging the jury that, "...the Defendant's knowledge and possession may be inferred when a substance is found on the property that is under a defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with other evidence, in this case. You give it the weight you think it should have." The trial judge should have made it clear to the jury that it is free to accept or reject the permissive inference depending on its view of the evidence. The Court rendered the jury instruction unconstitutional with the presumed language concerning the defendant's knowledge and possession.

(b) Applicant claims that pursuant to Strickland v. Washington, 466 U.S. 668 (1984), his trial counsel William A. McKinnon's performance fell below an objective standard of reasonableness in failing to object to trial Judge's unconstitutional, burden-shifting, and impressive inference charge to the jury. The Court A jury charge violates Due Process if it is reasonable likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proves certain predicate facts, thereby relieving the State's burden of proof as an element of the offense. The burden shifted to the Defendant to prove his innocence instead due to the Court's error in charging the jury.

(c) The trial court erred in ruling that evidence of a prior drug distribution by appellant, at a trailer two days before the other drug charges for which appellant was being tried for from the same trailer, would be admissible because it was a prior bad act and unduly prejudicial as propensity evidence.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Direct Appeal
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal-Affirmed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. Affirmed

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. Oct 26, 2016

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unpublished Opinion No. 2016-UP-441

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. 10a

ii. 10b

iii. 10c

(b) the proceedings in which each ground was raised:

i. Direct Appeal

ii. Direct Appeal

iii. Direct Appeal

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. B, C- William A. McKinnon
  - ii. Robert M. Pachak
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. BC-Trial and Sentencing
  - ii. Direct Appeal
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Petitioner seeks a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
 )  
County of YORK )

VERIFICATION

I, Reginald Raynard White, Jr. , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Reginald White

SWORN to and subscribed before me this 12  
day of May, 2017.

Maui Dantz (L.S.)  
Notary Public

My Commission Expires: 10/9/23



STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 Reginald Raynard White, Jr., )  
 SCDC #353172 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-46-1435

**RETURN AND PARTIAL MOTION  
 TO DISMISS**

FILED-RECEIVED  
 2017 OCT 26 15 AM 9:21  
 DAVID HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

Respondent, making its Return to the Application for Post-Conviction Relief (“PCR”) filed on May 17, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In May 2014, the York County Grand Jury indicted Applicant for trafficking in cocaine (2014-GS-46-1499) and possession with intent to distribute crack cocaine (2014-GS-46-1500). William A. McKinnon, Esquire represented Applicant. Assistant Solicitors Matthew W. Shelton, Esquire and Christopher Epting, Esquire prosecuted the case. On January 12-13, 2015, Applicant proceeded to trial before the Honorable Roger L. Couch. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without the possibility of parole for each charge.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant’s conviction on October 26, 2016. State v. White, Op. No. 2016-UP-441 (S.C. Ct. App. filed October 26, 2016). The remittitur was returned to the circuit court on December 7, 2016.

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant claims that in reference to Indictment 2014-GS-46-01499 he is being held in violation of his fifth and fourteenth Amendment rights of the U.S. Constitution, and the S.C. Constitution, Section 3, Due Process Clause to a fair trial; as well as in reference to Indictment 2014-GS-46-01500 for Trafficking Cocaine and possession of cocaine with the intent to distribute."
  - a. "...The trial judge should have made it clear to the jury that it is free to accept or reject the permissive inference depending on its view of the evidence. The Court rendered the jury instruction unconstitutional with the presumed language concerning the defendant's knowledge and possession."
2. "Applicant claims he is being held in custody in violation of his fifth and fourteenth Amendment rights, and the S.C. Constitution, Article 1 Section 3, the Due Process Clause guaranteeing a fair and impartial trial in reference to ineffective assistance of counsel."
  - a. "Applicant claims that pursuant to Strickland v. Washington, 466 U.S. 668 (1984), his trial counsel William A. McKinnon's performance fell below an objective standard of reasonableness in failing to object to trial Judge's unconstitutional, burden-shifting, and impressive inference charge to the jury. The Court A jury charge violates Due Process if it is reasonable likely that the jury understood the charge to create a mandatory presumption requiring it to infer an element of the offense if the State proves certain predicate facts, thereby relieving the State's burden of proof as an element of the offense. The burden shifted to the Defendant to prove his innocence instead due to the Court's error in charging the jury."
3. "The trial court erred in ruling that evidence of a prior drug distribution by appellant, at a trailer two days before the other drug charges for which appellant was being tried for from the same trailer, would be admissible because it was a prior bad act and unduly prejudicial as propensity evidence."
  - a. "The trial court erred in ruling that evidence of a prior drug distribution by appellant, at a trailer two days before the other drug charges for which appellant was being tried for from the same trailer, would be admissible

because it was a prior bad act and unduly prejudicial as propensity evidence.”

### III.

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Respondent submits that Applicant's allegation of trial court error must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Trial court error is not a claim cognizable under the Act and it is not a collateral attack on Applicant's conviction or sentence. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Trial court error is improper

for post-conviction relief because it could have been raised on direct appeal and is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial **or on direct appeal**. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (emphasis added). Furthermore, Applicant's issue that the trial court erred by admitting evidence of his prior drug distribution because it was a prior bad act and unduly prejudicial was in fact raised on direct appeal. For these reasons and pursuant to Rule 12(b)(6), SCRPC, any allegations concerning trial court error should be dismissed for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

#### V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

#### VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegation of ineffective assistance of trial counsel. As to all other allegations, Respondent moves

for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

October 17, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
) )  
) )  
Reginald White, # 00353172 )  
Applicant, )  
v. )  
) )  
State of South Carolina, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

2017-CP-46-1435

**MOTION TO AMEND APPLICATION  
FOR POST-CONVICTION RELIEF**

2017 JAN 23 PM 4: 51  
MID HAMILTON  
C.C.P. & GS  
YORK COUNTY, S

FILED-RECEIVED

NOW COMES the Applicant Reginald White by and through undersigned counsel and would move this Honorable Court for leave to amend his post-conviction relief application with the following grounds:

- I. Trial Counsel was ineffective pursuant to *Strickland v. Washington* for failing to contemporaneously object and preserve for appeal the improper admission of prior bad act/propensity evidence of Applicant's purported prior drug dealing. The prior bad act evidence only served as improper propensity evidence and was unduly prejudicial.
- II. In conjunction with Ground I, Trial Counsel was ineffective for eliciting testimony about the prior bad acts on cross-examination, further disqualifying the issue for exclusion by the trial judge and for appellate review. Additionally, had this evidence been properly excluded, the trial judge would have been precluded from considering it when deciding on the motion for directed verdict, as acknowledged by the trial judge.
- III. Trial Counsel was ineffective for failing to raise the issue in the motion to suppress or at the suppression hearing that the search warrant affidavit failed to provide a substantial basis for the magistrate to have found probable cause due to: (1) the entire basis for the affidavit was hearsay from a person who did not testify at the suppression hearing and whose credibility and reliability was not verified or provided for; (2) the absence of a link or nexus

- between Applicant and the residence or drug distribution at the residence; and (3) the absence of a basis for the belief that evidence of crack cocaine would be found there.
- IV. Trial Counsel was ineffective for stipulating to the partial basis of Investigator Walter Beck's knowledge of "controlled buys", "marked money" and the street value for drugs, when Trial Counsel stated the case had nothing to do with either controlled buys or marked money and had previously objected to both the qualification of Investigator Beck as an expert and testimony on such matters during a pre-trial hearing.
- V. In conjunction with Ground IV, Trial Counsel was ineffective for failing to request that the foundation for Investigator Beck's knowledge on these matters be heard *in camera*.
- VI. In conjunction with Grounds IV and V, Trial Counsel was ineffective for failing to contemporaneously and properly object/move to exclude/strike Investigator Beck's testimony on the common methods and manner of selling, buying, and using narcotics; controlled buys; drug price and weight; and other related topics. Investigator Beck was never qualified as an expert, and his testimony constituted as improper lay witness testimony, which consisted of opinion and commentary on an ultimate issue at trial. Further, the testimony was purely anecdotal, irrelevant, and unduly prejudicial.
- VII. In conjunction with and in addition to Grounds IV – VI, Trial Counsel was ineffective for eliciting additional testimony on cross-examination from Investigator Beck on these subjects as well as on matters of law relating to constructive possession. Not only did eliciting such testimony theoretically further open the door, but the testimony was also unduly prejudicial and consisted of opinion and commentary on an ultimate issue at trial.
- VIII. Trial Counsel was ineffective for eliciting testimony and/or failing to object/ move to strike Investigator Beck's testimony that "Other people had told us that he was living there"


because the testimony was inadmissible hearsay and violated Applicant's right to confrontation and cross-examination of these purported other individuals.

- IX. Trial Counsel was ineffective for failing to clarify or correct during argument on the directed verdict motion as to certain items and events the State argued sufficiently proved Applicant had dominion and control over the premises where the drugs were found or the right to exercise dominion or control thereof. In denying the motion for direct verdict, the trial judge cited a neighbor's testimony that Applicant frequently had stayed at the residence. The trial judge also cited "recently dated" prescription bottles with Applicant's name as support for the dominion and control element. Trial Counsel failed to bring to the trial judge's attention that: 1) the neighbor's testimony was not anywhere as near specific as to frequency, rather she testified she only believed he visited or may have lived there because she simply saw a "silver car" parked out front, which was not identified by any witness as belonging to Applicant; 2) the neighbor was unsure as to when she had seen Applicant there or the silver car, only that she had seen either at some point in "2014"; and 3) there was no testimony as to the date on any prescription bottle with Applicant's name.
- X. Trial Counsel was ineffective for failing to object to the trial court's instructions that the jury was to render a "just and true" verdict and that the jury's duty was to determine "the truth of the evidence", as well as the "truth of [witnesses'] statements".
- XI. Trial Counsel was ineffective for failing to object to the Solicitor's urging during closing argument for the jury to render a verdict that "speaks the truth."
- XII. Trial Counsel was ineffective for failing to request an instruction that the jury was free to "accept or reject" any evidentiary inference.

XIII. Trial Counsel was ineffective for failing to make a sufficient and supported objection to the separate counting of prior "strike" convictions.

Respectfully submitted,

WILLIAM G. YARBOROUGH III  
LAUREN C. HOBBS

By:   
Lauren C. Hobbs  
South Carolina Bar #103190

**William G. Yarborough III, Attorney at Law, LLC**  
522 North Church Street Greenville, SC 29601  
(864) 331-1612

Greenville, SC  
January 16, 2019

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS )  
FOR THE SIXTEENTH JUDICIAL CIRCUIT )

Reginald R. White, Jr., #353172, )

2017-CP-46-1435 )

Applicant, )

ORDER OF DISMISSAL )

v. )

State of South Carolina, )

Respondent. )

2019 JUN 28 AM 8:20  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

FILED-RECEIVED

This matter comes before the Court by way of an application for post-conviction relief filed on May 17, 2017, by Reginald White (Applicant). The State (Respondent) filed a return and partial motion to dismiss on October 26, 2017, requesting an evidentiary hearing. Applicant, through counsel, filed an amended application on January 23, 2019. An evidentiary hearing into the matter was convened on January 30, 2019, at the Moss Justice Center. Applicant was present at the hearing and represented by William Yarborough, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. The Honorable Judge William A. McKinnon (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. In May 2014, the York County Grand Jury indicted Applicant for trafficking in cocaine (2014-GS-46-1499) and possession with intent to distribute crack cocaine (2014-GS-46-1500). Counsel represented Applicant. Assistant Solicitors Matthew W. Shelton and Christopher Epting of the Sixteenth Circuit Solicitor's Office prosecuted the case. On January 12, 2015, Applicant proceeded to trial before the Honorable Roger

L. Couch. The jury found Applicant guilty as indicted and Judge Couch sentenced Applicant to life without the possibility of parole for each charge.

Applicant filed a timely notice of appeal. Appellant Defender Robert M. Pachak, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 26, 2016. State v. White, Op. No. 2016-UP-441 (S.C. Ct. App. filed October 26, 2016). The remittitur was returned to the circuit court on December 7, 2016.

## **II. SUMMARY OF FACTS**

Detective Carson Neely (Neely) with the York County Sheriff's Office received information from a complainant regarding illegal drug usage and packaging at a residence on Silver Creek Drive.<sup>1</sup> (Trial Tr. 72, 74.) Neely did not know the numeric address of the residence, but was able to show the complainant a Google map of the area and she pinpointed the exact home where the illegal activity was occurring. (Trial Tr. 72.) On February 26, 2014, Neely applied for a search warrant of the Silver Creek Drive residence. (Trial Tr. 70.) Neely explained a sexual assault occurred at the same residence just two days earlier on February 24, 2014, and that was also part of the probable cause to seek a search warrant for that residence. (Trial Tr. 73-74.) The search warrant provided precise directions to the residence and a detailed description of the residence to be searched. (Trial Tr. 74.) Neely also included a map of the target residence to show the magistrate judge issuing the warrant what residence he intended to search. (Trial Tr. 74-75.) Neely also did surveillance on the residence prior to applying for his search warrant to verify the

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<sup>1</sup>During the pre-trial suppression hearing, Counsel challenged the search warrant based on a facial defect because the numeric address listed on the search warrant was not the actual numeric address of the property law enforcement searched. The State presented evidence and testimony showing law enforcement provided detailed directions to the residence, a description of the residence, a map, and an aerial photograph of the residence to the magistrate identifying the residence they intended to search. Ultimately, the trial court believed the error to be a scrivener's error and denied Counsel's motion. (Trial Tr. 68-84.)

information provided by the complainant. (Trial Tr. 76.) Ultimately, the search warrant was issued for the Silver Creek Drive residence. (Trial Tr. 77.)

During the search of the residence, law enforcement located Oxycodone pills, three or four burnt marijuana cigarettes in the living room, a glass jar containing one bag of suspected crack cocaine, three bags of suspected cocaine in the back bedroom floor vent, a digital scale, and a pill grinder. (Trial Tr. 178-179.) Officers also located a pill bottle with Applicant's name on it in the bedroom nightstand, men's clothing, and bank statements bearing Applicant's name dated February 3, 2014. (Trial Tr. 215, 420, 422.) Officers located and interviewed Applicant after the search and Applicant admitted to living at the Silver Creek Drive residence with Jessica Collins (Collins) and stated they have a child in common. (Trial Tr. 196.) Applicant told officers they would find Oxycodone pills, cocaine, crack, "and pills" in the residence. (Trial Tr. 196.) Applicant told officers he "distributed crack cocaine to two other people" on February 24, 2014. (Trial Tr. 256, 427.)

### **III. ALLEGATIONS RAISED**

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Counsel was ineffective pursuant to Strickland v. Washington for failing to contemporaneously object and preserve for appeal the improper admission of prior bad act/propensity evidence of Applicant's purported drug dealing. The prior bad act evidence only served as improper propensity evidence and was unduly prejudicial.
2. Counsel was ineffective for eliciting testimony about the prior bad acts on cross-examination, further disqualifying the issue for exclusion by the trial judge and for appellate review. Additionally, had this evidence been properly excluded, the trial judge would have been precluded from considering it when deciding on the motion for directed verdict.
3. Counsel was ineffective for failing to raise the issue in the motion to suppress or at the suppression hearing that the search warrant affidavit failed to provide a substantial basis for the magistrate to have found probable cause due to:
  - a. The entire basis for the affidavit was hearsay from a person who did not

- testify at the suppression hearing and whose credibility and reliability was not verified or provided for;
- b. The absence of a link or nexus between Applicant and the residence or drug distribution at the residence;
  - c. The absence of a basis for the belief that evidence of crack cocaine would be found there.
4. Counsel was ineffective for stipulating to the partial basis of Investigator Walter Beck's knowledge of "controlled buys," "marked money," and the street value of drugs when Counsel stated the case had nothing to do with either controlled buys or marked money and had previously objected to both the qualification of Investigator Beck as an expert and testimony on such matters during a pre-trial hearing.
  5. Counsel was ineffective for failing to request that the foundation of Investigator Beck's knowledge on these matters be heard in-camera.
  6. Counsel was ineffective for failing to contemporaneously and properly object/move to exclude /strike Investigator Beck's testimony on the common methods and manner of selling, buying, and using narcotics; controlled buys; drug price and weight; and other related topics. Investigator Beck was never qualified as an expert, and his testimony constituted as improper lay witness testimony, which consisted of opinion, and commentary on an ultimate issue at trial. Further, the testimony as purely anecdotal, irrelevant, and unduly prejudicial.
  7. Counsel was ineffective for eliciting additional testimony on cross-examination from Investigator Beck on these subjects as well as on matters of law relating to constructive possession. Not only did eliciting such testimony theoretically further open the door, but the testimony was also unduly prejudicial and consisted of opinion and commentary on the ultimate issue at trial.
  8. Counsel was ineffective for eliciting testimony and/or failing to object/move to strike Investigator Beck's testimony that "Other people had told us that he was living there" because the testimony was inadmissible hearsay and violated Applicant's right to confrontation and cross-examination of these purported other individuals.
  9. Counsel was ineffective for failing to clarify or correct during argument on the directed verdict motion as to certain items and events the State argued sufficiently proved Applicant had dominion and control over the premises where the drugs were found or the right to exercise dominion or control thereof. In denying the motion for directed verdict, the trial judge cited a neighbor's testimony that Applicant frequently stayed at the residence. The trial judge also cited "recently dated" prescription bottles with Applicant's name as support for the dominion and control element. Counsel failed to bring to the trial judge's attention that:
    - a. The neighbor's testimony was not anywhere as near specific as to frequency, rather she testified she only believed he visited or may have lived there because she simply saw a "silver car" parked out front, which was not identified by any witness as belonging to Applicant;

- b. The neighbor was unsure as to when she had seen Applicant there or the silver car, only that she had seen either at some point in "2014;"
  - c. There was no testimony as to the date on any prescription bottle with Applicant's name.
10. Counsel was ineffective for failing to object to the trial court's instructions that the jury was to render a "just and true" verdict and that the jury's duty was to determine "the trust of the evidence" and well as the "trust of [witnesses] statements."
  11. Counsel was ineffective for failing to object to the Solicitor's urging during closing argument for the jury to render a verdict that "speaks the truth."
  12. Counsel was ineffective for failing to request an instruction that the jury was free to "accept or reject" any evidentiary inference.
  13. Counsel was ineffective for failing to make a sufficient and supported objection to the separate counting of prior "strike" convictions.

On January 30, 2019, an evidentiary hearing was convened. Applicant informed this Court he would be proceeding on the allegations in his amended application.

#### IV. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id.

Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 300 S.C. 115.

## **V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of the allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency and any prejudice therefrom.

*Ineffective Assistance of Counsel for failing to contemporaneously object and preserve for appeal the improper admission of prior bad act/propensity evidence of Applicant's purported drug dealing. The prior bad act evidence only served as improper propensity evidence and was unduly prejudicial.*

Applicant alleges Counsel was constitutionally deficient for failing to object to Applicant's "prior bad acts" being brought up during trial and, therefore, failing to preserve this issue for appeal. Applicant testified Counsel made a good argument on his behalf when he attempted to keep this information from being used at trial, but ultimately, the trial court allowed the

information to come in. Applicant testified Counsel did not renew his objection during the trial when the information was introduced. Applicant testified he believes Counsel should have objected during the trial and because he did not, it affected his ability to raise that issue on appeal. Applicant testified the decision from the South Carolina Court of Appeals shows Counsel's failure to object affected his ability to raise the issue on appeal. Applicant also testified Counsel's lack of objection to this issue affected his ability to win the directed verdict motion.

Counsel testified this case was a constructive possession case. Counsel testified the State wanted to use Applicant's admission that he had distributed drugs two days prior to the search of his residence as circumstantial evidence to prove Applicant had constructive possession of the drugs found during the search warrant. Counsel testified he attempted to suppress Applicant's statement to law enforcement so Applicant's admission to distributing drugs on February 24, 2014, could not be used against Applicant at trial. Counsel testified he argued to the trial judge that the evidence was prejudicial. Counsel testified the trial judge was right to have admitted the evidence against Applicant. Counsel testified the probative value of Applicant's admission to distributing drugs at the residence was very strong and Judge Couch was correct to allow it in at trial.

According to the record, law enforcement executed a search warrant at the Silver Creek Drive residence on February 26, 2014. (Trial Tr. 223.) Applicant was found and interviewed by law enforcement in the early morning hours of February 27, 2014. (Trial Tr. 253.) During that interview, Applicant told Neely that, on February 24, 2014, he gave two people crack [at the Silver Creek Drive residence] and they smoked it. (Trial Tr. 117.) Although Counsel argued the State could prove intent solely on the weight of the drugs recovered from the residence, the trial court found that was a rebuttable presumption and allowed the State to use Applicant's statement regarding the previous distribution at trial. (Trial Tr. 134-135.)

Applicant has also alleged he was prejudice by Counsel's failure to object to the introduction of this evidence against him because Counsel's lack of objection did not preserve the issue for appeal. In McHam, the South Carolina Supreme Court states, ". . . to be entitled to relief on such a claim, an applicant must establish the underlying claim is meritorious and would have resulted in a reversal on appeal to a reasonable probability." Id., 404 S.C. at 475-476, 746 S.E2d at 47. As Counsel testified, the evidence was properly admitted by the trial judge against Applicant, and therefore, even if he had contemporaneously objected to the admission of the evidence during trial, it would not have been a meritorious claim to raise on appeal. Additionally, even if the issue had been raised on appeal, Applicant has failed to establish this claim would have a reasonable probability of resulting in a reversal on appeal.

This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds that Neely's testimony regarding Applicant's statement was admissible. This Court also finds Neely's testimony was properly admitted because it had high probative value in regards to the element of intent, which is a required element in order to prove possession with intent to distribute crack cocaine, third offense. Therefore, the prejudicial effect of the prior bad act evidence did not outweigh its probative value.

This Court finds Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency as this Court finds the prior bad act evidence was properly admitted and, therefore, Counsel's failure to contemporaneously object during the trial is harmless error. Additionally, Applicant has also failed to show the underlying claim he believes Counsel should have preserved was meritorious and would have a reasonable probability to be successful on appeal. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and this allegation must be denied and dismissed with prejudice.

*Counsel was ineffective for eliciting testimony about the prior bad acts on cross-examination, further disqualifying the issue for exclusion by the trial judge and for appellate review. Additionally, had this evidence been properly excluded, the trial judge would have been precluded from considering it when deciding on the motion for directed verdict.*

Applicant alleges Counsel addressed his prior bad acts during cross-examination, which allowed the trial court to consider that evidence during the directed verdict motion. Additionally, Applicant alleges Counsel's decision to address his prior bad acts on cross-examination further precluded the issues from being addressed on appeal.

As noted in the previous section, this Court finds the prior bad act evidence was properly admitted against Applicant during the trial. Therefore, this Court finds this allegation wholly without merit as the trial judge properly allowed the prior bad acts to be admitted despite Counsel's pretrial motion to exclude this evidence. As such, Counsel was proper to cross-examine witnesses on the prior bad acts during the trial. This Court also finds the trial judge properly considered this evidence during the directed verdict motion as it was proper evidence before the court.

As noted in the previous section, this Court finds Counsel's testimony with respect to the admission of the prior bad acts very credible, whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient or any resulting prejudice from Counsel's alleged deficiency as the prior bad act evidence was properly admitted during the trial. Based on the standard set forth in Strickland, this Court finds Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was ineffective for failing to raise several issues during the motion to suppress the search warrant.*

Applicant alleges Counsel should have argued during the motion to suppress the search warrant that the underlying affidavit for the search warrant was entirely based on hearsay by a person whose credibility and reliability was not verified. Applicant also alleges Counsel should

have argued there was no link between Applicant and the residence or drug distribution within the residence. Applicant also believes Counsel should have argued law enforcement did not have a reason to believe crack cocaine would be found at the residence. Applicant testified he wanted Counsel to challenge the affidavit of the search warrant.

Counsel testified he did not see any other basis to challenge the search warrant other than the grounds he raised during the suppression hearing. Counsel testified the search warrant was valid. Counsel testified Collins admitted Applicant lived with her when she was questioned by officers.

In State v. Driggers, the South Carolina Court of Appeals held, “. . . the task of a magistrate when determining whether to issue a warrant is simply to make a practical, common sense decision as to whether, under the totality of the circumstances set forth in the affidavit, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that evidence of a crime will be found in a particular place.” State v. Driggers, 322 S.C. 506, 510, 473 S.E.2d 57, 59 (1996).

The record shows the State was able to present evidence during the suppression hearing that law enforcement believed the complainant to be credible and reliable. (Trial Tr. 76.) Officers also conducted surveillance of the target residence to verify the information provided by the complainant. (Trial Tr. 76-77.) Further, during cross-examination of Collins by the State during the suppression hearing, Collins admitted the residence on law enforcement’s map was the residence she shared with Applicant. (Trial Tr. 81.) Law enforcement also made it clear there was another incident that occurred at the targeted residence that, although not relevant to the drug charges against Applicant, added to the probable cause affidavit used to obtain the search warrant. (Trial Tr. 72.)

This Court finds Counsel's testimony with regard to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds this allegation is without merit as Applicant has failed to establish any deficiency on behalf of Counsel as Counsel raised the only meritorious arguments he could during the suppression hearing. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was constitutionally ineffective for the way he handled the testimony of Investigator Beck during the trial.<sup>2</sup>*

Applicant alleges Counsel was deficient for stipulating to Investigator Beck's (Beck) knowledge of controlled buys, marked money, and the street value of drugs. Applicant alleges Counsel had previously objected to Beck's testimony on this matter during a pretrial hearing. Applicant alleges Counsel was ineffective for failing to request an in-camera hearing to establish the foundation of Beck's knowledge. Applicant alleges Counsel was deficient for failing to object to Beck's testimony regarding the common methods of selling, buying, and using narcotics; as well as, controlled buys, and other related topics. Applicant alleges Beck's testimony was inappropriate opinion testimony from a lay witness and was unduly prejudicial. Applicant also alleges Counsel was deficient for cross-examining Beck on constructive possession, which led to prejudicial opinion testimony and commentary. Finally, Applicant alleges Counsel was deficient for failing to object or strike the testimony of Beck that, "other people had told us that he was living there" as that testimony was inadmissible hearsay and violated Applicant's right to confrontation.

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<sup>2</sup> This section addresses allegations 4 – 8 of Applicant's amended application.

Counsel testified he objected to Beck's testimony regarding controlled buys and marked money during the trial because the testimony was not relevant to Applicant's case. (Trial Tr. 229.) Counsel testified he did stipulate to Beck's knowledge of marked money, street value of drugs, and controlled buys because those issues were not relevant to Applicant's case. During cross-examination, Counsel questioned Beck on whether controlled buys and marked bills had anything to do with Applicant's case, and Beck testified they did not. (Trial Tr. 237.) Also during cross-examination, Counsel was questioning Beck on what evidence showed Applicant lived at the residence where the drugs were found. (Trial Tr. 240.) Beck responded to Counsel's question in part by stating, "Other people had told us that he was living there." (Trial Tr. 240.) In response, Counsel directed Beck to focus on the actual evidence in the case. (Trial Tr. 240.) The State attempted to use Beck's statement to go further into who told Beck Applicant was living at the residence, however, Counsel successfully argued against the State being able to elicit any further testimony from Beck on that issue. (Trial Tr. 246-247.) Counsel also testified that a single sentence from Beck that "other people" indicated Applicant lived at the residence did not make a difference in Applicant's case.

According to the record, Counsel "strenuously" objected to any expert testimony by Beck during pretrial motions. (Trial Tr. 52.) Counsel told the trial court that "purported expert testimony from a law enforcement officer as far as the cocaine trade . . . [is] inappropriate expert testimony[.]" (Trial Tr. 52.) The State conceded they would not offer him as an expert, but would rely on his training and experience. (Trial Tr. 53.) The trial court indicated the State would be wise not to introduce Beck as an expert, but also indicated there was nothing wrong with the jury knowing that he is competent and knows what he is doing. (Trial Tr. 53-54.) The trial court also indicated Beck could testify as to his experience in handling drug buys, the market value of drugs for sales he has participated in, and what he has observed. (Trial Tr. 54-55.)

This Court finds Counsel's testimony with regard to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds this allegation is without merit as Applicant has failed to establish any deficiency on behalf of Counsel. This Court finds Beck did not provide improper testimony during the trial and Counsel's stipulation to Beck's knowledge and experience in the drug trade was inconsequential to Applicant's case. Counsel also conducted proper cross-examination of Beck regarding constructive possession.

Applicant has also failed to show this Court any resulting prejudice from Counsel's alleged deficiencies in handling Beck's testimony at trial. Applicant has failed to show this Court how the outcome of his trial would have been different had Counsel not stipulated to Beck's knowledge of the drug trade, or if Counsel had requested an in-camera hearing of Beck's qualifications prior to his testimony. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was constitutionally ineffective for failing to clarify or correct the State's argument during the directed verdict motion regarding Applicant's dominion and control over the premises where the drugs were found.*

Applicant alleges Counsel was deficient for failing to correct the trial judge's summary of the neighbor's testimony in his finding that Applicant lived at the Silver Creek Drive residence. Applicant also alleges Counsel was deficient for failing to correct the trial judge's statement that the "recently dated" pill bottle showed Applicant had dominion and control over the residence. Applicant alleges he was prejudiced by Counsel's failure to correct the trial judge's statements regarding the neighbor's testimony and the pill bottle during the denial of Applicant's directed verdict motion.

Counsel testified the judge did not know the date on the pill bottle. According to the record before this Court, the judge specifically stated, "Evidence inside of that location would indicate

that he was present and living there as well, such as the pill bottle that was found on the nightstand or dresser in the bedroom which the drugs were found that had his name on it, as well as the bank records that were found in the home that had his name on [them], which were fairly recent of the date, indicating that they had recently been placed there.” (Trial Tr. 353-354.) The trial judge never referred to the pill bottle being “recently dated” or even implying a date at all regarding the pill bottle.

Kimberly Kinley (Kinley), the neighbor, testified for the State and stated she was acquaintances with Applicant and Collins and testified Applicant and Collins lived at the Silver Creek Drive residence in 2014. (Trial Tr. 263.) Kinley testified she saw Applicant come and go and knew he had a silver car, although should could not identify the make and model of the vehicle. (Trial Tr. 263.) The trial court summarized the neighbor's testimony during his denial of the directed verdict motion by stating, “There was evidence from a neighbor . . . that [Applicant] lived there quite often. He would come and go and stay there. While he was not there all the time, he was there frequently, and stayed there for periods of time at that address.” (Trial Tr. 353.) This summary is an accurate summation of the neighbor's testimony as the neighbor did indicate Applicant and Collins lived there and observed Applicant come and go from the residence. Further, her belief was not solely based on the silver car she believed to be Applicant's.

This Court finds Counsel's testimony with regard to this allegation very credible. This Court finds this allegation is without merit as Applicant has failed to establish any deficiency on behalf of Counsel as Counsel did not need to clarify the trial court's findings because the trial court properly summarized the pill bottle evidence and the neighbor's testimony during the denial of the directed verdict motion. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as the record shows the pill bottle and the neighbor's testimony was not the only evidence the State presented linking Applicant to the Silver Creek Drive residence.

Importantly, Applicant provided a statement to law enforcement stating he lived at the residence. Additionally, the State presented recently dated bank statements bearing Applicant's name and men's clothing found in the residence to show Applicant lived at the Silver Creek Drive residence. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was ineffective for failing to object to the trial court's instructions that the jury was to render a "just and true" verdict and that the jury's duty was to determine "the trust of the evidence" and well as the "trust of [witnesses] statements.*

Applicant alleges Counsel was deficient for failing to object to the trial judge's jury instruction that the jury was to render a "just and true" verdict. Applicant further alleges Counsel should have objected to the trial judge's instruction that it was the jury's duty to determine "the trust of the evidence" as well as the "trust of [witnesses] statements." Applicant testified he believes Counsel was ineffective because he did not object to the judge when the judge shifted the burden of proof.

Counsel testified at the time of the trial the trial court's jury instructions came out of the bench book. Counsel testified the trial judge properly instructed the jury on circumstantial and direct evidence, the State's burden of proof, and inferences.

Upon review of the record, this Court finds the trial court did not provide any jury instructions that improperly shifted the burden from the State. The trial court provided clear instructions regarding the State's burden of proof and properly instructed the jury that the verdict be based upon the evidence presented during the trial. The trial court never instructed the jury to "seek the truth."

This Court finds Counsel's testimony with regard to this allegation very credible. This Court finds Applicant has failed to show how Counsel was deficient for failing to object to the trial court's jury instructions because the jury instructions properly advised the jury on the State's

burden of proof, direct evidence, and circumstantial evidence. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as the jury reached its verdict after being properly instructed by the trial court. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was ineffective for failing to object to the Solicitor's urging during closing argument for the jury to render a verdict that "speaks the truth."*

Applicant alleges Counsel was deficient for failing to object to the State's closing where the solicitor told the jury to render a verdict that "speaks the truth."

Counsel testified he does not recall the solicitor making that statement in his closing. Counsel testified he does not recall any objectionable statements made by the State during closing. Counsel testified he typically does not make an objection during closing unless the statement is egregious.

The State's closing argument should be reviewed in context of the entire record. State v. Rudd, 355 S.C. 543, 586 S.E.2d 153 (2003). Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the petitioner has the burden of proving he did not receive a fair trial because of the alleged improper argument. Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id. (citing DeChristoforo, 416 U.S. at 643).

This Court finds Counsel's testimony with regard to this allegation very credible. This Court finds this allegation is without merit. This Court has reviewed the State's closing argument in context of the entire record and finds the isolated statement Applicant is challenging does not "so infect the trial with unfairness as to make the resulting conviction a denial of due process."

Additionally, the trial court properly instructed the jury prior to their deliberations on their duties and the State's burden of proof. This Court finds Applicant has failed to show how Counsel was deficient for failing to object to the solicitor's closing argument or any resulting prejudice therefrom. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was ineffective for failing to request an instruction that the jury was free to "accept or reject" any evidentiary inference.*

Applicant alleges Counsel was deficient for failing to request a jury instruction that tells the jury they are free to "accept or reject" any evidentiary inference. Counsel testified the jury was properly instructed on inferences by the trial court.

During the jury charge the trial court states the following:

The defendant's knowledge and possession may be inferred when a substance is found on the property that's under a defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with other evidence in the case. You give it the weight you think it should have.

Again, mere presence at a scene where drugs are found is not enough to prove possession. The defendant's knowledge and possession may be inferred when the substance is found on property under the defendant's control. However, again, that inference is simply an evidentiary fact to be considered by you, along with all the other evidence in the case, and you give it the weight you think it should have.

(Trial Tr. 451, 452.)

This Court finds Counsel's testimony with regard to this allegation very credible and finds this allegation is without merit. This Court has reviewed the trial court's jury instructions and finds the jury was properly instructed regarding the weight they could give to evidentiary inferences. This Court finds Applicant has failed to show how Counsel was deficient for failing to request a jury instruction that the jury was free to "accept or reject" any evidentiary inference

as the jury was properly instructed by the trial court. Applicant has also failed to establish any resulting prejudice from the alleged deficiency. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

*Counsel was ineffective for failing to make a sufficient and supported objection to the separate counting of prior "strike" convictions.*

Applicant alleges Counsel failed to properly articulate and support his objection to the State use of Applicant's prior "strike" convictions to qualify him for a life without the possibility of parole sentence. Applicant testified he did not feel he had three strikes. Applicant testified he did research on his strikes and does not believe Counsel made a good argument on his life sentence.

Counsel testified Applicant had two prior strikes for separate incidents, but that Applicant was arrested for his two prior strikes on the same day. Counsel testified he wrote lengthy letters and talked to Applicant about the fact that he was facing a life sentence. Counsel testified he strongly urged Applicant to take the State's plea offer. Counsel testified Applicant rejected the plea offer on the record.<sup>3</sup>

According to the record, Counsel did object to Applicant's prior offenses being counted as two separate and distinct strikes since he was arrested for them on the same date. However, the trial court properly found Applicant's prior convictions did qualify as strikes under the law. (Trial Tr. 470.) Counsel further argued imposing a life sentence on Applicant would be cruel and unusual punishment. (Trial Tr. 470.)

In State v. Woody, the South Carolina Supreme Court reversed the petitioner's three strike conviction because two of the strikes stemmed from a singular incident. The petitioner was charged with two counts of armed robbery after robbing a Fast Fare convenient store. One of

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<sup>3</sup> On December 17, 2014, Applicant rejected the plea offer on the record before Judge Alford. (Trial Tr. 466.)

petitioner's charges was for robbing the store's clerk and the second charge was for robbing the store itself. The South Carolina Supreme Court held the petitioner's two robbery convictions could not be counted as two separate strikes under S.C. Code Ann. §17-25-50 since they stemmed from a singular incident. Section 17-25-50 states, "In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses." S.C. Code Ann. §17-25-50. Here, although Applicant was arrested for his prior convictions on the same date, the incidents occurred during separate incidents on different dates, which allows them to count as two separate strikes.

This Court finds Counsel's testimony credible, whereas Applicant's testimony is not credible. This Court finds Applicant's allegation is without merit as Counsel properly advised him that he could face a life sentence, urged him to accept the State's plea offer, and objected to the State's use of Applicant's prior convictions as separate strikes. However, the trial court properly counted Applicant's prior convictions as two separate strikes and imposed a proper sentence on Applicant. Applicant has failed to establish any deficiency on behalf of Counsel or show this Court what Counsel should have or could have done that would have made a difference in Applicant's case. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency. As such, Applicant has failed to meet his requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

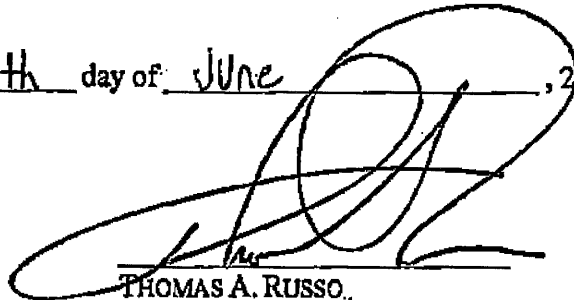
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20th day of June, 2019.



THOMAS A. RUSSO,  
Presiding Judge  
Sixteenth Judicial Circuit

Florence, South Carolina

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of YORK )  
 )  
REGINALD RAYNARD WHITE )  
 )  
 Full name and prison number (if any) of Applicant )  
#353172 )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2019CP46-3761

APPLICATION FOR  
POST-CONVICTION RELIEF

AFFIDAVIT OF FACTS GIVING  
JUDICIAL NOTICE

DAVID HAMILTON  
C.C.C.P. & OS  
YORK COUNTY, S.C.

2019 NOV -1 PM 1:01

FILED-RECEIVED

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER C.I. P.O. BOX 205 RIDGEVILLE, S.C.  
29472
2. Name and location of Court which imposed sentence YORK COUNTY COURT OF  
GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_  
SEE CASE 2017-CP-46-1435
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
 (a) "  
 (b) "

SEE CASE NUMBER 2017-CP-46-1435

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

\_\_\_\_\_

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:
  - i. SEE CASE NUMBER 2017-CP-46-1435
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_



(c) the disposition thereof:

i. SEE ATTACHED SHEETS AND CASE 2017-CP-46-1435

ii. \_\_\_\_\_ " \_\_\_\_\_

iii. \_\_\_\_\_ " \_\_\_\_\_

iv. \_\_\_\_\_ " \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_ " \_\_\_\_\_

ii. \_\_\_\_\_ " \_\_\_\_\_

iii. \_\_\_\_\_ " \_\_\_\_\_

iv. \_\_\_\_\_ " \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_ " \_\_\_\_\_

ii. \_\_\_\_\_ " \_\_\_\_\_

iii. \_\_\_\_\_ " \_\_\_\_\_

iv. \_\_\_\_\_ " \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

\_\_\_\_\_ "

\_\_\_\_\_ "

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_ " \_\_\_\_\_

ii. \_\_\_\_\_ " \_\_\_\_\_

iii. \_\_\_\_\_ " \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_ " \_\_\_\_\_

ii. \_\_\_\_\_ " \_\_\_\_\_

iii. \_\_\_\_\_ " \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) SEE ATTACHED SHEETS AND CASE 2017-CP-46-1435

(b) "

(c) "

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? "

(b) your trial, if any? "

(c) your sentencing? "

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? "

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? "

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. "

"

ii. "

"

iii. "

"

(b) the proceedings at which each such attorney represented you:

i. "

"

ii. "

"

iii. "

"

INSOMUCH, IT IS BEYOND DISPUTE THAT THE "SENTENCING SHEET" IS THE STATE'S EQUIVALENT TO A "COMMITMENT ORDER". FOR THE RECORD. I GIVE THE COURT AND ALL PARTIES JUDICIAL NOTICE. THIS PCR IS NOT FILED MERELY ATTACKING THE INDICTMENTS AND OTHER CONSTITUTIONAL STRUCTURAL AND DUE PROCESS ERRORS THAT EXIST IN THIS CASE. THIS IS A COLLATERAL ATTACK UPON THE SENTENCING SHEETS WHICH ARE LEGALLY DESIGNATED AS COMMITMENT ORDERS, AS WELL AS A COLLATERAL ATTACK UPON MY FINAL ORDER ISSUED IN MY PREVIOUS PCR, CASE NUMBER 2017-CP-46-1435, FOR FRAUD UPON THE COURT. THE SENTENCING SHEETS, AS COMMITMENT ORDERS, ESTABLISH THE ORDER OR DECREE FROM THE GENERAL SESSIONS COURT PERTAINING TO MY CONVICTION. THE FINAL ORDER ISSUED IN PCR CASE 2017-CP-46-1435 IS A FINAL ORDER RELATED TO MY PCR AND IT IS A "[J]URISDICTIONAL [P]REREQUISITE" TO THE S.C. SUPREME COURT MAKING A DETERMINATION IN THESE MATTERS. SINCE THE PCR ORDER ~~UNDER~~ UNDER CASE 2017-CP-46-1435 IS DEEMED VOID DUE TO FRAUD UPON THE COURT. I OFFICIALLY MOTION TO VACATE THAT ORDER PURSUANT TO RULE 60(b)(3) AND FURTHER MOTION TO CONSOLIDATE THAT CASE WITH THIS PRESENTLY PRESENTED PCR. THUS, ANY CLAIM THAT THIS IS A SUCCESSIVE PCR OR THAT THERE IS A STATUTE OF LIMITATIONS CONCERN IS NOW DEEMED MOOT. FRAUD VITIATES EVERYTHING THAT IT ENTERS AND A JUDGMENT PROCURED BY FRAUD MAY BE COLLATERALLY ATTACKED FOR THAT FRAUD UPON THE COURT. THIS APPLIES TO ALL ACTS, ORDERS, JUDGMENTS OR DECREES OF ALL COURTS ON RECORD, WHICH THE SENTENCING SHEETS, AS COMMITMENT ORDERS ALSO REPRESENT, MYLES v. DOMINOS PIZZA, LLC., 2017 WL 238436 (D.C.Miss.2017); FIRST TECHNOLOGY CAPITAL INC. v. BANCTEC INC., 2016 WL 7444943 (D.C.Ky.2016); MARTIN v. TARGET CORP. OF MINNESOTA, F.Supp.2d., 2013 WL 1187034(D.N.J.2013); McCLAIN v. 1st. SECURITY BANK OF WASHINGTON, 2016 WL 8504775(W.D.Wash.2016).

DUE TO I ATTACKING THE "SENTENCING SHEET", WHICH ARE THE "LEGALLY" DESIGNATED "COMMITMENT ORDERS" AND THE PRIOR ORDER UNDER PCR CASE 2017-CP-46-1435 FOR FRAUD UPON THE COURT. THEREFORE, THE COURT OF COMMON PLEAS, NOR THE S.C. ATTORNEY GENERAL CAN FAIRLY OR LEGALLY ASSERT THAT I AM "TIME BARRED", OR THAT THIS PCR IS SUCCESSIVE SINCE THE ORDER IN THE PRIOR PCR IS SOUGHT VACATED AND CONSOLIDATED THROUGH THIS NEW PCR UNDER THE INDEPEN-

DENT ACTION RULE FOR FRAUD UPON THE COURT WHERE THAT FINAL ORDER IS CHALLENGED AS BEING UNCONSTITUTIONAL, A VIOLATION OF DUE PROCESS AND MUST BE DEEMED VOID. IT IS THE APPLICANT'S CLAIM THAT IT WAS AN ACT OF FRAUD UPON THE COURT FOR THE GENERAL SESSIONS COURT TO SIGN THE COMMITMENT ORDER, OR THE PCR COURT TO SIGN THE FINAL ORDER IN CASE 2017-CP-46-1435, KNOWING GOOD AND WELL THAT THE DUE PROCESS AND UNCONSTITUTIONAL STRUCTURAL ERRORS ARGUED WITHIN THIS DOCUMENT EXISTED IN THIS CASE. THEREFORE, THE PRIOR ORDER IN CASE 2017-CP-46-1435, AND THE SIGNING OF THE COMMITMENT ORDER IS UNCONSTITUTIONAL, AND THE GENERAL SESSIONS COURT AS WELL AS THE COMMON PLEAS COURT'S JURISDICTION IS VOID FOR SIGNING THEM, AS WELL AS THE CONVICTION(S) ATTACHED TO THEM BEING A NULLITY. IT IS WELL SETTLED IN LAW THAT A COLLATERAL ATTACK FOR FRAUD UPON THE COURT IS FREE OF ALL PROCEDURAL LIMITATIONS SUCH AS SUCCESSIVE, STATUTE OF LIMITATIONS OR THERE BEING OTHER PROCEEDINGS PENDING BY THE FRAUD UPON THE COURT THAT IS NOW ARGUED WITHIN THIS CASE, IN RE: GENESYS DATA TECHNOLOGIES, INC., 204 F3d. 124(4th.Cir.2000); UNITED STATES v. CONRAD 675 Fed. Appx' 263, 265 CA4 (N.C.2017); FOX EX REL FOX v. ELK RUN COAL CO. INC., 739 F3d. 131, 87 Fed. R. Serv.3d. 534(4th. Cir.2014).

FURTHER, THE APPLICANT IS CHALLENGING THE GENERAL SESSIONS COURT'S JURISDICTION TO SIGN THE COMMITMENT ORDER(S), THE COURT OF COMMON PLEAS JURISDICTION TO SIGN THE FINAL ORDER IN CASE 2017-CP-46-1435 AS WELL AS I AM CHALLENGING THEIR JURISDICTION TO ESTABLISH OR KEEP IN PLACE THE CONVICTION ITSELF. SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME, AT ANY STAGE OF ALL PROCEEDINGS, INCLUDING FOR THE FIRST TIME ON APPEAL, CANNOT BE WAIVED BY ME AND THE COURT SHALL NOT FAIL TO TAKE NOTICE, SEBELIUS v. AUBURN REGIONAL MEDICAL CENTER, 133 S.Ct. 817, 184 L.Ed.2d. 627, 81 U.S.L.W. 4053(U.S.2013); SIZWARD v. RIDDLE, F.Supp.2d., 2013 WL 707018(DSC.2013); GRUPO DALAFLUX v. ATLAS GLOBAL L.P., 541 U.S. 567, 124 S.Ct. 192, 158 L.Ed.2d. 866(U.S.2004); LOUMIET v. UNITED STATES, 65 F.Supp.3d. 19(2014); U.S. v. TISDALE, F.Supp.2d., 2007 WL 2156666(DSC.2007).

INASMUCH, THE APPLICANT BEGINS WITH ISSUE NUMBER ONE.  
THE INDICTMENTS POSSESS A STRUCTURAL ERROR AS IS ARGUED IN  
EXHIBIT, "ISSUE NUMBER 1". SEE THE ATTACHED PAGES THAT FOLLOW:

EXHIBIT, "ISSUE NUMBER 1"

(1) Did the trial court err, and was the appellant's 5th., 6th., 13th., 14th. 15th. amendment rights of the U.S. Constitution, as well as Article IV § 2, and his Due Process rights violated, regarding the indictment(s) as constructed, by the language or charge contained therein, which did create and or form conclusive presumption(s), that took away the appellant's presumption of innocence, and automatically shift the burden of persuasion to the defendant, in regard to the crucial elements of dispute?

The appellant humbly contends, it is well established by the U.S. Constitution, the 5th., 6th., 14th. amendment(s), and The Bill Of Rights, that when an individual is brought before a court of jurisprudence upon accusation, that the individual alleged thereupon, is innocent, until proven by a jury of his peers, guilty of aforesaid accusation being brought before the court. This is the defendant's most basic, and most fundamental right by Federal and State laws pertaining to Due Process. Because the indictment(s) possess a structural constitutional error and or defect, in that the language and or charge contained therein, in constructed to produce conclusive presumption(s), that immediately shift the burden of persuasion to the defendant in regards to the crucial elements of the offense(s), the indictment(s) and or complaint documents violate Due Process as well as the 13th. and 15th. amendments.

The appellant did not object to this defect and or error at the time he gave his guilty plea, and or before he went to trial, but the defect and or error serve to render the indictment wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d. Indictments And Information § 299(1986); State v. Munn, 357 S.E.2d. 461(S.C.1987).

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss

v. Aetna Life Ins. Co., 228 S.E.2d. 108; State v. Broad River Power Co., 177 S.C. 240, 180 S.E. 41; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th. Edition).

By what is cited in Sandstrom v. Montana, 442 U.S. 510 at 520, 99 S.Ct. (2450) at 2457 (61 L.Ed.2d. 39)(1979), under (4) criminal law [west key] 324. The Supreme Court was unequivocal and unambiguous when it stated [v]erbatim:

"Conclusive presumptions conflict with the overriding presumption of innocence which the law endows the accused and which extends to every element of the crime charged, and they invade the fact-finding function which in a criminal case the law assigns the jury, Morissette supra, at 275, 72 S.Ct. at 255 and United States Gypsum Co. supra., at 446, 98 S.Ct. at 2878. The indictment and complaint documents around the nation, with the exception of the few states that corrected this problem, require the jury, if satisfied as to the facts that trigger the presumption to find intent unless the defendant offers evidence to the contrary. The indictments and complaints around the nation, by their structural constitutional error and or defect, language and or charge, mislead the jury, and we can add the defendant, to believe the presumption was not limited to requiring the defendant to satisfy the burden of production, when the burden of production is to be consistently bore by the state. A presumption although not conclusive, that has the effect of shifting the burden of persuasion would suffer the same similar infirmities", Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d. 508(1975), even if its embodied within the charge of an indictment or criminal complaint.

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To state by use of an indictment or criminal complaint within the (50) states that an individual "did" with intent, knowingly, malice, aforethought, and other such elements imply conclusive firsthand knowledge of the events pertaining to the accusation being brought before the court. To such knowledge the Grand Jury who swore to such indictments, "[c]annot" by all scientific reason and jurisprudence ascertain as being true under such circumstances, especially without a trial. It is universally recognized that every oath [o]ught and [m]ust be founded upon "[c]ertain [k]nowledge", meaning knowledge that is certain beyond a reasonable doubt as being true (OMNE SACREMENTUM DEBET ESSE DE CERTA SCIENTIA). Inasmuch, the reality of this matter is that the issues in question, embodied in said indictments are allegations, they are accusations, not proven facts. So how could they be sworn by indictment as being true? Several other states have corrected this injustice. The State of South Carolina is one of the remaining states who have not. It is the command of the U.S. Constitution that anything, to include any and all legislation, whether it be by statute, indictment or otherwise, that is contrary to its inherent, intrinsic and explicit presuppositions "[s]hall [n]ot [s]tand", and therefore should be abolished and or rendered [v]oid (Article IV § 2 U.S. Const.).

"THE STATE MUST PROVE", I repeat, "THE STATE MUST PROVE", not the defendant, every single element that is charged, and that is crucial to the offense. It is not to be given to them in any way. They "[m]ust" first prove it before it can ever be declared. Every single time an indictment is sworn where it states clearly without ambiguity a defendant "did", etc., it immediately with destructive results tear down the commonwealth's constitutional Due Process right of being innocent until proven guilty, and automatically shift the burden of persuasion to the individual or commonwealth charged. It gives the false unconstitutional premise and or presumption that such has already been proven by a jury of one's peers, or even more specific, without a trial by a jury of one's peers in violation of Due Process Law. To have such unconstitutional presumption(s)



embodied within indictments and or criminal complaints that rely on such language is constitutionally infirm.

The appellant avers, in Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d. 508, the court found as a violation of Due Process and Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d. 323(1970), an indictment that [p]resumed that a defendant acted with "[m]alice and [a]forethought", if it were found that the homicide was intentional and unlawful, the defendant then bore the burden of disproving the elements. Similar in Sandstrom, the jury was instructed in determining whether or not the defendant had the [p]rerequisite intent to commit murder [t]he law presumes that the person intended the ordinary consequences of his voluntary actions, thereby relieving the state of its burden on that element. The language and or charge in the indictment(s) do the same thing, taking away the presumption of innocence, and by what is written predetermine in advance the outcome of the proceedings and presumes that a person intends the ordinary consequences of his voluntary actions, thereby relieving the state of its burden on the elements crucial to the offense. What if the person was forced to commit the crime at gunpoint? Or was the victim of brainwashing by the induction of some chemically based mind controlling drug, and under such control he committed the crime? Or it simply was an accident depending upon the crime charged? These are just a few reasons why such wording is impermissible, Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923).

Once the courts of South Carolina, New Jersey and the remaining (48) states constructed an indictment or criminal complaint contrary to the laws of Due Process, the Attorney for the appellant telling the appellant that he is innocent until proven guilty, or the Judge giving a curative instruction to the appellant and or jury of the defendant being innocent until proven guilty, or stating that the state or federal government has the ultimate burden and must prove every element, being given to the appellant and or jury, or stating the indictment or criminal complaint is not evidence to the appellant or jury,



does "[n]ot" cure the Due Process problem created and presented by the structural constitutional error, defect and or charge in the indictment(s) and Complaint(s).

Constitutional Law [west key] 266(7), in situation where elements of offense and "so-called" "affirmative defense", pose same ultimate issue of shifting the burden of persuasion, the Due Process problem is "[n]ot" eliminated by including an instruction in a charge that the state has the ultimate burden of proving every element beyond a reasonable doubt, and we can add to this, stating the indictments or criminal complaints are not evidence by the courts. The teaching of these cases is that "[a]ny" presumption, even if its not conclusive, even if its embodied within the charge of an indictment or criminal complaint, that has the effect of shifting the burden of persuasion to the defendant on any element of the crime charged violates Due Process, (U.S.C.A. Const. Amend. 14) Humanik v. Beyers, 811 F2d. 432(3rd.Cir.1989).

Such is a substantive disadvantage and not merely procedural disadvantage to the defendant related to his rights of Due Process. If the indictments and or criminal complaints around the nation, by their defect contained therein, require that the defendant prove he did not possess the "MENS REA" on any element pertaining to the alleged crime at trial and or before a guilty plea, 421 U.S. at 684, 95 S.Ct. at 1888, it becomes obvious that the burden of proof is shifted.

The Court recognized by requiring the defendant to prove the critical elements of said dispute, ID at 710, 95 S.Ct. at 1890, the Maine Rule, as do the nation's indictments and criminal complaints, affirmatively shift the burden of proof to the defendant(s), thus creating a further likelihood of an erroneous conviction and or guilty plea, due to the shifting of the burden of persuasion to prove one's innocence, as implied by the language and or charge in the indictment(s) and criminal complaint(s), ID at 421 U.S. at 701, 95 S.Ct. at 1890. Such serve



to negate certain facts of the crime which the government is to prove to the jury in order to convict the defendant of a crime charged, 432 U.S. at 207, 97 S.Ct. at 2325. The Winship Rule is clear in which the defendant creates a reasonable doubt on any element of the offense(s) charged is entitled to an acquittal.

In such a situation the relevance of the subsidiary facts in this case are the same and the sole significance of the defendant's evidence and or testimony concerning the "so-called" "affirmative defense", is to create a reasonable doubt on the existence of an element of the offense, by the preponderance of evidence to counteract an unconstitutional presumption.

As stated in United States v. Clemens, 843 F2d. 741, 752(3rd.Cir.1988):

"Justly put, merely labeling something as "affirmative defense", "a statutory procedure", and we can add to this, "an indictment or criminal complaint", does not mean that such constructed contrary to the laws of Due Process are constitutional. It must appear that the aforementioned, as related thereto, do [n]ot [n]egate any element of the crime, and we can add to this, shift the burden of persuasion, as the indictments and or criminal complaints of this nation do", ID W. Lafave & Scott Substantive Criminal Law § 1.8 at 75(1986). see generally Sandstrom v. Montana supra. A defendant may be required to bear the burden of persuasion with respect to defenses such as showing justification or excuse, but not with respect to those that negate guilt by canceling out the existence of some required element of the crime, nor should his presumption of innocence be deprived, W. Lafave & Scott supra. at 71, 75. Accordingly, accessing the constitutionality of an "affirmative defense", "a statutory procedure", and we can add to this, "an indictment or criminal complaint", etc., of any kind related thereto, **even by terms of that which the statute requires, is defined in terms of fact so central to the nature of the offense that in effect, the prosecution has been freed of the burden of establishing**



each constituent element of the crime charged. If the indictments and criminal complaints around the nation already predetermine in advance of any proceeding that you "did" with malice, aforethought, intentionally, willfully, etc., the state has been relieved of proving it, see ID at 2.13 at 233. Also see Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923). By the structural constitutional error and or defect, its already given and no longer by the charge and or defect, have to be established. In order to contribute some significant burden, a rational trial juror's only option, and we can add, the defendant's only option, is to conclude that the indictments or criminal complaints are true, or are to be considered as true, because the language and or charge reflects such in depriving one of the presumption of innocence. It is clear from Martin v. Ohio, 480 U.S. 228, 107 S.Ct. 1098, 94 L.Ed.2d. 267(1987) and Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923), that this is constitutionally impermissible.

Perhaps the 50 states of this nation would contend, that such is merely the conveying of information from witnesses 1, 2, 3 or more possibly, and upon this testimony such an oath is based. Even if one would adopt this premise still the indictments and criminal complaints of this nation "[c]annot" be deemed as that which is founded upon "[c]ertain [k]nowledge" (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENTIA), but it is founded upon the basis of hearsay and or secondhand knowledge. Notwithstanding, it has been recorded throughout history since the earliest stages of civilization that people do bear false witness in groups and in numbers depending upon their motivation. For example, you have an unjust King and Queen, Ahab and Jezebel, coercing several people to lie in a covert plot to steal the land of a righteous man in I Kings chapter 21. In the Book of Micah, a man's closest members of his household bear false witness against a Prophet Of God. In Christianity you have officials who were in power, Saducees, Scribes and Pharisees, incite and pay groups of people in the Gospel(s) Of Matthew, Mark, Luke and John to bear false witness against the Messiah. In Islamic Prophecy the Prophet Muhammad(PBUH), in Sahih Al Bakhari Vol.

9 Hadith No. 7086, prophesied how in these times there will hardly be a trustworthy person left in the world. The Spanish Inquisition of 1478 and The English Inquisition of 1518 found people unjustly burned at the stake and or hanged, due to unjust accusations by people in numbers for false claims of heresy. Adolph Hitler, and a group of people called "Nazis", brought numerous unjust claims against the Jews, falsely rooted in lies, in the holocaust of the 1930's. The Salem Witch Trials in the 17th. century, in Massachusett, found numerous men, women and children, burnt at the stake for false claims of practicing witchcraft, brought by groups of people in numbers ("The witch bitches as they were called). The Ku Klux Klan, throughout the South, brought unjust accusation against the innocent Post Civil War Era, and in the 1930's through 1960's. Judaism, Christianity, Islam, American History, European History, World History, "[a]ll" are filled with unspeakable atrocities originating in lies, perpetrated by people in numbers and in groups against the innocent. Our constitutional forefathers in their wisdom and jurisprudence saw this repeated pattern that like a poisonous, venomous snake, rose its head from the soils of society to fatally bite the commonwealth. and in their wisdom they set up "[b]ulwarks", "[b]arriers" of protection for the American citizenry, all who are held by us, all who enter our borders or territories, that under no circumstance, outside of an individual committing an act of treason, were to be torn down, because people in groups and in numbers do bring false accusation against the innocent.

Referring back to the third situation here as illustrated by State v. Breakiron, 108 N.J. 591, 532 A.2d. 199(1987) and State v. Zola, 112 N.J. 384, 548 A.2d. 1022(1988), in inferring the state of mind element, whether the prerequisite intent and or purpose was present at the time of the crime. The Grand Jury, in the form of the indictments and or criminal complaints around the nation, "[c]annot" say what was in a person's mind, nor do they have first hand knowledge of the facts related to the incident charged. They do not have "[c]ertain [k]nowledge". (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENCTIA). Thus, again the

very language and or structural constitutional error and or defect, and or charge of the indictment(s) and criminal complaints around the nation predetermine in advance before trial or plea an individual is guilty of the state of mind element(s) and forces a defendant, due to the shifting of the burden of persuasion, to prove his innocence by the preponderance of evidence and or testimony in violation of Due Process Law. This creates an instant double jeopardy issue showing that this is not a harmless error, Moore v. Dempsey supra.; State v. Gordon, 588 S.E.2d. 105, 356 S.C. 143(S.C.2003); State v. Perry, 595 S.E.2d. 883, 358 S.C. 633(S.C.2004).

In regard to a charge, and we can add to this, a charge in an indictment or criminal complaint, that constitutes a constitutionally impermissible charge/instruction, or contradicts the presumption of being innocent until proven guilty, even with a later instruction "BOILERPLATE" of being innocent until proven guilty by the courts or stating that the indictments or criminal complaints are not evidence by the courts, the [p]roblem is [n]ot [c]lured where there exist a reasonable likelihood that the jurors, and we can add in this case, that the defendant, may have considered the charge, and we can add to this, the charge in the indictments or criminal complaints around the nation as conveying an unconstitutional message in both state and federal prosecutions, Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d. 344(1983).

Such presumptions intrinsically and explicitly established snatch the blind fold off of "LADY JUSTICE" herself, and now, not only is she no longer impartial, unbiased or fair; but now she says because its you, because its this particular crime or alleged action as opposed to another, because you are charged in this particular state as opposed to another, because you fall under this particular statute as opposed to another, you are no longer innocent until proven guilty and your constitutional rights are hereby revoked. Such presumptions destroy



the very metal of the shield of protection placed around the American citizenry, those who are held by us, and those who enter our borders or territories, and abolishes the very core integrity of the Due Process Clause our constitutional forefathers have died and shed their best blood to establish and preserve. The greater aspect of evil related to such action by the criminal complaints and or indictments around the entire nation, far and extremely outweigh the greater aspect of good that it sought to establish related thereto. If we as responsible citizens of the commonwealth allow individuals who are placed in positions of legislative authority, whether it be at town, city, state or federal level, whether it be intentional or unintentional, to initiate or place into effect legislation by statute or any other means, that deteriorate the very pillars of that which our Constitution was founded upon, then we no longer establish ourselves as a true democracy, where the good of the many outweigh the good of the few. We step more into the realm of monarchy, and set ourselves on a path of Constitutional destruction detrimental to the commonwealth that can only lead to anarchy creating the similarities that manifested themselves in the aforementioned Nazi Occupation, Salem Witch Trials, The Spanish Inquisition and the like. Where trials and criminal proceedings became an arbitrary action, an abusive and recreant process, fraudulently designed to rob the commonwealth of their God given liberty. This we cannot do!!! It is our courts, our Supreme Courts, and our Federal District Courts' inherent responsibility as guardians of the faith and integrity of our system of jurisprudence to protect the commonwealth from such a dark demise. The Presuppositions set forth by our constitutional forefathers "E PLURIBUS UNUM", were one nation, under God, indivisible, with liberty and justice "FOR ALL", "FOR ALL", and was not to be taken away simply because an individual fell victim to accusation, or fell under a particular statute of law as compared to another, or was charged in one particular state as opposed to another. The only exception to this sacred standard and trust was to be if an individual committed acts of High Treason against our government itself, which in some particularity is what the indictments and criminal complaint documents

around the entire nation reflect, because they innately swear allegiance to that which sets itself at war, enmity and variance to the constitutional rights of all citizens of the commonwealth and all others who are subject to them. Therefore, they are a form of treason. The indictments and criminal complaints around the entire nation betray our Constitution. Henceforth they "[m]ust" be abolished and or reformed. They are intense espionage and diabolical sabotage and stands at war with the rights of this nation's commonwealth in violation of Due Process. They covertly with corrosive results steal away stealthly the fundamental truths by which the Constitution was founded upon and throw a monkey wrench into the mechanical works of justice and fairness by detonating explosive results that detrimentally tear down the bulwarks that were forthrightly established to protect the commonwealth against unjust prosecution. By the defect, language and or charge contained within the indictments and criminal complaint documents around the entire nation you have already surmised and ascertained without the total weight of evidence set forth before a jury an individual's guilt in violation of state and federal laws also pertaining to the U.S. Constitution, inferring the state of mind element(s), negating the burden of proof that by law was to be consistently bore by the prosecution, Francis v. Franklin supra.; Moore v. Dempsey supra.

THE COURT HOLDS that a charge, and we can add to this, a charge in an indictment or criminal complaint, which impart to the jury, and we can add in this case, the defendant, an unconstitutional understanding of the allegations, even more specific, the burden of persuasion, and the presumption of innocence, creates a reasonable likelihood that the jurors understood the charge, and we can add, that the defendant understood the charge, in the criminal complaints and indictments, in an unconstitutional manner unless other language in the complaints or indictments explain the infirm language sufficiently to eliminate this possibility. If such a reasonable possibility, "we have no way of knowing that [t]he defendant was [n]ot [c]onvicted,



and we can add, gave his guilty plea, on the basis of the unconstitutional charge, specifically the charge embodied within the indictments and complaints", Sandstrom, 442 U.S. at 526(99 S.Ct. at 2460). For this reason it has been well settled since Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 117(1931) that where there exist a reasonable likelihood and or possibility that the jury, and we can add, the defendant, relied upon an unconstitutional understanding of the law in reaching a verdict, and we can add, in giving his guilty plea, that verdict and or guilty plea must be set aside, Id. at 323n. 7, 105 S.Ct. at 1976 n. 7. We conclude that there is more than a reasonable likelihood that the jurors, and we can add, defendant(s), received an unconstitutional understanding of the situation pertaining to their tasks.

This is no way a mischaracterization of the law pertaining to the cases cited here. Even though some of the cases cited dealt with conclusive presumption(s) given by Judges in charges that have the effect of shifting the burden of persuasion to the defendant regarding the crucial elements, in this case we are dealing with a similar charge except this time its given by the Grand Jury in the form of an indictment or criminal complaint, that has the effect of shifting the burden of persuasion to the defendant regarding the crucial elements. The subsidiary facts related to the shifting of the burden of persuasion to the defendant regarding the crucial elements and the inferring the state of mind element(s) to the offenses are the same in these matters. Due to the defect in the construction of the indictments and criminal complaints nationally, the defendants' presumption of innocence is clearly taken away, also guilt of the offense(s) is illegally predetermined in advance by the Grand Jury who do not have the power by state or federal law or state or federal constitution to convict, due to the language and or charge contained therein, and the indictments and or criminal complaints nationally serve to negate the burden of proof.

This creates a structural constitutional error and or defect. Structural Constitutional errors and or defects compro-

mise the entire trial and or plea hearing proceedings. It requires reversal and or vacating as it involves deprivation of constitutional protection so basic, and so fundamental, that in its absence criminal trial and or plea proceedings "[c]annot" reliably serve its function as a vehicle for determination of guilt or innocence, and "[n]o" criminal punishment may be deemed or regarded as fundamentally fair, Robinson v. Arvonio, 27 F3d. 877 rehearing denied, cert. granted vacated 115 S.Ct. 1247, 513 U.S. 1186, 131 L.Ed.2d. 129. Such a structural constitutional error and or defect of this magnitude is "[n]ot" subject to the harmless error analysis. Structural constitutional errors and or defects not subject to the harmless error analysis are defects and or errors affecting framework, in which trial and or plea proceedings "[c]annot" reliably serve its function as a vehicle for determining guilt or innocence, involving deprivation of constitutional protection so basic, and so fundamental, that in its absence no trial or plea can be deemed reliable, nor any punishment fundamentally fair, Vines v. United States, 28 F3d. 1123 crim. law 1163(1), 1165(1). It is perspicuous that such a defect and or error does affect the framework of the proceedings, because the court(s) must constructively amend the indictments and criminal complaints around the nation on the "MENS REA" crucial elements of the offense(s) to correct, rather, in an attempt to correct the structural constitutional error and or defect by giving a Judge's charge. The boundaries cited by law are clear and certain even as cited by Winship Rule and Humanik v. Beyers supra.. Any conclusive presumption, of any kind, that's placed before a jury to obtain a conviction, or we can add, placed before a defendant to manipulate, mentally and or psychologically coerce, and or force the defendant into an unfreely, unknowingly, involuntarily or unintelligently given guilty plea, that determines in advance a person's guilt, that has the effect of shifting the burden of persuasion to the defendant, violates Due Process and is grounds for an acquittal, even if its embodied within an indictment or criminal complaint, Moore v. Dempsey supra.. Clearly there is nothing cited by law that would mandate that these strict rules of court, and requirements of Due Process law, be solely limited to a Judge's charge.

They apply to any charge that's placed before a jury to obtain a conviction, or a defendant in order to manipulate, mentally and or psychologically coerce, and or force him into a guilty plea. Such a heavy weight of shifting the burden of persuasion, and the taking away of one's presumption of innocence, by the indictments and criminal complaints of this entire nation, have been unjustly and unconstitutionally used against defendants in this nation, in this new Jim Crow and racial caste system, to mentally and or psychologically coerce, and or force them into plea bargains, and at their trials for far too long.

To elaborate on or bolster this proposition, if the honorable court would please take notice of the warrant(s) pertaining to the offense(s), as it is for every warrant in the nation. In the body of the warrant for most and or all states it reads:

"I further state that there is probable cause to believe that the defendant named above did etc.\*\*\*\*".

This is the language that explains the constitutionally infirm language and or charge. This is the language that aids in the maintaining of the presumption of innocence, and also which confirms the specific job of the Grand Jury. The job of the Grand Jury is two prong. One--is to determine and ensure that some state and or federal official is not acting arbitrarily in bringing accusation against a citizen of this country. The second---is to determine whether or not there is sufficient probable cause to bring a defendant to trial, Stirone v. United States, 361 U.S. 212(1960); Ex Parte Bain, 121 U.S. 1 (1887); Gaither v. United States, 413 F2d. 1061(D.C.Cir.1969); The (50) States Constitutions; United States v. Abrams, 539 F.Supp. 378, 384(S.D.N.Y.1982); United States v. Calandra, 414 U.S. 338, 342-343, 98 S.Ct. 613, 617, 38 L.Ed.2d. 561, 568(1974); Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d. 626(1972). To determine guilt of the offense(s), to include the "MENS REA" on the crucial elements of dispute, is a violation of the Grand Jury's shielding function. A Grand Jury merely investigates and reports. They are not authorized by Federal or State Consti-

tution, nor Federal and or State laws, to convict, Jenkins v. McKeithen, 395 U.S. at 430, 89 S.Ct. at 1853, 32 L.Ed.2d. at 422(1969). The powers of the Grand Jury are not unlimited, and are subject to the supervisory of a judge. Grand juries may individually or collectively enjoy protections assertable in suits for defamation, but the privilege is not applicable to bar the petition of an appellant to remove language from the indictments and criminal complaints around the entire nation, Compare Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d. 288, 294-95(1967). When the Grand Jury goes beyond the scope of the power and authority given to them, it is indeed a violation of Due Process, United States v. Chadwick, CA9 (Nev.) 1977, 556 F2d. 450; United States v. Briggs, 514 F2d 794(5th.Cir.1975). Yet, by the Structural Constitutional error, defect, language and or charge of the indictments and criminal complaints, both State and Federal around the nation, the Grand Jury adjudicated not only guilt of the offense(s) charged, but also the "MENS REA" related thereto. If such or similar language as aforementioned, is not embodied within the body of the charging instrument(s), then the indictments and or criminal complaints are not constitutionally sound and they violate Due Process. The evil that has developed from this, far and extremely out weigh the original good it intended.

Any indictment or criminal complaint, whether it be in the smallest of detail, whether it be in the smallest of towns, or the largest of cities, whether it be within the boundaries of any county or state, whether it be intentional or unintentional, that's constructed in a fashion where it automatically shift the burden of persuasion from the State or Federal government to the defendant, takes away one's presumption of innocence, and by the language predetermines in advance the outcome of the proceedings, giving off an unconstitutional impression and understanding of his or her rights by the laws of Due Process, contrary to the U.S. Constitution "[s]hall [n]ot [s]tand". They violate the appellant's rights under the 4th., 5th., 6th., 13th., 14th., 15th. amendments and seek to unjustly deprive one of life, liberty and property. It is for this reason that the New Jersey and Maine Supreme Courts overthrew such similar actions

in those States, and on this same premise the same should be done for every state within this nation now. And yes, under these circumstances, it may be far more difficult for the prosecution to obtain said conviction or guilty plea. But it is far better that they endure the difficulty than the greater degree and or likelihood, for innocent men and women to be subject to an erroneous conviction and or guilty plea, that is not freely, knowingly, voluntarily or intelligently given, because it prejudice the individuals subjected to these criminal indictments and or complaints within this nation. Prosecutors must be made to know and understand, that such is "THE NATURE OF THE BEAST". The burden is theirs and we are to be presumed innocent in every detail until fairly and justly convicted. This goes with the professional territory at hand.

The following statement in relevant part was made by the court in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194(1963). It pertained to the suppression of evidence favorable to the defense, but the subsidiary facts related to Due Process violation have a bearing on these matters here. It has been slightly modified to paint a more true picture of this issue:

"WE HOLD, that such presumptions violate Due Process irrespective of the good faith or bad faith of the prosecution. The principle here is not to punish society for such Due Process violations, or the misdeeds of the prosecuting body, but the avoidance of an unfair trial and or plea hearing to the accused. Society not only wins when the guilty are convicted, but when criminal trials and or plea hearings are fair; Our system of administration of justice suffers when its citizens are treated unfairly in the courts. An inscription on the wall of The Department Of Justice states the proposition candidly for the federal Domain: The United States wins its point whenever justice is done its citizens in the courts", Brady v. Maryland supra.; citing Mooney v. Holohan, 294 U.S. 103.

The appellant humbly quotes that which is stated in United



States v. Walsh, 194 F3d. 37(2nd.Cir.1999) and United States v. Pirro, 212 F3d. 89(2nd.Cir.2000):

"The indictments do more than simply track the language of 18 U.S.C. § 242, which provides penalties for any person, who under color of any state or federal law, statute, ordinance, regulation, custom, and we can add to this, "an indictment or criminal complaint", willfully subjects any person,...to the deprivation of "[a]ny", "[a]ny", right, privileges, or immunities secured and protected by the U.S. Constitution and Laws of the United States\*\*\*", and this was done in violation of the appellant's rights to Equal Protection of the laws, Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031(1945); State v. Middleton, 207 S.C. 473, 36 S.E.2d. 742(1946); Eslinger v. Thompson, 340 F.Supp. 886(DSC.1972) Aff'd 476 F2d. 225(4th.Cir.1973); Mc Laughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d. 222(1964); Dubinka v. Judges Of Superior Court Of The State Of Los Angeles, 23 F3d. 218; Jones v. Arkansas, 929 F2d. 275; Hicks v. Oklahoma, 447 U.S. 343, 346, 100 S.Ct. 2227, 2229, 65 L.Ed.2d. 175(1980); Dozier v. Loop College, City Of Chicago, 776 F2d 752; Lugar v. Edmondson Oil Co., 457 U.S. 922, 928-30, 102 S.Ct. 2744, 2749-50, 73 L.Ed.2d. 482(1982).

By the structural constitutional error, defect, language, and or charge contained within the indictments and criminal complaints around the entire nation, the defendant(s) most basic and most fundamental right to be viewed as innocent until proven guilty, and to have the state bear the burden of production on the critical elements of dispute has been clearly taken away. This is a serious price to pay for the sake of obtaining a conviction.

"The teaching of these cases is that "[a]ny", "[a]ny", presumption, even if its not conclusive, even if its embodied within the charge of an indictment or criminal complaint, that placed before a jury to obtain a conviction, and or defendant to coerce him or her into a guilty plea, that has the effect

of shifting the burden of persuasion to the defendant on any element of the crime charged, or deprives him of the presumption of innocence, predetermining in advance the outcome of the proceedings, violates Due Process and is grounds for an acquittal", IN Re Winship supra.; Humanik v. Beyers supra.; Moore v. Dempsey supra.; It involves deprivation of constitutional protection so basic and so fundamental that in its absence criminal trials and or plea proceedings "[c]annot" reliably serve its function as a vehicle for the determination of guilt or innocence and no criminal punishment may be deemed or regarded as fundamentally fair because the structural constitutional error and or defect affect the framework of the proceedings and "[c]annot" be viewed as harmless, Robinson v. Arvonio supra.; Vines v. United States supra..

The actions of the conspiring agents, both state and federal, produce fraud upon the court also in violation of 18 U.S.C. §§ 241 and 242. Fraud will vitiate any legal transaction which include criminal trials and or plea hearing where the indictments and proceedings are a form of contract. And any asserted title to property in the form of this modern day slavery by this broken judicial system, this so-called "debt to society" founded on it is void. The U.S. Constitution does not confer power or jurisdiction upon any state or federal government or court within this nation to establish or legalize modern day slavery which essentially is what the government has done here, both state and federal as is defined in the definition for slavery under the C.A.T. Treaty ratified by Congress. Although public documents such as, and or even indictments or criminal complaints, which themselves are a form of contract, which embellish this modern day slavery and property of the states or federal government by criminal conviction are deemed prima facie evidence of facts which they purport to state, they are open to be impunged for fraud and a clear challenge to the courts nationally "[p]ower" to establish or legalize modern day slavery, The Conception, Brunn, Coll. C. 497, 2 Wheeler CC 597, 6 F. Cas. 359 No. 3137(C.C.D. S.C. 1819); The La Conception, 19 U.S. 235, 1821 WL 2188, 5 L.Ed. 249, 6 Wheat, 235 U.S.S.C. (Mar. 8, 1821); The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024,

2006 A.M.C. 2955, 10 L.Ed. 826, U.S. Conn., January 1841; Chewing v. Ford Motor Company, 345 S.C. 72, 579 S.E.2d. 605(S.C.2003); Appling v. State Farm Mut. Auto Ins. Co., 340 F3d. 769, 780 (9th.Cir.2003); King v. First American Investigation Inc., 287 F3d. 91, 95(2nd.Cir.2002) cert. denied 537 U.S. 960, 123 S.Ct. 393, 154 L.Ed.2d. 314(2002); Brailsford, 669 S.E.2d. 342, 380 S.C. 433; Callon Petroleum Co. v. Frontier Ins. Co., 351 F3d. 204, 208(5th.Cir.2003). This fraud upon the court is endemic and compromises the system itself and institution set up to protect the commonwealth from unjust prosecution-corrupting, irreparably, the entire judicial system as a whole warranting it be abolished and or reformed. The Grand Jury does not have the power to predetermine in advance the outcome of the proceedings and must refrain itself from making any opinion as to guilt or innocence. How much more egregious is it if they swear upon their oath a person's guilt or innocence before they have a trial or give a guilty plea? This "[c]annot" be deemed as a harmless error, United States v. Direct Sales Co., 40 F.Supp.917 D.C.S.C.(1941); United States v. Atlantic Commission Co., 45 F.Supp. 187 D.C.N.C.(1942); State v. Boyd, 2 Hill (S.C.) 288, 1834 WL 1573 S.C. App. L. & Esq. 1834; State v. Bramlett, 166 S.C. 323, 164 S.E. 873(S.C.1932); Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 U.S. Wash.(1962); State v. Tollin, 352 S.C. 235, 573 S.E.2d. 812(S.C.App.2002); Byers v. Reynolds, 2011 WL 7063638, \* 8 (DSC.2011); United States v. Jefferson, 546 F3d. 300 CA4 (Va.2008); In Re: Grand Jury Subpoena John Doe, No. 05GJ1318, 584 F3d. 175 CA4 (Va.2009); In Re: Grand Jury Subpoena (T-112), 597 F3d. 189 CA4 (Va.2010).

We are arguing violations of the Anti-Peonage Act of The 13th. Amendment. Under this provision of law no time bar, or statute of limitations, or (3) strike provision, or successive bar, which all are statute of limitations can hold a man in Peonage.

The 13th. Amendment Provides---"Neither slavery nor involuntary servitude, except as punishment for crimes where of the party is "duly" (emphasis added) convicted, shall exist



within the United States, or any place subject to their jurisdiction".

The courts have repeatedly held that by the language of the 13th. Amendment, the 13th. Amendment does not apply to a person serving a sentence for a criminal conviction, Newell, 563 F2d. 123; WL 1415149(2012); Cox v. U.S. Attorney General, F.Supp.2d, 2012 WL 1570110 DSC April 10, 2012; Gaddy v. South Carolina Supreme Court's District Of Columbia, S.C., 2013 WL 6150715 DSC November 21, 2013; Flood v. News & Courier Co., 71 S.C. 112, 50 S.E. 637(1905).

The courts in these previous cited cases abused their discretion in their determination because they are controlled by an error of law in their interpretation and or they failed to address a critical part of the language written in the 13th. Amendment.

An abuse of discretion occurs when the court(s) are controlled by an error of law, or when the order bases upon findings of fact is without evidentiary support or fact, Sharpes v. Sharpes, 535 S.E.2d. 913, 342 S.C. 71(2000).

None of the aforementioned legal authorities ever addressed whether or not the issue of slavery and violations of the 13th. Amendment have standing if the convicted person is not "duly" (emphasis added) convicted. Since none of the afore citings, or any similar, addressed the issue of whether the 13th. Amendment applies in cases where the party is [n]ot "duly" (emphasis added) convicted. Which is indisputably in the language of the 13th. Amendment. Using or applying any of those citings, or any similar, would be misplaced if the citing does not address the issue of whether slavery applies or have standing when a person is [n]ot "duly" (emphasis added) convicted. See S.C. Code Ann § 17-25-10.

"Duly---is defined, as is 'right' and 'fitting'; 'properly'; in 'accordance with legal requirements'".

BY THE LEGAL ISSUES PRESENTED IN THIS DOCUMENT AND ARGUED WITHIN THIS CASE. THE CONVICTION IS NOT RIGHT. IT IS NOT FITTING. THE CONVICTION IS NOT PROPER, NOR IS IT IN ACCORDANCE TO THE LEGAL REQUIREMENTS OF DUE PROCESS LAW. IT IS NOT CONSTITUTIONAL WHICH VOIDS THE GENERAL SESSIONS COURT'S JURISDICTION. THUS, I AM NOT "DULY" (EMPHASIS ADDED) CONVICTED, AND VIA THE FRAUD, THE 13TH. AMENDMENT DOES HAVE STANDING. SEE S.C. CODE ANN. § 17-25-10. THE SENTENCES AND CONVICTIONS AROUND THE NATION, TO INCLUDE THE APPLICANT'S, MUST BE VACATED. I SEEK THAT THE STATE APPOINT AN ATTORNEY AND THAT ATTORNEY SEEK CLASS ACTION CERTIFICATION UNDER ARTICLE III SECTION 2 OF THE U.S. CONSTITUTION AND FEDERAL RULE 23 ARGUING PREEMPTION.

I GIVE THE COURT OF COMMON PLEAS JUDICIAL NOTICE THAT THIS LEAD ISSUE OF RELIGIOUS PROPHECY ARGUED WITHIN THIS CASE WHERE THE INDICTMENTS BY THEIR LANGUAGE PREDETERMINED IN ADVANCE THE OUTCOME OF THE PROCEEDINGS, CREATING AN INSTANT DOUBLE JEOPARDY ISSUE, SHIFTING THE BURDEN OF PERSUASION UPON THE APPLICANT VIA THE MENS REA ELEMENTS OF THE OFFENSE AND INDISPUTABLY TAKING AWAY THE PRESUMPTION OF INNOCENCE. THE UNITED STATES SUPREME COURT HAS RECENTLY GAVE JUDICIAL REVIEW ON AN ESSENTIAL PART OF THIS ISSUE AND ARGUMENT THAT VOIDS THE COURT'S JURISDICTION DUE TO UNCONSTITUTIONAL ACTION UNDER THE CASE OF NELSON v. COLORADO, 137 S.Ct. 1249, 197 L.Ed.2d. 611, 85 U.S.L.W. 4205 (U.S.2017). THE U.S. SUPREME COURT DETERMINED THAT THE PRESUMPTION OF INNOCENCE LIES AT THE FOUNDATION OF THE WHOLE CRIMINAL PROCEEDING MAKING IT A "STRUCTURAL ERROR" NOT SUBJECT TO THE HARMLESS ERROR DOCTRINE. THE U.S. SUPREME COURT FURTHER DETERMINED THE PRESUMPTION OF INNOCENCE IS A PRINCIPLE SO ROOTED IN THE TRADITIONS AND CONSCIENCE OF THE PEOPLE AS TO BE FUNDAMENTAL AND TO DEPRIVE SUCH AS THE INDICTMENTS DO, IS A VIOLATION OF DUE PROCESS, IS UNCONSTITUTIONAL, WHICH VOIDS THE GENERAL SESSIONS COURT'S JURISDICTION. NORMALLY, THIS WOULD BE AN AUTOMATIC REVERSIBLE ERROR. BUT DUE TO THE ADDED COMPOUNDING FACTORS SUCH AS THE GRAND JURY GOING BEYOND THE SCOPE OF THE POWER AND AUTHORITY GIVEN TO THEM AND BY THE LANGUAGE CONVICTING US, SUBJECTING US TO A FORM OF MODERN DAY SLAVERY, TAKING AWAY OUR RIGHT TO VOTE IN VIOLATION OF THE 15TH. AMENDMENT VIA EGREGIOUS

ACTS OF FRAUD UPON THE COURT BY THESE VIOLATIONS. THEN YOU ADD THE ADDITIONAL COMPOUNDING FACTOR(S) OF CONSTRUCTIVELY AMENDING THE INDICTMENTS ON THE MENS REA AND OTHER ESSENTIAL ELEMENTS, EVEN BY ATTEMPTED INSUFFICIENT CURATIVE INSTRUCTION "BOILERPLATE" . THE AMOUNT OF PREJUDICE AND DUE PROCESS VIOLATION BECOMES SO EGREGIOUS IT REQUIRES THAT THE SENTENCE AND CONVICTION BE VACATED. A REVERSIBLE CONVICTION IS REVERSIBLE REGARDLESS OF THE REASON, AND AN INVALID CONVICTION IS NO CONVICTION AT ALL WHICH ADD TO PROVING THAT MONTGOMERY v. LOUISIANA, 136 S.Ct. 718, 193 L.Ed.2d. 599 WAS CORRECT ABOUT UNCONSTITUTIONAL ACTION VOIDING JURISDICTION EVEN IN CRIMINAL CASES, UNITED STATES v. LIBOVS, 858 F3d. 64 (2nd.cir.2017); CITY OF LEBANNON v. MILBURN, 286 Or. App. 212, 398 P.3d. 486(2017). TO ENSURE THAT THE COURT OF COMMON PLEAS DOES NOT ABUSE ITS DISCRETION AND MISREPRESENT THE FACTS IN ACTS OF FRAUD UPON THE COURT AND DETERMINE THAT THE U.S. SUPREME COURT CASE ONLY APPLY TO CASES WHEN A CONVICTION HAS BEEN VACATED. ALL ONE WOULD HAVE TO DO IS REVIEW SUBSEQUENT CASES THAT ADDRESSED THIS MATTER AND IT WOULD BE PERSPICUOUS THAT THE U.S. SUPREME COURT'S DETERMINATION APPLIES TO THE STRUCTURAL FOUNDATION OF ALL CRIMINAL PROCEEDINGS FROM THE POINT OF ARREST UNTIL HE PLEAS OR A JURY DETERMINES GUILT, BEING A FUNDAMENTAL RIGHT, AND IT CANNOT BE STRIPPED BEFORE THAT PLEA OR CONVICTION OCCURS WHICH THE INDICTMENTS BY THEIR LANGUAGE DO. SEE BETTERMAN v. MONTANA, 136 S.Ct. 1609, 194 L.Ed.2d. 723 (U.S.2016); STATE v. THOMPSON, 2018 WL 1702406, \* 6+ W.Va.; MARTIN v. UNITED STATES, 2018 WL 1626578, \* 2, D.Md.; DIXON v. YORDY, 2018 WL 1526006, \* 5 D.IDAHO.

BY THE AFOREMENTIONED ISSUE, TO INCLUDE ALL OTHERS EMBELLISHED WITHIN THIS DOCUMENT. THE APPLICANT'S DUE PROCESS MATTERS ARE RIDDLED WITH STRUCTURAL CONSTITUTIONAL ERRORS THAT VOID THE COURTS INVOLVED JURISDICTION. BEFORE A CONSTITUTIONAL STRUCTURAL ERROR CAN BE DEEMED HARMLESS. THE COURT MUST BE ABLE TO DECLARE IT WAS HARMLESS BEYOND A REASONABLE DOUBT WHICH BY THE FRAUD AND OTHER CLAIMS MADE THE COURT CANNOT DO. THUS, THE SENTENCE AND CONVICTION MUST BE VACATED WHICH I SEEK, ALBERTO GONZALEZ FIGUEROA JR., PETITIONER v. WARREN L. MONTGOMERY, U.S.,

2019 WL 914128 (S.D.Cali.2019); MURPHY v. WINN, 2019 WL 586095 (D.C.Mich.2019); PEOPLE v. CALIAHAKI, 2018 WL 5084834, \* 6+ GUAM TERR.

**ISSUE NUMBER 2:**

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 4TH., 5TH., 6TH., 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV § 2, AND HIS DUE PROCESS RIGHTS VIOLATED, BY THE TRIAL COURT AND OR PROSECUTION, ENGAGING IN ACTS OF FRAUD UPON THE COURT AND SHAM LEGAL PROCESS, BY STAMPING THE INDICTMENTS "TRUE BILLED", ALLEGING A PROPER RETURN BY THE GRAND JURY, WHEN NO SUCH FAIR AND PROPER REVIEW BY THE GRAND JURY EVER OCCURRED?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOSS v. AETNA LIFE INS. CO. SUPRA.; STATE v. BROAD RIVER POWER CO. SUPRA.; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPLICANT DID NOT OBJECT AT THE PROCEEDINGS, (BLACK LAW DICTIONARY 8TH. EDITION).

S.C. CODE ANN § 17-19-10 PROVIDES:

"ALL OFFENSES SHALL BE PROSECUTED BY GRAND JURY IN-

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DICTION(S). THUS, NO PERSON SHALL BE HELD TO ANSWER IN ANY COURT FOR AN ALLEGED CRIME OR OFFENSE UNLESS UPON INDICTMENT BY A GRAND JURY".

S.C. CODE ANN § 17-19-20 PROVIDES:

"EVERY INDICTMENT SHALL BE DEEMED AND JUDGED AS GOOD AND SUFFICIENT IN LAW, WHICH IN ADDITION AS TO ALLEGATIONS AS TO TIME AND PLACE AS REQUIRED BY LAW, CHARGES THE CLAIM SUBSTANTIALLY IN THE LANGUAGE OF THE COMMON LAW OF THE STATUTE, PROHIBITING THE CRIME AND SO PLAINLY THAT THE NATURE OF THE OFFENSE CHARGED MAY BE EASILY UNDERSTOOD\*\*\*".

BY THIS ISSUE, THERE IS NO VALID INDICTMENT. THEREFORE, THE EXISTING INDICTMENTS CANNOT BE DEEMED OR JUDGED AS GOOD AND SUFFICIENT. ON AUGUST 9, 2018 NUMEROUS DEFENSE ATTORNEYS WITHIN THE COUNTY OF YORK MOTIONED BEFORE THE COURT OF GENERAL SESSIONS TO QUASH THE INDICTMENTS IN OVER (70) PENDING CRIMINAL CASES. THIS WAS SOUGHT BECAUSE IT WAS DISCOVERED THAT THE PROSECUTOR FOR THE STATE OF SOUTH CAROLINA, AS WELL AS THE COUNTY OF YORK, WAS ENGAGING IN SHAM LEGAL PROCESS, PRIVY BY THE GENERAL SESSIONS COURT, IN ACTS OF FRAUD UPON THE COURT, WHERE APPROXIMATELY 300 INDIVIDUAL CRIMINAL CASES WERE ALLEGEDLY "TRUE BILLED", REVIEWED AND INVESTIGATED BY THE YORK COUNTY GRAND JURY WHERE THE PROCESS FOR EACH INDIVIDUAL CASE WAS CONCLUDED ON AN AVERAGE OF .38 SECONDS EACH. WE ALL KNOW THAT THIS IS IMPOSSIBLE. THE SAME THING HAPPENED WITHIN THE APPLICANT'S CASE. I WANT THE GRAND JURY MINUTES FROM MY CASE THAT WERE ESTABLISHED DURING THE TIME THE APPLICANT'S INDICTMENT(S) ALLEGEDLY PASSED BEFORE THE YORK COUNTY GRAND JURY. WITHOUT AN INDICTMENT THAT WAS PROPERLY RETURNED BY A GRAND JURY, WHICH IS A "[J]URISDICTIONAL [P]REREQUISITE" UNDER THE STATE AND FEDERAL CONSTITUTION, YOUR JURISDICTION IS MADE VOID. THIS IS A CONSISTENT PATTERN OF FRAUD AND DECEPTION DONE BY YORK COUNTY AND ITS PROSECUTORS. THIS ACTION ON THE PART OF THE STATE IS WITHOUT A DOUBT UNCONSTITUTIONAL AND VOID THE JURISDICTION OF THE GENERAL SESSIONS COURT FOR FRAUD AND DUE PROCESS VIOLATION, U.S. v. \$41,320 U.S. CURRENCY, 9 F.Supp.3d. 582, 2014 WL 126640; WHITE v. MANIS, 2014

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WL 1513280(DSC.2014); FOX EX REL FOX v. ELK RUN COAL CO. INC., 739 F3d. 131 (4th.Cir.2014); BLUE SKY TRAVEL AND TOURS, LLC. v. AL TAYYAR,--Fed. Appx'--, 2015 WL 1451636 CA4 (Va.2015); BARLOW v. COLGATE PALMOLIVE CO., 772 F3d. 1001, 90 Fed. R. Srrv. 3d. 85 CA4 (Md.2014); UNITED STATES v. CONRAD, 675 Fed. Appx' 263, 265 CA4 (N.C.2017); 24 SENATORIAL DIST. REPUBLICAN COMMITTEE v. ALCORN, 820 F3d. 624 (4th.Cir.2016); VAETH v. BOARD OF TRUSTEE F.Supp.3d., 2016 WL 775386(D.C.Md.2016).

I AM RESPECTFULLY SEEKING THE GRAND JURY MINUTES IN REGARD TO MY CASE TO ADDRESS THIS ISSUE DUE TO WHAT HAS NOW OCCURRED BEFORE THE YORK COUNTY COURT OF GENERAL SESSIONS THE WEEK OF AUGUST 9, 2018. THIS SAME CRIMINAL INJUSTICE OCCURRED IN MY CASE WHERE THE STATE GAVE A FALSE IMPRESSION, CONCEALING AND SUPPRESSING TRUTH WHEN THERE WAS A FIDUCIARY DUTY TO SPEAK, IN THEIR ACTS OF FRAUD, WHICH VITIATE THE ENTIRE CRIMINAL PROCEEDINGS DUE TO UNCONSTITUTIONAL ACTION, HAMER v. NEIGHBORHOOD HOUSING SERVICE OF CHICAGO, 138 S.Ct. 13, 199 L.Ed.2d. 249 (U.S. 2017); WELLS FARGO BANK N.A. v. FARAG, 2016 WL 2944561(N.C.2016); U.S. v. KORN, F.Supp.2d., 2013 WL 2898056(W.D.N.Y.2013); TONEY v. COM., 1998 WL 684203(4th.Cir.1998); SEC. v. FARMER, F.Supp.2d. 275 (D.N.J.2011).

THE STATE AND OR PROSECUTING BODY, ACTING UNJUSTLY, ARBITRARILY, CONSPIRING UNDER COLOR OF STATE LAW, HAS EGREGIOUSLY FAILED TO ADHERE TO NOT JUST THE CONSTITUTION, BUT ALSO THEIR OWN STATE LAWS, SERVING TO DENY THE APPLICANT THE EQUAL PROTECTION OF THE LAWS AGAINST UNJUST, ARBITRARY PROSECUTION AND JUDICIAL ACTION IN ACTS OF FRAUD UPON THE COURT, GREAT COASTAL EXP. INC. SUPRA., 675 F2d. 1349(4th.Cir.1982); U.S. v. BEGGERLY, 524 U.S. 38, 118 S.Ct. 1864, 141 L.Ed.2d. 32(U.S.1998); U.S. v. TEJADA, 445 Fed. Appx' 719, 2011 WL 3891825 CA4 (S.C.2011); SCREWS v. UNITED STATES SUPRA.; STATE v. MIDDLETON SUPRA.; ESLINGER v. THOMPSON SUPRA.; McLAUGHLIN v. FLORIDA SUPRA.; DUBINKA v. JUDGES OF SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES SUPRA.; HICKS v. OKLAHOMA SUPRA.; JONES v. ARKANSAS SUPRA.; LUGAR v. EDMONDSON OIL CO. SUPRA.; GREENWOOD v. PEACOCK, (1966) 384 U.S. 808, 16 L.Ed.2d. 944,

86 S.Ct. 1800; UNITED STATES v. OTHERSON, (1980 CA9 Cal.) 637 F2d. 1276 CERT. DENIED (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct.149; S.C. CODE ANN § 17-25-10.

THE REQUIREMENT OF THE INDICTMENT(S) LIMIT AND CONSTRAIN THE SUBJECT MATTER JURISDICTIONARY "[P]OWERS" OF BOTH THE PROSECUTION AND THE COURT BY LIMITING WHAT CAN BE PRESENTED AT TRIAL, CONVICTION AND SENTENCING. BY THIS CRIMINAL, ARBITRARY ACTION ALL CONSTITUTIONAL RESTRAINTS HAVE BEEN UNJUSTLY DENIED TO ME VIOLATING DUE PROCESS LAW VOIDING THE COURT'S JURISDICTION, UNITED STATES v. PROMISE, 255 F3d 150 (4th.Cir.2001); STATE v. GUTHRIE, 352 S.C. 103, 572 S.E.2d. 309. IT IS THE COMMAND OF THE U.S. CONSTITUTION, THAT ANYTHING TO THE CONTRARY IS NOTWITHSTANDING, (ARTICLE IV § 2 U.S. CONST.); S.C. CODE ANN § 17-25-10.

WHEN AN OFFICER OF THE COURT AND OR STATE, SHALL USE THEIR POWERS PURSUANT TO ARREST AND OR PROSECUTION IN EGREGIOUS ACTS OF PROSECUTIONAL MISCONDUCT, FRAUD UPON THE COURT AND MACHINATION, FOR ULTERIOR MOTIVES AND INCARCERATE AND OR PROSECUTE AN ACCUSED FOR THE PURPOSE OF ENGAGING IN MALICIOUS, ARBITRARY, FRAUDULENT AND CRIMINAL ACTS, WILLFULLY SUBJECTING THE APPLICANT TO DEPRIVATION OF ANY RIGHTS, IMMUNITIES OR PRIVILEGES SECURED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES WITHIN ANY STATE, DISTRICT OR TERRITORY. THEY SHALL BE SUBJECT TO STATE AND FEDERAL PENALTIES. BY WHAT HAS BEEN DONE HERE PRODUCING OVERWHELMING PREJUDICE AND OR RACIAL ANIMUS DUE TO MY CONNECTION TO THE FOREIGN SOVEREIGN CROWN AND SOLE CORPORATION, IN VIOLATION OF 42 U.S.C. §§ 1983, 1985(2), 1985(3) AND 1986. SUCH ACTION IS INDISPUTABLY DEPRIVATION OF RIGHTS, IMMUNITIES AND PRIVILEGES OF THE ACCUSED TO LIBERTY AND A VIOLATION OF 18 U.S.C. § 242 AND 1001. NEITHER THREAT, NOR VIOLENCE IS A NECESSARY INGREDIENT OF THE OFFENSE UNDER THESE CIRCUMSTANCES WHERE THE CONSPIRING INDIVIDUALS WERE CLEARLY ACTING ARBITRARILY UNDER COLOR OF STATE LAW FOR ULTERIOR MOTIVES GIVING A MOCK GRAND JURY PROCEEDING THAT NEVER EXISTED, ILLEGALLY TRUE BILLING INDICTMENTS, ESTABLISHING AN ILLEGAL SEIZURE, WHICH IS TO BE ADJUDICATED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION. THUS,

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THE SENTENCE AND CONVICTION MUST BE VACATED. SEE EXHIBIT, "SHAM LEGAL PROCESS" ATTACHED. ALSO SEE, ELDERBERRY OF WEBER CITY, LLC. v. LIVING CENTER SOUTHEAST, INC.,--F3d.--, 2015 WL 4430836 CA4 (Va.2015); PCS NITROGEN INC. v. FORD MOTOR CO.,--F.Supp.3d.--, 2015 WL 6758983 (E.D.N.C.2015); APPLING v. STATE FARM MUT. INS. CO., 340 F3d. 769(9th.Cir.2003); UNITED STATES v. BARTKO, 728 F3d. 327(4th.Cir.2013); NAPUE v. PEOPLE OF THE STATE OF ILLINOI , 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d. 1217(U.S.1959).

**EXHIBIT, "SHAM LEGAL PROCESS"**

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**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

TONNYA K. KOHN  
INTERIM DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1355

September 28, 2017

Reginald Raynard White, Jr., #353172  
Perry Correctional Institution, Q3A-204  
430 Oaklawn Road  
Pelzer, South Carolina 29669

Re: Your correspondence received September 27, 2017

Dear Mr. White:

As requested, we have enclosed a copy of the terms of circuit and family court for the 16<sup>th</sup> Judicial Circuit, including York County for the month of May 2014.

We have also enclosed a copy of the Supreme Court's Order concerning the cost for copies and mailing. Please be advised that should you request any additional information from this office, you will be charged per the enclosed order.

All terms of court dating back to 2002 are available on our public website at <http://www.sccourts.org/calendar/scmaping.cfm>. If you are unable to access this information yourself, you may wish to have someone do so on your behalf.

Sincerely,

Staff Attorney Section / tr

*Chief Administration Judge 16<sup>th</sup> on May 29, 2014*

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David Guyton  
1020 W. Heckle Blvd.  
P.O. Box 11746  
Rock Hill, SC 29732-0342

Office # (803) 909-7117

Fax # (803) 909-7118

Email [dguyton@s.c.werts.org](mailto:dguyton@s.c.werts.org)

Circuit Number	5/5/2014	5/12/2014	5/19/2014	5/26/2014
16	<p>General Sessions Union Alford, Lee</p> <p><u>CAMPO</u></p> <p>Common Pleas/Common Pleas Nonjury York Kinard, J.</p> <p><u>NELSON</u> 5, 6, 7 <u>NO CR NEEDED</u> 8</p>	<p>General Sessions York Hayes, John C.</p> <p><u>NELSON</u></p> <p>General Sessions York Addy, Frank</p> <p><u>BUTLER</u></p> <p>Common Pleas Non- Jury 14, 15 York Kimball, S.</p> <p><u>NYE</u> 14 <u>NEVERS</u> 15</p>	<p>General Sessions York Griffith, Eugene</p> <p><u>BROOM</u> 19, 20 <u>NELSON</u> 21 <u>BROOM</u> 22 <u>NO CR NEEDED</u> 23</p> <p>General Sessions York Welmaker, G.</p> <p><u>BUTLER</u> 19, 20, 21 am <u>BUTLER</u> 22, 23</p>	<p>General Sessions Non- Jury Alford, Lee</p> <p><u>NO CR NEEDED</u></p> <p>Common Pleas/Common Pleas Nonjury York Hayes, John C.</p> <p><u>NELSON</u></p> <p>Common Pleas/Common Pleas Nonjury Union Kelly, R.</p> <p><u>NO CR NEEDED</u> 27, 28, 29, 30</p>
	<p>Family Court York Guyton, David G.</p> <p><u>MCGILBERRY</u> 5, 6, 7 am <u>MCGILBERRY</u> 8</p> <p>Family Court York Jones, Tony M.</p> <p><u>ST. GERMAIN</u></p> <p>Family Court York White, Thomas Henry</p> <p><u>DAWSON</u> 5, 6 <u>HARDY</u> 7 <u>BROOM</u> 8</p>	<p>Family Court York Creech, Wayne M.</p> <p><u>CAMPO</u> 12, 13 am <u>CAMPO</u> 14, 15, 16</p> <p>Family Court York Guyton, David G.</p> <p><u>MCGILBERRY</u></p> <p>Family Court Union Jones, Tony M.</p> <p><u>DAWSON</u></p>	<p>Family Court York Guess, Robert E.</p> <p><u>DAWSON</u></p> <p>Family Court York Guyton, David G.</p> <p><u>MCGILBERRY</u></p> <p>Family Court York Jones, Tony M.</p> <p><u>ST. GERMAIN</u></p>	<p>Family Court York Fraley, James F.</p> <p><u>BUTLER</u> 27 am, 28, 29 am <u>BUTLER</u> 30</p> <p>Family Court York Sprott, W. Thomas</p> <p><u>ST. GERMAIN</u> 27 am, 28, 29 am <u>ST. GERMAIN</u> 30</p> <p>Family Court York Bridges, Usha J.</p> <p><u>MCGILBERRY</u> 27 am, 28 <u>DAWSON</u> 29 <u>NO CR NEEDED</u> 30</p> <p>Family Court Union White, Thomas Henry</p> <p><u>DAWSON</u> 27 <u>NO CR NEEDED</u> 28, 29, 30</p>

**ISSUE NUMBER 3:**

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 4TH., 5TH., 6TH., 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS VIOLATED, BY THE COURT ALLOWING THE DRUG EVIDENCE TO BE SUBMITTED AT TRIAL WHEN THE ADDRESS ON THE WARRANT WAS INCORRECT AND THE FAILURE TO LIST THE PROPER ADDRESS DEMONSTRATED A KNOWING AND RECKLESS DISREGARD FOR TRUTH?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOSS v. AETNA LIFE I S. CO. SUPRA; STATE v. BROAD RIVER POWER CO. SUPRA.; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT AT THE PROCEEDINGS, (BLACK LAW DICTIONARY 8TH. EDITION).

INASMUCH, THE EXCLUSIONARY RULE EXIST TO DETER POLICE MISCONDUCT WHERE OFFICERS ACTIONS ARE PURPOSEFUL AND FLAGRANT, UTAH v. STREFF, 136 S.Ct. 2056, 195 L.Ed.2d. 400, 84 U.S.L.W. 4430 (U.S.2016). THIS IS THE CASE HERE. THE OFFICERS INVOLVED IN THIS CASE ACTIONS WERE PURPOSEFUL AND OR FLAGRANT, WITH AN EGREGIOUS DISREGARD FOR TRUTH, UNITED STATES v. DEMOUCHET, F.Supp., 2016 WL 7331562(M.D.La.2016); UNITED STATES v. ASMODOE, 763 Fed. Appx' 75 (2nd.Cir.2019).

THE APPLICANT'S 4TH., 5TH., 6TH., AND 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION WERE VIOLATED, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS WERE VIOLATED BECAUSE THE STATE

PROSECUTOR, CONSPIRING UNDER COLOR OF STATE LAW, WITH THE COURT BEING PRIVY TO IT ESTABLISHING FRAUD UPON THE COURT ITSELF, CONSPIRED TO GIVE A FRAUDULENT MISREPRESENTATION OF THE FACTS TO MAKE IT APPEAR THAT THE OFFICERS ACTED IN GOOD FAITH WHEN THEY LISTED THE ADDRESS OF THE PLACE TO BE SEARCHED INCORRECTLY, WHEN IN REALITY THIS EGREGIOUS MISCARRIAGE OF JUSTICE DEMONSTRATED A KNOWING AND RECKLESS DISREGARD FOR THE TRUTH.

IT IS COMMON KNOWLEDGE THAT ANY INFORMATION OBTAINED BY THE INTERNET, SUCH AS "GOOGLE MAPS", HAVE A PROPENSITY FOR ERROR WHICH DUE DILIGENCE AND THE OFFICER'S FIDUCIARY DUTY WOULD REQUIRE A MORE SUBSTANTIAL AND UNQUESTIONABLE VERIFICATION OF THE FACTS BEFORE ANY SUCH SEARCH WARRANT IS OBTAINED, WHICH THE OFFICERS KNOWINGLY, FLAGRANTLY AND RECKLESSLY FAILED TO DO.

IT IS CLEAR FROM THE RECORD ESTABLISHED BEFORE THE COURT THAT IT WAS OFFICER NEELY WHO WAS THE PERSON WHO OBTAINED THE SEARCH WARRANT. (SEE TT.PP.248-266).

IT IS ALSO CLEAR FROM THE RECORD ESTABLISHED BEFORE THE COURT THAT OFFICER NEELY HAD A SUBSTANTIAL OPPORTUNITY TO AND DID SURVEIL THE RESIDENCE IN QUESTION FOR AN EXTENSIVE AMOUNT OF TIME BEFORE HE OBTAINED THE SEARCH WARRANT. (SEE SUPPRESSION HEARING TT.PP.76).

IT IS ALSO CONSPICUOUS FROM THE COURT RECORD VIA TESTIMONY BY THE WITNESS MS. COLLINS, THAT THE ADDRESS OF THE RESIDENCE WAS CLEARLY MARKED ON THE MAILBOX WHICH WAS DIRECTLY IN FRONT OF THE HOME AS WELL AS THE ADDRESS BEING CLEARLY MADE ON THE RESIDENCE (HOUSE) ITSELF. GOODNESS GRACIOUS. IT BECOMES PAINFULLY OBVIOUS THAT THE OFFICER WHO OBTAINED THE SEARCH WARRANT DIDN'T EVEN HAVE TO GET OUT OF HIS VEHICLE. HE COULD HAVE SIMPLY DROVE BY THE RESIDENCE, EVEN USE A PAIR OF BINOCULARS, WHICH WERE TOTALLY UNNECESSARY, DUE TO THE CLOSENESS AND OR PROXIMITY OF THE MAILBOX AND ADDRESS ON THE HOUSE ITSELF, SINCE THE OFFICER ADMITTED ON THE COURT RECORD THAT HE SURVEILLED THE RESIDENCE FOR A SUBSTANTIAL TIME PERIOD BEFORE OBTAINING THE SEARCH WARRANT

. (SEE SUPPRESSION HEARING TT.PP.79).

EVEN THE TRIAL JUDGE IN THE CASE WHEN INSTRUCTING THE JURY ON WHAT THEY COULD AND CANNOT DO, INFORMED THE JURY THAT OBTAINING EVIDENCE AND OR INFORMATION FROM THE INTERNET AND APPLYING IT TO THEIR DELIBERATIONS, THAT SUCH INFORMATION (ie. "GOOGLE MAPS") IS NOT ALWAYS RELIABLE DEMONSTRATING COMMON KNOWLEDGE OF THIS SUBSTANTIAL TRUTH. THEREFORE, FOR THE TRIAL JUDGE TO FLAUNT THIS FACT BEFORE THE JURY THAT THE INTERNET WAS UNRELIABLE FOR THE PURPOSE OF BRINGING INFORMATION INTO THE COURT PROCESS FOR DELIBERATION PURPOSES (ie. "GOOGLE MAPS"), AND THEN IN THE SAME BREATH ACCEPT THE OFFICERS TAKING SUCH ACTION AND OR INFORMATION FROM THE INTERNET AS A DEMONSTRATION OF "GOOD FAITH" IS INCONSISTENT WITH HIS SUBSEQUENT JUDICIAL DETERMINATION AND IS AN ABUSE OF DISCRETION AS WELL AS IS HIGHLY INAPPROPRIATE FOR LEGAL PURPOSES OF THIS NATURE AND WAS A FLAGRANT AND RECKLESS DISREGARD FOR TRUTH, STATE v. UTLER, 2019 WL 2385094 (S.C. App.2019).

IT IS ALSO CONSPICUOUS FROM THE COURT RECORD THAT THE OFFICERS INVOLVE HERE HAD A BRIEFING TO DISCUSS ALL FACTS OF THE CASE TO ALLOW THEM TO DETERMINE HOW THEY WERE GOING TO PROCEED BEFORE THE SEARCH WARRANT WAS EVER OBTAINED AS IS TESTIFIED BY OFFICER NEELY DEMONSTRATING THAT THEY INDISPUTABLY HAD MORE THAN A SUFFICIENT OPPORTUNITY AND SUBSTANTIAL AMOUNT OF TIME TO CATCH THE ERROR AND CORRECT IT AND OBTAIN A SUBSEQUENT SEARCH WARRANT CONTAINING THE CORRECTION BUT KNOWINGLY FAILED TO DO SO ESTABLISHING AND OR PRODUCING A RECKLESS DISREGARD FOR THE TRUTH. (SEE TT.PP.251 AND TT.P .253).

IN ORDER TO REVERSE A CASE BASED ON ERRONEOUS ADMISSION OR EXCLUSION OF EVIDENCE, PREJUDICE MUST BE SHOWN WHERE BY THE CLAIMS ARGUED WITHIN THIS CASE THAT BURDEN IS MET, TO INCLUDE THE FACT THAT THE APPLICANT WAS DENIED THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE 14TH. AMENDMENT, STATE v. LYLES, 379 S.C. 328, 665 S.E.2d. 201 (S.C.2008); STATE v. TAYLOR, 333 S.C. 159, 172, 508 S.E.2d. 870, 876(1998); STATE v. COOPER, 2019 WL 1208534 (S.C.App.2019); SIMMONS v. MASE AND COMPANY,

LLC., S.E.2d., 2018 WL 3471149 (S.C.App.2018).

TO SHOW PREJUDICE, THERE MUST BE A REASONABLE PROBABILITY THAT THE JURY'S VERDICT WAS INFLUENCED BY THE CHALLENGED EVIDENCE OR LACK THEREOF, WHICH DUE TO THE SUBMITTING OF THIS EVIDENCE. IT IS MORE THAN REASONABLE TO CONCLUDE THAT THE JURY'S VERDICT WAS INFLUENCED BY ITS SUBMISSION REQUIRING REVERSAL, STATE v. WHITE, 372 S.C. 364, 642 S.E.2d. 607(S.C.App.2007); FIELDS v. REGIONAL MED. CTR. ORANGEBURG, 363 S.C. 19, 26, 609 S.E.2d. 506, 509(2005); STATE v. TENNANT, 383 S.C. 245, 678 S.E.2d. 812(S.C.App.200 ) ; STATE v. FULLER 425 S.C. 468, 822 S.E.2d. 910 (S.C.App.2019); STATE v. SPADE, S.E.2d., 2016 WL 3670561 (S.C.App.2016).

ALL RELEVANT EVIDENCE IS ADMISSIBLE EXCEPT OTHERWISE PROVIDED BY THE CONSTITUTION OF THE UNITED STATES. TH Y HAD OPPORTUN TY TO SEEK A SUBSEQUENT SEARCH WARRANT WITH THE CORREC- TION BUT PURPOSELY, FLAGRANTLY FAILED TO DO SO. EVIDENCE SEIZED IN VIOLATION OF THE WARRANT REQUIREMENT MUST BE EXCLUDED FROM TRIAL, STATE v. LY ES, 379 S.C. 328, 665 S.E.2d. 201(S.C.App. 2008); STATE v. OTOWSKI, 427 S.C. 119, 828 S.E.2d. 605(S.C.App. 2019); SINGLET v ST CK, 2019 WL 459998 (S.C.App.2019).

THE OFFICERS SURVEILLED THE RESIDENCE FOR A SUBSTANTIAL TIME PERIOD BEFORE OBTAINING THE SEARCH WARRANT. THEY WERE GIVEN KNOWLEDGE OF POSSIBLE CRIMINAL ACTIVITY BY CONFIRMATION OF AL- LEGED VICTIM WHICH PERMITTED THE OFFICER TO DRIVE BY, APPROACH THE HOUSE AND EVEN LOOK AT THE ADDRESS THAT WAS CLEARLY MARKED ON THE MAILBOX AND HOUSE ITSELF. IT WAS PERMITTED FOR THEM TO EVEN KNOCK ON THE DOOR. YET, THEY KNOWINGLY FAILED TO DO ANY OF THIS DEMONSTRATING A RECKLESS DISREGARD FOR TRUTH OF WHAT THE EXACT ADDRESS OF THE PLACE NEEDING TO BE SEARCHED WAS. IN- STEAD, IN LAZINESS, NEGLECT OF DUTY, THEY RELIED UPON AN UNRELI- ABLE SOURCE THAT THEY KNEW WAS SUBJECT TO ERROR IN THE FORM OF "GOOGLE MAPS" WHEN A SIMPLE WALK TO THE DOOR OR MAILBOX OR DRIVE BY THE HOUSE AND OR MAILBOX WOULD HAVE CLEARLY PREVENTED THIS ERROR DEMONSTRATING A FLAGRANT AND RECKLESS DISREGARD FOR

TRUTH, ID AT 172, 776 S.E.2d. AT 70; STATE v. WRIGHT, 391 S.C. 436, 444, 706 S.E.2d. 324, 328(2011); STATE v. BASH, 419 S.C. 263, 797 S.E.2d. 721(S.C.App.2017); STATE v. COUNTS, 413 S.C. 153, 776 S.E.2d. 59 (S.C.App.2015).

BY THIS EGREGIOUS UNCONSTITUTIONAL ACTION ON THE PART OF THE COURT AND PROSECUTOR. THE APPLICANT WAS DENIED THE EQUAL PROTECTION OF THE LAWS AND HIS DUE PROCESS RIGHTS WERE VIOLATED. THEREFORE, THE SENTENCE AND CONVICTION MUST BE VACATED, MONT GOMERY v. LOUISIANA SUPRA.; 24 SENATORIAL DIST. REPUBLICAN COM- MITTEE v. ALCOR SUPRA. (SEE EXHIBIT(S), "FAULTY SEARCH WARRANT"),

**EXHIBIT(S), "FAULTY SEARCH WARRANT"**

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STATE OF SOUTH CAROLINA

COUNTY OF York, SC 29745

AFFIDAVIT

Personally appeared before me, one Detective Carson Neely who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Identification of "Reggie." Black Male, approximately 25 years old, wears glasses and resides at \_\_\_\_\_ Drive, Clover, South Carolina.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

\_\_\_\_\_, Clover, in the County of York, South Carolina. A mobile home located on the same lot as and behind the mobile home of \_\_\_\_\_ Drive, Clover. Traveling from Highway 5 / Black Highway, turn left onto Cedar Grove Road, then turn left onto King Road. A dirt drive runs off King Road just prior to Silver Creek Drive. A white mobile with rust color shutters, a small covered front porch. Any and all buildings and vehicles at the residence.

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

The affiant, who is a certified law enforcement officer assigned to the Violent Crimes Unit of York County Sheriff's Office and has fifteen years of law enforcement experience to include investigations, states the following facts to support probable cause to search the premise listed within.

\*\*See Attached Affidavit\*\*

Sworn to and Subscribed before me  
this 26th day of February, 20 14  
Rayne Beaufort (L.S.)  
Signature of Judge  
2:16pm

Carson Neely  
Affiant

Address 1675-2A York Highway,  
York, SC 29745  
Phone 803-628-3213 or 493-3713

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STATE OF SOUTH CAROLINA

COUNTY OF York, SC 29745

SEARCH WARRANT

Form Approved by  
S.C. Attorney General  
Section 17-13-160  
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY  
OF York, SC 29745

it appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

Drive, Clover, in the County of York, South Carolina. A mobile home located on the same lot as and behind the mobile home of [redacted] Drive, Clover. Traveling from Highway 5 / Black Highway, turn left onto Cedar Grove Road, then turn left onto King Road. A dirt drive runs off King Road just prior to Silver Creek Drive. A white mobile with rust color shutters, a small covered front porch. Any and all buildings and vehicles at the residence.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all evidence related to the sexual assault of Macias that occurred on February 24, 2014 at the address of [redacted] Drive, Clover, South Carolina. To include but not limited to Deoxyribonucleic Acid (DNA), Hair, fiber, bodily fluids, or any evidence that would result from a sexual assault. Crack, Crack Cocaine, Crack paraphernalia, mobile phones, records, receipts, currency and any other items pertaining to storing, and shipping of Crack Cocaine. Also photographs of the residence.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

This issuing Magistrate

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

[Signature] J.S.C.  
2-26 20 14

[Signature] (L.S.)  
Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF York, SC 29745

Personally appeared before me, one Detective Carson Neely who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

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\*\*See Attached Affidavit\*\*

Sworn to and Subscribed before me  
this 26th day of February, 20 14  
                  (L.S.)  
         Signature of Judge  
2:17pm

          
         Affiant

Address 1675-2A York Highway,  
York, SC 29745  
Phone 803-628-3213 or 493-3713

**\*\*Affidavit for Search Warrant (York County Sheriff's Office Incident Report 201400005989)\*\***

On February 25, 2014, Cl Macias (22 year old female) was transported to Piedmont Medical Center (PMC) due to allegations of being sexually assaulted. Macias was evaluated and treated for the reported sexual assault. Evidence was collected by PMC staff as part of the Sexual Assault Nurse Examination Kit. Detective Carson Neely, York County Sheriff's Office, responded to PMC for investigation. Detective Neely conducted interviews with the Macias and her boyfriend, Johnny Batchler. During the interviews, both Macias and Batchler state that on the evening of February 24, 2014, they were picked up by a man named Reggie (last name unknown) at their residence ( ) Road, Clover, SC) and transported to Reggie's residence. Batchler had called Reggie from his mobile phone prior to Reggie coming to pick them up. Batchler provided a phone number of ( ) as the Reggie's phone number. Batchler and Macias admitted that during their visit at this residence Reggie provided them crack (crack cocaine) to smoke. After Batchler and Macias smoked the crack, Macias stated she went to the bathroom. While in the bathroom, Macias stated that Reggie forcefully pulled her into a bedroom and sexually assaulted her. Macias provided details of being forced to give Reggie oral sex and she stated he physically forced her to have vaginal and anal sexual intercourse. Macias was not sure if Reggie used a condom. Macias stated that she was unsure of all the details due to the drug usage. After the alleged sexual assault, Macias got dressed and stated she did not tell Batchler due to being fearful. Reggie drove Batchler and Macias back to their residence. Detective Neely took pictures of bruises that Macias had on her body as a result of the sexual assault. The Sexual Assault Examination Kit and clothing Macias had on that night was collected for investigation. Batchler and Macias provided a road name and physical description of the location of the residence that the drug use and sexual assault took place. Detective Neely used "Google Maps" to assist in finding this location and address. Investigation revealed that this incident location is ( ) Drive, Clover, in the county of York South Carolina. This address / mobile home is located on the same lot as ( ) Drive, Clover, South Carolina.

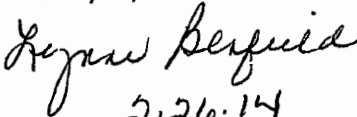
On February 26, 2014, Detective Neely met with Macias at her residence and obtained a written statement as to the sexual assault and drug use at Reggie's residence / incident location. Macias provided a statement as to seeing Reggie crushing crack in baggies. This occurring prior to the sexual assault.

This affiant is requesting to locate "Reggie" who is described as a black male, approximately 25 years old, wears glasses, and lives at this incident location. This affiant is also requesting to locate and seize any and all evidence related to the alleged sexual assault. This requested information and evidence will assist in a police investigation and criminal prosecution.

  
Detective Carson Neely

York County Sheriff's Office

February 26, 2014

  
2.26.14

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STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF York, SC 29745

Personally appeared before me, one Detective Carson Neely who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

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REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

The affiant, who is a certified law enforcement officer assigned to the Violent Crimes Unit of York County Sheriff's Office and has fifteen years of law enforcement experience to include investigations, states the following facts to support probable cause to search the premise listed within.

\*\*See Attached Affidavit\*\*

Sworn to and Subscribed before me

this 26th day of February, 2014  
Dyane Reynolds (L.S.)  
Signature of Judge  
2:17pm

Carson Neely  
Affiant

Address 1675-2A York Highway,  
York, SC 29745

52-of-171 Phone 803-628-3213 or 493-3713

**\*\*Affidavit for Search Warrant (York County Sheriff's Office Incident Report 201400005989)\*\***

On February 25, 2014, Macias (22 year old female) was transported to Piedmont Medical Center (PMC) due to allegations of being sexually assaulted. Macias was evaluated and treated for the reported sexual assault. Evidence was collected by PMC staff as part of the Sexual Assault Nurse Examination Kit. Detective Carson Neely, York County Sheriff's Office, responded to PMC for investigation. Detective Neely conducted interviews with the Macias and her boyfriend, Johnny Batchler. During the interviews, both Macias and Batchler state that on the evening of February 24, 2014, they were picked up by a man named Reggie (last name unknown) at their residence (1326 Shelterwood Road, Clover, SC) and transported to Reggie's residence. Batchler had called Reggie from his mobile phone prior to Reggie coming to pick them up. Batchler provided a phone number of \_\_\_\_\_ as the Reggie's phone number. Batchler and Macias admitted that during their visit at this residence Reggie provided them crack (crack cocaine) to smoke. After Batchler and Macias smoked the crack, Macias stated she went to the bathroom. While in the bathroom, Macias stated that Reggie forcefully pulled her into a bedroom and sexually assaulted her. Macias provided details of being forced to give Reggie oral sex and she stated he physically forced her to have vaginal and anal sexual intercourse. Macias was not sure if Reggie used a condom. Macias stated that she was unsure of all the details due to the drug usage. After the alleged sexual assault, Macias got dressed and stated she did not tell Batchler due to being fearful. Reggie drove Batchler and Macias back to their residence. Detective Neely took pictures of bruises that Macias had on her body as a result of the sexual assault. The Sexual Assault Examination Kit and clothing Macias had on that night was collected for investigation. Batchler and Macias provided a road name and physical description of the location of the residence that the drug use and sexual assault took place. Detective Neely used "Google Maps" to assist in finding this location and address. Investigation revealed that this incident location is \_\_\_\_\_ Drive, Clover, in the county of York South Carolina. This address / mobile home is located on the same lot as \_\_\_\_\_ Drive, Clover, South Carolina.

On February 26, 2014, Detective Neely met with Macias at her residence and obtained a written statement as to the sexual assault and drug use at Reggie's residence / incident location. Macias provided a statement as to seeing Reggie crushing crack in baggies. This occurring prior to the sexual assault.

On February 26, 2014, Detective Neely and Officers from the Multi-Drug Enforcement Unit responded to Drive, Clover South Carolina and served previously obtained Search Warrants for the address. One of the Search Warrants was to obtain the identification of "Reggie" (Black Male, lives at this residence, wears glasses, approximately 25 years old.) While at the residence, Detective Neely obtained the identity of Reggie as being Reginald Raynard White (I - ).


On February 28, 2014, Detective Neely conducted research and found phone number { to be associated with Straight Talk Phone Company. Detective Neely made contact with Straight Talk phone company and was provided Verizon Mobile as a carrier.

This affiant is requesting to obtain the listed information pertaining to phone records for phone number to assist in a police investigation and criminal prosecution.

  
Detective Carson Neely

York County Sheriff's Office

February 26, 2014

  
2-28-14

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY  
OF York, SC 29745

it appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)  
TO BE SEARCHED

Drive, Clover, in the County of York, South Carolina. A mobile home located on the same lot as and behind the mobile home of Drive, Clover. Traveling from Highway 5 / Black Highway, turn left onto Cedar Grove Road, then turn left onto King Road. A dirt drive runs off King Road just prior to Silver Creek Drive. A white mobile with rust color shutters, a small covered front porch. Any and all buildings and vehicles at the residence.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all evidence related to the sexual assault of ( Macias that occurred on February 24, 2014 at the address of Drive, Clover, South Carolina. To include but not limited to Deoxyribonucleic Acid (DNA), Hair, fiber, bodily fluids, or any evidence that would result from a sexual assault. Crack, Crack Cocaine, Crack paraphernalia, mobile phones, records, receipts, currency and any other items pertaining to storing, and shipping of Crack Cocaine. Also photographs of the residence.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

This issuing Magistrate

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Yan S. C.  
2-26 20 14

Luzmar Benjira (L. S.)  
Signature of Judge

ISSUE NUMBER 4:

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 5TH., 6TH. AND 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS VIOLATED, BY THE INDICTMENT(S) FOR TRAFFICKING COCAINE AND POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE'S FAILURE TO PROPERLY LIST THE COCAINE AMOUNTS FOR THE TRAFFICKING COCAINE AND THE SUBSECTIONS FOR BOTH TRAFFICKING COCAINE AND POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE IN THE BODY OF THE CHARGING INSTRUMENT?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOSS v. AETNA LIFE INS. CO. SUPRA.; STATE v. BROAD RIVER POWER CO. SUPRA.; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT AT THE PROCEEDINGS, (BLACK LAW DICTIONARY 8TH. EDITION).

THE APPLICANT DID NOT OBJECT TO THESE INDICTMENT DEFECTS AND OR ERRORS AT THE TIME OF HIS TRIAL AND OR BEFORE HE GAVE HIS GUILTY PLEA, BUT THE DEFECTS AND OR ERRORS SERVE TO RENDER THE INDICTMENT(S) WHOLLY INVALID. DEFECTS AND OR ERRORS IN AN INDICTMENT THAT ARE OF SUCH A FUNDAMENTAL CHARACTER AS TO RENDER AN INDICTMENT WHOLLY INVALID ARE NOT SUBJECT TO WAIVER BY THE DEFENDANT, 41 AM. JUR.S.2d. INDICTMENTS AND INFORMATION § 299 (1968); STATE v MUNN SUPRA. SUBJECT TO CERTAIN MINOR EXCEPTIONS NOT PRESENT, THE TRIAL COURT IS PROHIBITED FROM ENACTING AND

OR INVOKING ITS SUBJECT MATTER JURISDICTIONARY "[P]OWERS" GIVEN TO THEM BY STATE STATUTES TO CONVICT A DEFENDANT FOR AN OFFENSE, WHEN THERE IS NO INDICTMENT CHARGING HIM WITH THAT OFFENSE WHEN THE JURY IS SWORN, AND OR BEFORE HE GIVES HIS GUILTY PLEA, WHERE SUCH AN ACTION WOULD "[V]OID" THE TRIAL COURT'S JURISDICTION FOR DUE PROCESS VIOLATION AND UNCONSTITUTIONAL ACTION, STATE v. BEACHUM, 288 S.C. 325, 342 S.E.2d. 597(1986); GRUPO DALAFLUX v. ATLAS GLOBAL GROUP L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); LOUMIET v. UNITED STATES, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. CURRENCY, 9 F.Supp.3d. 582, 2014 WL 1266240.

I AM ARGUING AGAINST THE PRECEDENT SET IN PLACE BY STATE v. GENTRY SUPRA IN 2005, WHICH WAS ADJUDICATED UNDER AN EGREGIOUS CLOUD OF FRAUD UPON THE COURT PURSUANT TO S.C. RULES OF APPELLATE PROCEDURE, RULE 217. TO ASSERT THAT INDICTMENT DEFECTS HAVE ABSOLUTELY NOTHING TO DO WITH SUBJECT MATTER JURISDICTION IS AN ABUSE OF DISCRETION AND AN ACT OF FRAUD UPON THE COURTS INVOLVED LEAVING EVERY COURT IN THIS STATE THAT ADOPTS THIS POSITION OPEN TO COLLATERAL ATTACK FOR CONSPIRACY, OBSTRUCTION OF JUSTICE AND FRAUD UPON THE COURT. WHAT TIES THE INDICTMENTS TO SUBJECT MATTER JURISDICTION IS THAT IF YOU TAKE A FATALLY DEFECTIVE INDICTMENT, MAKING USE OF IT AND ENTERING IT INTO A CRIMINAL PROCEEDING, AND THEN YOU CONSTRUCTIVELY AMEND IT BEFORE THE COURT ON THE ESSENTIAL ELEMENTS AND OR ALLEGATIONS OF THE OFFENSES. THAT CRIMINAL PROCEEDING NOW BECOMES UNCONSTITUTIONAL AND A VIOLATION OF DUE PROCESS WHICH IS TO BE ADJUDICATED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION. ANYTHING THAT VIOLATES DUE PROCESS OR THAT IS CONTRARY TO THE U.S. CONSTITUTION IS VOID, WHICH INCLUDE ANY CONVICTION OR JUDICIAL DETERMINATION ATTACHED TO IT, AND IS AS IF THERE NO CONVICTION OR TRIAL OR JUDICIAL DETERMINATION DONE, MADE OR COMMENCED AT ALL. SEE MONTGOMERY v. LOUISIANA, 136 S.Ct.718, 193 L.Ed.2d 599, 84 U.S.L.W. 4063(U.S.2016). ALSO SEE THE ADDITIONAL CASES CITED WITH THIS DOCUMENT.

INSOMUCH, ALLEGING THE SPECIFIC CODE AND SUBSECTION THE APPLICANT IS ALLEGED TO HAVE VIOLATED GOES TOWARD THE VERY ILLE-

GALITY OF THE OFFENSE. THIS IS A FAILURE THAT APPLIES TO BOTH OF THE INDICTMENTS IN QUESTION. TO ADD TO THIS "INDICTMENT AMBUSH". THE INDICTMENT FOR TRAFFICKING COCAINE DOES NOT EVEN PROPERLY ALLEGE THE AMOUNT OF DRUGS THAT THE APPLICANT WAS IN POSSESSION OF. MAKING USE OF THE TERM "10 GRAMS OR MORE" CAN POTENTIALLY MEAN THAT THE APPLICANT WAS IN POSSESSION OF A MILLION POUNDS OF COCAINE. NO ONE CAN SAY WHAT WAS IN THE MIND OF THE GRAND JURY. THE APPLICANT BY 5TH. AMENDMENT INDICTMENT CLAUSE ADOPTED BY THE STATE CONSTITUTION, BY THE APPLICANT'S 6TH. AMENDMENT RIGHT TO BE APPRISED OF THE "CAUSE AND NATURE" OF THE OFFENSES. THIS CANNOT BE DEEMED AS REASONABLE NOTICE WHICH ALSO SERVE TO DENY THE APPLICANT OF PROPER DUE PROCESS AND THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE 14TH. AMENDMENT. THE ADDITIONAL LITIGATION THAT ADDRESSES THIS ISSUE IS SEEN IN EXHIBIT, "INDICTMENT DEFECTS" HEREWITH ATTACHED. ALSO SEE THE COPIES OF THE INDICTMENTS, WARRANTS AND SENTENCING SHEETS ATTACHED.

**EXHIBIT, "INDICTMENT DEFECTS"**

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Motion for severance is addressed to sound discretion of the trial court. Which in this case that discretion was not sound due to trial court engaging in acts of fraud upon the court, criminal conspiracy, machination under color of state law. The trial court's ruling will not be disturbed on appeal absent an abuse of discretion which conspicuously occurred here. Criminal cases may be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. All (4) (emphasis added) of these elements must exist before the appellant and his codefendant can be tried together, not (3) or (2). The Appellant's constitutional Due Process rights pursuant to notice, being properly apprised as to the cause and nature of the accusations or offenses, having crucial, essential elements and averments passed upon by the Grand Jury, to call the codefendant to testify, to establish potential alibi and not have the indictments constructively amended throughout the proceedings were violated producing extreme prejudice where the prosecution sought to conceal all of this by trying us both together. Thus, the conviction must be vacated and reversed, State v. Caldwell, 378 S.C. 268, 662 S.E.2d. 474 (S.C.App.2008); State v. Tyre, S.E.2d., 2013 WL 8538730 (2013); State v. Butts, S.E.2d., 2014 WL 2586521 (2014); DeLuna v. United States, 308 F.2d. 140 (5th.Cir. 1962); United States v. Kahn, 366 F.2d. 259, 263-264 (2nd.Cir.) cert. denied, 389 U.S. 1015, 88 S.Ct. 591, 19 L.Ed.2d. 661 (1967); 454 F.2d. 772 (1971); State v. Rocheville, 425 S.E.2d. 32 (S.C. 1993); State v. Kelsey, 502 S.E.2d. 63 (S.C.1998); State v. Beekman, 415 S.C. 632, 785 S.E.2d. 202 (2016); State v. McDonald, 412 S.C. 133, 771 S.E.2d. 840 (S.C.App.2015).

(3) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated by the indictment(s) for attempted murder's failure to allege what weapon was allegedly used and who it was the

appellant supposedly acted in concert with, in the same vein, the indictment for conspiracy's failure to allege who it was that the appellant conspired with, in the body of the charging instrument?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

The appellant did not object to these defects and or errors at the time of his trial and or before he gave his guilty plea, but the defect(s) and or error(s) serve to render the indictment(s) wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d Indictments And Information § 299(1968); State v. Munn supra.

It is universally recognized that an indictment "[m]ust" contain certain [s]pecification of [a]cts and [c]ircumstances as well as on its [f]ace fix and determine the identity of the offense with such [p]articularity, that it will enable the defendant to know with sufficient [c]ertainty what he has to face at trial to give him or her a fair opportunity to prepare his defense to avail him or herself of conviction, or acquittal as a bar to further prosecution arising out of the same facts,



State v. Rallo, 403 S.E.2d. 653(1991); State v. Hardee, 279 S.C. 409, 308 S.E.2d. 521(1983); Locke v. State, 341 S.C. 54, 533 S.E.2d. 324(2000); IN RE: Jason T., 340 S.C. 455, 531 S.E.2d. 544(S.C.App.2000); State v. Parker, 344 S.C. 250, 543 S.E.2d. 255(S.C.App.2001).

S.C. Code Ann § 17-19-10 Provides:

"All offenses shall be prosecuted by Grand Jury indictment(s). Thus, no person shall be held to answer in any court for any alleged crime or offense unless upon indictment by a Grand Jury".

S.C. Code Ann § 17-19-20 Provides:

"Every indictment shall be deemed and judged as good and sufficient in law, which in addition as to allegations as to time and place as required by law, charges the crime substantially in the language of the common law of the statute, prohibiting the crime and so plainly that the nature of the offense charged may be easily understood\*\*\*".

Insomuch, it is the body of the indictment which is the [v]ital part of the charging instrument, State v. Tate, 345 S.C. 577, 549 S.E.2d. 601(S.C.2001), and it "[c]annot" be so cryptic or the wording so loose, vague and ambiguous as to fail to comply with the basic right of the accused to be "[f]ully" informed as to the "[c]ause and [n]ature" of the accusation being levied against them, which is one of the most basic, fundamental and universally recognized rights of Due Process, Smith v. O'Grady, 312 U.S. 329, 61 S.Ct. 572(1941); State v. Tabor, 262 S.C. 136, 141, 202 S.E.2d. 852(1974)(Holding that the state may not support a conviction \* 334 for an offense intended to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment).

Subject to certain minor exceptions not present, jurisdic-

tion is made void for Due Process violation, and the trial court is prohibited from enacting and or invoking and or continuing its Subject Matter Jurisdictionary "[p]owers" to convict a defendant for an offense, when there is no indictment charging him with that offense when the jury is sworn, and or before he gives his guilty plea even though the court does possess such "[p]ower" given to them by legislative statute, State v. Beachum, 288 S.C. 325, 342 S.E.2d. 597(1986); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 126640; White v. Manis, 2014 WL 1513280(DSC.2014).

Federal Rules of Procedure, Rule 7(c) requires that an indictment contain a "[p]lain", "[c]oncise" and "[d]efinite" written statement of essential elements and or allegations constituting the offense charged. The indictment Clause of the 5th. Amendment require that the indictments contain some amount of factual particularity to ensure that the prosecution will not fill in elements of his case with facts other than those considered by the Grand Jury, United States v. Abrams, 539 F.Supp. 378, 384(S.D.N.Y.1982).

If the court will please take notice of the indictment(s) for attempted murder. They read: "That in Berkeley County, South Carolina,\*\*\*\*Morris Gourdine,\*\*\*\*, while acting in concert with codefendant, discharged a firearm at the victim,\*\*\*\*".

The indictment for conspiracy reads:

"That in Berkeley County,\*\*\*\*the defendant Jason Morris Gourdine, did combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing a crime, to wit, attempted murder.\*\*\*\*\*".

These are the generic terms of the statute for conspiracy. Inasmuch, the indictment(s) are to vague and cryptic. The attempted murder indictment(s) do not say what weapon was supposedly used, and both the attempted murder and conspiracy in-



dictment(s) do not allege who it was the appellant conspired with. The court and prosecution did add these elements and or aggravating factors that were not passed upon by the Grand Jury. Did the appellant possess a handgun, a slingshot, a dirk, a machete, an uzi, an AKA-47 or a rocket launcher? The indictments do not say. Did the appellant allegedly conspire with "Sponge Bob", "Barrack Obama", Donald Duck Trump and the alt right", Bugs Bunny" or "Michael Jackson" who came back from the dead? The indictment(s) do not say. This is why they conspired under color of State law, in acts of prosecutorial misconduct as well as in acts of fraud upon the court and denied the motion for severance, which extremely prejudiced the appellant, permitting them to constructively amend the indictments before the court. This extreme prejudice caused actual substantive disadvantage where these material averments were not passed upon by the Grand Jury in the body of the charging instrument. This act led to said constructive amendment and denial of the motion for severance by fraud, depriving the appellant of proper notice giving way to arbitrary judicial action in violation of Due Process law, voiding jurisdiction for Due Process violation. This issue is also preserved for appellate review where the attorney for the defense argued that the State did not prove the indictments or elements of the motions for dismissal, direct verdict and severance, Castillo v. Holder, ---F3d.---, 2015 WL 161952 CA4 (2015); State v. Brandt, 393 S.C. 526, 713 S.E.2d. 591(S.C.2011).

The language in the indictment(s) is so vague, so loose, so cryptic and ambiguous it is almost impossible for the appellant to know what he is called upon to meet and defend. What weapon was the appellant in possess of? As far as the appellant can tell, it must have been a surface to air missile or rocket launcher. As far as the appellant can tell, in whom it was that he allegedly conspired with. It could have been Napoleon Bonapart after he battled at Waterlou or Genghis Khan after he left the Asian Continent, where these people were resurrected from the dead. No one can say what was in the mind of the Grand Jury. This "[c]annot" be deemed as reasonable notice, which is why



the court denied the motion for severance, to constructively amend the indictments where the jury would have been able to only speculate had this not been done. The indictments cannot be deemed as sufficient if the prosecution is permitted to prove all these materially different sets of facts, to include any other set of facts not passed upon by the Grand Jury, subjecting the appellant to "Indictment Ambush" at the onset of the proceedings, voiding their jurisdiction for Due Process violation, State v. Keith, 283 S.C. 597, 598, 325 S.E.2d. 325, 326(1985); State v. Bullock; United States v. Masotto, 73 F3d. 1233 cert. denied 117 S.Ct. 54, 136 L.Ed.2d. 18; Castillo v. Holder, --- F3d. ---, 2015 WL 161952 CA4 (2015); State v. Brandt, 393 S.C. 526, 713 S.E.2d. 591(S.C.2011); S.C. Code Ann § 17-25-10.

The requirement of the indictment(s) limit and constrain the Subject Matter Jurisdictionary "[p]owers" of both the prosecution and the court by limiting what can be presented at trial, conviction and sentencing, United States v. Promise, 255 F3d. 150(4th.Cir.2001); State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309. It is the command of the U.S. Constitution, that anything to the contrary is notwithstanding, (Article IV § 2 U.S. Const.); S.C. Code Ann § 17-25-10.

The State and or prosecuting body, acting unjustly, arbitrarily, conspiring under color of law, has egregiously failed to adhere to their own state laws, serving to deny the appellant the Equal Protection of the Laws against unjust, arbitrary prosecution and judicial action in acts of fraud upon the court, Great Coastal Exp. Inc. supra., 675 F2d. 1349(4th.Cir.1982); Fox Ex. Rel. Fox v. Elk Run Coal Co. Inc., 739 F3d. 131(4th. Cir.2014); U.S. v. Beggerly, 524 U.S. 38, 118 S.Ct. 1862, 141 L.Ed.2d. 32(U.S.1998); Blue Sky Travel and Tours, LLC v. Al Tayer, ---Fed. Appx'---, 2015 WL 1451636 CA4 (Va.2015); Barlow v. Colgate Palmolive Co., 772 F3d. 1001, 90 Fed. R. Serv.3d. 85 CA4 (Md.2014); U.S. v. Tejada, 445 Fed. Appx' 719, 2011 WL 3891825 CA4 (S.C.2011); Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin

v. Florida supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Hicks v. Oklahoma supra.; Jones v. Arkansas supra.; Lugar v. Edmondson Oil Co. supra.; Greenwood v. Peacock, (1966) 384 U.S. 808, 16 L.Ed.2d. 944, 86 S.Ct. 1800; United States v. Otherson, (1980 CA9 Cal.) 637 F2d. 1276 cert. denied (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct. 149; S.C. Code Ann § 17-25-10.

In United States v. Hooker, 841 F2d. 1225, 1227(4th.Cir. 1988)(EN BANC) and in Russell v. United States, 82 S.Ct. 1047 (1962), the court held:

"It is an elementary principle where the definition of the offense(s) charged, whether it be at common law or statute, include generic terms, it is "[n]ot" sufficient that the charging should be in the same generic terms of the statute, but it "[m]ust" descend to "[p]articulars".

WE HOLD, a mere citation of the statute of which the defendant is charged with violating is insufficient to cure the failure of the indictment(s) to charge each essential element and or allegation of the offense because a mere citation alone does not ensure that the Grand Jury considered and found the crucial elements and or facts of the offense". The appellant also cannot be subjected to language that violate his rights to double jeopardy protection.

Hence, by the Doctrine of "STARE DECISIS ET NON QUIENTA MOVERE", and indictment "[m]ust" properly set forth all essential elements of the offense. By Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887(1974), it is well established and recognized under American Jurisprudence: That if an indictment fails to charge all the necessary elements, it fails to charge the offense . If it fails to charge the offense or subject a person to double jeopardy, such violates the appellant's 5th., 6th. 14th. Amendment rights of the U.S. Constitution, as well as Article IV § 2, and his rights of Due Process, voiding the court's jurisdic-

tion for Due Process violation. Thus, the conviction "[m]ust' be set aside, United States v. Cabrera-Teron, 168 F3d. 141(5th. Cir.1999); United States v. Pupo, 841 F2d at 1239(4th.Cir.1988) (EN BANC); United States v. Hooker, 841 F2d. 1225(4th.Cir.1988); United States v. Daniels, 973 F2d. 272(4th.Cir.1992); Elderberry Of Weber City, LLC v. Living Center--Southeast, Inc.,---F3d.--, 2015 WL 4430836 CA4 (Va.2015); Norbrega v. Hinkle, 576 Fed. Appx' 224 CA4 (Va.2014); Manis v. White, 2014 WL 1513280(DSC. 2014); Robinson v. Cohen, F.Supp.2d., 2009 WL 789882(DSC.2009); United States v. Gomez, 690 F3d. 194 CA4 (Md.2012); Carr v. United States, 560 U.S. 438, 130 S.Ct. 2229(U.S.2010); United States v. Robare, 2011 WL 10583565 (N.D.N.Y.2011) Castillo v. Holder supra.; State v. Brandt supra..

(4) Did the trial court err, and was the appellant's 5th., 6th., 14th. Amendment rights violated, as well as Article IV § 2 and his Due Process rights violated, voiding the court's jurisdiction for Due Process violation, due to the court's failure to issue a final written order in the appellant's stand year ground hearing?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th. Edition).

(9) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, by the indictment(s) for attempted murder's failure to properly and or sufficiently apprise the appellant of the "[t]ime" of assault(s), in the body of the charging instrument, as "[t]ime" is recognized by law?

The appellant did not object to this defect and or error at the time of his trial and or before he gave his guilty plea, but the defect and or error serves to render the indictment wholly invalid. Defects and or errors in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d. Indictments and Information § 299(1968); State v. Munn supra.. Subject to certain minor exceptions not present, the trial court is prohibited from enacting and or invoking its subject Matter jurisdictionary "[p]ower" given to them by state statutes to convict a defendant for an offense, when there is no indictment charging him with that offense when the jury is sworn, and or before he gives his guilty plea, where such an action would "[v]oid" the court's jurisdiction for Due Process violation, State v. Beachum, 288 S.C. 325, 342 S.E.2d. 597(1986); Grupo Dalaflex v. Atlas Global Group L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240.

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra. 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitu-

tional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

The appellant humbly contends his 5th., 6th., 14th. amendment rights of the U.S. Constitution were violated, as well as Article IV § 2, and his Due Process rights were violated for the charge in question, because the charging instrument, in the body of the indictment does "[n]ot" state the exact time and or date of the alleged assault(s) as time is recognized by law, which is a necessary and requisite element of the offense for murder and or attempted murder, being made a part of the critical elements of the offense. For example, in State v. Rector, 158 S.C. 212, 155 S.E. 385(1930), the Supreme Court [s]pecifically and [u]nequivocally, with [c]larity and [p]articularity, stated in Haec [V]erba:

"The State "[m]ust" prove not only the assault and death occurring from it, but also the "[t]ime" of the assault and the "[t]ime" of the death, as "[t]ime" is recognized by law. In addition the state "[m]ust" prove the "[p]lace" of the assault, and the "[p]lace" of death\*\*\*\*\*".

These necessary elements of the crime "[m]ust" not only be proven before a person may be lawfully convicted, but they "[m]ust" be alleged within the body of the charging instrument, be passed upon by the Grand Jury in the indictment returned against the defendant in accordance to the constitutional rights of the accused(emphasis added).

Assault And Battery With The Intent To Kill embraces the whole of attempted and visa versa. The elements to prove the crimes are the same as it is for murder with the exception of the death ensuing from it, State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d. 283, 285(2000).

Inasmuch, it is the body of the indictment(s) that is the [v]ital part of the charging instrument, State v. Tate, 345 S.C. 577, 549 S.E.2d. 601(S.C.2001), and it "[c]annot" be so cryptic or the wording so loose, vague and ambiguous as to fail to comply with the basic right of the accused to be fully informed as to the "[c]ause and [n]ature" of the accusation being levied against him, which is one of the defendant's most basic, fundamental, and universally recognized rights of Due Process, Smith v. O'Grady, 312 U.S. 329, 61 S.Ct. 572(1941); State v. Tabory, 262 S.C. 136, 141, 202 S.E.2d. 852(1974)(holding that the state may not support a conviction \* 334 for an offense intended to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment) . Also see S.C. Code Ann § 17-25-10; United States v. Masotto, 73 F3d. 1233 cert. denied 117 S.Ct. 54, 136 L.Ed.2d. 18; Castillo v. Holder, ---F3d.---, 2015 WL 161952 CA4 (2015); State v. Brandt, 393 S.C. 526, 713 S.E.2d. 591(S.C.App.2011).

Insomuch, the statutory text of S.C. Code Ann §§ 17-19-20 and 17-19-30 also as a fact of "[W]ritten [L]aw", require that the "[t]ime" of the offenses be stated in the body of the charging instrument of the indictment. The language in the charging in the charging instrument for attempted murder in question alleges that the assault occurred "ON OR ABOUT" July 28, 2013. Could this mean July 29th., 30th., August 1st., 2nd., 3rd. 4th., 7th., 10th., 13th., July 27th., 25th., 23rd., 20th., 19th., 15th.? All of these dates can be considered as "ON OR ABOUT" July 28, 2013. The State knew and could have easily allege the exact date of the supposed assault(s). This means that this failure to assert the exact time of the assault(s) was an arbitrary judicial action. Murder is a composite crime. Thus, they, by not alleging an exact time of assault have in some respects destroyed the identity of the Corpus delecti. This cannot be deemed reasonable notice. It is the appellant's contention that this is "[n]ot" a proper or sufficient "[t]ime" of assault, which is made part of the essential elements of the offense, which must be alleged within the body of the charging instrument,

passed upon by the Grand Jury and returned against the accused in accordance to the Constitutional Due Process rights of the defendant. This produces substantial prejudice, denying the defendant his right to proper and or sufficient notice, and serve to deny him the Equal Protection of the Laws.

The appellant contends, that a panel of jurors that embodied the Grand Jury upon their oaths aforesaid, stated the mortal blow and or assault occurred "ON OR ABOUT" July 28, 2013. This is not an exact time of assault. Thus, it becomes a false and invalid oath, tainting this oath producing fraud and misrepresentation requiring that the indictment(s) be quashed. It is universally recognized that every oath "[m]ust" be founded upon "[c]ertain [k]nowledge" (OMNE SACRAMENTUM DEBET ESSE CERTA SCIENTIA). The reality is that such oath was not founded upon certain knowledge where the Grand Jury who swore to such indictments, did not discover as they supposed that the exact "[t]ime" of the assault had not been alleged in the indictment. Failing to properly state the time of assault of the alleged crime are clear grounds that would demand that such a judgment be reversed, especially in light of the overwhelming prejudice to the appellant's Due Process rights. By this injustice the appellant was denied opportunity to make claims of alibi or actual innocence where the State would be permitted to assert the assault occurred on the numerous days afore claimed by alleging "ON OR ABOUT". The law is clear on this issue. No one can say what was in the mind of the Grand Jury which allowed the trial jury to speculate that the Grand Jury intended the time to be exactly July 28, 2013 where by making use of the term "ON OR ABOUT" such is not clear, or is it an exact asserted time of assault. This also denied the appellant his Due Process right to meet the charge by being able to call specific witnesses who could have clearly proven the assault did not occur on all those vague "ON OR ABOUT" dates the appellant previously listed. It is truly unnecessary to cite authority to the fact that it is absolutely essential in an indictment for murder, and in this case, attempted murder, that the exact "[t]ime" of assault and or death of the decease



party, or in thi case, the assaulted party, should be alleged therein, and in absence of such allegation said indictment is fatally defective and should be quashed and or judgment arrested upon motion made, which is done, and further, such a defective indictment is beyond the reach of amendment or repair as in a similar matter as it pertains to "[p]lace" of assault and death, for the indictment to a great extent destroys the identity of the corpus delecti, State v. Blakeney, 33 S.C. 111, 11 S.E. 637 infra State v. Stewart, 26 S.C. 125, 1 S.E. 468; Ball v. United States, 140 U.S. 118, 11 S.Ct. 761, 35 L.Ed. 377; State v. Platt, 154 S.C. 1, 151 S.E. 202.

In State v. Kennedy, (L.A.)(1845) 8 Rob. 590, the court in holding an indictment for murder bad, as not alleging the time and or place of the death said: "The material fact in murder are the mortal stroke and the consequent death being a composite crime, and the death "[m]ust" appear upon the record and or on the face of the indictment to have occurred within one year and a day from the time when the mortal stroke was given". The averment then of each of these material facts "[m]ust" under well established rules of criminal pleading be accompanied by an allegation of a certain time and or place, to include not alleging "ON OR ABOUT" as it pertains to time.

To amplify this proposition, in State v. Rallo, 403 S.E.2d 653 (1991), the court in relevant part stated [v]erbatim:

"It is true that the State need not prove the exact time and or date set forth in the indictment(s), unless "[t]ime" is an essential element of the offense, or is made part of it", Id. at 655.

In State v. Ham, 259 S.C. 118, 191 S.E.2d. 13(S.C.1972). The South Carolina Supreme Court stated in Haec [V]erba:

"If '[t]ime' is '[n]ot' of the essence or gist of the offense, the '[p]recise [t]ime' of which the offense is

charged to have been committed is '[n]ot' material".

On the other side of the spectrum of this language, the "[p]recise [t]ime" at which the offense is said to have been committed "[i]s" material if "[t]ime" is of the essence or gist of the offense as it is in this case.

Inasmuch, to be "ON POINT", in State v. Pierce, 207 S.E.2d 414, which is a murder precedent, the indictment charged that the offense and or crime occurred on a certain date, and does "[n]ot" charge "ON OR ABOUT". The State knew the exact time of assault and also knew that "time" was an essential element of the offense. But they figured since they thought they got away with that Gentry fraud. They continued the arbitrary act and disregarded the appellant's Due Process rights.

Hence, by the Doctrine of "STARE DECISIS ET NON QUIENTA MOVERE", an indictment "[m]ust" properly set forth all the essential elements of the offense. By Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887 (1974), it is well established and recognized under American Jurisprudence: That if an indictment fails to charge all necessary elements, it fails to charge the offense. If it fails to charge the offense, such violates the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution, as well as Article IV § 2, and his rights of Due Process which "[v]oids" the trial court's jurisdiction for Due Process violation. Thus, the sentence and conviction "[m]ust" be vacated, United States v. Masotto supra.; Castillo v. Holder supra.; State v. Brandt supra.; United States v. Cabrera-Teron, 168 F3d. 141 (5th.Cir.1999); United States v. Pupo, 841 F2d. at 1239(4th.Cir.1988)(En Banc); United States v. Hooker, 841 F2d. 1225(4th.Cir.1988); U.S. v. \$41,320 U.S. Currency, 9 F.Supp. 3d. 582, 2014 WL 266240; White v. Manis, 2014 WL 1513280(DSC. 2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); Hunt v. United States, F.Supp.2d., 2007 WL 5131716(DSC.2007); Brown v. U.S., 2014 WL 2871398(DSC.2014).

ARREST WARRANT

2014A4610100218

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE

2014-5989

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone: SSN

Sex M Race B Height 6 Weight 190

DL State SC DL #

DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Carson Neely - N7078

Offense: Sex / Criminal sexual conduct - First degree

Offense Code: 0160

Code/Ordinance Sec: 16-03-0652

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Reginald White

on 2/3/2014

Signature of Probation/Parole/Supervision Officer

RETURN WARRANT TO:

York County General Sessions

1675 York Hwy

York, SC 29745

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Personally appeared before me the affiant Carson Neely who

being duly sworn deposes and says that defendant Reginald Raynard White, Jr

did within this county and state on or about 2/24/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did willfully and unlawfully violate South Carolina Code of Laws, Criminal Sexual Conduct (st degree) by physically forcing unwanted sexual vaginal and anal intercourse on Chelsea Macies, a 22 year old female. This incident occurred without the victim's consent and resulted in physical injury. Incident occurring on February 24, 2014 at the address of 817 Silver Creek Drive, Clover, County of York, South Carolina. All against the peace and dignity and all laws made and provided.

Victim Statements-Evidence & Police Investigation

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Affiant's Address 1675 York Hwy.

York, SC 29745-000

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/24/2014 defendant Reginald Raynard White, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of York) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 2/27/2014

Signature of Issuing Judge

Lynne Horton Benfield (L.S.)

Judge Code: 5806

Judge's Address Moss Justice Center

York, SC 29745-7428

Judge's Telephone (803)628-3029

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

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Form Approved by S.C. Attorney General April 24, 2003 SCCA 510

AFFIDAVIT

74-OF-171

ARREST WARRANT

2014A4610200312

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE

201400006142

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone: SSN: Sex: M Race: B Height: 6 Weight: 190 DL State: SC DL #: DOB: Agency ORI #: SC0460000 Prosecuting Agency: York County Sheriff Prosecuting Officer: M Doty - D8203 Offense: Drugs / PWID Oxycodone 2nd

Offense Code: 0187 Code/Ordinance Sec: 44-53-0370(b)(2)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Reginald Raynard White Jr on Feb 27, 2014

Signature of Constable/Law Enforcement Officer (REMOVED)

RETURN WARRANT TO:

York County General Sessions 1675 York Hwy York, SC 29745

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA County/ Municipality of York

AFFIDAVIT

AUDIT COPY

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant M Doty who being duly sworn deposes and says that defendant Reginald Raynard White, Jr did within this county and state on or about 2/26/2014 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of York) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / PWID Oxycodone 2nd

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on February 26, 2014 in the county of York, one Reginald Raynard White Jr did willfully and unlawfully violate South Carolina Drug Law by possessing with the intent to distribute 5 grams of oxycodone. This was discovered during a search warrant at 817 Silver Creek Drive Clover, County of York, SC. The Defendant has one prior conviction for this offense. REPORT #201400006142

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of York

Affiant's Address Moss Justice Center York 29745-7428 Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

it appearing from the above affidavit that there are reasonable grounds to believe that on or about 2/26/2014 defendant Reginald Raynard White, Jr did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / PWID Oxycodone 2nd

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 2/26/2014 (L.S.) Signature of Issuing Judge Leon E. Yard Judge Code: 5945

Judge's Address Moss Justice Center York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

75-OF-171

609

ARREST WARRANT

2014A4610200313

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE

201400006142

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone:

Sex: M Race: B Height: 6 Weight: 190

DL State: SC DL #: Agency ORI #: SC0460000

DOB: Prosecuting Agency: York County Sheriff

Prosecuting Officer: M Doty - D8203

Offense: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense

Offense Code: 0387

Code/Ordinance Sec: 44-53-0370(e)(2)(a)2

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Reginald Raynard White Jr on Feb. 27, 2014

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions 1675 York Hwy York, SC 29745

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Personally appeared before me the affiant M Doty being duly sworn deposes and says that defendant Reginald Raynard White, Jr did within this county and state on or about 2/26/2014 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of York) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on February 26, 2014 in the county of York, one Reginald Raynard White Jr did willfully and unlawfully violate South Carolina Drug Law aiding, abetting, scheming and conspiring with another to traffic approx 10.2 grams of cocaine. This was discovered during a search warrant at 817 Silver Creek Drive Clover, SC. Probable cause based on a police investigation, execution of a search warrant and the recovery of evidence (digital scale, 10.2 grams of cocaine in 2 bags). The defendant has one prior drug conviction. REPORT 201400006142

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Affiant's Address Moss Justice Center York 29745-7428

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2014 defendant Reginald Raynard White, Jr did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 2/26/2014

Judge's Address Moss Justice Center York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: Magistrate

Leon E. Yard

Judge Code: 5945

Judge's Address Moss Justice Center York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: Magistrate

AUDIT COPY

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AUDIT COPY

AUDIT COPY

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

76-of-171

ARREST WARRANT

2014A4610200314

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

York

THE STATE

201400006142

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone:

Sex: M Race: B Height: 6 Weight: 190

DL State: SC DL #: [ ]

DOB: [ ] Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: M Doty - D8203

Offense: Drugs / PWID CRACK -2nd offense

Offense Code: 3015

Code/Ordinance Sec: 44-53-0375(B)(2)

This warrant is CERTIFIED FOR SERVICE in the [X] County/ [ ] Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Reginald Raynard White Jr. on Feb 27, 2014

Signature of Constable/Law Enforcement Officer (YEMOED)

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

York

Personally appeared before me the affiant M Doty being duly sworn deposes and says that defendant Reginald Raynard White, Jr who

did within this county and state on or about 2/26/2014

State of South Carolina (or ordinance of [X] County/ [ ] Municipality of York violate the criminal laws of the

DESCRIPTION OF OFFENSE: Drugs / PWID CRACK -2nd offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on February 26, 2014 in the county of York, one Reginald Raynard White, Jr did willfully and unlawfully violate South Carolina Drug Law by possessing with the intent to distribute 5 grams of crack. This was discovered during a search warrant at 817 Silver Creek Drive Clover, SC. Probable cause based on a police investigation, execution of a search warrant and the recovery of evidence (digital scale, 5 grams of crack). The defendant has one prior drug conviction. REPORT # 201400006142

Signature of Affiant

Signature of M Doty (YEMOED)

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

York

Affiant's Address Moss Justice Center

York 29745-7428

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: it appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/26/2014 defendant Reginald Raynard White, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of York ) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / PWID CRACK -2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 2/26/2014

Signature of Issuing Judge (L.S.) Leon E. Yard

Judge Code: 5945

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

Form Approved by S.C. Attorney General April 21, 2003 SCCA 516

AFFIDAVIT

AUDIT COPY

77-0f-171

611

ARREST WARRANT

2014A4610100216

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE against

2014-5989

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone: SSN: Sex: M Race: B Height: 6 Weight: 190

DL State: SC DL #: DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Carson Neely - N7078

Offense: Children / Legal custodian, unlawful neglect of child or helpless person

Offense Code: 2481

Code/Ordinance Sec: 63-05-0070

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: York County General Sessions 1675 York Hwy York, SC 29745

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA County/ Municipality of York

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Carson Neely who being duly sworn deposes and says that defendant Reginald Raynard White, Jr did within this county and state on or about 2/24/2014 State of South Carolina (or ordinance of County/ Municipality of York violate the criminal laws of the in the following particulars:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did willfully and unlawfully violate South Carolina Code of laws 63-05-0070 by placing victim, his 13 month old daughter at unreasonable risk of harm affecting the victim/child's physical safety by conducting an illegal drug transaction in the presence of the child. This incident occurred on February 24, 2014 at the defendant's residence located at , Clover, South County of York. All against the peace and dignity of this State and such laws made and provided.

Police investigation & Recovery of Evidence

Signature of Affiant

STATE OF SOUTH CAROLINA County/ Municipality of York

Affiant's Address 1675 York Hwy. York, SC 29745--000 Affiant's Telephone (803)628-3059

78-OF-171

612

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 2/24/2014 defendant Reginald Raynard White, Jr did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of York as set forth below:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 2/27/2014 Judge's Address Moss Justice Center York, SC 29745-7423 Judge's Telephone (803)628-3029 Issuing Court: Magistrate Municipal Circuit

Signature of Issuing Judge (L.S.) Lynne Horton Benfield Judge Code: 5806

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ARREST WARRANT

2014A4610100217

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE 2014-5989

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone: SSN: [redacted]

Sex: M Race: B Height: 6 Weight: 190

DL State: SC DL #: [redacted]

DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Carson Neely - N7078

Offense: Children / Legal custodian, unlawful neglect of child or helpless person

Offense Code: 2481

Code/Ordinance Sec: 63-05-0070

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Reginald White on 2/27/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions 1675 York Hwy York, SC 29745

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ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Personally appeared before me the affiant Carson Neely who

being duly sworn deposes and says that defendant Reginald Raynard White, Jr

did within this county and state on or about 2/24/2014 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did willfully and unlawfully violate South Carolina Code of laws 63-05-0070 by placing victim, his 6 week old son ( ) at unreasonable risk of harm affecting the victim/child's physical safety by conducting an illegal drug transaction in the presence of the child. This incident occurred on February 24, 2014 at the defendant's residence located at Drive, Clover, South County of York. All against the peace and dignity of this State and such laws made and provided.

Police investigation & Recovery of Evidence

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Affiant's Address 1675 York Hwy.

York, SC 29745-000

Affiant's Telephone (803)628-3059

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/24/2014 defendant Reginald Raynard White, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 2/27/2014

Signature of Issuing Judge Lynne Horton Benfield

Judge Code: 5806

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: Magistrate Municipality Circuit

ORIGINAL

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Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

AFFIDAVIT

79-OF-171

ARREST WARRANT

2014A4610100217

STATE OF SOUTH CAROLINA

County/  Municipality of

York

THE STATE

2014-5989

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone:

SSN:

Sex: M Race: B Height: 6 Weight: 190

DL State: SC DL #: [redacted]

DOB: [redacted] Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Carson Neely - N7078

Offense: Children / Legal custodian, unlawful neglect of child or helpless person

Offense Code: 2481

Code/Ordinance Sec: 63-05-0070

This warrant is CERTIFIED FOR SERVICE in the

County/  Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Reginald White

on 2/27/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions  
1675 York Hwy  
York, SC 29745

ORIGINAL

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STATE OF SOUTH CAROLINA

County/  Municipality of

York

Personally appeared before me the affiant Carson Neely who

being duly sworn deposes and says that defendant Reginald Raynard White, Jr did within this county and state on or about 2/24/2014

State of South Carolina (or ordinance of  County/  Municipality of York) violate the criminal laws of the in the following particulars:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did willfully and unlawfully violate South Carolina Code of laws 63-05-0070 by placing victim, his 6 week old son ( ) at unreasonable risk of harm affecting the victim/child's physical safety by conducting an illegal drug transaction in the presence of the child. This incident occurred on February 24, 2014 at the defendant's residence located at , Clover, South County of York. All against the peace and dignity of this State and such laws made and provided.

Police investigation & Recovery of Evidence

Signature of Affiant

STATE OF SOUTH CAROLINA

County/  Municipality of

York

Affiant's Address 1675 York Hwy.  
York, SC 29745-000

Affiant's Telephone (803)628-3059

80-OF-171

614

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/24/2014 defendant Reginald Raynard White, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

County/  Municipality of York ) as set forth below:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 2/27/2014

Signature of Issuing Judge Lynne Horton Benfield (L.S.)

Judge Code: 5806

Judge's Address Moss Justice Center  
York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2014A4610100216

STATE OF SOUTH CAROLINA

County/ Municipality of

York

THE STATE

2014-5989

against

Reginald Raynard White, Jr

Address:

Clover, SC 29710-

Phone:

SSN

Sex: M

Race: B

Height: 6

Weight: 190

DL State: SC

DL #:

Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Carson Neely - N7078

Offense: Children / Legal custodian, unlawful neglect of child or helpless person

Offense Code: 2481

Code/Ordinance Sec: 63-05-0070

This warrant is

CERTIFIED FOR SERVICE

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Reginald White Jr 2/26/14

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions 1675 York Hwy York, SC 29745

ORIGINAL

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ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

York

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCA 518

Personally appeared before me the affiant

Carson Neely

being duly sworn deposes and says that defendant

Reginald Raynard White, Jr

who

did within this county and state on or about

2/24/2014

State of South Carolina (or ordinance of

County/ Municipality of

York

violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The defendant did unlawfully and unlawfully violate South Carolina Code of laws 63-05-0070 by placing victim, his 13 month old daughter ( ) at unreasonable risk of harm affecting the victim/child's physical safety by conducting an illegal drive transaction in the presence of the child. This incident occurred on February 24, 2014 at the defendant's residence located at Drive, Clover, South County of York. All against the peace and dignity of this State and such laws made and provided.

Police investigation & Recovery of Evidence

Signature of Affiant

Carson Neely

STATE OF SOUTH CAROLINA

County/ Municipality of

York

Affiant's Address

1675 York Hwy.

York, SC 29745-000

Affiant's Telephone

(803)628-3059

81-OF-171

615-

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/24/2014

defendant

Reginald Raynard White, Jr

did violate the criminal laws of the State of South Carolina

County/ Municipality of

York

as set forth below:

DESCRIPTION OF OFFENSE: Children / Legal custodian, unlawful neglect of child or helpless person

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 2/27/2014

(L.S.)

Signature of Issuing Judge

Lynne Horton Benfield

Judge Code: 5806

Judge's Address

Moss Justice Center

York, SC 29745-7425

Judge's Telephone

(803)628-3029

Issuing Court:

Magistrate

Municipal

Circuit

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

INDICTMENT

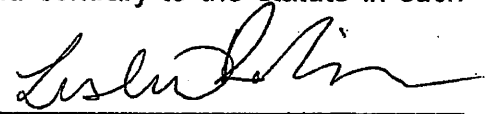
At a Court of General Sessions, convened on May 29, 2014, the Grand Jurors of York County present upon their oath:

**TRAFFICKING IN COCAINE**

*ATA Reginald Raynard White Jr*

On or about February 26, 2014, the Defendant, Reginald Raynard White, Jr., did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of 10 grams or more of cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-370, Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR

DOCKET NO. 2014-GS-46-01499

WITNESSES

YCMDEU/Doty

vk

ARREST WARRANT NUMBER

2014A4610200313

ACTION OF GRAND JURY

TRUE BILL

*Rebecca M. Means*  
Foreperson of Grand Jury

Date: 5/29/14

VERDICT

Guilty

*William A. Sharp*  
Foreperson of Petit Jury

Date: 1/14/2015

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

May 29, Term 2014

THE STATE

vs.

REGINALD RAYNARD WHITE, JR.

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370(e)(2)(a)

CDR Code: 0147

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

*one (2 pages) 1-14-2015*

81

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on May 29, 2014, the Grand Jurors of York County present upon their oath:

**POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE**

*Alia Reginald Raynard White*

On or about February 26, 2014, the Defendant, Reginald Raynard White, Jr., did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver crack cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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

*Leslie Robin*

ASSISTANT SOLICITOR

**WITNESSES**

YCMDEU/Doty

vk

**ARREST WARRANT NUMBER**

2014A4610200314

**ACTION OF GRAND JURY**

**TRUE BILL**

*Rikera W. Meares*  
Foreperson of Grand Jury  
Date: *5/29/14*

**VERDICT**

*Guilty*

*Sharon P. Sharp*  
Foreperson of Petit Jury  
Date: *1/14/2015*

DOCKET NO. 2014-GS-46-01500

**The State of South Carolina**  
**County of York**

**COURT OF GENERAL SESSIONS**

**May 29, Term 2014**

**THE STATE**

**vs.**

**REGINALD RAYNARD WHITE, JR.**

**Indictment for**  
**POSSESSION WITH INTENT TO DISTRIBUTE**  
**CRACK COCAINE**

SC Code: 44-53-375(B)  
CDR Code: 3039

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

619

*h*

*Exhibit # 2  
(2 pages)  
over*

*over*

COUNTY OF YORK

STATE VS.

REGINALD RAYNARD WHITE, JR

AKA: Reginald Raynard White

Race: Black Sex: M Age: 27

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip: Clover, SC 29710

DL# \_\_\_\_\_ SID# SC01704022

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

TO: PWID Crack Cocaine, 3<sup>rd</sup> offense

In violation of § 44-53-375(B) of the S.C. Code of Laws, bearing CDR Code # 3039

INDICTMENT/CASE#: 2014GS4601500  
A/W: 2014A4610200314  
Date of Offense: 02/26/2014  
S.C. Code §: 44-53-0375 (B) (3)  
CDR Code #: 3039

SENTENCE SHEET

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Leslie D. Robinson Assistant Solicitor SC Bar # 74785  
Walter W. Shelton Defendant SC Bar # 80151

Walter W. Shelton Attorney for Defendant SC Bar # 69463

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of Life w/ 10 year days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ Obtain GED

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ 280.00

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Mike Watts

SCCA/217 (03/2011)

Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: \_\_\_\_\_

Judge Bar ID: \_\_\_\_\_ Judge Code: 2135

Sentence Date: 1-14-15

OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.
AKA: Reginald Raynard White
Race: BLACK Sex: M Age: 25
DOB: SS#
Address:
City, State, Zip: York, SC 29745
DL#: SID#

INDICTMENT/CASE#: 2012GS4602520
A/W#: J158404
Date of Offense: 4/4/2012
S.C. Code § : 44-53-0370(b)(1)
CDR Code #: 0183

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Drugs / Distribution of Cocaine - 1st offense

CONVICTED OF or PLEADS

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Epting, Christopher W SC Bar# 76321
Defendant: [Signature]
Attorney for Defendant: [Signature] SC Bar# 69466

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$280-

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: David Hamilton 85-of-17
Court Reporter: Shirley Broom
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2113
Sentence Date: 11-9-12

IN THE COURT OF GENERAL SESSIONS

3B COUNTY OF York STATE VS. Reginald Raynard White AKA: Race: BLACK Sex: M Age: 25 DOB: SS#: [REDACTED] Address: City, State, Zip: York, SC 29745 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2012GS4602515 A/W#: M604481 Date of Offense: 4/13/2012 S.C. Code § : 44-53-0370(d)(2) CDR Code #: 0179

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Epting, Christopher W SC Bar# 76321 Defendant Attorney for Defendant SC Bar# 69416

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 6 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 2 Days The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$280-

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton Court Reporter: Shirley Broom 86-of-171 SCCA/217 (03/2011)

Presiding Judge Judge Code: 213 Sentence Date: 11-9-12

IN THE COURT OF GENERAL SESSIONS

OF York VS. Reginald Raynard White AKA: Race: BLACK Sex: M Age: 25 DOB: SS# Address: City, State, Zip: York, SC 29745 DL#: SID#

INDICTMENT/CASE#: 2012GS4602514 A/W#: M604480 Date of Offense: 4/13/2012 S.C. Code § : 44-53-0370(d)(2) CDR Code #: 0179

SENTENCE SHEET ORIGINAL

\*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

CONVICTED OF or PLEADS

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Epting, Christopher W SC Bar# 76321 Defendant Attorney for Defendant SC Bar# 69416

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 6 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees. TOTAL \$280

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton Court Reporter: Shirley Broom 87-of-171 SCCA/217 (03/2011)

Presiding Judge Judge Code: 2113 Sentence Date: 11-9-12

ISSUE NUMBER 5:

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 4TH., 5TH., 6TH., 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS VIOLATED, BY THE COURT AND PROSECUTION ALLOWING INTO EVIDENCE STATEMENT(S) THAT WERE FRAUDULENTLY OBTAINED IN VIOLATION OF THE APPLICABLE STATUTES WHERE THERE WAS NO EVIDENCE ADDUCED AT TRIAL THAT DEMONSTRATE THE WITNESS WAS GIVEN A COPY OF THE STATEMENT AT THE TIME IT WAS MADE AS THE STATUTE AND DUE PROCESS LAW REQUIRES, AND WHERE THE RECEIPT SIGNED BY THE WITNESS CONTAIN A FRAUDULENT ENTRY?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOSS v. AETNA LIFE INS. CO. SUPRA.; STATE v. BROAD RIVER POWER CO. SUPRA.; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT AT THE PROCEEDINGS, (BLACK LAW DICTIONARY 8TH. EDITION).

S.C. CODE ANN §§ 17-25-10; 1-7-730 AND 17-13-150, REQUIRE THAT THE PROSECUTING BODY "[S]HALL" FULFILL, AND SEE THAT ALL DUTIES, REQUIREMENTS AND RULES OF PROCEDURE RELATED TO CRIMINAL DUE PROCESS AND OR THE STATE AND FEDERAL CONSTITUTION AND OR STATE AND FEDERAL LAW ARE ADHERED TO AND PROPERLY COMPLETED WITHIN THE COURT(S).

THIS ACTION ALSO CONSTITUTE AN ACT OF FRAUD UPON THE

COURT DESIGNED TO PREVENT THE APPLICANT FROM BEING HEARD WITHIN THE PROPER AND FAIR BOUNDARIES OF DUE PROCESS LAW WHERE THE JUDGE INVOLVED WAS COMPLACENT, VIOLATING HIS OR HER OATH OF OFFICE TO UPHOLD THE STATE AND FEDERAL CONSTITUTION WHEN IT WAS THE JUDGE'S DUTY AS FIDUCIARY TO THE PUBLIC TO SPEAK WHEN THEY SEEN THAT THE STATEMENT(S) AND TESTIMONY RELATED THERETO WERE BEING INTRODUCED AS EVIDENCE WHEN SUCH EVIDENCE AND STATEMENT PRODUCED, SPIT IN THE FACE OF DUE PROCESS LAW AND BLATANTLY VIOLATE THE APPLICABLE STATUTES RELATED THERETO. THE COURT'S SILENCE FURTHER ESTABLISHES THE FRAUD TAINING THE ENTIRE PROCEEDINGS VITIATING THE CONVICTION WHERE FRAUD VITIATES EVERYTHING THAT IT ENTERS, RENDERING THE PROCEEDINGS UNCONSTITUTIONAL, VOIDING THE COURT INVOLVED JURISDICTION. FRAUDULENT CONCEALMENT AND SUPPRESSION OF TRUTH WITH INTENT TO DECEIVE OR EVEN WITHOUT MISREPRESENTATION OR DUTY TO DISCLOSE CAN CONSTITUTE FRAUD, EVEN IN ABSENCE OF FIDUCIARY DUTY, STATUTORY, OR OTHER INDEPENDENT LEGAL DUTY TO DISCLOSE MATERIAL INFORMATION, COMMON LAW FRAUD INCLUDES ACTS TAKEN TO CONCEAL, CREATE FALSE IMPRESSION, MISLEAD, OR OTHERWISE DECEIVE TO PREVENT OTHER PARTY FROM ACQUIRING MATERIAL INFORMATION SUCH AS THAT WHICH OCCURRED IN THIS INSTANCE. THE MATERIAL INFORMATION CONCEALED IS THAT THEY FRAUDULENTLY ENTERED THE TESTIMONY AND STATEMENT(S) INTO THE COURT RECORD OF JESSICA COLLINS KNOWING FULLY WELL THAT BY DUE PROCESS LAW THEY COULD NOT DO SO, BECAUSE THE STATEMENT STOOD IN BLATANT VIOLATION OF THE APPLICABLE STATUTES AND THE COURT WAS PRIVY TO IT ALSO PRODUCING FRAUD UPON THE COURT. IT WAS THE COURT'S DUTY TO SPEAK RENDERING THE PROCEEDINGS UNCONSTITUTIONAL AND VOID THE COURT INVOLVED JURISDICTION WHERE THEY CONSPIRED UNDER COLOR OF STATE LAW WITH THE PROSECUTION TO BRING THIS CASE, U.S. v. COTTON, 231 F3d. 890 (4th.Cir.2000); IN RE: DURAMAX DIESEL LITIGATION,--F.R.D.--, 2018 WL 949856(E.D.Mich. 2018); UNITED STATES v. PALIN, 874 F3d. 418(4th.Cir.2017); UNITED STATES v. LUSK, 2017 WL 508589(S.D.Va.2017); UNITED STATES v. CALLOWAY, F.Supp.3d., 2016 WL 4269961(N.D.Cali.2016); MORRISON v. ACCUWEATHER INC., 2016 WL 3015226(M.D.Pa.2016); HAMER v. NEIGHBORHOOD HOUSING SERVICES OF CHICAGO, 138 S.Ct. 13, 199 L.Ed.2d. 249(U.S.2017); PHILLIPS v. BROCK & SCOTT, PLLC., 2017 WL 3226866(D.C.Md.2017); MOSELY v. UNITED STATES, 2018 WL 1187778

(W.D.N.C.2018); MILFORD v. MIDDLETON, 2018 WL 348059(DSC.2018); VAETH v. BOARD OF TRUSTEES, F.Supp.3d., 2016 WL 775386(D.C.Md. 2016); IN RE: BUILDING MATERIAL CORP. OF AMERICA ASPHALT ROOFING SHINGLES PRODUCTS, F.Supp.3d., 2013 WL 1827923(DSC.2013); ARATA v. VILLAGE WEST OWNERS ASS'N INC., S.E.2d., 2011 WL 11735004(S.C. App.2011); ROBINSON v. ESTATE OF HARRIS, 388 S.C. 630, 698 S.E.2d 222(S.C.2010); WELLS FARGO BANK N.A. v. FARAG, 2016 WL 2944561 (N.C.2016).

SO THE LAW IS WRITTEN, "ITA LEX SCRIPTA EST", S.C. CODE ANN § 19-1-80 STATE IN [H]AEC [V]ERBA:

"CONDITIONS ON EXAMINATIONS OF WITNESSES IN CRIMINAL PROCEEDINGS CONCERNING WRITTEN STATEMENT(S) MADE TO PUBLIC EMPLOYEE(S)---NO WITNESS IN ANY PRELIMINARY HEARING OR IN ANY CRIMINAL JUDICIAL PROCEEDING OF ANY KIND OR NATURE, SHALL BE EXAMINED OR CROSS-EXAMINED BY ANY EXAMINER, SOLICITOR, LAWYER OR PROSECUTING OFFICER CONCERNING A WRITTEN STATEMENT FORMERLY MADE OR GIVEN TO ANY PERSON EMPLOYED BY THIS STATE, OR ANY COUNTY, CITY OR MUNICIPALITY THEREOF, OR ANY PART OF ANY SUCH GOVERNMENTAL BODY, UNLESS IT FIRST BE SHOWN THAT AT THE TIME OF MAKING OF THE STATEMENT THE WITNESS WAS GIVEN AN EXACT COPY, AND THAT BEFORE ANY EXAMINATION OR CROSS-EXAMINATION THE WITNESS WAS GIVEN A COPY OF THE STATEMENT AND ALLOWED A REASONABLE AMOUNT OF TIME IN WHICH TO READ IT, AND THE WITNESS SIGNED A RECEIPT TAKEN THEREFOR, STATE v. MOTES, (S.C.1975) 215 S.E.2d. 19; STATE v. STEADMAN, 257 S.C. 528, 186 S.E.2d. 712 (1972).

S.C. CODE ANN § 19-1-90 STATE IN [H]AEC [V]ERBA:

"ADMISSIBILITY IN CRIMINAL PROCEEDINGS OF WRITTEN STATEMENTS MADE TO PUBLIC EMPLOYEE(S)---UNLESS THE PROVISIONS OF S.C. CODE ANN § 8-15-50 AND S.C. CODE ANN § 19-1-80 HAVE BEEN COMPLIED WITH, NO STATEMENT SUCH AS REFERRED TO IN THOSE SECTIONS SHALL BE ADMISSABLE INTO EVIDENCE IN ANY CASE, NOR SHALL ANY REFERENCE BE MADE TO IT IN ANY TRIAL OF ANY CASE".

LETS DIRECTLY ADDRESS THIS MATTER. YOU HAVE THE WITNESS

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JESSICA COLLINS MAKING A STATEMENT. THE STATEMENT WAS NEVER WRITTEN BY HER. IT WAS WRITTEN AND OR TYPED BY AN OFFICER TO WHICH SHE SIGNED IT. THE STATUTE AND DUE PROCESS LAW REQUIRES THAT THE WITNESS WRITE HER OWN STATEMENT UNLESS THERE IS SOME JUSTIFIABLE REASON AS TO WHY SHE CAN'T AND THEN SIGN IT, NOT THE OFFICER INVOLVED TYPING IT POTENTIALLY FRAMING THE MATTERS AS HE SEE FIT THEN COERCING SOMEONE TO SIGN IT. THUS, THE DOCUMENT CONSTITUTE AN ACT OF FRAUD AND OR FRAUDULENT MISREPRESENTATION.

FURTHER, THE STATEMENT HAS A FRAUDULENT ENTRY IN IT, IN THAT IT ASSERTS A COPY WAS GIVEN TO COLLINS AT THE TIME SHE MADE THE STATEMENT WHICH IS WHY THE PROSECUTOR AND CONSPIRING PARTIES, PURPOSELY, MALICIOUSLY, NEVER ASKED THIS PARTICULAR WITNESS THIS QUESTION WHEN SHE WAS ON THE WITNESS STAND. THE COURT AND THE PROSECUTOR BOTH KNEW THAT IF COLLINS WAS MADE TO ANSWER THIS ESSENTIAL, CRITICAL QUESTION ON THE WITNESS STAND. IT WOULD HAVE IMMEDIATELY PRODUCED EVIDENCE THAT THE DOCUMENT WHICH EMBELLISHED HER STATEMENT CONTAINED A FRAUDULENT ENTRY MAKING IT ANY ANY TESTIMONY GIVEN RELATED THERETO INADMISSIBLE DUE TO THE DOCUMENT ALSO BEING ESTABLISHED IN BLATANT VIOLATION OF THE APPLICABLE STATUTES.

BUT THE CONSPIRING UNDER COLOR OF STATE LAW AND ACTS OF OBSTRUCTION OF JUSTICE GO BEYOND THIS. THE COURT AND PROSECUTOR KNEW EVEN BEFORE THE TRIAL COMMENCE THAT THIS WAS A CRUCIAL FACTOR AND DEFECT, WHICH IS DEMONSTRATED BY THE FACT THAT THE NEVER PERMITTED THE WITNESS CHELSEA MACIAS TO TESTIFY BECAUSE IT WAS CLEAR ON ITS FACE THAT HER STATEMENTS ALSO WERE NOT IN COMPLIANCE TO THE APPLICABLE STATUTES. YET IT IS MORE THAN THIS IN THEIR CONSPIRING UNDER COLOR OF STATE LAW AND IN EGREGIOUS ACTS OF FRAUD UPON THE COURT. THE STATE AND COURT FURTHER KNEW THAT IF CHELSEA MACIAS WAS MADE TO TESTIFY. IT WOULD HAVE BEEN DISCOVERED THAT THE STATE OFFICIALS AND PROSECUTOR LIED; THAT THERE WAS NO CONFIDENTIAL INFORMANT USED TO ESTABLISH PROBABLE CAUSE. BUT IT WAS CHELSEA MACIAS HERSELF WHO WAS THE SOLE SOURCE OF THE OFFICERS ESTABLISHING PROBABLE CAUSE TO OBTAIN THE SEARCH WHERE IT WAS CLEARLY DISCOVERED THAT SHE WAS NOT A RELIABLE

SOURCE INVALIDATING THE SEARCH WARRANT ITSELF WHICH WOULD HAVE RENDERED ALL THE DRUG EVIDENCE SUBMITTED FRUIT OF A POISONOUS TREE. THUS, THE STATEMENT STANDS IN BLATANT DEFIANCE TO DUE PROCESS LAW AND THE APPLICABLE STATUTES BY THIS FRAUD AND DECEPTION OF COURT AND JURY AND ESTABLISHES CLEAR ACTS OF OBSTRUCTION OF JUSTICE, BENTON v. BURNS, 2017 WL 491251(D.C.Md.2017); PEGG v. HEARNBERGER, 845 F3d. 112(4th.Cir.2017); JOHNSON v. BYRD, 2016 WL 6839410(N.C.2016); GRAHAM v. GAGNON, 831 F3d. 176(4th.Cir.2016); STATE v. BRANDT, 393 S.C. 526, 713 S.E.2d. 591(S.C. 2011); NORTH AMERICAN RESCUE PRODUCTS, INC. v. RICHARDSON, 411 S.C. 371, 769 S.E.2d. 237(S.C.2015); SOUTHEASTERN SITE PREP, LLC. v. ATLANTIC COAST BUILDERS AND CONTRACTORS, LLC., 394 S.C. 97, 713 S.E.2d. 650(S.C.App.2011).

WHEN YOU LOOK AT THE RESULTS OF THIS MISCARRIAGE OF JUSTICE WHERE BY SUCH ACTS, I WAS DENIED THE EQUAL PROTECTION OF THE LAWS. I WAS DENIED MY RIGHT OF PRISTINE DUE PROCESS UNTAINTED BY FRAUD. I WAS DENIED MY RIGHT TO A FAIR AND IMPARTIAL TRIAL. I WAS DENIED MY RIGHT TO A DIRECT VERDICT BECAUSE WITHOUT THESE FRAUDULENTLY OBTAINED STATEMENTS FROM BOTH CHELSEA MACIAS AND JESSICA COLLINS AND THE TESTIMONY AT TRIAL RELATED THERETO. THE OFFICERS WOULD HAVE NEVER BEEN ABLE TO ESTABLISH PROBABLE CAUSE TO OBTAIN THE SEARCH WARRANT, THE TRIAL WOULD HAVE BEEN REQUIRED TO BE REVERSED SINCE THE COLLINS STATEMENT VIOLATED THE APPLICABLE STATUTES AND THE COURT AND PROSECUTOR WOULD HAVE NEVER BEEN ABLE TO MEET THE BURDEN OF ESTABLISHING THE ELEMENTS OF THE OFFENSE(S) CHARGED AND OR THE CORPUS DELECTI PERTAINING TO THESE MATTERS. THE AMOUNT OF OVERWHELMING PREJUDICE EXPERIENCED BY THE APPLICANT BECOMES PAINFULLY OBVIOUS. THUS, THIS EVIDENCE AND OR TESTIMONY OBTAINED BY FRAUD IS INADMISSIBLE, CHRISTIANSON v. M.B.N.A. AMERICAN BANK N.A., S.E.2d., 2013 WL 8507850(S.C.App.2013); CALDWELL v. WIQUIST, 402 S.C. 595, 741 S.E.2d. 583(S.C.App.2013); ANDERSON BROS. BANK v. E.B.T. PROPERTY HOLDINGS CO., INC., S.E.2d., 2013 WL 8507807(S.C.App.2013); TILLMAN v. TILLMAN EX REL ESTATE OF TILLMAN, S.E.2d., 2013 WL 5390504(S.C.App.2014); MILLER v. COLUMBIA FOREST INC., S.E.2d., 2014 WL 5390504 S.C.App.2014); SPRINGOB v. UNIVERSITY OF SOUTH CAROLINA, 407 S C. 490, 757 S.E.2d. 384(S.C.2014).

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THE SOUTH CAROLINA SUPREME COURT IN SUBSEQUENT CASES GAVE GREATER CLARITY TO THIS ISSUE. THAT COURT DETERMINED THAT THE PROSECUTING AGENTS AND OR LAW ENFORCEMENT OFFICERS WHO TOOK THE STATEMENT, DO NOT HAVE TO GIVE A COPY OF THE STATEMENT(S) AT THE EXACT TIME THAT IT WAS MADE. BUT IT "[M]UST"(EMPHASIS ADDED) BE GIVEN TO THE PERSON MAKING THE STATEMENT A REASONABLE TIME SHORTLY AFTER THE STATEMENT(S) WERE MADE. WE WILL SAY (60) DAYS AFTER THE STATEMENTS WERE TAKEN TO BE FAIR TO THE STATE PROSECUTORS AND OR LAW ENFORCEMENT OFFICERS. IN FUNDAMENTAL FAIRNESS TO THE APPLICANT AND OR ACCUSED, IT CANNOT BE CONSTRUED TO MEAN A YEAR LATER WHICH APPEARS TO BE THE CASE HERE, STATE v. COPELAND, 321 S.C. 318, 468 S.E.2d. 620(1996); BANNISTER v. STATE, (S.C.1998) 333 S.C. 298, 509 S.E.2d. 807; STATE v. BUTLER, (S.C.1982) 277 S.C. 454, 290 S.E.2d. 1, CERT. DENIED 103 S.Ct. 242, 459 U.S. 932, 74 L.Ed.2d. 191. THERE IS NO ROOM FOR THE COURT TO IMPOSE A DIFFERENT JUDGMENT BASED UPON ITS OWN NOTIONS ONCE THE STATE LEGISLATORS AND SOUTH CAROLINA SUPREME COURT HAS MADE THEIR DETERMINATION ON THIS ISSUE. THE PLAIN MEANING RULE APPLIES IN THIS INSTANCE, BASS v. ISOICHEM, 617 S.E.2d. 369(S.C.App.2005); STATE v. BRANNON, 666 S.E.2d. 272 (S.C.App.2008); STATE v. PITTMAN, 647 S.E.2d. 144(S.C.2007); LIBERTY MUT. INS. v. S.C. SECOND INJURY FUND, 611 S.E.2d. 297 (S.C.20 5); BANK MARKAZI v. PETERSON, 136 S.Ct. 1310, 194 L.Ed.2d. 382, 8 U.S.L.W. 4424(U.S.2016); U.S. v. BASTON, 818 F3d. 651(11th.Cir.2016); STAR ATHLETICA, LLC. v. VARSITY BRANDS, INC., 137 S.Ct. 10 2, 197 L.Ed.2d. 354, 85 U.S.L.W. 4139(U.S. 2017); ENCINO MOTOR CARS LLC. v. NAVARO, 136 S.Ct. 2117, 195 L.Ed.2d. 382, 8 U.S.L.W. 4222(U.S.2016). TO DENY THIS RIGHT OF THE APPLICANT AND FACT WOULD VIOLATE THE EQUAL PROTECTION OF THE LAWS CLAUSE AS THE CONSPIRING STATE ACTORS AND COURT DID, ACTING ARBITRARILY UNDER COLOR OF STATE LAW TO CONCEAL MATERIAL FACTS IN VIOLATION OF 18 U.S.C. §§ 242 AND 1001, DONATONI v. DEPARTMENT OF HOMELAND SECURITY,--F.Supp.3d.--, 2016 WL 1755871; U.S. v. HARE, 820 F3d. 93(4th.Cir.2016); U.S. v. LAWRENCE, F.Supp.3d., 2015 WL 856866 (S.D.Va.2015); MINA v. CHESTER COUNTY, F.Supp.3d., 2015 WL 6550543(2015).

THE STATE AND OR PROSECUTING BODY, ACTING UNJUSTLY, ARBI-

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TRARILY, CONSPIRING UNDER COLOR OF STATE LAW, HAS EGREGIOUSLY FAILED TO ADHERE NOT TO JUST THE S.C. AND U.S. CONSTITUTIONS, BUT ALSO FAILED TO ADHERE TO THEIR OWN STATE LAWS, SERVING TO DENY THE APPLICANT THE EQUAL PROTECTION OF THE LAWS AGAINST UNJUST, ARBITRARY PROSECUTION AND JUDICIAL ACTION IN ACTS OF FRAUD UPON THE COURT, GREAT COASTAL EXP. INC. SUPRA., 675 F2d. 1349(4th.Cir.1982); U.S. v. BEGGERLY, 524 U.S. 38, 118 S.Ct. 1862, 141 L.Ed.2d. 32(U.S.1998); U.S. v. TEJADA, 445 Fed. Appx' 719, 2011 WL 3891825 CA4 (S.C.2011); SCREWS v. UNITED STATES SUPRA.; STATE v. MIDDLETON SUPRA.; ESLINGER v. THOMPSON SUPRA.; McLAUGHLIN v. FLORIDA SUPRA.; DUBINKA v. JUDGES OF SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES SUPRA.; HICKS v. OKLAHOMA SUPRA.; JONES v. ARKANSAS SUPRA.; LUGAR v. EDMONDSON OIL CO. SUPRA.; GREENWOOD v. PEACOCK, (1966) 384 U.S. 808, 1 L.Ed.2d. 944, 86 S.Ct. 1800; UNITED STATES v. OTHERON, (1980 CA9 Cal.) 637 F2d. 1276 CERT. DENIED (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct. 149; S.C. CODE ANN § 17-25-10.

BY THE ISSUES ARGUED WITHIN THIS CASE, THE CONVICTION DOES NOT COMPORT WITH DUE PROCESS. WHEN AN OFFICER OF THE COURT AND OR STATE, SHALL USE THEIR POWERS PURSUANT TO ARREST AND OR PROSECUTION, IN EGREGIOUS ACTS OF PROSECUTIONAL MISCONDUCT, FRAUD UPON THE COURT AND MACHINATION, FOR ULTERIOR MOTIVES AND INCARCERATE AND OR PROSECUTE AN ACCUSED FOR THE PURPOSE OF ENGAGING IN MALICIOUS, ARBITRARY, FRAUDULENT AND CRIMINAL ACTS, WILLFULLY SUBJECTING THE APPLICANT TO DEPRIVATION OF ANY RIGHTS, IMMUNITIES OR PRIVILEGES SECURED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES WITHIN ANY STATE, DISTRICT OR TERRITORY AS THEY DID IN THIS CASE. THEY SHALL BE SUBJECT TO STATE AND FEDERAL PENALTIES. BY WHAT HAS BEEN DONE HERE PRODUCING OVERWHELMING PREJUDICE AND RACIAL ANIMUS IN VIOLATION OF 28 U.S. . §§ 1985(2), 1985(3) AND 1986. SUCH ACTION IS INDISPUTABLY DEPRIVATION OF RIGHTS, IMMUNITIES AND PRIVILEGES OF THE ACCUSED TO LIBERTY AND A VIOLATION OF 18 U.S.C. §§ 242 AND 1001. NEITHER THREAT, NOR VIOLENCE IS A NECESSARY INGREDIENT OF THE OFFENSE UNDER THESE CIRCUMSTANCES WHERE THESE CONSPIRING INDIVIDUALS WERE CLEARLY ACTING ARBITRARILY UNDER COLOR OF STATE LAW FOR

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ULTERIOR MOTIVES, GIVING MOCKED GRAND JURY PROCEEDINGS, VIOLATING BRADY REQUIREMENTS PRODUCING STATEMENTS AND OR TESTIMONY THEY KNEW TO BE INADMISSIBLE, ILLEGALLY TRUE BILLING INDICTMENTS WHICH IS TO BE ADJUDICATED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION. THIS MAKES THE CASE UNCONSTITUTIONAL AND VOIDS THE COURT'S JURISDICTION. THUS, THE SENTENCE AND CONVICTION MUST BE VACATED WHICH I MOVE FOR BEFORE THIS COURT, WILLIAMS v. UNITED STATES, CA5 (FLA.) 1950, 179 F2d. 656 CERT. GRANTED 71 S.Ct. 70, 340 U.S. 850, 95 L.Ed. 622 AFF'D 71 S.Ct. 341 U.S. 97, 95 L.Ed. 774; BROWN v. UNITED STATES, CA6 (TENN.) 1953, 204 F2d. 247; UNITED STATES v. RAMEY, CA4 (W.Va.) 1964, 336 F2d. 512 CERT. DENIED 85 S.Ct. 649, 779 U.S. 972, 13 L.Ed.2d. 564; UNITED STATES v. KOZMINSKI, (1988) 487 U.S. 931, 101 L.Ed.2d 78, 108 S.Ct. 2751, 46 C.C.H. EPD ¶ 38067 ON REMAND (1988 CA6 Mich.) 852 F2d. 1288; ELDERBERRY OF WEBER CITY, LLC. v. LIVING CENTER-SOUTHEAST, INC. SUPRA.; PCS NITROGEN INC. v. FORD MOTOR CO.,--F.Supp.3d.--, 2015 WL 6758983(E.D.N.C.2015); APPLING v. STATE FARM MUT. INS. CO., 340 F3d. 769(9th.Cir.2003); UNITED STATES v. BARTKO, 728 F3d. 327(4th.Cir.2013); NAPUE v. PEOPLE OF THE STATE OF ILLINOIS, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d. 1207(U.S.1959); NORBREGA v. HINKLE, 576 Fed. Appx' 224 CA4 (Va. 2014); LOUGHMAN v. U.S., 134 S.Ct. 2384(U.S.2014); SMITH v. CLARK/ SMOOT/ RUSSELL,--F3d.--, 2015 WL 4717932 CA4 (Md.2015); UNITED STATES AIDS FUNDS, INC. v. ESPINOSA, 559 U.S. 260, 130 S.Ct. 1367(U.S.2010); U.S. v. KORN, F.Supp.2d., 2013 WL 2898056 (W.D.N.Y.2013); SEC v. FARMER, F.Supp.3d., 2015 WL 5838867(S.D. Tex.2015); EVANCHO v. PINERICH AND SCHOOL DISTRICT, 237 F.Supp.3d 267, 301(W.D.Pa.2017); TAYLOR v. U.S., 136 S.Ct. 2074, 195 L.Ed.2d. 456, 84 U.S.L.W. 4462(U.S.2016). ALSO SEE EXHIBIT, "STATEMENT FRAUD" ATTACHED.

**EXHIBIT, "STATEMENT FRAUD".**

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**YORK COUNTY MULTIJURISDICTIONAL  
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Before asking you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before answering any questions and to have your lawyer present during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire.

W. B. [Signature]  
(Witness)

Jessie Cobb  
(Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person(s) talking with me is a police officer and I understand what he/she is talking about.

W. B. [Signature]  
(Witness)

Jessie Cobb  
(Signed)

PERSONALLY appears before me- Jessie Cobb, Collins, who after Being duly sworn deposes and says: "My name is Jessie Cobb, Collins  
Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
My address is \_\_\_\_\_ Drive Clover, SC 29710  
Place of Employment- \_\_\_\_\_ Road Rock Hill, SC  
Home Phone Number: \_\_\_\_\_ cell Work Phone Number: N/A  
I have completed 9 years in school and I can (  ) cannot (  ) read and write"

Reginald Reynard White is 26 years old and he is the father of my 5 kids. His nickname is Reggie. 3 kids are biologically with Reggie and I have a 5 year old and a 6 week old with other men. Reggie is who I had my 4 year old, 3 year old, and 13 month old with. The three oldest kids that I have live with Reggie's grandmother in Great Falls, SC. The 13 month old and 6 week old live with me and Reggie. Reggie lives with me at my mobile home on Silver Creek Drive. He has lived with me since December of 2013. Reggie got out of prison for selling crack in August of 2013. He was in prison for 10 months. After he got out of prison he lived with his other baby momma, Christine Jeshiva at \_\_\_\_\_ in York, SC. Christine has one kid with Reggie and another on the way. She is due on June 10 and she works at the McDonald's at the Wal-Mart in Newport on Highway 161. He sneaks around on me to go see her and I know he is cheating on me with her and a 17 year old named Brittany McConnells that lives in the last house on Hudson Street in York, SC. Reggie drives a green four door Honda Accord that is registered to him and it's between at 1996 and 1998.

Sunday night I got off work at Taco Bell at 3:00am and I got home around 3:30pm. Reggie was there with the two kids. We slept together in our bedroom. It's the bedroom on the right closest to the living room.

Jessie Cobb - of - 171

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Statement of Jessica Amanda Collins

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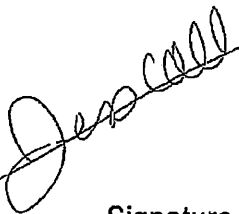
On Monday morning Reggie and I got up at 7:30am and I had a doctor's appointment in Lancaster, SC at 9:10am. Reggie, me, and the two kids went to the Dr. After that we stopped at the Wal-Mart in Rock Hill on Dave Lyle Boulevard so Reggie could get a new cell phone. His phone number is (803) and he has had that phone number since the beginning of February. We then stopped at Pet Smart in Rock Hill and got back home around 2pm. Reggie dropped off me and the two kids and he left driving his Honda. He got back home about 30 minutes later. I don't know where he went and I didn't ask.

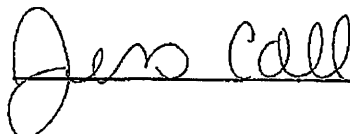
When Reggie got back I left for work at 3:05pm. I left Reggie with the two kids. Reggie watched the kids while I am working. On the way to work I stopped at the Wal-Mart in Lake Wylie to buy a phone and eat some chicken. I got to work at 4:27pm on Monday afternoon. I clocked out from work at 9:31pm on Monday evening.

I left work early Monday night because I thought Reggie was cheating on me and I wanted to catch him in the act. I thought Reggie was cheating on me because he is a hoe and he messes around with other women. After I clocked out of work Monday night I drove straight home. I got home at 10:05pm and saw that Reggie's car was gone. I backed out of the driveway and drove to Pecan Circle and then I checked Hudson Street for his car. I didn't see it there so I drove toward the Green Acres neighborhood in York, SC. Reggie's mom, Lisa White, lives on Mighty Joe Trail in Green Acres. On the way to Green Acres Reggie called me at 10:15pm and asked where I was. I told him I was looking for him. He said he was going home. I got home at 10:25pm.

Reggie didn't show up until midnight on Monday night with the two kids. We got into an argument. When I left Reggie was wearing an orange shirt with a white t-shirt under it. He was dressed different but I don't remember what he was wearing. I later found that orange shirt on the baby walker in the back bedroom on the far left side of the mobile home. We went to bed later Monday night around 1:30am. Tuesday morning Reggie left around 9am or 10am with the 13 month old. The 6 week old and I slept until 1:30pm on Tuesday afternoon.

Sometimes Reggie uses my phone. Today, Tay texted me looking for Reggie around 3pm. Tay is one of Reggie's friends. Tay was looking for a morphine pill. I was with Reggie on the way home. After I got the message I asked Reggie if he had any pills and Reggie told me no. Reggie doesn't have a prescription for morphine. I really don't pay attention to what Reggie does. Reggie hasn't worked since he got out of prison in August of 2013.

  
Signature of person making statement



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PERSONALLY appears before me: Jessica Amanda Collins  
who deposes and says: I make this statement of my own free will and accord, without  
reward or hope of reward. I have not been mistreated or threatened in any way. All of  
the above is the truth, the whole truth and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 3 pages and have  
received a copy of same"

Jess Collins  
(Signature)

W. Beck  
(Witness)

SWORN TO AND SUBSCRIBED TO BEFORE ME  
THIS 26 DAY OF February, 2014

Michael C. Deady

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES ON 1-20-2016

STATEMENT TAKEN ON February 26, 2014 AT \_\_\_\_\_ 8:00 AM PM  
STATEMENT SIGNED ON February 26, 2014 AT \_\_\_\_\_ 9:00 AM PM

STATEMENT FROM- TAPE ( ); WRITTEN NOTES ( ); DICTATED (); INTERVIEW ( ).

STATEMENT PREPARED BY: W. Beck

**ISSUE NUMBER 6:**

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 5TH., 6TH., 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV § 2, AND HIS DUE PROCESS RIGHTS VIOLATED, AS WELL AS THE TRIAL COURT'S JURISDICTION BEING MADE VOID FOR UNCONSTITUTIONAL ACTION, BY THE TRIAL COURT AND OR PLEA COURT ALLOWING CONSTRUCTIVE AMENDMENT OF THE INDICTMENT(S) AT THE APPLICANT'S TRIAL AND OR PLEA HEARING?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOSS V. AETNA LIFE INS. CO. SUPRA.; STATE V. BROAD RIVER POWER CO. SUPRA.; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL DUE PROCESS RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT AT THE PROCEEDINGS, (BLACK LAW DICTIONARY 8TH. EDITION).

THIS ISSUE IS ALSO JURISDICTIONAL IN NATURE, IN THAT BY SUCH ACTION IT RENDERS THE PROCEEDINGS UNCONSTITUTIONAL AND A VIOLATION OF DUE PROCESS. ANY ACT THAT STANDS IN BLATANT DEFIANCE TO THE U.S. CONSTITUTION AND DUE PROCESS LAW CORRUPTS THE ENTIRE PROCEEDINGS, AND DUE TO THE FRAUD UPON THE COURT WHICH IS ATTACHED TO IT. IT IS AS IF THERE WERE NO FINAL ORDER, CONVICTION OR JUDICIAL DETERMINATION MADE IN THE GENERAL SESSIONS COURT AT ALL. THE COURT'S JURISDICTION IS MADE VOID. SUBJECT MATTER JURISDICTION CAN BE RAISED AT "[A]NY" TIME, "[C]ANNOT" BE WAIVED BY THE APPLICANT, CAN BE RAISED FOR THE FIRST TIME ON APPEAL AND THE COURT "[S]HALL" NOT FAIL TO TAKE NOTICE, GRUPO

DALAFUX v. ATLAS GLOBAL GROUP, L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); LOUMIET v. UNITED STATES, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. CURRENCY SUPRA.; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES v. TRAN, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); MONTGOMERY v. LOUISIANA SUPRA.; 24 SENATORIAL DIST. REPUBLICAN COMMITTEE v. ALCORN SUPRA.; McCOY v. LOUISIANA SUPRA.; WHITE v. MANIS SUPRA.; BROWN v. U.S. SUPRA.; WELLS FARGO BANK N.A. v. FARAG SUPRA..

S.C. CODE ANN §§ 17-25-10; 1-7-730 AND 17-13-150, REQUIRE THAT THE PROSECUTING BODY "[S]HALL" FULFILL, AND SEE THAT ALL DUTIES, REQUIREMENTS AND RULES OF PROCEDURE RELATED TO CRIMINAL DUE PROCESS AND OR THE STATE AND FEDERAL CONSTITUTION AND OR STATE AND FEDERAL LAW ARE ADHERED TO AND PROPERLY COMPLETED WITHIN THE COURT(S).

INASMUCH, IT DOESN'T REQUIRE THAT THE APPLICANT BE LENGTHY TO ADDRESS THIS ISSUE. THE COURT AND PROSECUTION CONSTRUCTIVELY AMENDED THE INDICTMENT(S) ON THE ESSENTIAL ELEMENTS OF THE OFFENSES REGARDING DRUG AMOUNTS AND THE REQUIRED SUBSECTIONS SINCE ALL THE ESSENTIAL ELEMENTS WERE NOT LISTED WITHIN THE BODY OF THE CHARGING INSTRUMENT. THIS INCLUDE CONSTRUCTIVELY AMENDING THE "MENS REA" ELEMENTS OF THE OFFENSES IN THEIR TOTALITY ONCE THE INDICTMENTS BY THEIR LANGUAGE ADJUDICATE GUILT AND PREDETERMINE IN ADVANCE THE OUTCOME OF THE PROCEEDINGS DEPRIVING ME OF MY PRESUMPTION OF INNOCENCE IN VIOLATION OF U.S. SUPREME COURT HOLDINGS UNDER BOTH NELSON v. COLORADO, 137 S.Ct. 1249, 197 L.Ed.2d. 611, 85 U.S.L.W. 4205(U.S 2017) AND BETTERMAN v MONTANA, 136 S.Ct. 1609, 194 L.Ed.2d. 723(U.S.2016). THE LITIGATION FOR THIS ISSUE THAT SUPPORTS THIS CLAIM IS SEEN IN EXHIBIT, "CONSTRUCTIVE AMENDMENT" HEREWITH ATTACHED. CONSTRUCTIVE AMENDMENT OF AN INDICTMENT IS A PER SE VIOLATION OF THE PROVISIONS OF THE 5TH. AMENDMENT IF IT EFFECTS THE ESSENTIAL ELEMENTS OF THE OFFENSE WHICH IT DOES IN THIS CASE. SUCH A VIOLATION REQUIRES REVERSAL OF THE CONVICTION, EVEN WITHOUT A SHOWING OF PREJUDICE. BUT ONCE PREJUDICE IS CLEARLY SHOWN AS BY THE CONSTITUTIONAL STRUCTURAL ERRORS THAT EXIST IN THIS CASE. THE SENTENCE AND CONVICTION MUST BE VACATED FOR DUE PROCESS VIOLATION WHICH VOIDS

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THE CRIMINAL COURT'S JURISDICTION. THIS CLAIM MUST BE ADJUDICATED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION WHICH ADDRESSES UNCONSTITUTIONAL ACTION, STATE v. GUTHRIE, 352 S.C. 103, 572 S.E.2d 309; ARTICLE IV § 2 U.S. CONST.; UNITED STATES v. COYNE, 4 F3d. 100 (2nd.Cir.1993); UNITED STATES v. MORGENSTEIN, 933 F2d. 1108, 1115(2nd.Cir.1991); WILSON v. LINDLER, 995 F2d. 1256; STIRONE v. UNITED STATES, 361 U.S. 212(1960); GAITHER v. UNITED STATES, 413 F2d. 1061(D.C.Cir.1969); DOUGLAS v. STATE OF ALABAMA, 380 U.S. 407, 85 S.Ct. 1074(1965); DECH v. MISSOURI, 544 U.S. 622, 125 S.Ct. 2007, 161 L.Ed.2d. 953, 73 U.S.L.W. 4370(U.S.2005); UNITED STATES v. WHITEFIELD, 695 F3d. 288 CA4 (N.C.2012); UNITED STATES v. MILLS, 555 Fed. Appx' 241 CA4 (Va.2014); UNITED STATES v. NAIDU, 480 Fed. Appx' 180 CA4 (Md.2012).

**EXHIBIT, "CONSTRUCTIVE AMENDMENT".**

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violated, by the trial court and or plea court allowing constructive amendment of the indictment(s) at the appellant's trial and or plea hearing?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

Subject Matter Jurisdiction can be raised at "[a]ny" time, "[c]annot" be waived by the appellant, can be raised for the first time on appeal and the court shall not fail to take notice, Grupo Dalaflex v. Atlas Global Group, L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240; South Carolina Department Of Social Services v. Tran, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); McCain v. Brightharp supra..

It is the body of the indictment which is the [v]ital part of the charging instrument, State v. Tate supra., and it "[c]annot" be so cryptic or the wording so loose and ambiguous as to fail to comply with the basic right of the accused to be fully informed as to the "[c]ause and [n]ature" of the accusation being levied against him, which is one of his most basic, fundamental, and universally recognized rights of Due Process, Smith v. O'Grady supra.; State v. Tabor supra.. Reliance upon

a caption to bolster a fatally defective indictment is therefore contrary to the constitutional mandate that for most offenses, a defendant may only be required to answer an indictment of a Grand Jury that is deemed good, S.C. Const. Article 1 § 11; cf. State v. Tabory supra. (holding that the state may not support a conviction for an offense intended to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment).

Insomuch, the indictment(s) for attempted do not properly and or sufficiently apprise the appellant of the "[c]ause and [n]ature" of the offense, or of what he is called upon to meet and defend because they do not allege an exact time of assault as time is recognized by law. The wording is too loose, and vague making use of the term "ON OR ABOUT". Such deprives the appellant of the right to call witnesses to defend the cause because he cannot establish an exact date. It deprives him of the right to establish alibi not being certain of said exact date. "ON OR ABOUT" July 28, 2013 can be any day within a (3) month radius before or after that date. The material fact in murder are the mortal blow and the subsequent death occurring from it being a composite crime and the death "[m]ust" appear upon the record or indictment as having occurred within a year and a day of each other, (ei. when the mortal blow was given). The averment then of each of these material facts [m]ust under well established Rules of Criminal pleading be accompanied by an allegation of a certain time and or place to include not alleging "ON OR ABOUT" as it pertains to time. Assault and Battery With Intent To Kill embraces the whole of attempted murder and visa versa. The elements to prove the crimes are the same as it is for murder with the exception of the death ensuing from it. The indictment(s) for attempted murder also do not allege who it was that the appellant conspired with as is the same as the conspiracy indictment(s). The Attempted murder indictment(s) do not allege what weapon it was that was allegedly used in the crime. No one can say what was in the mind of the Grand Jury as to what exact date of the assault was to be adjudi-

cated, being an essential element of the offense. The indictments don't say who it was that the appellant conspired with. As far as the appellant can tell, the indictment asserts that he went back in a time machine and brought back Napoleon Bonapart, Genghis Khan, John Wayne and Julius Ceasar and conspired with them. As far as the appellant can tell from the indictment(s) he was in possession of a M-60 machine gun or a surface to air rocket launcher. No one can say what was in the mind of the Grand Jury. The language is too vague, subjecting the appellant to arbitrary judicial action and process. The language is so cryptic, loose and vague it creates an enigma as to what the appellant is called upon to meet and defend setting the appellate up for "INDICTMENT AMBUSH" at the onset of his proceedings. The indicments cannot be deemed sufficient if the prosecution is permitted to prove all these different material sets of facts. The indictments in question do not descend to an exact time and or who it was the appellant conspired with or what weapon was used. These crucial elements and or averments must be passed upon by the Grand Jury in accordance to the constitutional rights of the accused. To not allege these crucial elements and or allegations in the body of the charging instrument returned against the accused, having them passed upon by the Grand Jury, then, thereafter the trial court and or plea court and or prosecuting body adds or modifies these material averments in one form or the other, to assert these crucial elements and or averments, not confirmed or passed upon by the Grand Jury within the proceedings, and allow a trial and or plea hearing to go forward, where such were not passed upon by the Grand Jury, is constructive amendment of the indictment(s). No one can say what was in the mind of the Grand Jury, See S.C. Code Ann. §§ 17-19-10, 17-19-20, 17-19-30, 17-25-10; State v. Hardee supra.; State v. Rallo supra.; State v. Parker supra.; Locke v. State supra.; State v. Tate supra.; State v. Tabor supra.; United States v. Abrams supra.; State v. Keith supra.; State v. Rector supra.; Smith v. O'Grady supra.; United States v. Masotto supra.; Castillo v. Holder supra.; State v. Brandt supra.; State v. Blakeney supra.; State v. Stewart supra.; Ball v. United States

supra.; State v. Platt supra.; State v. Kennedy supra.; State v. Ham supra.; State v. Pierce supra.; Hamling v. United States supra.; United States v. Hooker supra.; United States v. Pupo supra.; U.S. v. \$41,320 U.S. Currency supra.; State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d. 283, 285(2000).

In regard to the constitutional structural error and or defect in the indictment(s), as constructed in all (33) states that make use of an indictment, also the remaining (17) states that make use of a criminal complaint, and all (50) states that make use of an indictment under Federal captivity, taking away the presumption of innocence and automatically shifting the burden of persuasion, predetermining in advance the outcome of the proceedings by the language contained therein. According to the findings and or language of the indictment(s) produced by The Grand Jury, under the plain language Rule, the appellant is already found guilty and convicted. The Grand Jury does not have the power and authority by State and or Federal Law, or by State and or Federal Constitution to convict a defendant. The law is clear. The Grand Jury "[m]ust" refrain from even making an "[o]pinion" as to a person's guilt. How much more egregious and criminal where they swear upon their "[o]ath" (emphasis added) our guilt? This is an egregious violation of their shielding function. This serves to aid in establishing modern day slavery which too, they do not have the power or authority to do, where we can no longer be deemed "DULY"--meaning "PROPERLY" convicted in violation of S.C. Code Ann § 17-25-10, Due Process Law and the provisions of the 13th. amendment. For the Grand Jury to produce indictments that state, adjudicate and or charge that the defendant is not only guilty of the crimes charged, to include the "MENS REA" elements related to the offenses; then, thereafter, the court alters the charge(s) of the indictment(s), to include the "MENS REA" elements, and charge that the defendant is innocent until proven guilty, and the State court or Federal government or prosecuting agents aid them, conspiring under color of state law and or authority, turning the blind eye and deaf ear in doing so, is constructive

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amendment of the indictment(s), and changes the very nature of the allegations returned by the Grand Jury. This too creates an instant double jeopardy issue. To accept a guilty plea, and or to take a defendant to trial on charges in an indictment for which he has already been found guilty of, violates Due Process and is double jeopardy. No one can say what was in the mind of the Grand Jury as to whether or not they intended to illegally take upon themselves the role of the trial jury and determine guilt of the offenses not allowing any subsequent adjudication to occur rendering any subsequent proceeding "[v]oid" for Due Process violation. This means that this is an error which can only be corrected by the Grand Jury and not the trial jury, prosecutor or court. Even the Gentry court could not adjudicate that case where it was prematurely determined by the Grand Jury. This produces a Subject Matter Jurisdiction issue under the Double Jeopardy Clause and law, which is to be adjudicated under the Due Process violation prong to Subject Matter Jurisdiction. This further serves to validate that the structural constitutional error and or defect affect the framework of the proceedings and cannot be viewed as harmless, because the court "must" constructively amend the indictment(s) on the "MENS REA" element(s) of the offense(s) to correct, or in an effort to correct the structural constitutional error in acts of fraud upon the court and modern day slavery, The Amistad supra.; State v. Easler, (S.C.1997) 327, 121, 489 S.E.2d. 617; State v. Lewis, (S.C.App.1996) 321 S.C. 146, 147 S.E.2d. 265; Sandstrom v. Montana supra.; Morisette supra.; United States Gypsum Co. supra.; Humanik v. Beyers supra.; United States v. Clemens supra.; Martin v. Ohio supra.; Robinson v. Arvonio supra.; United States v. Briggs supra.; United States v. Chadwick supra.; Compare Pierson v. Ray supra.; Jenkins v. McKeithen supra.; Branzburg v. Hayes supra.; Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923); United States v. Direct Sales Co., 40 F.Supp. 917 D.C.S.C.(1941); United States v. Atlantic Commission Co., 45 F.Supp. 187 D.C.N.C.(1942); State v. Boyd, 2 Hill (S.C.) 288, 1834 WL 1573 S.C. App. L. & Esq. 1834; State v.

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Bramlett, 166 S.C. 323, 164 S.E. 873(S.C.1932); Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 U.S. Wash. (1962); State v. Tollin, 352 S.C. 235, 573 S.E.2d. 812(S.C.App.2002); Byers v. Reynolds, 2011 WL 7063638, \* 8 (DSC.2011); United States v. Jefferson, 546 F3d. 300 CA4 (Va.2008); IN RE: Grand Jury Subpoena John Doe, No. 05GJ1318, 584 F3d. 175 CA4 (Va.2009); IN RE: Grand Jury Subpoena (T-112), 597 F3d. 189 CA4 (Va.2010); United States v. Umana, 750 F3d. 320 CA4 (N.C.2014); United States v. Dinkins, 691 F3d. 358 CA4 (Md.2012); Dickerson v. Warden Of Lieber C.I., 2013 WL 4500048(DSC.2013); James v. Reynolds, 2014 WL 2624431 (DSC.2014); Clark v. Arizona, 548 U.S. 735, 126 S.Ct. 2709, 165 L.Ed.2d. 842, 74 U.S.L.W. 4560(U.S.2006); 130 S.Ct. 2896; S.C. Code Ann § 17-25-10.

Constructive amendment of an indictment is a per se violation of the provisions of the 5th. amendment if it affects an essential element of the offense. Such a violation requires reversal of the conviction, even without a showing of prejudice, but once prejudice is clearly shown, the sentence and conviction must be vacated for Due Process violation which must be adjudicated under the Due Process Prong to Subject Matter Jurisdiction, State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309; Article IV § 2 U.S. Const.; United States v. Coyne, 4 F3d. 100 (2nd.Cir. 1993); United States v. Morgenstein, 933 F2d. 1108, 1115(2nd.Cir. 1991); Wilson v. Lindler, 995 F2d. 1256; Stirone v. United States, 361 U.S. 212(1960); Gaither v. United States, 413 F2d. 1061 (D.C.Cir.1969); Douglas v. State Of Alabama, 380 U.S. 407, 85 S.Ct. 1074(1965); Dech v. Missouri, 544 U.S. 622, 125 S.Ct. 2007, 161 L.Ed.2d. 953, 73 U.S.L.W. 4370(U.S.2005); United States v. Whitfield, 695 F3d. 288 CA4 (N.C.2012); United States v. Mills, 555 Fed. Appx' 241 CA4 (Va.2014); United States v. Naidu, 480 Fed. Appx' 180 CA4 (Md.2012).

Inasmuch, constructive amendment of the indictment(s) did occur and the unconstitutional amendment prejudiced the appellant at his proceedings leading to an unfair and partial trial and or guilty plea that was not knowingly, freely, volun-

tarily or intelligently given, depriving the appellant of reasonable notice and of his right to have material averments passed upon by the Grand Jury in egregious violation of the appellant's substantial rights of Due Process. This occurred when the charging terms of the indictment were altered literally and or constructively in the manner aforementioned. S.C. Code Ann § 17-19-100(1985) permit amendment of an indictment provided the nature of the offense charged is [n]ot changed. If (A) there is a defect in form in any indictment. or (B) on the trial of any case there shall appear to be any variance between the allegations of the indictment(s) and evidence offered in proof thereof, the court before which the trial may be had may amend the indictment(s) according to the proof, if the amendment be because of variance, if such amendment does "[n]ot" change the "[n]ature" of the offense charged. After such amendment the trial and or plea hearing should proceed in all respects and with the same consequences as if the indictments had originally been returned as so amended, unless such amendment shall operate as to surprise the defendant, in which case the defendant shall be entitled upon demand to a continuance of the cause.

A variance between pleadings and proof is [n]ot material where matter alleged is [n]ot an [e]lement of the offense, State v. Hiott, 276 S.E.2d. 163.

On the other side of the spectrum of this language, a variance between pleadings and proof "[i]s" material where matter alleged "[i]s" an element of the offense; and furthermore, such an amendment cannot be had if such amendment changes the "[n]ature" of the offense, Hope v. State, 328 S.C. 78, 492 S.E.2d. 76; State v. Grainger, 507 S.E.2d. 322(S.C.1998); United States v. Naidu, 480 Fed. Appx' 180 CA4 (Md.2012); United States v. Allmendinger, 706 F3d. 330 CA4 (Va.2013); State v. Green, 406 S.C. 589, 753 S.E.2d. 259(S.C.App.2014).

Once the nature of the elements became altered in the manner aforementioned, the indictment(s) were no longer to be considered the indictment(s) returned against the appellant.

A defendant is entitled to be tried and or give his guilty plea on charges that are properly set forth in an indictment and such properly set forth charges must be passed upon by the Grand Jury, S.C. Code Ann § 17-19-10(1976). The true test of the sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he is called upon to meet and defend. The essential elements and or allegations in this instance are not alleged. The indictments for attempted murder do not allege an exact date to the extreme prejudice of the appellant. "ON OR ABOUT" can reasonably be considered to be any of the days asserted expanding at minimum (3) months in either direction of July 28, 2013. The indictments in question do not allege who it was the appellant supposedly consired with or what weapon was used in the alleged crime. The indictment(s) are too vague and do not descend to these particulars. Further, by the language and or charge of the indictment(s) as constructed, via the structural error, it informs the appellant that he is called upon to meet the burden of production on the critical elements of dispute related to the offenses. By the mandates of Due Process law, the appellant is not, by State or Federal Constitution, nor by State or Federal law, called upon to meet the burden of production on the critical elements of dispute related to the offense(s). The indictment(s) inform the appellant that his guilt is illegally predetermined in advance under "[o]ath"(emphasis added) and the appellant is being subjected to another proceeding on the same charges, which produce an instant Double Jeopardy claim, and fraud upon the court, misrepresentation and modern day slavery due to this fraud, Brown v. State supra.; Mathis v.State supra.; Francis v. Franklin supra.; United States v. Abrams supra.; Martin v. Ohio supra.; IN RE: Winship supra.; Mullaney v. Wilbur supra.; Humanik v. Beyers supra.; Moore v. Dempsey supra.; The Amistad supra.; Callon Petroleum Co. v. Frontier Ins. Co. supra.; Appling v. State Farm Mut. Auto Ins. Co. supra.; King v. First American Investigators Inc. supra.; S.C. Code Ann § 17-25-10.

What's worse than this, the indictment(s) not only by

their very nature already prematurely in advance convict the appellant of all charges made and or laid before the court, denying the appellant the presumption of innocence, but it also creates this egregious, blatant, outrageous violation of Due Process where the indictment(s) by the structural constitutional error and or defect, has denied the appellant the right to a trial by a jury of one's peers; denied the appellant the right to confront his accusers or cross-examine witnesses; denied the appellant the right to call witnesses in his defense or to present expert testimony; denied the appellant the right to take the stand and testify at his proceedings; denied the appellant the right to place forth evidence that would vindicate him at trial; denied the appellant the right to counsel of choice, way before a trial jury was sworn, not this illegal trial jury in the form of the Grand Jury who swore upon their "[o]ath" the appellant's guilt, way before a trial commenced satisfying these essential constitutional requirements of Due Process law; or way before he voluntarily, freely, intelligently or knowingly gave them up if we are dealing with a guilty plea, also way before he hired counsel or way before the court appointed legal counsel to assist the appellant. With the existence of the structural error and or defect, the court has attempted to close the barn door far after the time the horses have already been released and or escaped. The Grand Jury being duly sworn, in clear violation of their shielding function has taken upon themselves the role of the trial jury, and has already convicted the appellant of the crimes charged under "[o]ath" (emphasis added). To permit the appellant to obtain counsel of choice after this egregious injustice, or to appoint counsel after the appellant has already been illegally convicted by the Grand Jury, and deny the appellant the previous mentioned constitutional rights involve deprivation of constitutional protection so basic and so fundamental that in their absence no criminal trial and or proceeding can be deemed reliable as a vehicle for the determination of guilt or innocence, and no criminal punishment can be regarded as fundamentally fair, because such action has prematurely, criminal, stripped the appellant of

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his inalienable rights of Due Process, also in violation of The Taking Clause of the 5th. amendment. The State acting unjustly, arbitrarily under color of State law, causing extreme prejudice to the appellant's proceedings, in violation of 18 U.S.C. §§ 241, 242, 1001, have blatantly failed to adhere to their own State laws and has denied the appellant the Equal Protection Of the Laws. Since the appellant's guilt was already, unjustly, arbitrarily determined and or adjudicated by the structural constitutional error and or defect via the Grand Jury indictments and or criminal complaints nationally under "[o]ath" in acts of fraud upon the court; this serves to make any other subsequent proceeding initiated "[v]oid", "[n]ullified", "[a]rrested" and a violation of the 5th. and 6th. amendments also the appellant's rights of Due Process, to include his right to Double Jeopardy protection. How can the court be allowed and or permitted to have a trial and or accept a guilty plea for an offense the Grand Jury who swore upon their "[o]ath", have already found the appellant guilty of? This "[c]annot" be cured by an instruction that constructively amends the indictments on the "MENS REA" elements. By their actions and fraud upon the court they have essentially established modern day slavery, branding us as felons, taking away our right to vote in violation of the 15th. amendment and Voting Rights Act. Congress confers no power or authority upon any court, State or Federal the right to establish modern day slavery of any kind in violation of the not being "DULY"(emphasis added) convicted provisions of the 13th. amendment and Anti-Peonage Act, depriving them of jurisdiction, or voiding their jurisdiction, or prohibiting them from entertaining jurisdiction from the cases' onset, demonstrating that they inappropriately entertained jurisdiction rendering all action done void, stripping all judges and courts of immunity. The Structural constitutional error and or defect does affect the proceedings and "[c]annot" be deemed as harmless. The framework is essentially abolished. The extreme prejudice is obvious and need not be debated any further, The Amistad supra.; Chewing v. Ford Motor Company supra.; Appling v. State

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Farm Mut. Auto Ins. Co. supra.; State v. Easler, (S.C.App.1997) 327 S.C. 121, 489 S.E.2d. 617; State v. Lewis, (S.C.App.1996), 321 S.C. 146, 147 S.E.2d. 265; State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309; Vines v. United States, 28 F3d. 1123 Crim. Law 1116(1), 1156(1); State v. Reddick, 348 S.C. 631, 635, 560 S.E.2d. 441, 443(Ct.App.2002); State v. Padgett, 354 S.C. 268, 271, 580 S.E.2d. 159, 161(Ct.App.2003); State v. Honey, 344 S.C. 85, 97, 544 S.E.2d. 30, 36(2001); Griswald v. State Of Connecticut, 381 U.S. 481, 85 S.Ct. 1678(1965); Carter v. State, 329 S.C. 355, 362, 495 S.E.2d. 773, 777(1998); 28 U.S.C.A. § 1654; Turner v. American Bar Ass'n, D.C. Tex. 1975, 407 F.Supp. 457 Aff'd 539 F2d. 715 Aff'd 542 F2d. 56; Faretta v. California, 422 U.S. at 835n. 46, 95 S.Ct. at 2541, 45 L.Ed.2d. 562, 592 (1975); Wiggins v. Estelle, 681 F2d. 266(1982); United States v. Gonzales-Lopez, 548---U.S.---2006; Chaplin & Drysdale Chartered v. United States, 491 U.S. 617, 624-625(1989); Rodriguez v. Chandler, 382 F3d. 675, 676 (CA 7 2004) cert. denied 543 U.S. 1156(2005); Stirone v. United States supra.; United States v. Silverman, 30 F2d. 106, 110 (2nd.Cir.) listing these functions modified 439 F2d. 198(2nd.Cir.1970), 91 S.Ct. 1619(1971); Martin v. Ohio supra.; Francis v. Franklin supra.; Mathis v. State supra.; United States v. Abrams supra.; Moore v. Dempsey supra.; Roberts v. State, 408 S.C. 123, 757 S.E.2d. 744(S.C.App.2014); Eppenger v. McFadden, 2014 WL 4198862(DSC.2014); Blanding v. Warden McCormick C.I., 2014 WL 3809656(DSC.2014).

The requirement of the indictment(s) limit and constrain the Subject Matter Jurisdictionary "[p]owers" of both the prosecution and the court, by limiting what can be presented at trial, conviction and sentencing, United States v. Promise, 255 F3d. 150(4th.Cir.2001); State v. Guthrie supra. It is the command of The United States Constitution, that anything to the contrary is notwithstanding (Article IV § 2 U.S. Const.).

Again, the State and or prosecuting body, acting unjustly, arbitrarily, conspiring under color of state law, has failed to adhere to their own state laws, in egregious violation of

the appellant's substantial Federal Constitutional rights of Due Process, serving to deny the appellant the Equal Protection Of The Laws against unjust and arbitrary prosecution, also in violation of 18 U.S.C. §§ 241, 242 and 1001, Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin v. Florida supra.; Jones v. State Of Arkansas supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Dozier v. Loop College, City Of Chicago supra.; Hicks v. Oklahoma supra.; Lugar v. Edmondson Oil Co. Supra.; Williams v. United States supra.; Greenwood v. Peacock supra.; United States v. Otherson supra..

In Wilson v. Lindler, 995 F2d. at 1256, it was held that constructive amendment of an indictment, sometimes referred to as fatal variance, denies the criminal defendant the fundamental guarantee of notice of the charges pending against him. This right is safely guarded and embodied within the 6th. amendment, the 5th. amendment Indictment Clause, and the appellant's 14th. amendment rights of Due Process, as well as pursuant to the appellant's right to equal protection of the laws against arbitrary prosecution and these requirements must be adhered to and not denied. Therefore, due to the enormous amount of prejudice experienced by the appellant, the sentence and conviction must be vacated, State v. Daniels, 401 S.C. 251, 737 S.E.2d. 473(S.C.App.2012); United States v. Kirby, 547 Fed. Appx' 363 CA4 (N.C.2013); Placencia v. McFadden, 2014 WL 2199984(DSC.2014); Sullivan v. Cartledge, 2014 WL 994237(DSC.2014); Van de Kamp v. Goldstein, 555 U.S. 355(2009); Dennis v. Wetzell, 966 F.Supp.2d 489(ED.Pa.2013); Kaley v. United States, 134 S.Ct. 1090(U.S.2014) ; United States v. Direct Sales Co. supra.; United States v. Atlantic Commission Co. supra.; State v. Boyd supra.; State v. Bramlette supra.; Roberts v. State, 408 S.C. 123, 757 S.E.2d. 744(S.C.App.2014); State v. Green, 406 S.C. 589, 753 S.E.2d. 259(S.C.App.2014); S.C. Code Ann § 17-25-10; U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); White v. Manis, 2014 WL 1513280 (DSC.2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240.

**ISSUE NUMBER 7:**

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 5TH., 6TH., 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV § 2, AND HIS DUE PROCESS RIGHTS VIOLATE , BY THE STATE, COURT AND OR PROSECUTOR ALLOWING EVIDENCE AND OR CLAIMS OF PRIOR BAD ACT INTO THE COURT RECORD AND BEING PLACED BEFORE THE JURY?

JUDICIAL NOTICE TAKES PLACE OF PROOF. IT SIMPLY MEANS THAT THE COURT WILL ADMIT INTO EVIDENCE AND CONSIDER, MATTERS WITHOUT PROOF OF FACTS, MATTERS OF COMMON AND GENERAL KNOWLEDGE, MOS v. AETNA LIFE INS. CO. SUPRA.; STATE v. BROAD RIVER POWER CO. SUPRA.; 31 C.J.S. EVIDENCE §§ 6 AND 9; FEDERAL RULES OF EVIDENCE, RULE 201(a).

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR. AN ERROR ON THE PART OF THE TRIAL COURT THAT HAS AN IDENTIFIABLY NEGATIVE IMPACT ON THE PROCEEDINGS TO SUCH A DEGREE, THAT THE CONSTITUTIONAL RIGHTS OF THE PARTY ARE COMPROMISED. A MANIFEST CONSTITUTIONAL ERROR CAN BE REVIEWED BY A COURT OF APPEALS EVEN IF THE APPELLANT DID NOT OBJECT AT THE PROCEEDINGS, (BLACK LAW DICTIONARY 8TH. EDITION).

INASMUCH, IT IS THE APPLICANT'S POSITION THAT THE TRIAL JUDGE AND COURT ABUSED ITS DISCRETION AND VIOLATED THE APPLICANT'S DUE PROCESS RIGHTS CREATING AN UNFAIR AND PARTIAL TRIAL IN VIOLATION OF THE 6TH. AMENDMENT WHEN THE PROSECUTOR AND COURT ALLOWED EVIDENCE OF AN ALLEGED PRIOR BAD ACT INTO THE COURT RECORD WHEN AT NO TIME WAS THE APPLICANT EVER CONVICTED OF THE ALLEGED ACT NOR DID HE GIVE A GUILTY PLEA ON IT IN ANY COURT OF LAW. SUCH AN EGREGIOUS MISCARRIAGE OF JUSTICE ON THE PART OF THE TRIAL COURT TAKING JURISDICTION OVER A CHARGE TO WHICH THE APPLICANT WAS NEVER INDICTED FOR, TRIED OR PLEAD TO, EVEN VIOLATE THE PROVISIONS OF CLEAR S.C. LEGISLATIVE STATUTE.

S.C. CODE ANN § 17-19-10 PROVIDE:

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"ALL OFFENSES "[S]HALL" BE PROSECUTED BY GRAND JURY INDICTMENT. THUS, NO PERSON SHALL BE HELD TO ANSWER IN ANY COURT FOR AN ALLEGED CRIME OR OFFENSE UNLESS UPON INDICTMENT BY A GRAND JURY".

BY THE COURT'S ACTIONS THEY ESSENTIALLY CONVICTED ME OF A CHARGE FOR WHICH THERE WAS NO INDICTMENT, TO WHICH THERE WAS NO TRIAL OR PLEA, "PIGGY BACKING" THIS ALLEGED OFFENSE ON CHARGES THAT WERE PRESENTED BEFORE THE COURT WITHIN THIS CASE CREATING A STRUCTURAL ERROR THAT VIOLATED DUE PROCESS RENDERING THE ENTIRE PROCEEDINGS UNCONSTITUTIONAL AND VOID AND IS AS IF THERE WERE NO TRIAL OR CONVICTION DONE AT ALL.

DUE TO THIS EGREGIOUS MISCARRIAGE OF JUSTICE, STRUCTURAL CONSTITUTIONAL ERROR OCCURRED WHERE THE COURT VIOLATED MY DUE PROCESS RIGHTS TAKING AWAY MY PRESUMPTION OF INNOCENCE IN REGARDS TO THIS SUPPOSED AND ALLEGED PRIOR BAD ACT. THE UNITED STATES SUPREME COURT DETERMINED THAT THE PRESUMPTION OF INNOCENCE LIES AT THE FOUNDATION OF THE WHOLE CRIMINAL PROCEEDINGS MAKING THIS ABUSE OF DISCRETION A STRUCTURAL ERROR THAT IS NOT SUBJECT TO THE HARMLESS ERROR DOCTRINE. IT WOULD BE ONE THING IF THE APPLICANT WAS CONVICTED OF THIS SO-CALLED PRIOR BAD ACT. BUT IN THIS CASE HE WAS NOT THUS, THE PRESUMPTION OF INNOCENCE BLANKETS THE APPLICANT UNTIL THAT PRESUMPTION IS TAKEN AWAY BY A JURY WHICH CAN ONLY OCCUR IF THE APPLICANT WAS INDICTED FOR THE ALLEGED CRIME AND STOOD TRIAL. THE UNITED STATES SUPREME COURT FURTHER DETERMINED THAT THE PRESUMPTION OF INNOCENCE IS A PRINCIPLE SO ROOTED IN THE TRADITIONS AND CONSCIENCE OF THE PEOPLE AS TO BE FUNDAMENTAL AND TO DEPRIVE THE APPLICANT OF SUCH BY THE USE OF AN ALLEGED PRIOR BAD ACT FOR WHICH THE APPLICANT NEVER PLED TO OR WAS TRIED BY A JURY FOR, IS A VIOLATION OF DUE PROCESS , IS UNCONSTITUTIONAL AND VOIDS THE GENERAL SESSIONS COURT'S JURISDICTION. SEE NELSON v. COLORADO, 137 S.Ct. 1249, 197 L.Ed.2d 611, 85 U.S.L.W. 4205(U.S.2017); BETTERMAN v. MONTANA, 136 S.Ct. 1609, 194 L.Ed.2d. 723(U.S.2016).

INSOMUCH, IN A CRIMINAL CASE, THE STATE CANNOT ATTACK

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THE CHARACTER OF THE DEFENDANT UNLESS THE DEFENDANT HIMSELF FIRST PLACE HIS CHARACTER IN ISSUE, S.C. RULES OF EVID. 403, 404(b); STATE v. LAWSON, 424 S.C. 51, 817 S.E.2d. 509(S.C. App.2018).

EVIDENCE OF PRIOR BAD ACT IS ADMISSIBLE TO SHOW CRIMINAL PROPENSITY OR TO DEMONSTRATE THE ACCUSED IS A BAD PERSON; EVIDENCE OF OTHER CRIMES MUST BE PUT TO A SEVERE TEST BEFORE ADMISSION. AND SUCH AN ALLEGED BAD ACT SHOULD NOT BE ADMITTED UNLESS A PERSON IS CONVICTED IN THIS REGARD DUE TO THE LEGAL PRESUMPTION OF INNOCENCE, S.C. RULES OF EVID. 403, 404(b).

THE STATE MAY NOT BOOTSTRAP IMPROPER CHARACTER EVIDENCE INTO ADMISSABLE TESTIMONY IN A CRIMINAL TRIAL BY SIMPLY CLAIMING IT WAS OFFERED TO AUTHENTICATE OTHER EVIDENCE, ESPECIALLY WHEN THE STATE CAN OVERCOME THE LOW THRESHOLD OF AUTHENTICATION WITH OTHERWISE ADMISSABLE EVIDENCE SUCH AS A STIPULATION. IT HAS BEEN PREVIOUSLY HELD A VIOLATION OF DUE PROCESS FOR COUNSEL TO AGREE TO SUCH A STIPULATION UNLESS THE DEFENDANT KNOWINGLY AND VOLUNTARILY AGREE TO SUCH A STIPULATION WHICH IN THIS CASE THE APPLICANT DID NOT AGREE, JONES v. LOCKHART, 851 F.2d. 1115 (8th Cir. 1988); COX v. HUTTON, 589 F.2d. 394, 296 (8th Cir. 1979).

IN THIS INSTANCE ANY RELEVANT EVIDENCE SUCH AS THE PRIOR BAD ACT USED AT THE APPLICANT'S TRIAL MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF ISSUES, OR MISLEADING THE JURY, OR BY CONSIDERATION OF UNDUE DELAY, WASTE OF TIME\*\*, STATE v. ANDERSON, 303 S.C. 377, 401 S.E.2d. 146(1991); STATE v. HUNTER, 2019 WL 4052480(2019); STATE v. SLEDGE, 832 S.E.2d. 633(S.C. 2019); STATE v. CROSS, 832 S.E.2d. 281 (S.C.App.2019).

INASMUCH, THE TRIAL COURT ALLOWING TESTIMONY AT THE APPLICANT'S TRIAL WAS NOT A HARMLESS ERROR WHEN IT WAS NOT CONNECTED TO OR RELEVANT TO THE EVENTS OF THE EXISTING ACCUSATION AND WAS SUBMITTED ONLY TO EXTREMELY PREJUDICE THE APPLICANT'S RIGHT TO A FAIR AND IMPARTIAL TRIAL. IT WAS DONE TO PREJUDICE THE

APPLICANT IN THE MIND OF THE JURY POTENTIALLY IMPACTING THEIR VERDICT. THE STATE'S CASE WAS CIRCUMSTANTIAL DUE TO THEY NOT FULLY AND OR PROPERLY ESTABLISHING CONSTRUCTIVE POSSESSION AND THERE IS A QUESTION AS TO THE VALIDITY OF THE SEARCH WARRANT DUE TO THE FRAUD AND CRIMINAL CONCEALMENT OF MATERIAL FACTS RELATED TO THE PROBABLE CAUSE IN HOW THE SEARCH WARRANT WAS OBTAINED, WONGSUN v. U.S., 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d. 441 (1963); U.S. v. MOORE, 119 Fed. Appx' 438 CA4 (N.C.2004); U.S. v. DECKER, 956 F2d. 773, 776 (8th.Cir.1992); WEEKS v. U.S., 232 U.S. 383, 398, 34 S.Ct. 341, 346, 58 L.Ed. 652(1914); U.S. v. GENTILE, 373 S.C. 506, 513, 646 S.E.2d. 171, 174 (Ct.App.2007).

THIS ISSUE IS ALSO JURISDICTIONAL IN NATURE, IN THAT BY SUCH ACTION ON THE PART OF THE GENERAL SESSIONS COURT. IT RENDERS THE PROCEEDINGS UNCONSTITUTIONAL AND A VIOLATION OF DUE PROCESS. SUCH ACTION VOIDS THE GENERAL SESSIONS COURT'S JURISDICTION AND IS AS IF THERE WERE NO FINAL ORDER OR JUDICIAL DETERMINATION OR TRIAL HELD IN THIS CASE AT ALL. SEE MONTGOMERY V. LOUISIANA SUPRA.; 24 SENATORIAL DIST. REPUBLICAN COMMITTEE V. ALCORN SUPRA..

**ISSUE NUMBER 8:**

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 4TH., 5TH., 6TH., AND 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS VIOLATED, DUE TO THE SEARCH WARRANT, ON ITS FACE, WAS INVALID, BECAUSE THE AFFIANT, OFFICER NEELY, WHO PROCURED THE SEARCH WARRANT, FAILED TO PROVIDE INFORMATION TO THE ISSUING MAGISTRATE IN REGARD TO THE "RELIABILITY OF THE INFORMANT",... THEREFORE, THE AFFIANT WHEN PRESENTED TO THE MAGISTRATE WAS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE WHICH IS THE BASIS FOR ISSUANCE OF THE SEARCH WARRANT?

JUDICIAL NOTICE TAKES PLACE OF PROOF\*\*\*\*\*.

THIS IS ALS A MANIFEST CONSTITUTIONAL ERROR.\*\*\*\*\*.

INSOMUCH, HERE THE COURT AND PARTIES WILL FIND ATTACHED: EXHIBIT, "INFORMANT RELIABILITY". THESE ARE THE STATEMENTS SUBMITTED BY THE INFORMANT, ONE NAMED, "CHELSEA MACIAS". ALSO NOTE THAT THESE STATEMENTS ARE NOT IN COMPLIANCE TO THE PROVISIONS OF S.C. CODE ANN § 19-1-80 AND 19-1-90 IN THAT THEY DO NOT CONTAIN A RECEIPT DEMONSTRATING THAT A COPY WAS GIVEN TO THIS PERSON AT THE TIME THE STATEMENTS WERE MADE. FOR THE RECORD THIS IS THE STATE'S SO-CALLED "CONFIDENTIAL INFORMANT". THE STATE OFFICERS LIED AND ENGAGED IN EGREGIOUS ACTS OF FRAUD UPON THE COURT WHERE THE TRIAL COURT AIDED THEM IN THIS FIASCO. ALL OF THEM KNOWING FULLY WELL THAT NO SUCH CONFIDENTIAL INFORMANT EXISTED, THAT CHELSEA MACIAS WAS THE ALLEGED CONFIDENTIAL INFORMANT WHOSE TESTIMONY AND OR STATEMENTS WERE USED BY THE AFFIANT IN THE SEARCH WARRANT TO ESTABLISH PROBABLE CAUSE. SO THE COURT, CONSPIRING UNDER COLOR OF STATE LAW WITH THE PROSECUTOR, SEPARATED ANY ALLEGED PROCEEDING INVOLVING THIS WITNESS, TO WHICH THERE WAS ALSO A CSC CHARGE ATTACHED, TO CONCEAL MATERIAL FACTS, IN ACTS OF FRAUD UPON THE COURT. IF THE PROCEEDINGS WERE ADJUDICATED WITHIN ONE PROCEEDING. IT WOULD HAVE BEEN REVEALED ON

THE COURT RECORD THAT IT WAS CHELSEA MACIAS TESTIMONY WHICH WAS THE SOURCE FOR ESTABLISHING PROBABLE CAUSE TO OBTAIN THE SEARCH WARRANT, AND IT WOULD HAVE ALSO BEEN DISCOVERED THAT THIS WITNESS THEY USED TO OBTAIN THE SEARCH WARRANT WAS INDEED NOT RELIABLE DUE TO EMAILS WRITTEN BY HER LATER DISCOVERED ON THE INTERNET AND OR VIA TEXT SENT OVER HER PHONE TO THE APPLICANT. THUS, THE AFFIDAVIT ON ITS FACE WAS INVALID, WHERE DETECTIVE NEELY, THE OFFICER WHO PROCURED THE SEARCH WARRANT, FAILED TO PROVIDE INFORMATION TO THE ISSUING MAGISTRATE IN REGARD TO THE "RELIABILITY OF THE INFORMANT",....THEREFORE, THE AFFIANT WHEN PRESENTED TO THE MAGISTRATE WAS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE WHICH IS THE LEGAL BASIS FOR THE ISSUANCE OF THE SEARCH WARRANT, STATE v. ROBINSON, 408 S.C. 268, 758 S.E.2d. 725 (S.C.App.2014).

THE COURT, STATE AND PROSECUTOR, FOR THE PURPOSES OF CIRCUMVENTING IT BEING REVEALED THAT IT WAS CHELSEA MACIAS WHOSE TESTIMONY THEY USED TO ESTABLISH PROBABLE CAUSE WHICH YIELDED THE DRUGS OBTAINED BY THE SEARCH AND TO KEEP IT FROM BEING REVEALED THAT THIS INFORMANT WAS UNRELIABLE, SEPARATED, FAILED TO PURSUE THE CSC CHARGE AND THEN LIED ON THE COURT RECORD EXACTLY WHO IT WAS WHOSE TESTIMONY WAS USED TO OBTAIN THE SEARCH WARRANT AND ESTABLISH PROBABLE CAUSE FOR THE OBTAINING THEREOF. SINCE THE COURT AND PROSECUTOR ENGAGED IN THESE EGREGIOUS ACTS OF FRAUD UPON THE COURT, AND THE AFFIANT FAILED TO ESTABLISH THE RELIABILITY OF THE INFORMANT FROM WHOSE TESTIMONY THE SEARCH WARRANT WAS OBTAINED. THE SEARCH WARRANT ON ITS FACE IS INVALID AND ALL EVIDENCE OBTAINED FROM IT IS FRUIT OF A POISONOUS TREE. SEE STATE v. WESTON, 329 S.C. 287, 494 S.E.2d. 801(1997). SWORN TESTIMONY ALONE, DOES NOT SATISFY THE STATUTE, STATE v. MCKNIGHT, 291 S.C. 110, 352 S.E.2d. 471(1987).

I MAKING A PROBABLE CAUSE DETERMINATION, THE TASK OF THE ISSUING MAGISTRATE IS SIMPLY TO MAKE A PRACTICAL, COMMON SENSE DECISION WHETHER GIVEN ALL THE CIRCUMSTANCES SET FORTH IN THE AFFIDAVIT BEFORE HIM, INCLUDING THE "VERACITY" AND BASIS OF KNOWLEDGE OF PERSONS SUPPLYING HEARSAY INFORMATION, THERE IS A FAIR PROBABILITY THAT CONTRABAND OR EVIDENCE OF A CRIME WILL BE FOUND AT A CERTAIN PLACE, STATE v. HERRING, 387 S.C.

201, 212, 692 S.E.2d. 490, 496(2009)(QUOTING ILLINOIS v. GATES, 462 U.S. 213, 28, 103 S.Ct. 2317, 2332, 76 L.Ed.2d. 527, 548 (1983); U.S. v. DUKES, 758 F3d. 932(2014)(WHEN PROBABLE CAUSE DEPENDS ON INFORMATION SUPPLIED BY AN INFORMANT, THE CORE QUESTION IS WHETHER THE INFORMANT IS RELIABLE); STATE v. PHILPOT, 317 S.C. 458, 454 S.E.2d. 905 (S.C.1995)(WE CONCLUDE THE SEARCH WARRANT SHOULD NOT HAVE BEEN ISSUED. THE RECORD INDICATES THE MAGISTRATE HAD ONLY THE "AFFIANT" OF OFFICER NEELY AND THE WRITTEN STATEMENT OF THE CONFIDENTIAL INFORMANT BEFORE HIM, WE REVIEWED BOTH THE AFFIDAVIT AND THE WRITTEN STATEMENT AND FIND ABSOLUTELY NO SHOWING OF THE CONFIDENTIAL INFORMANT'S RELIABILITY.) THIS IS SUPPORTED BY THE TEXT MESSAGES THE ALLEGED VICTIM AND OR INFORMANT SENT TO THE APPLICANT WHICH IS WHY THEY REFUSED TO TRY THE CSC AND THE ALLEGED DRUG CHARGES TOGETHER. A MAGISTRATE MAY ONLY ISSUE A SEARCH WARRANT UPON FINDING PROBABLE CAUSE AND THE WITNESS MUST BE DEEMED RELIABLE WHICH WAS NOT THE CASE IN THESE CIRCUMSTANCE, STATE v. BELLAMY, 336 S.C. 140, 559 S.E.2d. 347(1999).

THE COURT DETERMINED IN U.S. v. LULL, 824 F3d. 109(4th. Cir.2016)(THAT WHEN INFORMATION FORMING THE BASIS FOR PROBABLE CAUSE FOR SEARCH WARRANT COMES FROM AN INFORMANT, THE VERACITY AND RELIABILITY ARE CRITICAL TO THE TOTALITY OF CIRCUMSTANCE TEST.). ALSO SEE STATE v. DILL, 423 S.C. 534, 86 S.E.2d. 557 (2018); ILLINOIS v. GATES SUPRA.; U.S. v. CRUZ-JIMENEZ, 894 F2d. 1, 3 (1st.Cir.1990)(INFORMANT [SEARCHED FIRST], HAD COCAINE WHEN SHE EXITED DEFENDANTS MOTEL ROOM, THAT PLUS WHAT POLICE OVERHEARD FROM RECORDER SHE WORE DURING THE TRANSACTION, CONFIRM SHE OBTAINED DRUGS FROM DEFENDANT).

THE APPLICANT REITERATES. THEY SEPARATED THE CSC FROM THE DRUG CHARGES WHEN THE ALLEGED EVENTS OCCURRED SIMULTANEOUSLY BECAUSE IF THEY WERE EVER TRIED TOGETHER EVIDENCE WOULD HAVE BEEN REVEALED THAT THE OFFICERS, COURT AND PROSECUTOR CONSPIRED UNDER COLOR OF STATE LAW TO PREVENT IT FROM BEING REVEALED THAT THE PROBABLE CAUSE ESTABLISHED BY AN ALLEGED INFORMANT WAS INDEED CHELSEA MACIAS, NOT SOME OTHER, TO WHICH THEY LIED AND THAT THIS

PERSON, CHELSEA MACIAS, INDISPUTABLY AS PROVEN BY THE TEXT SHE SENT THE APPLICANT WAS NOT A RELIABLE INFORMANT. THUS, THE EVIDENCE USED AT TRIAL WAS OBTAINED BY FRAUD AND THEN ENTERED INTO THE COURT RECORD BASED UPON THE SAME CORRUPTING THE ENTIRE PROCEEDINGS RENDERING THE TRIAL AND CONVICTION UNCONSTITUTIONAL AND VOID, GARY v. STATE OF GEORGIA SUPREME COURT, 262 Ga. 573, 422 S.E.2d. 42 (1992) (THE COURT APPLIED THE TOTALITY OF CIRCUMSTANCES ANALYSIS AND CONCLUDED THAT THE MAGISTRATE DID NOT HAVE SUBSTANTIAL BASIS FOR CONCLUDING THAT PROBABLE CAUSE EXISTED BECAUSE NONE OF THE FACTS THAT FORMED THE BASIS FOR THE AFFIANT'S BELIEF THAT THE INFORMANT WAS BEING "TRUTHFUL" WERE EVER REVEALED TO THE MAGISTRATE. ALSO SEE AGUILAR v. TEXAS, 378 U.S. 108, 84 S.Ct. 1509(1964); U.S. v. WILHEM, 80 F3d. 116, 119-20(4th Cir.1996) (ESTABLISHING THERE IS NO PROBABLE CAUSE FOR SEARCH WARRANT WHEN POLICE RELIED UPON AN UNNAMED INFORMANT, HAD NO INDICATION OF THE INFORMANT'S "TRUTHFULNESS" RELIABILITY AND LITTLE TO NO CORROBORATION.); U.S. v. VENTRESCA, (1965) 380 U.S. 102, 107-108, 85 S.Ct. 741, 13 L Ed.2d. 684 (HOLDING A RELIABLE INFORMANT WHOSE RELIABILITY WAS BASED ON PRIOR RELIABLE INFORMATION WHICH HAD RESULTED IN "3" PRIOR CONVICTIONS THE AFFIDAVIT SUFFICIENT FOR ISSUANCE OF SEARCH WARRANT); DAVID L. RICE, APP. v. CHARLES L. WOLFF JR., 513 F2d. 1280(1975); STATE v. JOHNSON, 302 S.C. 243, 395 S.E.2d. 1678 (S.C.1990); U.S. v. ODELL, 766 F3d. 870 FN.7 (2014). THE PROCEEDINGS ARE AN EGREGIOUS VIOLATION OF DUE PROCESS THEREFORE ARE UNCONSTITUTIONAL AND VOID. THUS, THE SENTENCE AND CONVICTION MUST BE VACATED. THE APPLICANT SEEKS SUCH. Also see United States

v Anderson, 2019 WL 3307841, \*21 W.D.Va.;  
United States v. Moran, 2017 WL 9604651, \*21  
W.D.Va.; State v Gore, 408 SC 237, 758 SE2d.  
717 (SC App. 2014); United States v. Christianson,  
2017 WL 2274328, \*41 E.D.Va.; United States v.  
Balk, 2019 WL 1507410, \*2 W.D.Va.

**EXHIBIT, "INFORMANT RELIABILITY".**

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Voluntary Statement

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Phone # \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone # \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**VOLUNTARY STATEMENT**

I, Chelsea Macias, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) Q- Did Reggie ever smoke any crack?
- 2) A- Not that I know of I just saw him crushing
- 3) it in the living room in Reggie's.
- 4) Q- Was there anyone else there during the assault?
- 5) A- There was two babies an infant and a baby
- 6) girl which was in the bedroom before the bathroom.
- 7) Q- What more details do you remember about the assault?
- 8) A- It all happened so fast, he grabbed my arm,
- 9) pulled me in the room, then I remember pulling
- 10) my pants and holding me down <sup>on</sup> the bed
- 11) and that's when he pulled my pants off and
- 12) forced my head pulling my hair down on
- 13) him, then I was turned on my belly when
- 14) he forced himself in.
- 15) Q- How did you get home?
- 16) A- Reggie drove us home.

The statement above, consisting of 2 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

Signed: \_\_\_\_\_ Date: 2/26/14 Time: 11:30am  
 Witness: (Print) Carson Neely Page 2 of 2  
 Witness: (Sign) [Signature]

Name: Chelsea Macias

DOB: 4-8-91

Phone # 805-222-6599

Address: 1326 Shellerwood Rd.

Phone # \_\_\_\_\_

City: Clover

State: SC

Zip: 29710

**VOLUNTARY STATEMENT**

I, Chelsea Macias, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) It was Monday, of the 24<sup>th</sup> of February, in the
- 2) afternoon that we were first at home until my
- 3) boyfriend decided he was bored and wanted
- 4) to call some friends to see who wanted to
- 5) hang-out. Then after no one answered he decided
- 6) to call Reggie, which is the man who raped
- 7) me later that night at his house, he invited us
- 8) over. And he was just a acquaintance through a
- 9) long time friend him, which lives right in front
- 10) of the man who raped me. I remember him
- 11) was also there but she left just before 8pm
- 12) that night. Then after she left around 8pm
- 13) I went to the bathroom towards the back of
- 14) his trailer, which there was a bedroom where
- 15) he pulled my arm in the room all of a sudden.
- 16) It happened so fast I didn't expect it and

The statement above, consisting of 2 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

Signed: [Signature] Date: 2/26/14 Time: 1100

Witness: (Print) Carson Neely Page 1 of 2

Witness: (Sign) [Signature]

Voluntary Statement

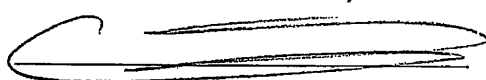
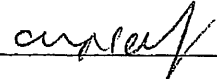
Name: Chebec Macias DOB: \_\_\_\_\_ Phone # \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone # \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**VOLUNTARY STATEMENT**

I, Chebec Macias, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) All I remember is him pulling my hair and
- 2) holding me down on the bed. He forced me
- 3) to do oral and forced himself inside my
- 4) vagina and rectum. I was so afraid and
- 5) still shocked. My boyfriend was just in the
- 6) living room. I was afraid to say anything
- 7) that night because Reggie is a drug dealer
- 8) and we were in his house and I was afraid
- 9) for my boyfriend to tell him then what happened
- 10) because I didn't want them to fight and go
- 11) to jail. It wasn't til the next morning I
- 12) broke down and called 911.
- 13) \_\_\_\_\_
- 14) \_\_\_\_\_
- 15) \_\_\_\_\_
- 16) \_\_\_\_\_

The statement above, consisting of 2 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

Signed:  Date: 2-26-14 Time: 11am  
 Witness: (Print) Carson Neely Page 2 of 2  
 Witness: (Sign) 

Voluntary Statement

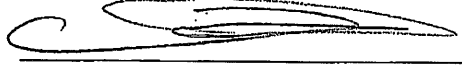
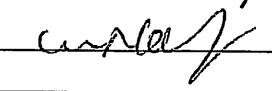
Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Phone # \_\_\_\_\_  
 Address: \_\_\_\_\_ Phone # \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**VOLUNTARY STATEMENT - follow up questions**

I, Chelsea Macias, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) Q How do you or your boyfriend (Johnny Bantcher) know
- 2) Reggie?
- 3) A - Johnny is a friend of him and the guy
- 4) Reggie knows him because he lives behind
- 5) her.
- 6) Q why did you & Johnny go to Reggie's house?
- 7) A Just to hang-out with friend's which him
- 8) Q - was there any drug use (illegal narcotics)?
- 9) A - I remember after him left me, Johnny and
- 10) Reggie was in the living room. And I remember
- 11) Reggie crushing crack in baggie's and Johnny wanted
- 12) to try some, so he let him. And since I was
- 13) right there next to Johnny, I had contact with
- 14) crack and gave me 1 or 2 hits before I went
- 15) to the restroom.
- 16) \_\_\_\_\_

The statement above, consisting of 2 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

Signed:  Date: 2/26/14 Time: 11:30  
 Witness: (Print) Carson Neef Page 1 of 2  
 Witness: (Sign) 

**ISSUE NUMBER 9:**

DID THE TRIAL COURT ERR, AND WAS THE APPLICANT'S 4TH., 5TH., 6TH., 14TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION VIOLATED, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS VIOLATED WHERE NOT ONLY WAS COUNSEL INEFFECTIVE FOR FAILING TO PROPERLY AND OR ADEQUATELY INVESTIGATE THE CASE AND DISCOVERY RECORD, BUT IN SUCH HE FAILED TO DISCOVER THE FACT THAT THERE WAS NO EVIDENCE IN THE RECORD PURSUANT TO DISCOVERY THAT DEMONSTRATE THAT THERE WAS PHYSICAL PROOF OF CHAIN OF CUSTODY (FORMS) FROM THE SEIZING OFFICER WHO ALLEGEDLY FOUND AND LOCATED THESE DRUGS DURING THE SEARCH AND EXECUTION OF THE SEARCH WARRANT?

I GIVE THE COURT AND PARTIES JUDICIAL NOTICE THAT THE LITIGATION FOR THIS PARTICULAR ISSUE IS FORTHCOMING.

ISSUE NUMBER 10:

WAS COUNSEL APPOINTED BY THE STATE AND OR HIRED TO REPRESENT THE APPLICANT INEPT AND CONSTITUTIONALLY INEFFECTIVE IN VIOLATION OF THE APPLICANT'S 4TH., 5TH., 6TH., 13TH. 14TH. AND 15TH. AMENDMENT RIGHTS OF THE U.S. CONSTITUTION, AS WELL AS ARTICLE IV§2, AND HIS DUE PROCESS RIGHTS WHICH LED TO AN UNFAIR AND PARTIAL TRIAL CREATING AN EGREGIOUS MISCARRIAGE OF JUSTICE RENDERING THE PROCEEDINGS UNCONSTITUTIONAL WHICH VOIDS THE TRIAL COURT'S JURISDICTION?

JUDICIAL NOTICE TAKES PLACE OF PROOF\*\*\*\*\*.

THIS IS ALSO A MANIFEST CONSTITUTIONAL ERROR\*\*\*\*\*.

A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL. TO DEMONSTRATE INEFFECTIVE ASSISTANCE OF COUNSEL, A PETITIONER MUST SHOW, PURSUANT TO THE TWO PRONG TEST ENUNCIATED IN STRICKLAND v. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674(1984), THAT (1) HIS COUNSEL WAS DEFICIENT IN HIS REPRESENTATION AND (2) HE WAS PREJUDICED AS A RESULT, ID AT 687; ALSO SEE WILLIAMS v. TAYLOR, 529 U.S. 362, 391, 120 S.Ct. 1495, 14 L.Ed.2d. 389(2000)(STATING THAT THE STRICKLAND TEST PROVIDES SUFFICIENT GUIDANCE FOR RESOLVING VIRTUALLY ALL INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS).

TO SATISFY THE FIRST PRONG OF STRICKLAND, A PETITIONER MUST SHOW THAT TRIAL COUNSEL'S ERRORS WERE SERIOUS ENOUGH THAT HIS PERFORMANCE FELL WELL BELOW THE OBJECTIVE STANDARD OF REASONABLENESS GUARANTEED BY THE 6TH. AMENDMENT OF THE U.S. CONSTITUTION. WITH REGARD TO THE SECOND PRONG OF STRICKLAND, THE APPLICANT MUST SHOW THAT THERE IS A REASONABLE POSSIBILITY THAT, BUT FOR COUNSEL'S PERFORMANCE AND UNPROFESSIONAL ERRORS, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT, STRICKLAND, 466 U.S. AT 694.

THE APPLICANT'S 4TH., 5TH., 6TH., 13TH. 14TH. 15TH. AMEND-  
MENT RIGHTS OF THE U.S CONSTITUTION WERE VIOLATED, AS WELL  
AS ARTICLE IV§2, ALSO HIS RIGHTS UNDER ARTICLE 1§10 OF THE S.C.  
CONSTITUTION WERE VIOLATED, HIS DUE PROCESS RIGHTS WERE VIOLATED  
AND HE WAS DENIED THE EQUAL PROTECTION OF THE LAWS, IN THAT  
THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF  
COUNSEL GUARANTEED BY THE 6TH. AND 14TH. AMENDMENTS OF THE U S.  
CONSTITUTION AS WELL AS IN VIOLATION OF ARTICLE 1 §§ 3 AND 14  
OF THE S.C. CONSTITUTION. DUE TO THE JURISDICTIONAL NATURE AND  
FRAUD UPON THE COURT ATTACHED TO THE ISSUES PRESENTED IN THIS  
DOCUMENT. THIS FILING IS FREE OF ALL PROCEDURAL LIMITATIONS  
SUCH AS ANY CLAIM THAT THE FILING IS SUCCESSIVE OR ANY CLAIM  
OF OTHER PENDING ACTION BEFORE ANY OTHER COURT. ALL OF THESE  
WOULD BE CONSIDERED AS PROCEDURAL LIMITATION WHICH DO NOT ATTACH  
IN THIS CASE. THE STATE WOULD NOT HAVE MERIT MAKING SUCH CLAIMS  
UNDER THESE CIRCUMSTANCES. TO CONSPIRE TO TAKE AWAY REMEDY BY  
THE UNCONSTITUTIONAL ACTIONS ARGUED WITHIN THIS DOCUMENT, REMEDY  
GIVEN TO ME FOR THE ENFORCEMENT OF CONSTITUTIONALLY PROTECTED  
RIGHTS, IS TO TAKE AWAY THE DUE PROCESS RIGHT ITSELF. SUCH WOULD  
NOT BE WITHIN THE POWER OR DISCRETION OF THE STATE OR THIS COURT.  
UNDER FEDERAL LAW, WHICH IS APPLICABLE TO THE STATES, THAT IF  
A COURT OR PARTIES IS "WITHOUT AUTHORITY", SUCH AS DUE TO FRAUD  
UPON THE COURT AND THE STRUCTURAL ERRORS ARGUED WITHIN THIS  
CASE, CONSPIRING TO BE SILENT ON THESE CLAIMS, FAILING TO OBJECT  
TO PRESERVE THESE CLAIMS FOR APPELLATE REVIEW IN ACTS OF MACHINA-  
TION, WHICH ARE ALL UNCONSTITUTIONAL VIOLATING DUE PROCESS.  
ITS JUDGMENTS AND OR ACTS AND OR ORDERS ARE REGARDED AS NULLITIES  
. THEY ARE NOT VOIDABLE, BUT SIMPLY VOID, AND FORM NO BAR TO  
RECOVERY, EVEN PRIOR TO REVERSAL IN OPPOSITION OF THEM. THEY  
CONSTITUTE NO JUSTIFICATION, AND ALL PERSONS CONCERNED IN EXECU-  
TING SUCH ACTS OR JUDGMENTS OR SENTENCES ARE CONSIDERED IN LAW  
AS "TRESPASSERS OF THE LAW". THE FRAUD EFFECTS EVEN THE MOST  
SOLEMN ACTS OR JUDGMENTS OR DECREES. LABEO DEFINES FRAUD AS  
ANY CUNNING DECEPTION OR ARTICLE USED TO CIRCUMVENT OR DECEIVE  
ANOTHER. MR WELLS, IN HIS VERY WORK ON RES JUDICATA SAYS SEC.  
499 "FRAUD VITIATES EVERYTHING", ELLIOTT v. PIERSOL, 1 PET.  
328, 340, 26 U.S. 328, 340(U.S.1828); NUDD v. BURROWS, 91 U.S.  
667-683(U.S.1875); U.S. v. THROCKMORTON, 98 U.S. 61-67(U.S.1871);

WELLS FARGO BANK N.A. v. FARAG, 2016 WL 2944561(2016); 24 SENATORIAL DIST. REPUBLICAN COMMITTEE v. ALCORN, 820 F3d. 624(4th. Cir.2016); TRINSLEY v. PAGLIAR , 229 F.Supp. 647(D.C Pa.1964) MYLES v. DOMINOS PIZZA, LLC., 2017 WL 238436(D.C.Mass.2017); NELSON v. COLORADO, 136 S.Ct. 1249, 197 L.Ed.2d. 611, 85 U.S.L.W. 4205(U.S.2017); STATE v. DUNBAR, 356 S.C. 138, 142, 587 S.E.2d. 691, 693-94(2003)(IN ORDER FOR AN ISSUE TO BE PRESERVED FOR APPELLATE REVIEW, IT MUST HAVE BEEN RAISED TO BE PRESERVED FOR APPELLATE REVIEW AND RULED ON BY A JUDGE. ISSUES NOT RAISED AND RULED ON IN A TRIAL WILL NOT BE CONSIDERED ON APPEAL); STATE v. ROGERS, 361 S.C. 178, 183, 603 S.E.2d. 910, 912-913(Ct.App. 2004); I'O'N', LLC. v TOWN OF MT. PLEASANT, 338 S.C. 406, 422, 526 S.E.2d. 716, 724(2000); STATE v. SIMPSON, 325 S.C. 37, 42 479 S.E.2d. 57, 60(1996); STATE v. SHUMPERT, 312 S.C. 502, 507, 435 S.E.2d. 859, 862(1993).

I SOMUCH, YOU HAVE ISSUES 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 11 PRESENTED WITHIN THIS DOCUMENT. COUNSEL WAS INEFFECTIVE IN THAT HE FAILED TO PROTECT MY DUE PROCESS RIGHTS RELATED TO THESE ISSUES. HE SHOULD HAVE OBJECTED TO PRESERVE THESE ISSUES WITHIN THE COURT RECORD <sup>instead of conspiring</sup> WITH THE COURT AND PROSECUTOR TO CONCEAL MATERIAL FACTS, OBSTRUCT JUSTICE AND DENY ME THE EQUAL PROTECTION OF THE LAWS. HE SHOULD HAVE MOTIONED TO PROPERLY SUPPRESS THE EVIDENCE AND MOVED TO QUASH THE INDICTMENTS. IN SUCH COUNSEL WAS INEPT AND CONSTITUTIONALLY INEFFECTIVE. IF COUNSEL WOULD NOT HAVE FAILED AT THESE ISSUES OF CONCERN THE OUTCOME WOULD HAVE DEFINITELY BEEN DIFFERENT, U.S. v. HALL, 858 F3d. 254(4th. Cir.2017); MARTINEZ v. RYAN, 132 S.Ct. 1309 (U.S.2012).

BY ALL THE AFOREMENTIONED ARGUED WITHIN THIS DOCUMENT THE CASE STANDS IN BLATANT DEFIANCE TO LAW ESTABLISHED UNDER 18 U.S.C. §§ 242 AND 1001 AS WELL AS 42 U.S.C. §§ 1985(2), 1985 (3) AND 1986 PRODUCING FRAUD UPON THE COURT CONSPIRING UNDER COLOR OF STATE LAW FOR THE PURPOSE OF DENYING ME THE EQUAL PROTECTION OF THE LAWS. THE GOVERNMENT "[M]UST [A]LWAYS" BE HELD ACCOUNTABLE TO JUDICIARY FOR A MAN'S IMPRISONMENT, AND THE RESTRAINTS ON LIBERTY IF THE IMPRISONMENT DOES NOT CONFORM TO THE BASIC REQUIREMENTS OF DUE PROCESS LAW. BY THE INJUSTICES

ASSERTED WITHIN THIS CASE. IT IS AS IF THE APPLICANT WENT TO TRIAL WITH NO LEGAL COUNSEL APPOINTED AT ALL RENDERING THE PROCEEDINGS UNCONSTITUTIONAL AND VOIDS THE GENERAL SESSIONS COURT'S JURISDICTION. THEREFORE, THE SENTENCE AND CONVICTION MUST BE REVERSED AND VACATED IN FUNDAMENTAL FAIRNESS TO THE ACCUSED, SHELTON v. CICCONE, CA8 (MO.) 1978, 570 F2d. 1241; EVATT v. LUCY, 469 U.S. AT 387, 105 S.Ct. 830, 83 L.Ed.2d. 831(1985); GRAY, 800 F2d. AT 646; POWELL v. ALABAMA, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158(1932); STRICKLAND v. WASHINGTON SUPRA.; MARTINEZ v. RYAN SUPRA.; MYLES v. DOMINOS PIZZA, LLC. SUPRA.; UNITED STATES v. CONRAD, 675 Fed. Appx' 263, 265 CA4 (N.C.2017); PCS NITROGEN INC. v. ROSS DEVELOPMENT CORP., 126 F.Supp.3d. 611(DSC. 2015); YATES v. FORD MOTOR CO., --F.Supp.3d.--, 2015 WL 6758983 (E.D.N.C.2015); JOHNSON v. UNITED STATES, --S.Ct.--, 2015 WL 2473450(U.S.2015). BEFORE A STRUCTURAL ERROR CAN BE DEEMED HARMLESS THE COURT MUST BE ABLE TO DECLARE IT WAS HARMLESS BEYOND A REASONABLE DOUBT, WHICH IN THIS CASE, THE COURT CANNOT DO, RENDERING THE TRIAL PROCEEDINGS THAT OCCURRED IN THIS CASE UNCONSTITUTIONAL VOIDING THE TRIAL COURT'S JURISDICTION, ALBERTO-GONZALEZ FIGUEROA JR., PETITIONER v. WARREN L. MONTGOMERY, 2019 WL 914128(S.D.Cali.2019); MURPHY v. WINN, 2019 WL 586095(D.C. Mich.2019); PEOPLE v. CALIALIAK, 2018 WL 5084834, \* 6+ GUAM TERR.

**ISSUE NUMBER 11:**

SEE EXHIBIT, "GENTRY FRAUD . THE LITIGATION FOR THIS ISSUE IS ATTACHED. IT IS ARGUED FOR MY INDICTMENT DEFECT ISSUES AND TO DEMONSTRATE THAT A CRIMINAL COURT'S JURISDICTION IS NOT ABSOLUTE DESPITE THEY BEING GIVEN SUCH JURISDICTION AND POWER BY STATE STATUTES.

EXHIBIT, "GENTRY FRAUD".

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( ) Did the S.C. Supreme Court in State v. Gentry supra. err, engaging knowingly, intentionally in acts of fraud upon the court, in their efforts to essentially establish modern day slavery in violation of the Anti-Peonage Act, and abused their discretionary "[p]owers", which they even conspired to take away our right to vote, and or done so surreptitiously , in violation of the Voting Rights Act. And in such, the court's jurisdiction was made void for Due Process violation, and the court was prohibited from enacting and or invoking and or continuing its Subject Matter Jurisdictionary "[p]owers", even though they do indeed possess such "[p]ower" via state legislative statute and or Congressional intent, due to the indictment defects and or errors contained and argued within this document, in violation of the appellant's 4th., 5th., 6th., 13th., 14th., 15th. Amendment rights of the U.S. Constitution, as well as Article IV § 2, also 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986; 18 U.S.C. §§ 241, 242, and the laws of Due Process?

The appellant did not object to these defects and or errors at the time of his trial and or before he gave his guilty plea, but the defects and or errors serve to render the indictments wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d. Indictments and Information § 299(1968); State v. Munn supra..

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge. We are arguing against the precedent established by State v. Gentry pursuant to S.C. Appellate Court Rule 217, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra. 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error , fraud and machination on the part of the South Carolina Supreme Court that has an identifiably negative impact on all proceedings to such a degree, that the constitutional rights of all defen-

dants within this state, including the appellant's are compromised. A manifest constitutional error, violations of the Anti-Peonage Act and fraud upon the court of this magnitude cannot be waived, is not subject to any time limits, and can be reviewed by a court of appeals even if the appellant did not object at the proceedings, especially in light of the fact that the court's decision and fraudulent actions disproportionately effect African Americans and all other inmates within this state and potentially around the nation, (Black Law Dictionary 8th. Edition); The Amistad supra.; Callon Petroleum Co. v. Frontier Ins. Co. supra.; Digital Equip. Corp. v. Desktop Direct Ins., 511 U.S. 863, 868, 114 S.Ct. 1992, 1996, 128 L.Ed.2d. 842(1994); Chewing v. Ford Motor Company supra.; Appling v. State Farm Mut. Auto Ins. Co. supra.; King v. First American Investigators Inc., 287 F3d. 91, 92(2nd.Cir.2002) cert. denied 537 U.S. 960, 123 S.Ct. 393, 154 L.Ed.2d. 314(2002); The Anti-Peonage Act Of The 13th. Amendment; The Rico Act; Ex Parte Virginia, 100 U.S. 339, 346, 25 L.Ed. 676(1880).

The appellant contends, that the indictment(s) for attempted murder do not properly allege the "[t]ime" of the assault which is an essential element of the offense. The indictment(s) for attempted murder or the conspiracy indictment allege who it was that the appellant supposedly conspired with. The attempted murder indictment(s) do not allege what weapon the appellant was supposedly in possession of. None of these essential elements and or allegations are alleged within the body of the charging instrument. This prejudiced the appellant when it came time to seek a direct verdict which is why the court and parties conspiring under color of state law, in acts of fraud upon the court denied the motion for severance, violating the appellant's Due Process rights voiding their jurisdiction for Due Process violation. These actions placed the appellant at a substantial disadvantage, which is why the state in acts of conspiring under color of state law tried the appellant and his co-defendant together to conceal these fatal deficiencies, knowing fully well the indictments were extremely vague setting the appellant

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up for "Indictment Ambush" at the onset of his proceedings. The indictments "[c]annot" be deemed sufficient if the state is permitted to prove all these materially different sets of facts. The indictment(s) do not descend to the essential particulars. All the aforementioned "[m]ust" be alleged in the body of the charging instrument and passed upon by the Grand Jury in the indictments returned against the accused in accordance to the constitutional Due Process rights of the defendant. This cannot be deemed as reasonable notice. No one can say what was in the mind of the Grand Jury, State v. Pierce supra.; State v. Sutton supra.; State v. Platt supra.; State v. Rector supra.; State v. Blakeney supra.; State v. Munn supra.; State v. Rallo supra.; State v. Tate supra.; State v. Tabor supra.; State v. Keith supra.; State v. Hardee supra.; Locke v. State supra.; State v. Wilkes supra.; United States v. Daniels supra.; United States v. Abrams supra.; United States v. Hooker supra.; Russell v. United States supra.; Hamling v. United States supra.; United States v. Pupo supra.; Castillo v. Holder supra.; State v. Brandt supra.; Robinson v. Cohen supra.; United States v. Cohen supra.; United States v. Gomez supra.; Carr v. United States supra.; United States v. Robare supra.; United States v. Umana supra.; United States v. Dinkins supra.; James v. Reynolds supra.; Sullivan v. Cartledge supra.; Dech v. Missouri supra.; Clark v. Arizona supra.; United States v. Whitfield supra.; United States v. Mills supra.; United States v. Naidu supra.; United States v. Allmendinger supra.; State v. Green supra.; Roberts v. State supra.; Eppenger v. McFadden supra.; Blanding v. Warden McCormick Correctional Institution supra.; State v. Daniels supra.; United States v. Kirby supra.; Van de Kamp v. Goldstein supra.; Dennis v. Wetzel supra.; Plecencia v. McFadden supra..

The appellant further contends, that the indictment(s) do [n]ot properly and or sufficiently apprise the appellant of the "[c]ause and [n]ature" of the accusation(s), or of what he is called upon to meet and defend, because the structural constitutional error, defect, language and or charge embodied within the indictment(s) and criminal complaints around the

nation indicate and or inform the appellant, that the burden of production belongs to the appellant and not the government. By such the indictments also violate S.C. Code Ann §§ 17-19-10, 17-19-20 and 17-25-10. The language and or charge in the indictments indicate and inform the appellant that he is called upon to meet the burden of production on the critical elements of dispute, in violation of the appellant's 6th. amendment rights, the relevant statutes, and Due Process Law. They also violate the appellant's 4th. amendment rights to illegal seizure, his 5th. amendment rights to double jeopardy protection, because they predetermine in advance the outcome of the proceedings, taking away our presumption of innocence, and they inform the appellant that for a second time he is made to plea and or go to trial on a prior conviction for the same offense which produces fraud upon the court, modern day slavery in violation of The Anti-Peonage Act because you force us to work once convicted to up keep these institutions. Then you take away our right to vote once convicted in violation of the 13th. 15th. amendments and the Voting Rights Act, The Rico Act, and the holdings made in Ex Parte Virginia, 100 U.S. 339(1880). They infringe upon the appellant's 14th. Amendment right to Equal Protection of the Laws against unjust, arbitrary judicial action and prosecution behind a class based invidiously discriminatory animus because the action disproportionately effect African Americans and other minorities in violation of the holdings made in Ex Parte Virginia. The Grand Jury "[m]ust" refrain from even making an "[o]pinion" (emphasis added) as to our guilt. Yet, here these Knuckleheads swear an "[o]ath", under "[o]ath" mind you, our guilt foreclosing legally any subsequent adjudication. The Grand Jury by State or Federal law, or State or Federal Constitution, do "[n]ot" have the power to convict. This cannot be deemed reasonable notice. No one can say what was in the mind of the Grand Jury as determining whether or not they intended any subsequent adjudication to occur once they themselves determined guilt. Due to the structural constitutional error and or defect in the construction of the indictment(s) and or criminal complaints around the nation, they do "[n]ot" properly,



sufficiently or fully apprise the appellant of the "[c]ause and [n]ature" of the accusation being brought against him, or of what he is called upon to meet and defend, State v. Lewis supra.; State v. Easler supra.; Mathis v. State supra.; Brown v. State supra.; State v. Browning supra.; State v. Munn supra.; Moore v. Dempsey supra.; The Amistad supra.; Callon Petroleum Co. v. Frontier Ins. Co. supra.; Digital Equip Corp. v. Desktop Direct Ins. supra.; United States v. Direct Sales Co. supra.; United States v. Atlantic Commission Co. supra.; State v. Boyd supra.; State v. Bramlett supra.; Beck v. Washington supra.; State v. Tollin supra.; Byers v. Reynolds supra.; United States v. Jefferson supra.; In Re: Grand Jury Subpoena John Doe, No. 05GJ1318 supra.; In Re: Grand Jury Subpoena (T-112) supra.; United States v. Umana supra.; United States v. Dinkins supra.; Dickerson v. Warden Of Lieber C.I. supra.; James v. Reynolds supra.; Sullivan v. Cartledge supra.; Clark v. Arizona supra.; Kaley v. United States supra.; Placencia v. McFadden supra.; Jeandron v. Board Of Regents Of University System Of Maryland supra.; United States v. Whitfield supra.; United States v. Mills supra.; United States v. Naidu supra.; Roberts v. State supra.; State v. Green supra.; United States v. Kirby supra.; United States v. Allendinger supra..

This is how this thing went. The inmates of South Carolina were basically getting out of prison by arguing the defects within their indictments. The inmates convicted for murder discovered that there was a fatal flaw in the murder indictments related to "time and place", being essential elements of the offense. The South Carolina Supreme Court, in efforts to stop the inmate exodus from prison, engaged in acts of fraud upon the court in efforts to establish modern day slavery behind racial hatred, even with the black overseer type judges, came up with a plot, plan and scheme to defraud the inmates of this state in their acts of machination in violation of the holding

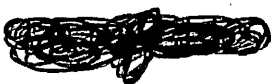


made in the U.S. Supreme Court case Ross v. Blake, 136 S.Ct. 1850(2016). They knew that beforehand in order to make a fair determination regarding the issue of Subject Matter Jurisdiction. It was required that the court review Ex Parte Bain, Russell, Stirone and Gaither collectively, but they purposely did not do so in order to hatch their plan. If you do not review them together, they knew you can make a fraudulent determination and no one would be the wiser. So, the judges of the South Carolina Supreme Court, conspiring under color of law behind a class based invidiously discriminatory animus, placed the numerous, voluminous pending criminal cases on hold, staying them, many for as long as over (4) or (5) years to allow them to go on a "FISHING EXPEDITION" in search of case law that was vague and ambiguous enough to allow them to enact their acts of fraud and machination. After this exhaustive search for (5) or more years, criminally holding these inmates cases in limbo. The conspiring judges found Cotton and Parkhurst, that would permit them to circumvent the holdings made in Stirone, Gaither and Russell via this fraudulent "FISHING EXPEDITION", due to these newly found cases being adjudicated under the incorrect prong to subject Matter Jurisdiction, Mitchell v. Conseco Life Ins., F.Supp.2d., 2013 WL 2407129(DSC.2013); J & J Sports Productions Inc. v. Wofford, 2014 WL 2980250(DSC.2014); United States v. McDonald, 444 Fed. Appx' 710 CA4 (Va.2011); Gindi v. Strategic Outsourcing, Inc., F.Supp.2d., 2012 WL 7761543(DSC.2012); State v. Jones, 364 S.C. 51, 610 S.E.2d. 846(S.C.App.2005).

This is what the S.C. Supreme Court judges specifically wanted. They wanted these specific cases to permit them to perpetrate the fraud and machination even though they knew there were other U.S. Supreme Court cases that gave greater clarity, which is why Plecones, honorable soul that he is, jumped ship. He knew what they were doing. They knew Ex Parte Bain, U.S. V. Cotton and Parkhurst were vague and ambiguous in that these cases found via the "FISHING EXPEDITION" never addressed the "[j]urisdictional [p]rerequisite" Due Process element, aspect or requirement of the indictment and adjudicated this clear

Due Process issue under the incorrect prong to Subject Matter Jurisdiction. U.S. v. Cotton used "word play", "verbal voodoo", "word winx" to evade the essential question related specifically to the "[p]rerequisite" aspect and requirement of the indictment as it relates to jurisdiction, which is a Due Process claim that "[v]oid" jurisdiction for Due Process violation. Please note that nothing in U.S. v. Cotton stated that they were overruling Stirone, Gaither or Russell,...why? Its because we are dealing with two separate and independent questions related to Subject Matter Jurisdiction, essentially two prongs. One being certain courts jurisdiction itself. The second being the "[p]rerequisites" and or "[r]equisites" that are attached to that jurisdiction, which is a Due Process claim that "[v]oids" jurisdiction for Due Process violation, the corrupt devils that they are, Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.supp.3d. 582, 2014 WL 1266240 (2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); White v. Manis, 2014 WL 1513280(DSC.2014).

The S.C. Supreme Court judges, in acts of fraud upon the court and machination, only reviewed Ex Parte Bain because it was vague on the "[p]rerequisite" and or "[r]equisite" Due Process issue itself, then added Cotton and Parkhurst because they knew these cases were adjudicated in the same vein, which did not address the prerequisite Due Process requirement of the indictment, which must be adjudicated under the Due Process prong to Subject Matter Jurisdiction, they came up with the State v. Gentry case, in acts of fraud upon the court and machination to halt the pending inmate exodus. Conspiring under color of state law in violation of 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986; 18 U.S.C. §§ 241, 242, 1001, by order of stay, they held Gentry and the massive number of pending cases in limbo, many for over (5) years, until they were time barred from seeking review in the S.C. U.S. District Court. The S.C. U.S. District Court Judges conspiring with them, under color of authority and or law, were privy to this aided the conspiring state judges, courts and actors such as the S.C. Attorney General; knowing



fully well the vast number of inmates whose cases were criminally held in limbo, many for over (5) years, lacked the intelligence to argue past the successive or statute of limitations placed upon them via PLRA and or AEDPA provisions, warranting the recusal and or disqualification of the S.C. U.S. District Court and 4th. Circuit, and all these cases in total be transferred to the State Of New Jersey District Court pursuant to 28 U.S.C. §§ 1404 and 1407. We motion for such.

Similar acts were done with intelligence test during reconstruction to deny minorities the right to vote. "How many jelly beans are in this jar?" "How do you get past the Statute of limitations or successive issues placed upon you by PLRA or AEDPA provisions?" It is a similar criminal act argued in Ex Parte Virginia, 100 U.S. 339(1880), in their white racial bonding. This produces fraud upon the court, machination in violation of the holdings made in Ross v. Blake, 136 S.Ct. 1850 (2016), demonstrating that we do not have to exhaust. It establishes a form of modern day slavery by that fraud and machination as is defined within The Convention Against Torture Treaty that Congress signed off on and ratified binding this nation and all states contained therein, where you force us to work to up keep these institutions and other forced labor while in captivity. Then you take away our right to vote by conspiring under color of state law and or authority to keep us labelled as felons and kill our political in what you white nationalist call , "establishing good government" as Senator Cole Blease Of South Carolina once said. It becomes an illegal seizure by this fraud and machination in violation of the 4th. amendment, as well as stand in violation of The Rico Act, the holdings made in Ex Parte Virginia, as well as the 5th., 6th., 8th., 13th., 14th., and 15th. amendments, also 18 U.S.C. §§ 241, 242 and 1001, Moore v. Dempsey supra.; The Amistad supra.; Digital Equip. Corp. v. Desktop Direct Ins. Co. supra.; State v. Means, 367 S.C. 374, 626 S.E.2d. 348(S.C.2006)(Where they applied this criminal act retroactively); Screws v. United States supra.; United States v. Kozminski, (1988) 487 U.S. 931, 101 L.Ed.2d. 788, 108 S.Ct. 2751, 46 C.C.H. E.P.D. ¶ 38067 on remand (1988 CA6 Mich.) 852 F2d 1288; Greenwood v. Peacock, (1966) 384 U.S.

808, 16 L.Ed.2d. 944, 86 S.Ct. 1800; United States v. Ramey, (1964 CA4 W.Va.) 336 F2d. 512 cert. denied (1965) 379 U.S. 972, 13 L.Ed.2d. 564, 85 S.Ct. 649; United States v. Otherson, (1980) CA9 Cal., 637 F2d 1276 cert. denied (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct. 149; Means v. Wilson, CA8 (S.D.) 1975, 522 F2d. 833 cert. denied 96 S.Ct. 1436, 424 U.S. 958, 47 L.Ed.2d 364; Berg v. Obama, E.D. Pa. 2008, 574 F.Supp.2d. 509; United States v. Figuerca, CA3 (N.J.) 2013, 729 F3d. 267; Ex Parte Virginia supra.; The Compendium Of United Nations Standards And Norms In Crime Prevention And Criminal Justice ISBN 978-92-1-133765-5.

This is not a situation where the state court simply held a view different its own, when the precedent from the U.S. Supreme Court is, at best ambiguous. They criminally conspired under color of state and stayed, held, all pending cases most for (5) years or more while they and the S.C. Attorney General purposely, maliciously, criminally went on a "FISHING EXPEDITION" in search for a vague, ambiguous U.S. Supreme Court case and the Parkhurst case, to allow them to engage in machination and acts of fraud upon the court when there were other clearly established U.S. Supreme Court cases that gave greater clarity and that were not ambiguous to defraud the inmates of this state. Thus, using the holdings made in cases like Green v. Fisher, 132 S.Ct. 38, 43(2011) would be misplaced due to the criminal and fraudulent intent that conspicuously exist, Barlow v. Colgate Palmolive Co., 772 F3d. 1001, 90 Fed. R. Serv.3d. 85(Md.2014).

Perhaps the court(s) of South Carolina would further contend that Subject Matter Jurisdiction, and the sufficiency of an indictment are, and have been combined in the various cited cases, that the indictment is merely a "notice document" and that Subject Matter Jurisdiction is the court's "[p]ower" to hear and determine a matter, and each should be viewed as separate and distinct from one another and the insufficiency of an indictment does "[n]ot" take away from or "[a]ffect" and or "[h]inder" a "[c]riminal" court's "[p]ower" and or "[a]bility" to hear "[t]his" general class of cases, to which the proceedings

in question belong, State v. Gentry, 363 S.C. 93, 610 S.E.2d. 494, 495(S.C.2005) citing United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d. 860(2002); State v. Parkhurst, 845 S.W.2d. 31(MO.1992). The court(s) has misinterpreted its citings and are in error, and they have abused their discretionary "[p]owers" in their determination of this matter, and they did this purposely in acts of fraud upon the court and machination in violation of the holdings made in Ross v. Blake, 136 S.Ct. 1850(2016). An abuse of discretion occurs when the court(s) are controlled by an error of law, or when the order based upon findings of fact is without evidentiary support or fact. The error of law that they are controlled by is that there are two concepts in question, essentially two prongs to Subject Matter Jurisdiction. One--the courts powers of jurisdiction given to them via state legislative statutes and or congressional intent for federal courts. Secondly---the Due Process jurisdictional "[p]rerequisites" and or "[r]erequisites" that are attached to that jurisdiction, which were never properly addressed by the courts involved, which were required to be addressed under the Due Process prong to Subject Matter Jurisdiction, Sharpes v. Sharpes, 535 S.E.2d. 913, 342 S.C. 71(2000).

The State Of South Carolina, by this ludicrous piece of legislation or law, in an egregious abuse of discretionary "[p]ower", acting arbitrarily, unjustly, under color of "state law", in defiance to fundamental fairness and judicial integrity, in violation of the appellant's federal constitutional rights of Due Process, also in violation of 18 U.S.C. §§ 241, 242 and 1001, has either altered, amended, modified, and or deleted, and or diminished and or eradicated, just about every single right and privilege secured and protected by the 4th., 5th., 6th., 13th., 14th., 15th. amendments of the U.S. Constitution, as well as the South Carolina Constitution, as it pertains to the "[p]rerequisite" Due Process requirement and use of an indictment in criminal proceedings, in blatant defiance to the appellant's rights to Equal Protection of the Laws, producing fraud upon the court, machination, essentially establishing



modern day slavery in violation of The C.A.T. Treaty, conspiring under color of state law to disenfranchise us, branding African Americans and other minorities who are disproportionately effected as felons to deny them the right to vote and kill their political voice, creating a racial caste system, See Book Entitled, "Mass Incarceration During The Age Of Colorblindness, the New Jim Crow, by Michelle Alexander; Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin v. Florida supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Jones v. State Of Arkansas supra.; Dozier v. Loop College , City Of Chicago supra.; Hicks v. Oklahoma supra.; Lugar v. Edmondson Oil Co. supra.; Williams v. United States supra.; Brown v. United States supra.; United States v. Ramey supra.; United States v. Kozminski supra.; Greenwood v. Peacock supra.; United States v. Otherson supra.

Insomuch, the 5th. amendment Indictment Clause has not been held applicable to the states, or the federal concept of a Grand Jury binding on the federal courts under the 5th. amendment are obligatory to the states. Nevertheless, by their own state(s) Constitution(s), the State Of South Carolina, New Jersey , Kentucky, Georgia, New York and (28) other states adopt the federal provisions. requirements, Due Process "[p]rerequisites" and or "[r]equisites", standards and mandates pertaining to the use of an indictment, and the remaining (17) states that make use of a criminal complaint document possess the structural error argued where the Grand Jury by the language presented, adjudicated guilt of the offenses as well. In further resolving the conflict, the Federal courts have held by the "BILL OF RIGHTS", many rights guaranteed by the first (8) amendments of The United States Constitution, have been made applicable to the several states through the Due Process Clause of the 14th. amendment and Supremacy Clause of Art. 6 cl. 2 of The U.S. Constitution, State v. Watts, 465 S.E.2d. 359; Henry v. City Of Rock Hill, 376 U.S. 776, 84 S.Ct. 1042, 12 L.Ed.2d. 79(1964); Also see South Carolina Constitution Art. 1 § 11; Ex Parte Bain, 121 U.S. 1 (1887); Costello v. United States,

350 U.S. 359; Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038(1962); Woods v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d. 569(1962); Frisbee v. United States, 157 U.S. 160, 15 S.Ct. 586, 39 L.Ed. 652 (1895); Hale v. Henkel, 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652(1906); Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d. 491(1968); Hurtado v. California, 110 U.S. 516, 538, 4 S.Ct. 111, 122, 28 L.Ed. 232(1884); Powell v. State Of Alabama, 287 U.S. 45, 67, 53 S.Ct. 55, 63, 77 L.Ed. 682(1948); Gideon v. Wainwright, 372 U.S. 335, 342-344, 83 S.Ct. 792, 796, 4 L.Ed.2d. 799(1963).

Yes, the indictment is a "notice document", but being a "notice document" is one of the many purposes and functions the indictment was created for. The Honorable Judge Plecones in the Gentry court, was the only one with enough judicial integrity and insight to see clear to the truth of this matter in part, and did not agree to the fraud and machination.

Yes, Subject Matter Jurisdiction is the "[p]ower" to hear and determine cases of a general class to which the proceedings in question belong, Bell v. Monsanto Corp., 579 S.E.2d. 325 S.C. 553(S.C.2003). Inasmuch, the court's "[p]ower" to hear and determine a case, is also defined as the court's "[a]bility" to hear and determine a case. Inasmuch, Subject Matter Jurisdiction does not only cover and or involve whether or not the matter resides in a proper court of jurisdiction to hear and determine it. This is only the first prong. It also involves any issue that may "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to act in accordance to Rules Of Court, Rules Of Procedure and Due Process Law. This is the second prong that "[v]oids" jurisdiction for Due Process violations. Such matters can be raised at "[a]ny" time, "[c]annot" be waived by the defendant, and the court "[s]hall [n]ot [f]ail" to take notice, Mathis v. State supra.; Brown v. State supra.; State v. Munn supra.; Browning v State supra.; U.S. v. \$41,320 U.S. Currency, 9 F.Supp. 3d. 582, 2014 WL 1266240; Hunt v. United States, F.Supp.2d., 2007 WL 5131716(DSC.2007).

Subject to certain minor exceptions not present, the trial court's jurisdiction is made void, and or they are prohibited from enacting, and or invoking and or continuing its Subject Matter Jurisdictionary "[p]owers" to convict a defendant for Due Process violation, even though they have such jurisdiction by state legislative statute and or congressional intent, when there is no indictment charging him with that offense when the jury is sworn, or when he gives his guilty plea, and we can add, or when he has already been unjustly convicted by the Grand Jury, illegally acting as the trial jury, being duly sworn and swearing upon their "[o]ath" the appellant's guilt, predetermining in advance the outcome of the proceedings, in violation of their shielding function, also in violation of the appellant's right to double jeopardy protection and Due Process Law, establishing fraud upon the court, modern day slavery, machination, taking away our right to vote conspiring to kill our political voice behind a class based invidiously discriminatory animus in the form of race in violation of the holdings made in Ex Parte Virginia supra. Also see State v. Lewis supra.; State v. Easler supra.; Moore v. Dempsey supra.; The Amistad supra.; United States v. Umana supra.; United States v. Dinkins supra.; Dickerson v. Warden Of Lieber C.I. supra.; James v. Reynolds supra.; Sullivan v. Cartledge supra.; Clark v. Arizona supra.; Deck v. Missouri supra.; Skilling v. United States supra.; State v. Beachum, 288 S.C. 325, 324 S.E.2d. 572(1986); S.C. Code Ann § 17-25-10.

The Gentry court misinterpreting its citings are in error in their determination of the matter in acts of fraud upon the court and machination. What gives the court in "[c]riminal" cases and or proceedings the "[a]bility" to hear and determine cases of "[t]his" general class to which the proceedings in question belong, and allow it to enact and or invoke and or continue its Subject Matter Jurisdictionary "[p]owers" in these type of cases, placing those "[p]owers" in operation is "an indictment".

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S.C.R.C.P., Rule 3(c) Provides:

"Disposition on arrest warrant(s):

The solicitor shall take action on the warrant(s) within (90) days by preparing 'an indictment' for presentment to the Grand Jury". In turn said indictment is to be passed on to the trial court to allow it to enact and or invoke and or continue its "[p]owers" of Subject Matter Jurisdiction, Sharpe v. Johnson, 107 F3d. 282(foot notes)(5th.Cir.1997); Santos v. State, 843 S.W.2d. 953, 956(Tex.App.1992); Studer v. State, 799 S.W.2d. 263(Tex.App.1990); Williams v. Morris, 320 S.C. 196, 464 S.E.2d. 97(1995).

The indictment is also the legal document that confirms the "[c]riminal" court's "[p]ower" and or "[a]bility" to hear the particular case, by stating and documenting the class of case, or alleged offense, and the statute of the offense charged, stating the offense in the language of the statute, further validating that the matter(s) reside in the proper court of jurisdiction to hear and determine the matter. These indisputable facts make the indictment more than merely a "notice document". It is the vehicle in "[c]riminal" cases and or proceedings which invest and or attach the "[c]riminal" court the Due Process mechanism and right to act, and or confirms that right to act, which is an intrinsic part of the Due Process Prong To Subject Matter Jurisdiction in these cases; Thereby making them inter-linked, inter-locked and inter-dependent upon the viability of each other. To determine that without the indictment(s), it does "[n]ot" "[a]ffect" and or "[h]inder" a "[c]riminal" court's "[p]ower" and or "[a]bility" to hear and determine cases of "[t]his" general class to which the proceedings in question belong, is an error of law, and is like stating not having a "soul", "consciousness", or "lifeforce", do "[n]ot" "[a]ffect" or "[h]inder" a man's "[p]ower" or "[a]bility" to be a man. Without a "soul" or "lifeforce", by the laws of reason you will still have a "man", but the total truth of the matter is that



you will have a "[d]ead man", whose worth to society is useless; the same way the "[c]riminal" court's "[p]ower" and or "[a]bility" to hear and determine "[t]his" particular class of case is useless without the essentially needed vehicle in the form of the indictment(s). The Sufficiency of an Indictment is a "[j]urisdictional [p]rerequisite" in cases of "[t]his" general class, to which the proceedings in question belong, and for which an indictment is needed and or required even though the courts do indeed have jurisdiction via state legislative statute and or via congressional intent. See Indictment sufficiency, 70 Column L. Rev. 876, 888(1970); United States v. Abrams, 539 F.Supp. 378, 384(S.D.N.Y.1982); Stirone v. United States, 361 U.S. 212 (1960); Gaither v. United States, 413 F2d. 1061(D.C. Cir.1969); Also see S.C. Constitution Art. 1 § 11; S.C. Code Ann § 17-25-10.

The Gentry court, by it misinterpreting its citings changed Federal law made applicable to the state(s) by they adopting such via their own state(s) Constitution(s) standing unchallenged for well over (100) years. For the Gentry court by it misinterpreting its citings, in acts of fraud upon the court and machination in violation of Ross v. Blake, 136 S.Ct. 1850(2016), to view the two concepts of Subject Matter Jurisdiction and the Sufficiency of an Indictment as being combined, when Federal law adopted by their own state(s) constitution(s), dictate that the Sufficiency of an Indictment is a "[j]urisdictional [p]rerequisite" to Subject Matter Jurisdiction in a "[c]riminal" court, which is a Due Process claim, is an error of law. Nothing in United States v. Cotton or State v. Parkhurst addressed and or adjudicated the "[p]rerequisite" Due Process aspect of the indictment. Nor did anything in those cases say that Abrams, Stirone, Russell and Gaither are overruled. If they are no officially overruled by The U.S. Supreme Court, then the [p]rerequisite Due Process aspect of the indictment is still controlling law. The Abrams, Stirone, Russell and Gaither court(s) intent should be ascertained from the plain language of these citings of law as is adjudicated by those



courts. The language must read in a sense that harmonizes with its subject matter and accords with its general purpose. Once these precedent setting courts have made a choice, there was no room for the Gentry court to impose a different meaning or judgment based upon their own misguided notions. If the provisions of law language is clear, there was no need to employ the rules of statutory and or common law construction, and the Gentry court had no right to go on a "FISHING EXPEDITION" holding those cases in limbo for (5+) years to force the inmates past the statute of limitations to prevent review in another higher court to which they were void of all jurisdiction in acts of fraud upon the court and machination. Also, due to they imposing another meaning to this prescribed law, in their efforts to essentially establish modern day slavery in violation of the C.A.T. Treaty, to which congress confers upon no court the "[p]ower" to establish slavery of any kind. Their jurisdiction is void from the onset, even making it an administrative function stripping them of immunity due to the fraudulent intent. These were the same such acts that were at the heart of the issues sought remedied in Ex Parte Virginia in 1880. The convictions are not "DULY" established. Where the language of the afore mentioned citings of law are clear and explicit, the Gentry court "[c]annot" go on a "FISHING EXPEDITION" to purposely search for a vague, ambiguous provision of law that did not address the "[j]urisdictional [p]rerequisite" Due Process aspect and requirement of the indictment to criminally, in acts of fraud upon the court and machination, rewrite the provisions of the law in and inject matters into the holdings which are not in the language found in Russell, Stirone, Abrams and Gaither. Under the plain meaning rule, it is not the Gentry court's place to change the meaning of clear and unambiguous provisions of law by citing of a law that is ambiguous and vague, to disproportionately affect African Americans and other minorities within this state and water down the protections established under Ex Parte Virginia. The law clearly states that the two concepts are not combined, but one is a "[j]urisdictional [p]rerequisite" of the other which "[m]ust" be adjudicated under the Due Process Prong of Subject Matter Jurisdiction. The law clearly states



that yes, the courts have jurisdiction via state legislative statutes and or congressional intent, but with that jurisdiction there are "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites" that "[m]ust" be adhered to related to Due Process which void jurisdiction for lack of compliance. If these two concepts are to be viable and operate in the fullness and purpose for which they were established and created, they are not to be viewed and or separated in the manner reasoned by the Gentry court misinterpreting the holdings made in the Cotton and Parkhurst courts, Mitchell v. Conseco Life Ins. supra.; J & J Sports Productions Inc. v. Wofford supra.; United States v. McDonald supra.; Gindi v. Strategic Outsourcing, Inc. supra.; State v. Jones supra.; Bass v. Isochem, 617 S.E.2d. 369(S.C.App. 2005); State v. Brannon, 666 S.E.2d. 272(S.C.App.2008); State v. Pittman, 647 S.E.2d. 144(S.C.2007); Liberty Mut. Ins. v. S.C. Second Injury Fund, 611 S.E.2d. 297(S.C.App.2005).

Further, the indictment(s) serve as a "[s]afeguard" to protect the American citizenry, all those who are held by us, and those who enter our borders or territories, from violations of their inalienable constitutional rights. Rule 7(c) requires that the indictment(s) contain a "[p]lain", "[c]oncise", and "[d]efinite" written statement of essential elements and or allegations constituting the offense charged. This requirement performs three constitutionally required functions: It fulfills the 6th. amendment right to be informed as to the "[c]ause and [n]ature" of the accusation (notice document); Yet, more than this, it prevents a person from being subject to double jeopardy as required by the 5th. amendment. It also serves the 5th. amendment protection against crimes based upon evidence not presented to the Grand Jury (constructive amendment of the indictment claim), State v. Lewis supra.; State v. Easler supra.; United States v. Silverman, 30 F2d. 106, 110(2nd.Cir.) listing these functions, modified 439 F2d. 198(2nd.Cir.1970) cert. denied 402 U.S. 953, 91 S.Ct. 1619, 29 L.Ed.2d. 123(1971). The Indictment Clause of the 5th. amendment requires that the indictment(s) contain some amount of factual particularity, to ensure that the prosecution will not fill in elements of his case with facts

other than those considered by the Grand Jury (constructive amendment of the indictment issue), United States v. Abrams supra.

The judges in State v. Gentry supra.; United States v. Cotton supra.; and State v. Parkhurst supra., in their determination, it is perspicuous that they have "[n]ot" given "[f]ull" weight to the total requirements and purpose of S.C. Code Ann §§ 17-19-10, 17-19-20, 17-19-30 and 17-25-10, or the "[j]urisdictional [p]rerequisite" Due Process aspect and requirement of the indictment. It is for the reasons aforementioned, in relevant part, and Federal Rules Of Criminal Procedure, Rule 7(c), that the requirements of the mentioned statutes are in effect, to ensure that the indictment(s) comply with Federal and State Rules of Criminal Procedure, The U.S. Constitution, The S.C. Constitution, and the Laws of Due Process, which make them more than merely a "notice document".

In addition to this, the indictment(s) aid in instructing the jury of the circumstances of the crime, and the incidentals, as well as the elements of the offense, that they are to confirm, or reject the confirmation of, by the preponderance of evidence presented before them by the prosecution and or defense in reaching a verdict. This too, makes them more than merely a "notice document", United States v. Abrams supra.; United States v. Silverman supra.. This requirement that the offense be stated\*\*\*\* specifying in detail each element of the crime was seen as providing assurance that both the Grand Jury understood what was necessary to establish the offense, not convict, and that the trial jury did not engage in unanticipated extensions of the substance of the offense, which is a constructive amendment of the indictment claim proving these are Due Process arguments which are to be adjudicated under the Due Process prong to Subject Matter Jurisdiction.

Lastly, the requirement of the indictment(s) limit and constrain the "[p]owers" of Subject Matter Jurisdiction of both

the prosecution and the court, by limiting what can be presented at trial, conviction and sentencing. This too, is potentially a constructive amendment of an indictment claim which demonstrate the deficiencies within the indictment(s) produce Due Process challenges that void jurisdiction for Due Process violation, United States v. Promise, 255 F3d. 150(4th.Cir.2001); State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309. It is the command of The U.S. Constitution that anything to the contrary is notwithstanding, (Article IV § 2 U.S. Const.).

The appellant places forth this issue in a straightforward fashion and want to make certain that there is no misunderstanding as to the specific claim(s) and or question that is placed before the court. The appellant is not arguing whether the criminal court has jurisdiction to hear and determine cases of "[t]his" general class to which the proceedings in question belong. The appellant concedes this fact. The appellant in this context agrees with all (3) Gentry, Cotton and Parkhurst court(s) when they determined that the criminal court does have Subject Matter Jurisdiction to hear cases of this general class and nature via state legislative statute and or congressional intent, this is not the issue. What the appellant is indisputably arguing is a question which clearly was not answered by either the Gentry, Cotton or Parkhurst court(s) is this. Despite the fact that the criminal court does have Subject Matter Jurisdiction to hear cases of "[t]his" general class to which the proceedings in question belong via state legislative statutes and or congressional intent. Do their egregious, blatant failure to be in compliance to said certain, essential, crucial Due Process "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]erequisites" at various phases of, and or at the commencement of the Subject Matter Jurisdictionary action and or process before the court, which is to be adjudicated under the Due Process prong to Subject Matter Jurisdiction. Do the State and or Federal government and or courts' egregious, blatant failure to be in compliance to these said certain, essential, crucial Due Process "[j]urisdictional [p]rerequisites" and or "[j]uris-



dictional [r]equisites" at various phases of, and or at the commencement of the Subject Matter Jurisdictionary action and or process, which is a Due Process issue. Do that failure halt, check, constrain, restrain, limit, arrest, stop or void the continuance of the court's Subject Matter Jurisdictionary "[p]owers" before the court for Due Process violation (ei vagueness in the indictment), even though the court do indeed possess such "[p]ower" by state legislative statute and or congressional intent? See Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.supp.3d. 582, 2014 WL 1266240 (2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md. 2010); White v. Manis, 2014 WL 1513280(DSC.2014).

This is a crucially, materially, distinctly different question related to Subject Matter Jurisdiction that was never answered by any of the courts involved pursuant to the Gentry case. This is why Judge Plecones in the South Carolina Supreme Court refuse to be a part of the arbitrary, unjust acts of the S.C. Supreme Court and conspiring parties handling of the Ezekial Hayes case. The highest court had opportunity to deal with the issue and instead chose to engage in further acts of fraud. Thus, even by this act the exhaustion and equitable tolling requirement is satisfied. This is a jurisdictional challenge to the Federal Courts as well. For if the federal courts fail to take notice they would be conspiring in acts created for the purpose of establishing modern day slavery. Congress confers no "[p]ower" on the State or Federal Courts to establish modern day slavery which would strip all of immunity. The Court would also be in violation of the C.A.T. Treaty(Convention Against Torture Treaty) where the definition for slavery is found that Congress signed off on. It becomes a jurisdictional duty of the Federal Courts to act. Thus, using the holdings made in the Gentry case would be misplaced, especially in light of the fact that it has been adjudicated under a cloud of fraud upon the court and machination where they went on a "FISHING EXPEDITION" to find a vague, ambiguous citing of law that did not address the Due Process "[j]urisdictional [p]rerequisite" aspect

of the indictment(s). Such a new question of law and fact is not barred from seeking relief for, does relate to Subject Matter Jurisdiction, "[c]annot" be waived by the appellant, and the court "[s]hall [n]ot" fail to take notice, Grupo Dalaflex v. Atlas Global Group, L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); South Carolina Department Of social Services v. Tran, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); McCain v. Brightharp supra.; Loumiet v. United States, 65 F.Supp. 3d. 19(2014); The Amistad supra.; Nezirovic v. Holt, 779 F3d. 233 CA4 (Va.2015); Kwai Fun Wong, 135 S.Ct. 1625, 191 L.Ed.2d. 533, 83 U.S.L.W. 4258(U.S.2015).

Insomuch, Rules of Criminal Procedure, the Sufficiency of an Indictment, Subject Matter Jurisdiction, and Due Process Law are inter-locked and inter-linked in these matters. Yes, Subject Matter Jurisdiction and the Sufficiency of an indictment are two distinct concepts, but the indictment(s) in "[c]riminal" cases and or pleadings is the Due Process required vehicle upon which the Due Process aspect of Subject Matter Jurisdiction is conferred upon the "[c]riminal" court, and or is that which enable the "[c]riminal" court the "[a]bility" and or "[p]ower", and or right or means to enact, and or invoke, and or continue its Subject Matter Jurisdictionary "[p]owers". It is not so much that they are combined or that the court does not have jurisdiction to hear these types of cases via state legislative statute and or congressional intent. The sufficiency of an Indictment is a Due Process "[j]urisdictional [p]rerequisite" in cases of "[t]his" general class to which the proceedings in question belong, and for which an indictment is needed and or required, as Due Process demands. English 101 and English 102 are two separate and distinct English courses, but "[b]oth" make up one English program towards one single College degree. English 101 is a "[p]rerequisite" to English 102. You "[m]ust" have and or take English 101, before you can have and or take English 102. Its a simple concept. Its not hard. You "[m]ust" have and or take a sufficient, not vague(emphasis added) Indictment, passed upon by the Grand Jury, before you can enact and or invoke and or continue the court's Subject Matter Jurisdic-

tionary "[p]owers" given to a "[c]riminal" court, even though that court do indeed possess such "[p]owers" via state legislative statute and or Congressional intent. To view the two concepts of Subject Matter Jurisdiction and the Sufficiency of an Indictment as being mistakenly combined, when, by Federal law made applicable to the States through the Due Process Clause and or South Carolina, New Jersey, Kentucky, Georgia, New York or other (28) relevant State(s) Constitution(s), dictate that one is a Due Process "[j]urisdictional [p]rerequisite" of the other is an error of law, fraud upon the court and machination. To determine that failure to be in compliance to Due Process "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites" do not effect the court's "[p]ower" to hear and determine a case is an error of law, fraud upon the court and machination. This question was circumvented by the courts involved conspiring under color of state law, and must now be answered in fundamental fairness to the appellant(s).

Even if you separate the two concepts aforementioned from one another, the "[e]ffect" and or "[o]utcome" on the trial court's "[p]owers" of Subject Matter Jurisdiction are the same. Due to the deficiency in the "[j]urisdictional [p]rerequisite" pursuant to the presentment of the fatally defective indictments, it "[n]ullifies", "[v]oids" the Subject Matter Jurisdictionary action, which must be adjudicated under the Due Process Prong to Subject Matter Jurisdiction, even though the "[c]riminal" court do indeed possess such "[p]ower" via state legislative statute and or congressional intent. They are distinct from one another the same way the inner-makings are distinct from the bread of a "sandwich", but "[b]oth" make the "sandwich". They are distinct from one another the same way a man's soul is distinct from his body, but "[b]oth" make the man. The "[c]riminal" court can have Subject Matter Jurisdiction all day long, but without the indictment(s), when indictments are needed and or require in this instance by Due Process Law, that "[p]ower" is useless. The lack thereof do "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to hear and determine cases

of "[t]his" general class to which the proceedings in question belong. To determine otherwise is an egregious error of law, machination, an act of fraud upon the court and conspiracy to establish modern day slavery in violation of 18 U.S.C. §§ 241, 242, 1001 and The Anti-Peonage Act as well as in violation of The Rico Act to include the holdings made in Ex Parte Virginia designed to disenfranchise us of our right to vote in violation of the 15th. amendment.

In comparison, you can have two pieces of bread all day long, but without the inner-makings you will never have a "sandwich". Being a "notice document" is only one of the numerous purposes and functions that the indictment serves. These numerous purposes and functions cannot be viewed and or work separately and independently of each other without affecting the "[t]rue" nature and purpose for which the indictment was created. To do so would be an error of law, see Herman Winns v. State, memo No. 2000 Mo-078 Daniel F. Piper Judge.

Insomuch, what the honorable court(s) in Gentry, Cotton and Parkhurst failed to see, is that the "[c]onfusion" that the Gentry court spoke of is "[n]ot" coming from our modern day courts mixing the two concepts of Subject Matter Jurisdiction and the Sufficiency of an Indictment together. The "[c]onfusion" that the Gentry court spoke of, is coming from our modern day court(s) and system of jurisprudence losing vision and insight of that which is laid and set before us by our Constitutional Forefathers in the establishing of our judicial system, that by all jurisprudence was not meant to be tampered with. That being a system of checks and balances, within a system of checks and balances. You have issues of Subject Matter Jurisdiction, jurisdictional prerequisites and or requisites, rules of criminal procedure, sufficiency of indictment issues, and issues of Due Process Law pertaining to the U.S. Constitution, as well as the South Carolina, New Jersey, New York, Kentucky, Georgia and remaining states constitutions, overlapping each other, and checking each other, as a "[s]afeguard" to ensure that the

U.S. citizen, those who are held by us, and those who enter our borders or territories, inalienable rights to a fair and impartial trial and or plea hearing are preserved. Our Constitutional forefathers purposely meant and designed for them to be viewed as a whole unit, inter-locked and inseparable though independent to themselves as an integral part of the overall judicial machine, so that if one part fails, the other parts would pick up and kick in. Thus, remaining true to the very nature of [l]egal "system". A system is comprised of various components, nevertheless, it is still to be considered as one. As the appellant mentioned in one of the previous issues. Our Constitutional forefathers in their wisdom and jurisprudence set up "[b]ulwarks", "[b]arriers" of protection forthrightly established to protect the American citizenry, those who are held by us, and those who enter our borders or territories, from unjust, arbitrary prosecution, that outside of an individual committing acts of treason were "[n]ot" meant to be torn down. These are those sacred "[b]ulwarks", "[b]arriers" of protection. To view them as separate and independent in the manner viewed by the Gentry court(s), as they relate to each other, or to determine that they do not affect the criminal court's "[p]ower" to hear and determine "[t]his" class of case, goes against the rightly established pattern and design of our judicial system, is fraud upon the court and machination, an act of establishing modern day slavery by forcing us to work once convicted, and is an error of law. It is a form of treason. It is the very epitome of betrayal to our Constitution, and sets itself at war and enmity to the substantial rights of the commonwealth, and seek to eradicate the very core integrity of the rights, immunities, and privileges of all citizens, those who are held by us, and those who enter our borders or territories, our Constitutional forefathers have died and sacrificed their best blood to establish and preserve. These sacred "[b]ulwarks" aid to ensure that "[L]ady [J]ustice" remains blindfolded, and the defendant's inalienable rights to a fair and impartial trial and or plea hearing remain secure and are never taken away. Such actions produce fraud upon the court, machination, modern day slavery vitiating all convictions, The Amistad supra.; Ex

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Parte Virginia, 100 U.S. 339, 348-349, 25 L.Ed. 676(1880); Pulliam v. Allen, 466 U.S. 522, 536-543, 104 S.Ct. 1970, 1977-1982, 80 L.Ed.2d. 565(1984); Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286(U.S.Cal.1991); Schmidt v. Degen, Ed. Pa. 1974, 376 F.Supp. 664; 18 U.S.C. §§ 241, 242, 1001; S.C. Code Ann § 17-25-10.

Insomuch, these very issues were at the heart of the matters that existed, in relevant part, during the time of Ex Parte Bain in 1887, and still vividly, with all certainty, exist now via Due Process within our modern day courts and system of jurisprudence, and by the constitutional rights of every citizen, of those who are held by us, and those who enter our borders or territories, these issues "[c]annot" be ignored. These issues of Due Process secured and protected by the rulings made in Ex Parte Bain in 1887, as well as in Gaither, Russell, Stirone and many other such holdings in other similar cases, still apply today and are protected by The U.S. Constitution and the laws of the United States. These concepts are designed to overlap in these matters to ensure a more true court of jurisprudence to its citizens, those who are held by us, and those who enter our borders or territories, for the sake of "justice and fairness".

In regard to State v. Gentry supra.; we are dealing with a "state law", in such a way designed, crafted, drafted, initiated, and set into place, that is egregiously contrary to the U.S. Constitution's inherent, intrinsic, and explicit presuppositions that by its very nature is intense espionage and diabolical sabotage, and stands in defiance to the rights of the commonwealth in violation of Due Process Law, establishing fraud upon the court, machination, modern day slavery behind a class based invidiously discriminatory animus in the form of racial hatred, surreptitiously done, because it disproportionately affect and harm the African Americans and minorities of the state and or nation. It creates the similarities seen in trials and or plea hearings that manifested themselves during the Nazi Occupation, the English Inquisition of 1518, the Spanish Inquisition of 1478, the Salem Witch Trials of the 17th. Century, the trials

and or hearings prior and during the Civil Rights Era, and the like; where trial and or plea hearings became an arbitrary action, a mere hollow and deceptive formality and or mechanism, utilized to snatch from the commonwealth their inalienable rights, and rob them of their God given liberty. The Judges of the Gentry court and defendants involved in these cases across the nation entered themselves into a deliberate plot and scheme to directly subvert the judicial process. The fraud in these cases is so broad that it involves far more than injury to a single litigate, but was rather a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot be complacently tolerated consistently with the good order of society. Id at 246, 64 S.Ct. 997. This plot and fraud not only involved an intentional scheme to deceive the judiciary and any future subsequent higher court, but also touch on the public interest in a way that fraud between individual parties generally does not. These parties have enacted and or attempted a more egregious form of subversion of the legal process, one that was specifically designed to prevent us from being heard on the issue. Those forms of subversion that we cannot necessarily expect to be exposed by the normal adversarial process. No timely objection is necessary to address this issue. It can be raised at any time, even for the first time on appeal, creates extraordinary circumstances, manifest injustice, tolls the time of appeal and the court shall not fail to take notice, Fox Ex Rel Fox v. Elk Run Coal Co., Inc., 739 F3d. 131 CA4(2014); Massi v. Walgreen Co., 2013 WL 5410810 (DSC.2013); DeVeaux v. United States, F.Supp.2d., 2010 WL 8738108 (DSC.2010); Arata v. Village West Owners Ass'n Inc., S.E.2d., 2011 WL 11735004(S.C.App.2011); Chritianson v. M.B.N.A. American Bank N.A., S.E.2d., 2013 WL 8507850(S.C.App.2013); Ge-Zhang v. Promontery Interfinacial Network LLC., ---Fed. Appx'---, 2015 WL 75360 CA4 (Va.2015); Baccus v. Merchant, 2014 WL 1330984(DSC. 2014); McKissick v. Warden Evans C.I., 2013 WL 4585613(DSC.2013); Conyers v. Virginia Housing Development Authority, 585 Fed. Appx' 66 CA4 (Va.2014); Rogers v. Carr, S.E.2d., 2014 WL 2721025 (S.C.Ap..2014); Inglesias v. Wal-Mart Stores East L.P., 542

Fed. Appx' 295 CA4 (Va.2013); Simmons v. Bailum, S.E.2d., 2013 WL 8482376(S.C.Ap..2013); Davis v. Davenport, 2013 WL 6840473 (DSC.2013); Burris v. Ware, 2014 WL 4293805(DSC.2014); United States v. Denedo, 556 U.S. 904, 129 S.Ct. 2213, 173 L.Ed.2d. 1235, 77 U.S.L.W. 4466, 09 Cal. Daily Op. Serv. 7069, (2009); McCann v. Brightarp, 399 S.C. 240, 730 S.E.2d. 916(S.C.App.2012) ; United States v. Boston, 539 Fed. Appx' 209 CA4 (N.C.2013); The Amistad supra., 40 U.S. 518, 15 Pet. 518, 1841 WL 5024, 2006 A.M.C. 2955, 10 L.Ed. 826, U.S. Conn. January 1841; Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 543; United States v Umana, 750 F3d. 320 CA4 (N.C.2014).

Inasmuch, the issues here go far beyond that of dealing with indictment defects, which are to be quashed by motion before a jury is sworn, or acknowledged, and or objected to before a guilty plea is given. The matters here in crucial part, do not have to necessarily be preserved for appellate review by a timely objection, but only need to be considered as a matter brought, conducted and or presented before the court in some fashion. The government "[m]ust [a]llways" be held accountable to judiciary for a man's imprisonment, and the restraints on liberty if the imprisonment does not conform to the basic requirements of Due Process Law. For the sake of "justice and judicial fairness", the appellant should not be penalized and made to suffer an onerous conviction, because hired counsel, and or counsel that the state appointed to represent him, was so inept and constitutionally ineffective, and or conspired under color of state law with the prosecution to cause irreparable harm to his proceedings, that he or she could not even see, or refuse to see the overwhelmingly obvious defects in an indictment presented before the court. Thereupon, the appellant, who later after conviction, or the fraud produced by the Gentry case, previously having no knowledge of law, and little to no access to legal books or materials before his trial and or plea hearing, later discovers the Gentry fraud and these "[p]lain", "[c]lear", "[e]gregious", Subject Matter Jurisdiction and Due Process issues and or errors producing manifest injustice should not in all fairness be barred from calling these matters

to the attention of the courts in order to seek relief, Shelton v. Ciccone supra.; Evitts v. Lucy supra.; Gray supra.; Powell v. Alabama supra.; United States v Promise supra.. The issues disproportionately effect and harm African American and other minorities.

**CONCLUSION:**

Insomuch, there were no holdings made in the Gentry, Cotton and Parkhurst cases that would justify and or serve to detach from the indictment(s) the 4th., 5th., 6th., 13th., 14th. and 15th. Amendment issues aforementioned within this document made applicable to states by they adopting such via their states Constitutions and or via the Supremacy Clause of the U.S. Constitution. Likewise, there were no holdings made in those cases that would justify and or serve to detach from the indictment the Due Process issues aforementioned within this document.

By the holdings made in the Gentry case. That court essentially took the position that the court's powers of Subject Matter Jurisdiction are "[a]bsolute" via state legislative statutes or Congressional statutes or enactments of law, and at "[n]o" time can that "[p]ower" be divested and or voided. The Gentry court essentially claimed there can be no situation that can divest or void jurisdiction. This is a ludicrous and criminal position to take which will be proven by judicial determinations made after the Gentry case was established.

There are essentially (2) prongs to Subject Matter Jurisdiction. One (1) is where the courts "[l]ack" Subject Matter Jurisdiction (ei. where a Family Court would attempt to try a criminal case, or a Probate Court would attempt to try a Military Tribunal case.). Of course in these situations those courts would "[l]ack" Subject Matter Jurisdiction.

This is essentially what the Cotton court was saying which is the reason why the litigant in that case did not prevail. By state and Federal statutes or Congressional enactments, specific courts have jurisdiction to hear cases of a general class (ei. criminal courts have jurisdiction to hear criminal cases). But (2) There is a second prong to Subject Matter Jurisdiction where jurisdiction is made void because of Due Process violation despite any existing state statute or federal law. So the Cotton court was essentially saying was that the litigant, by the language he presented. He was arguing his claim under the incorrect prong. More specific, the litigant should have asserted that jurisdiction is made void due to a particular Due Process violation, see U.S. v. \$41,320 U.S. Currency supra.; Hunt v. United States supra.; White v. Manis supra.; U.S. v. Aladekcha supra.; Brown v. U.S. supra..

The Gentry court knew the Cotton court was vague on this issue and went on a "FISHING EXPEDITION" to find Cotton and Parkhurst so that they could adjudicate the Gentry case under the same incorrect prong to defraud the inmates of this state in acts of machination in violation of the holdings made in Ross v. Blake, 136 S.Ct. 1850(2016). Like the Article V § 4 orders leading to the claims of default and collateral estoppel in these cases emerging from case 2013-CP-400-0084 in the Richland Court Of Common Pleas. The Sufficiency of an indictment is a "[j]urisdictional [p]rerequisite" and Due Process claim that voids jurisdiction as opposed to the other prong where the Family Court would attempt to try a criminal case and would "[l]ack" Subject Matter Jurisdiction. The Due Process Prong is what we are arguing the Article V § 4 orders, the claim of default and collateral estoppel, to include the structural constitutional error of religious prophesy pertaining to the indictments predetermining in advance the outcome of the proceedings, taking away our presumption of innocence, convicting us before we plea or go to trial, disenfranchising us of our right to vote, establishing modern day slavery in violation of the C.A.T. Treaty under. Congress confers upon no court the power to esta-

blish modern day slavery, The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024.

When the constitutionality of a ruling is in doubt (ei. The Cotton and Gentry cases). The court has an obligation to interpret the Cotton case as it relates to Gentry, Abrams, Gaither, Stirone, Russell and the voiding of jurisdiction for Due Process violation under the Due Process Prong, not the other. "STARE DECISIS ET NON QUIENTA MOVERE". Once this was decided the courts should have never moved from it. Certain violations of Due Process void jurisdiction when they give way to arbitrary judicial action. See S.C. Code Ann § 17-25-10 and 9 F.Supp.3d. 582.

If a criminal case is appealed, but no trial transcript is produced, what occurs? The trial transcript is a "[j]urisdictional" requirement in the appeals court. The court must remand for a new trial and or reconstruction hearing. If a case is in the state court, and a petition to remove is filed, what occurs? The state court's jurisdiction is divested and that court cannot proceed until remand order is issued or the federal case is dismissed, State v. Ladson, 373 S.C. 320, 644 S.E.2d. 271(S.C.App.2007); Lovett v. Deutsche Bank Nat' Trust Co., F.Supp 2d., 2013 WL 841679(DSC.2013). A case is in the lower court. A motion is filed where adverse ruling is given. The person appeals it, what occurs? The higher court cannot hear it without the "[j]urisdictional [p]rerequisite" final order, see Fortmill v. Fitzgerald, S.E.2d., 2014 WL 7339453(S.C.App.2014). In civil cases parties must be in compliance to all the rules of constructive service. Compliance is "[j]urisdictional [p]rerequisite". If step is omitted (comparingly a sufficient indictment is omitted) decree or ruling is void, see Caldwell v. Winguist, 402 S.C. 565, 741 S.E.2d. 583(S.C.App.2013). Where case is filed in the U.S. District Court, but parties file a second to subvert the District Court's jurisdiction in the state court. This act would void the state court's jurisdiction. Thus, jurisdiction is "[n]ot" absolute despite legislative statute or state or federal law, see Ackerman v. Exxon Mobil Corp., 734 F3d. 237

CA4 (Md.2013). Money amounts are jurisdictional in Wills, Probate and Estates, see Dickerson v. Alexander Hospital, 177 F2d. 876 CA4 (Va.1949); Aladeckcha, 2010 WL 4054267(2010).

When a conviction fails to comport with Due Process if statute under which it is obtained, and we can add to this, an indictment fails to comport to Due Process and fails to provide a person of ordinary intelligence "fair" notice or other essential requirements of Due Process (ei. Double jeopardy protection, presumption of innocence) jurisdiction is void. If the court fails to act in a manner consistent with Due Process and authorizes and or engages in or encourages arbitrary and discriminatory judicial or other practices (ei. Deny us the Equal Protection of the Laws, constructively amending indictments on essential elements, taking away our presumption of innocence, predetermining in advance the outcome of the proceedings by indictment language, spoliating documents and or evidence, illegally seizing evidence and or Foreign Sovereigns, engaging in acts of machination, fraud upon the court, essentially establishing modern day slavery where we are not "DULY" convicted, disenfranchising us of the right to vote behind racial animus, depriving us of proper notice in violation of S.C. Code Ann § 17-25-10, the 4th., 5th., 6th., 8th., 13th., 14th., 15th. amendment(s), producing arbitrary judicial action. Jurisdiction is made void for Due Process violation, Gentry Technology Of S.C. Inc. v. Baptist Health South Florida,...2015 WL 1219251 (DSC.2015); Yates Estate Of Yates, 2014 WL 2579917(S.C.App.2014); Ware v. Ware, 404 S.C. 1, 743 S.E.2d. 817(S.C.App.2013); Orlando Residence Ltd. v. Hilton Head Hotel Investors, F.Supp.2d., 2013 WL 1103027(DSC.2013); Federal Land Bank Ass'n Of Asheville N.C. v. C.I.R., 573 F2d. 179 CA4 (1978); Al Shimani v. C.A.C.I. Inter. Inc., 679 F3d. 205 CA4(Md.2012). The use of United States v. Cotton, Parkhurst and Gentry must be deemed misplaced and or overruled due to vagueness, Johnson v. United States,---S.Ct.--;2015, WL 2473450(U.S.2015); U.S. v. McKee, 506 F3d. 225, 229-232(3rd.Cir.2007); U.S. v. Huet, 665 F3d. 588(3rd.Cir.2008);

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Ingram v. Phillips, 36 S.C. L. 200, 1850 WL 2857 S.C. App. Law 1850; Lewis-Murray v. Murray, S.E.2d., 2005 WL 7084812(S.C.App. 2005); Bankers v. South Carolina, F.Supp.2d., 2010 WL 558580 (DSC.2010); Lampman v. Demolff Boberg & Associates Inc., 319 Fed. Appx' 293 CA4 (S.C.2009); United Student Aid Funds Inc. v. Espinosa, 559 U.S. 260, 130 S.Ct. 1367(U.S.2010); Arata v. Village West Owners Ass'n Inc., S.E.2d. 2011 WL 11735004(S.C.App. 2011); Elderberry Of Weber City, LLC v. Living Centers Southeast Inc., ---F3d.---, 2015 WL 4430836 CA4(Va.2015). The judgment in the appellant(s) case and these other cases (ei. Gentry et.al.,) are effected by fundamental infirmities. These infirmities may be raised after any judgment becomes final. Thus, the appellant(s) motion that the conviction and sentence be vacated, that an order issue expunging my record and the other inmates records due to seeking of class action certification and all monies that were paid out (ei. restitution etc.) be returned, United States Aid Funds, Inc. v. Espinosa supra.; Vose v. Hanahan, 10 Rich 465, 1857 WL 3239 S.C. Err. 1857; Norberger v. Hinkle, 576 Fed. Appx' 224 CA4(Va.2014); Jones v. Sternheimer, 387 Fed. Appx' 366, 2010 WL 2711305 CA4(Va.2010); U.S. v. Watson, ---F3d.---, 2015 WL 4385697 CA4(Va.2015); Harley v. South Carolina Dept. Of Corrections, 2013 WL 5428585(DSC.2013); People v. Rogers F.Supp.2d., 2010 WL 424201(DSC.2010); Gentry Technologies Of S.C. Inc. v. Baptist Health South, Florida Inc., 2015 WL 1219251 (DSC.2015).

The S.C. Attorney General and The United States are both parties to the default and claims of Res Judicata and or collateral estoppel emerging from case 2013-CP-400-0084 in the Richland County Court Of Common Pleas as they relate to these issues presented despite their efforts at fraud, machination and criminal conspiracy. Jurisdictional bar to challenge attaches, In RE: Variant Enterprise Inc., 81 F3d. 1310(4th.Cir. 1996); Bashnight, 551 S.E.2d. 274; Reot v. County Of Fairfax, 541 Fed. Appx' 333(4th.Cir.2013); Wells Fargo Bank, N.A. v. Farag, 2016 WL 2944561(2016).

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THE LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT IS CLEAR AND UNAMBIGUOUS ON THE ISSUES SUCH AS THE ONES BEING ARGUED WITHIN THIS CASE. IF A RULING HAS BEEN OBTAINED BY AN UNCONSTITUTIONAL JUDICIAL DETERMINATION AND OR LEGISLATIVE STATUTE AND OR INTERPRETATION OF LAW AND OR ACT, WHICH INCLUDE FRAUD. THE LAW EXPLAINED IF THIS POSITION IS WELL TAKEN, WHICH IT IS, IT EFFECTS THE "FOUNDATION" OF THE "WHOLE" (EMPHASIS ADDED) PROCEEDING, CONFIRMING THAT "FRAUD VITIATES EVERYTHING". AN UNCONSTITUTIONAL LAW AND OR ACT AND OR STATUTE AND OR JUDICIAL DETERMINATION IS "VOID" AND IS AS IF THERE WERE NO LAW OR ACT OR JUDICIAL DETERMINATION MADE OR DONE AT ALL BEING STRUCTURAL CONSTITUTIONAL ERROR NOT SUBJECT TO THE HARMLESS ERROR DOCTRINE. THE GENERAL RULE IS THAT AN UNCONSTITUTIONAL JUDICIAL DETERMINATION AND OR LEGISLATIVE STATUTE AND OR ACT AND OR LAW, THOUGH HAVING THE FORM AND NAME OF LAW, IT IS IN REALITY NO LAW BY SUCH ACTS, BUT IS "WHOLLY VOID" AND INEFFECTIVE FOR ANY PURPOSE, TO INCLUDE ANY JUDICIAL DETERMINATION ATTACHED TO IT, SINCE ITS UNCONSTITUTIONALITY DATES FROM THE TIME OF ITS ENACTMENT AND OR WHEN IT WAS DONE....IN LEGAL CONTEMPLATION, IT IS INOPERATIVE AS IF HAD NEVER BEEN PASSED OR DONE....SINCE AN UNCONSTITUTIONAL STATUTE AND OR JUDICIAL DETERMINATION AND OR LAW AND OR ACT IS VOID, THE GENERAL PRINCIPLE FOLLOWS THAT IT IMPOSES NO DUTY (DUTY TO MAINTAIN A CONVICTION), CONFERS NO RIGHTS (YOU HAVE NO RIGHT TO THIS CONVICTION PRODUCED BY FRAUD), CREATES NO OFFICE (JUDICIAL OR OTHERWISE), BESTOWS NO POWER OR AUTHORITY ON ANY PERSON (EMPHASIS ADDED)[WHICH MEANS THAT YOUR JURISDICTION IS VOID PLACING YOU IN FORFEITURE.], AFFORDS NO PROTECTION (YOU ARE NOT IMMUNE IF YOU FAIL TO CORRECT THIS INJUSTICE), AND JUSTIFIES NO ACTS PERFORMED UNDER IT....A VOID ACT CANNOT BE LEGALLY CONSISTENT WITH A VALID ONE BY THE FRAUD UPON THE COURT THAT OCCURRED RELATED TO THESE ISSUES. AN UNCONSTITUTIONAL LAW AND OR STATUTE CANNOT OPERATE TO SUPERSEDE AN EXISTING LAW. INDEED INsofar AS A JUDICIAL DETERMINATION AND OR STATUTE AND OR LEGISLATIVE PROVISION AND OR ACT RUN COUNTER TO THE FUNDAMENTAL LAW OF THE LAND (THE U.S. CONSTITUTION, THAT INDICTMENTS ARE TO BE ADJUDICATED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION), IT IS SUPERSEDED THEREBY. NO ONE IS BOUND TO OBEY FRAUD OR AN UNCONSTITUTIONAL LAW OR JUDICIAL DETERMINATION.

ALL RULES, STATUTES, PRACTICES (LIKE THE FRAUD AND MACHINATIONS ENGAGED IN INVOLVING THESE LEGAL ISSUES), WHICH ARE REPUGNANT TO THE U.S. CONSTITUTION ARE "NULL" AND "VOID", PYNE v. UNITED STATES, F.Supp.3d., 2016 WL 1377402(D.C.Md.2016); MARBURY v. MADISON, 5TH. U.S. (2 CRANCH) 137, 180; VINES v. UNITED STATES, 28 F3d. 1123 CRIM. LAW 1163(1), 1165(1); ROBINSON v. ARVONIO, 27 F3d. 877 REHEARING DENIED CERT. GRANTED VACATED 115 S.Ct. 124 , 513 U.S. 1186, 131 L.Ed.2d. 129; LOUMIET v. UNITED STATES, 65 F.Supp.3d. 19 (2014) JOHNSON v. UNITED STATES,--S.Ct.--, 2015 WL 2473450(U.S.2015); MONTGOMERY v. LOUISIANA, 136 S.Ct. 718, 193 L.Ed.2d. 599, 84 U.S.L.W. 4063(U.S.2016); GEFT OUTDOORS LLC. v. CONSOLIDATION CITY OF INDIANAPOLIS\*\*\*, 187 F.Supp.3d. 1002, 1012, S.D.Ill.; HILL v. SNYDER, 821 F3d. 763, 765+ (6th. Cir Mich.); PEOPLE v. SOLO, N.E.3d., 2017 WL 1838423(2017); 24 SENATORIAL DIST. REPUBLICAN COMMITTEE v. ALCORN, 820 F3d. 624 (4th.Cir.2016) VAETH v. BOARD OF TRUSTEES, F.Supp.3d., 2016 WL 775386(D.C.Md.2016); WELLS FARGO BANK N.A. v. H.M.H. ROMON TWO N.C. LLC., 89 F3d. 295(4th.Cir.2017); MOSLEY v. UNITED STATES, 2018 WL 1187778(N.C.2018).

19. State clearly the relief you seek in filing this application:

~~SENTENCE AND CONVICTION VACATED,~~  
~~NAME REMOVED FROM ALL DEROGATORY~~  
~~FILES AS WELL AS DNA RECORD EXPUNGED~~

20. Are you now under sentence from any other court that you have not challenged?

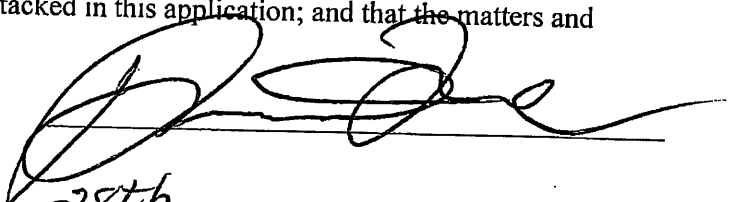
NONE

STATE OF SOUTH CAROLINA )

County of YORK )

VERIFICATION

I, Reginald Raynard White #353172, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 28th  
day of OCTOBER, 2019.

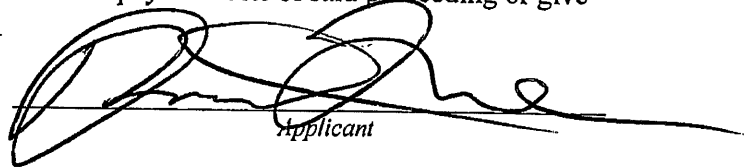
Linda K. Be... (L.S.)  
Notary Public

My Commission Expires: 6-20-26

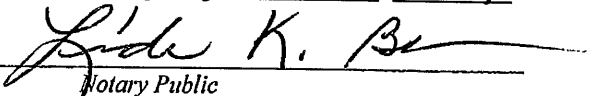
APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Reginald Raynard White #353172, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

  
Applicant

SWORN or affirmed to and subscribed before me this  
28<sup>th</sup> day of OCTOBER, 2019.

  
Notary Public

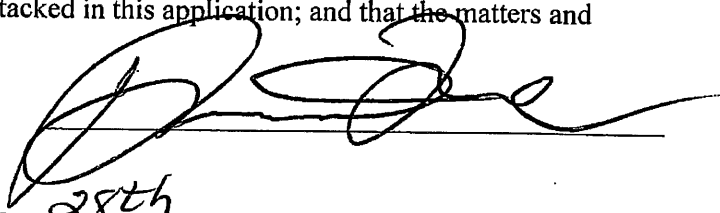
My Commission Expires: 6-20-20

19. State clearly the relief you seek in filing this application:  
SENTENCE AND CONVICTION WAIVED,  
NAME REMOVED FROM ALL DEROGATORY  
FILES AS WELL AS DNA, RECORD EXPUNGED
20. Are you now under sentence from any other court that you have not challenged?  
NONE

STATE OF SOUTH CAROLINA )  
 County of YORK )

VERIFICATION

I, Reginald Raynard White #353172, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 28th  
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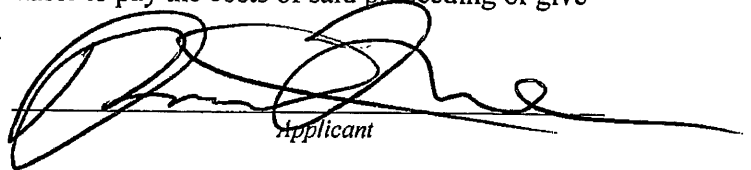
Lida K. Be... (L.S.)  
 Notary Public

My Commission Expires: 6-20-26

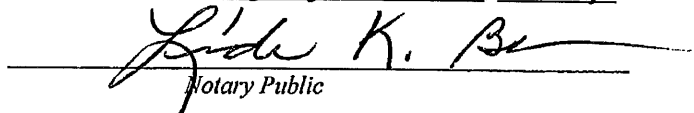
APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Reginald Raynard White #353172, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

  
Applicant

SWORN or affirmed to and subscribed before me this  
28<sup>th</sup> day of OCTOBER, 2019.

  
Notary Public

My Commission Expires: 6-20-26

FORM 5  
FILED-RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF YORK

2020 AUG 11 AM 10: 59

IN THE COURT OF COMMON PLEAS

Reginald Raynard White, Jr., No. 353172  
Full name and prison number (if any) of Applicant  
DAVID HAMILTON  
C.C.P. & GS  
YORK COUNTY, SC

2019-CP-46-3761

v.

State of South Carolina

AMENDED  
APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institute, P. O. Box 205, Ridgeville, SC
2. Name and location of Court which imposed sentence York County General Sessions Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-GS-46-01500
  - (b) 2014-GS-46-01499
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) January 14, 2015

Revised 3/2003

- (b) January 14, 2015
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. October 26, 2016
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2016-UP-441
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Revised 3/2003

(a) Applicant was denied effective assistance of counsel because Applicant desired to appeal the denial of his previous Post Conviction Relief Petition order, but counsel for him failed to file a Motion pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and to file the Notice of Appeal.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) The Post Conviction Relief Judge in the previous PCR issued an order on June 28, 2019 which was not sent to the Applicant by PCR counsel. Applicant did not learn of the issuance of the order until the early part of 2020. His PCR counsel has acknowledged that he failed to file a Notice of Appeal. A copy of the affidavit of PCR counsel is attached to this application.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. On May 17, 2017 the Applicant filed his first application for Post Conviction

Relief.

ii. same as above

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

Revised 3/2003

i. Common Pleas Court for York County

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. Dismissed.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. June 28, 2019

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Final order on file in the Office of the Clerk of Court for York County.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

Revised 3/2003

- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This Post Conviction Relief application is for the Applicant to be permitted to file a belated Rule 59 Motion and Notice of Appeal. The issue could not have been raised in the previous action.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. none
- ii. William A. McKinnon, 1675-1H York Highway  
Moss Justice Center, York, SC 29745
- iii. same
- iv. Robert M. Pachak, S. C. Office of Indigent Defense, 729 Kinlock Ct  
Columbia, SC 29223
- v. William G. Yarborough, III, 308 W. Stone Ave.,  
Greenville, SC 29609
- vi. C. Rauch Wise, 305 Main Street, Greenwood, SC 29646
- (b) the proceedings at which each such attorney represented you:
- i. No attorney
- ii. Trial

- iii. Sentencing
- iv. Appeal to South Carolina Court of Appeals.
- v. Post Conviction Relief application filed May 17, 2017.
- vi. Preparation of this amended Post Conviction Relief Application.

19. State clearly the relief you seek in filing this application:

The right to file a belated Motion under Rule 59 of the South Carolina Rules of Civil Procedure and a belated Notice of Appeal.

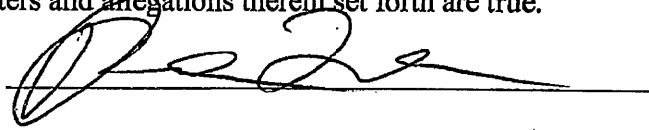
20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
 )  
County of Dorchester )

VERIFICATION

I, Reginald Raynard White, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 29<sup>th</sup>  
day of July, 2020.

Lian K. Be (L.S.)  
Notary Public

My Commission Expires: 6-20-26

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

  
\_\_\_\_\_  
Applicant

SWORN or affirmed to and subscribed before me this  
29<sup>th</sup> day of July, 2020

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 6-20-26

FILED-RECEIVED

STATE OF SOUTH CAROLINA 2023 JUL 17 AM 10:06 THE COURT OF COMMON PLEAS  
COUNTY OF YORK ) FOR THE SIXTEENTH JUDICIAL CIRCUIT  
REGINALD R. WHITE, #353172 ) ANGIE M. BRYANT  
C.C.P. & GS  
YORK COUNTY, SC ) Case No.: 2019-CP-46-3761

Applicant, )  
v. ) RETURN TO THE APPLICATION  
STATE OF SOUTH CAROLINA, ) FOR POST-CONVICTION RELIEF  
Respondent. ) AND PARTIAL MOTION TO  
) DISMISS  
) (Counsel Retained)

In response to Applicant Reginald R. White’s post-conviction relief (“PCR”) application filed on November 1, 2019, and amended on August 11, 2020, Respondent makes the following Return and Partial Motion to Dismiss:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections. In May 2014, the York County Grand Jury indicted Applicant for trafficking in cocaine (2014-GS-46-1499) and possession with intent to distribute crack cocaine (2014-GS-46-1500). William A. McKinnon, Esquire, represented Applicant. Assistant Solicitors Matthew W. Shelton and Christopher Epting prosecuted the case. On January 12–13, 2015, Applicant proceeded to trial before the Honorable Roger L. Couch. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without the possibility of parole for each charge.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant’s conviction on October 26, 2016. *State v. White*, Op. No. 2016-UP-441 (S.C. Ct. App. filed October 26, 2016). The remittitur was returned to the circuit court on December 7, 2016.

**First Application for Post-Conviction Relief**

Applicant filed his first action for post-conviction relief on May 17, 2017. A hearing was held on January 30, 2019, at the Moss Justice Center. Applicant was represented by William G. Yarborough, III, Esquire ("PCR Counsel"). Assistant Attorney General Janell H. Gregory represented the State. The Honorable Thomas A. Russo denied and dismissed Applicant's application with prejudice by order dated June 20, 2019. Applicant did not appeal the denial of his application.

## II. CURRENT ACTION BEFORE THE COURT

In his second application for post-conviction relief, Applicant alleges he is entitled to relief based on "4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> Amendment violations; due process violation; subject matter jurisdiction; fraud upon the court; ineffective assistance of counsel." In the space provided for a concise statement of supporting facts, Applicant has written, "See attached sheets," referring to approximately 160 pages of documents attached to his application. In those documents, Applicant appears to raise the following allegations:

1. Defective indictments
2. Fraud upon the court relating to grand jury process
3. Erroneous admission of drug evidence at trial
4. Insufficient indictments
5. Erroneous admission of fraudulent witness statements
6. Error by trial court in allowing amendment of indictments
7. Erroneous admission of prior bad act evidence
8. Insufficient search warrant affidavit
9. Ineffective assistance of trial counsel for failure to challenge chain of custody
10. Ineffective assistance of trial counsel for failing to challenge the constitutional violations enumerated above
11. Lack of subject-matter jurisdiction based on defective indictments, notwithstanding the South Carolina Supreme Court's decision in *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

As requested relief, Applicant states he is seeking "sentence and conviction vacated, name removed from all derogatory files as well as DNA, record expunged."

On August 11, 2020, Applicant, through retained counsel C. Rauch Wise, Esquire, filed an amended application raising the following allegation:

Applicant was denied effective assistance of counsel because Applicant desired to appeal the denial of his previous Post-Conviction Relief Petition order, but counsel for him failed to file a Motion pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and to file the Notice of Appeal.

As relief, Applicant requests “[t]he right to file a belated Motion under Rule 59 of the South Carolina Rules of Civil Procedure and a belated Notice of Appeal.”

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the underlying convictions, the records from Applicant’s direct appeal, Applicant’s records from the South Carolina Department of Corrections, and the records of Applicant’s prior post-conviction relief action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### **III. RESPONSE TO CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL**

Applicant claims PCR Counsel was ineffective for failing to file a Rule 59, SCRPC, motion and for failing to file an appeal following the denial of Applicant’s prior post-conviction relief action. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this

constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP.

Respondent submits that Applicant's allegation of ineffective assistance of counsel is meritless. However, an "allegation that counsel failed to seek review [of an adverse PCR decision] sufficiently states a claim of ineffective assistance." *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). When a PCR applicant alleges ineffective assistance of PCR Counsel, the circuit court must hold "an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review" of the prior PCR decision. *Id.* Accordingly, Respondent requests an evidentiary hearing be held solely on this issue.

#### **IV. MOTION TO DISMISS APPLICANT'S OTHER CLAIMS**

Respondent moves to dismiss Applicant's remaining claims as barred by the statute of limitations, by the rule against successive PCR claims, and by the doctrine of *res judicata*. Respondent's partial motion to dismiss is based on the following reasons:

##### **Statute of Limitations**

Respondent submits that Applicant's remaining claims must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act, S.C. Code Ann. sections 17-27-10 to -160. Section 17-27-45 requires as follows:

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). In the present case, Applicant was convicted and sentenced on January 12, 2015, and the remittitur from his direct appeal was sent on December 7, 2016. Based on Section 17-27-45(a), Applicant needed to file an application for post-conviction relief on or before December 8, 2017. This Application was filed on November 1, 2019, long after the expiration of the statutory filing period. Therefore, Respondent asks this Court to dismiss all of Applicant's remaining claims as barred by the statute of limitations.

#### Successiveness

Respondent submits that that Applicant's remaining claims must be dismissed because those claims are impermissibly successive to Applicant's previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. section 17-27-90 states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.*, 305 S.C. at 450, 409 S.E.2d at 394. If the applicant

could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* The applicant bears the burden of showing that the allegations could not have been raised previously. *Land*, 274 S.C. 243, 262 S.E.2d 735. Apart from the claim of ineffective assistance of PCR counsel, all of the issues raised in Applicant's current application relate to trial court error or ineffective assistance of trial counsel. Those claims either were raised or could have been raised in Applicant's first PCR action. Therefore, Applicant's current PCR application is impermissibly successive as to those claims. Accordingly, Respondent moves that Applicant's remaining claims be dismissed as improperly successive.

#### ***Res Judicata***

Similarly, Applicant's remaining claims are barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

As explained above, Applicant's remaining claims concern allegations of trial court error and ineffective assistance of trial counsel that either were raised or could have been raised at trial, on direct appeal, or in his first application for PCR. Accordingly, all of those claims are barred by the doctrine of *res judicata* and should be dismissed.

For these reasons, Respondent asks that an evidentiary hearing be held only as to Applicant's claim that PCR counsel was ineffective for failing to file an appeal from the denial of his first PCR application. Respondent asks this Court to dismiss all of Applicant's remaining claims as procedurally barred.

## V. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (holding *pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases, . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)–(b), SCRPC (explaining how to amend a pleading).

Under section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless

granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

#### **VI. GENERAL DENIAL**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be scheduled, solely to address Applicant's allegation of ineffective assistance of PCR counsel for failing to file an appeal from the denial of his first PCR application. Respondent asks that the remaining allegations in Applicant's post-conviction relief application be dismissed as untimely, improperly successive, and barred by the doctrine of *res judicata*.

Respectfully submitted,

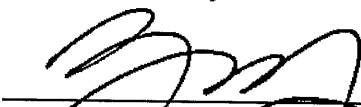
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

DON J. ZELENKA  
Deputy Attorney General

ZACHARY W. JONES  
Assistant Attorney General

By:

  
\_\_\_\_\_  
ATTORNEYS FOR THE STATE  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

7/11, 2023

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 Reginald Raynard White, Jr. )  
 SCDC № 353172, )  
 )  
 Applicant, )  
 )  
 -vs- )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2019-CP-46-3761

ORDER

ANGIE M. BRYANT  
 C.F.C.P. & GS  
 YORK COUNTY, SC

FILED-RECEIVED  
 2023 SEP -8 AM 9: 29  
 WJS

This matter came before for hearing on August 14, 2023. On May 17, 2017, Reginald Raynard White filed his initial Post Conviction Relief application. He was represented in that case by William G. Yarborough. A hearing was held on the application on January 30, 2019 before Judge Thomas A. Russo. By order dated June 20, 2019, the Post Conviction Relief application was dismissed. No appeal was filed from the dismissal.

On November 11, 2019, Mr. White, pro se, filed a second Post Conviction Relief Application. This application made numerous allegations that related to the trial. After filing the initial application, Mr. White retained the services of C. Rauch Wise who filed an amended application. The amended application sought to have the right to appeal and the right to file a Rule 59(e) SCRCP motion as it relates to order denying the original application. This hearing is upon this amended application.

Present at the hearing was William G. Yarbrough. He advised the court that at about the time the order was issued Mr. White and he were having communications problems. He stated he intended to file a Rule 59(e) SCRCP motion and subsequently a Notice of Appeal. He was led to believe that Mr. White had filed a pro se Rule 59(e) SCRCP motion so he did not file such a motion. Nor did he file a Notice of Appeal.

The State at the hearing conceded that under the facts of this case, Mr. White is entitled to a belated appeal. The State does not believe that Mr. White is entitled to file a belated Rule 59(e) SCRCR motion. The attorney for Mr. White argues that a Rule 59(e) SCRCR motion may be needed to preserve for appellate review any issues not ruled upon in the order.

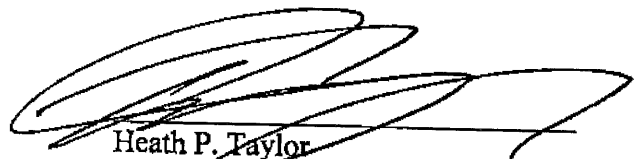
The parties finally agreed that the state would not object on appeal to an issue being unpreserved if the issue was fairly presented at the hearing but not ruled upon in the order. If the issues were not raised at the hearing, even if raised in the application, then the issue would not be preserved. The attorney for Mr. White accepted this compromise.

Therefore, it is hereby ordered that:

1. Reginald Raynard White shall have 30 days from the filing of this Order to appeal the dismissal of his original Post Conviction Application.
2. The State will agree that an issue is preserved if the issue was not ruled upon in the final order, but was otherwise presented to the Post Conviction Relief hearing judge.

IT IS SO ORDERED

August 31, 2023

  
Heath P. Taylor  
Presiding Judge  
York County

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

FILED-RECEIVED  
2023 SEP 15 PH 4: 22 <sup>WS</sup>

APPEAL FROM YORK COUNTY ANGIE M. BRYANT  
Court of Common Pleas C.C.C.P. & GS  
Heath P. Taylor, Circuit Court Judge YORK COUNTY, SC

Case No 2019-CP-46-3761

Reginald Raynard White, Jr. SCDC No. 353172, ..... Appellant,

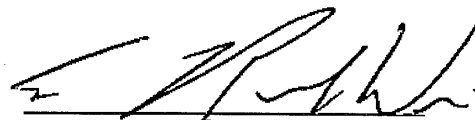
vs.

State of South Carolina ..... Respondent.

NOTICE OF INTENT TO APPEAL

Reginald Raynard White, Jr. appeals the Order of the Honorable Heath P. Taylor dated August 31, 2023. Appellate received a copy of this decision on September 1, 2023. The Order of Judge Taylor grants Mr. White permission to appeal the Order of the Honorable Thomas A. Russo.

Sept. 6<sup>th</sup>, 2023



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