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OCT 28 2013

{ STATE OF SOUTH CAROLINA }
IN THE SUPREME COURT } S.C. SUPREME COURT

CERTIORARI FROM GREENVILLE COUNTY

B. MARKIEY DENNIS JR., CIRCUIT COURT JUDGE

JOHN G. KIMBLE,

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT

{ PROISE RESPONSE PETITION FOR CERTIORARI }

JOHN G. KIMBLE *

MCCORMICK C/A F-a-B-

386 REDEMPTION WAY

MCCORMICK, SOUTH CAROLINA

29899

2012-213572

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{ ISSUE PRESENTED }

DID THE (PCR) COURT ERR IN HOLDING THAT TRIAL COUNSEL
ADEQUATELY ADVISED PETITIONER OF HIS CONSTITUTIONAL
RIGHT TO AN APPEAL? DID THE TRIAL COURT ERR IN FAILING
TO INFORM PETITIONER OF HIS CONSTITUTIONAL RIGHT TO
AN APPEAL

{ STATEMENT }

ON APRIL 13, 2010 A GREENVILLE COUNTY GRAND JURY INDICTED PETITIONER JOHN KIMBLE ON ONE COUNT OF FIRST DEGREE BURGLARY, TWO COUNTS OF ARMED ROBBERY, AND ONE COUNT OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME. APP. 318-328

ON JUNE 8th AND 9th 2010 PETITIONER'S CASE WAS HEARD BEFORE THE HONORABLE EDWARD W. MILLER AND A JURY APP. (1)

PETITIONER WAS REPRESENTED BY CHASE HARBIN AND THE STATE WAS REPRESENTED BY CHRISTY SUSTAKOVITCH AND LAUREN PRICE. Id

THE STATE ALLEGED THAT ON MAY 30, 2008 PETITIONER APPROACHED OMAR ARCOS, WHO WAS STANDING OUTSIDE OF THE TRAILER OF HIS FRIEND, JUAN GARCIA APP. 62 L-1-6

PETITIONER ALLEGEDLY HELD MR. ARCOS AT GUNPOINT, DEMANDED HIS MONEY, WALKED HIM INTO THE TRAILER AND ROBBED MR. GARCIA.

APP. 62 L-10-14

AFTER THE STATE PRESENTED ITS CASE, TRIAL COUNSEL MOVED FOR A DIRECTED VERDICT ON THE JURY CHARGE, THERE'S BEEN NO EVIDENCE FROM PROPRIETOR, THE OWNER OF THE DWELLING, THE PERSON THAT ACTUALLY LIVED IN THE DWELLING THAT MR. KIMBLE DID NOT HAVE PERMISSION TO GO INTO THE DWELLING." APP. 201- L-10-81

IN FACT NOT ONLY WAS MR. GARCIA NOT CALLED AT TRIAL, BUT THE STATE DID NOT ELICIT ANY OTHER EVIDENCE THAT PETITIONER DID ANYTHING OTHER THAN WALKED UNIMPDED INTO MR. GARCIA'S OPENED FRONT

DOOR. MR. ARCOS DID NOT TESTIFY TO ANY MORE THAN "GOING INSIDE THE HOUSE:

SIMILARLY WHEN THE STATE CALLED ONE OF ITS WITNESSES WHO WAS NOT AN ACCOMPLICE, TESTIFIED THAT SHE WAS NOT AN ACCOMPLICE, AND DID NOT CONSPIRE OR HAD ANY KNOWLEDGE ABOUT WHAT WAS GOING TO HAPPEN, THE STATE DID NOTHING TO CLARIFY WHAT THE WITNESS SAW WHEN PETITIONER WAS ALLEGEDLY "FORCING THE OTHER GUY INTO THE HOUSE/THE TRAILER. App. 125 L-12-16

JUDY RODGERS WHO WAS A STATE WITNESS AND NOT AN ACCOMPLICE TO THE ALLEGED CRIME GAVE THE MOST DETAILED DESCRIPTION OF PETITIONER'S ALLEGED ENTRY INTO THE TRAILER.

NEVERTHELESS THE JUDGE HELD SUFFICIENT EVIDENCE EXISTED TO PROVE THE CHARGE AND DENIED THE MOTION. App. 202 L-9-12

THE JURY RETURNED A VERDICT OF GUILTY ON ALL FOUR CHARGES AND JUDGE MILLER SENTENCED PETITIONER UNDER A SEAL SENTENCE OF TERMS OF THIRTY YEARS FOR FIRST DEGREE BURGLARY, THIRTY YEARS FOR BOTH COUNTS OF ARMED ROBBERY AND FIVE YEARS FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME.

App. 264 L-11-25 App. 267 L-20-22 App. 290 L-15-22

{ ARGUMENT }

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THE PCR COURT ERRED IN HOLDING THAT TRIAL COUNSEL ADEQUATELY
S.C. SUPREME COURT
APPRISED PETITIONER OF HIS CONSTITUTIONAL RIGHT TO AN APPEAL.
TO WAIVE A DIRECT APPEAL, A DEFENDANT MUST MAKE A KNOWING
AND INTELLIGENT WAIVER/DECISION NOT TO PURSUE THE APPEAL.

{ CLARK V STATE } 396 S.C. 164, 168 719 S.E. 2d 708, 710 (CT. App. 2011)

{ QUOTING SIMUEL V STATE } 390 S.C. 267, 269, 701 S.E. 2d 738, 739 (2010)

"FOLLOWING A TRIAL, COUNSEL IS REQUIRED TO MAKE CERTAIN THE
DEFENDANT IS MADE FULLY AWARE OF THE RIGHT TO APPEAL."

{ QUOTING TURNER V STATE } 380 S.C. 223, 224 S.E. 2d 373, 374 (2006)

"ABSENT AN INTELLIGENT WAIVER BY THE DEFENDANT, COUNSEL MUST
EITHER INITIATE AN APPEAL. THE SIXTH AMENDMENT TO THE UNITED
STATES CONSTITUTION GUARANTEES A DEFENDANT THE RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL U.S. CONST. AMEND. VI

{ STRICKLAND V WASHINGTON } 466 U.S. 668 (1984)

IN THE CASE AT BAR THE (PCR) COURT COMMITTED A LEGAL ERROR IN
HOLDING THAT COUNSEL ADEQUATELY ADVISED PETITIONER OF HIS
CONSTITUTIONAL RIGHT TO APPEAL, WHAT IS FURTHER WHEN THE SEALED
SENTENCE WERE OPENED THE SENTENCING COURT WERE OBLIGATED BY
LAW TO INFORM PETITIONER OF HIS CONSTITUTIONAL RIGHT TO APPEAL
THE CONVICTION AND SENTENCE IMPOSED.

IMPORTANTLY COUNSEL'S FAILURE TO ADEQUATELY ADVISE PETITIONER OF HIS CONSTITUTIONAL RIGHT TO APPEAL CAUSED PREJUDICE. THE TRIAL COURT DENIED PETITIONER'S MOTION FOR A DIRECTED VERDICT FINDING THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE BURGLARY CHARGE HOWEVER THE TRIAL COURT ERRED BECAUSE THE STATE ADDUCED NO EVIDENCE THAT PETITIONER ENTERED MR. GARCIA TRAILER WITHOUT HIS CONSENT.

"FIRST DEGREE BURGLARY REQUIRES THE ENTRY OF A DWELLING WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN AS WELL AS THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE."

{ STATE V. CROSS } 323 S.C. 41, 44 448 S.E. 2d 569, 569 (CT. APP. 1992)

{ CITING S.C. CODE ANN 16-11-311 (SUPP. 1993) }

"DUE PROCESS REQUIRES THE STATE TO PROVE EVERY ELEMENT OF A CRIMINAL OFFENSE BEYOND A REASONABLE DOUBT."

{ DERVIN V STATE } 386 S.C. 164, 168, 678 S.E. 2d 712, 714 (2009)

IN THE CASE AT BAR, THE STATE DID NOT PRODUCE MR. GARCIA OR ANY OTHER WITNESS TO TESTIFY THAT PETITIONER DID NOT HAVE PERMISSION TO ENTER THE TRAILER. THIS EVEN IF PETITIONER MAY HAVE FORCED MR. ARCOS THROUGH THE DOOR AT GUNPOINT, MR. GARCIA WAS NOT PRESENT TO TESTIFY THAT HE SAW A GUN OR OTHERWISE WAS FORCED TO LET PETITIONER INTO THE TRAILER AND THE STATE COULD NOT PROVE THE REQUIRED ELEMENT BEYOND A REASONABLE DOUBT.

{ CONSTITUTIONAL RIGHTS TO AN APPEAL }

THE PETITIONER HAS A CONSTITUTIONAL RIGHT FOR AN APPEAL ONE

BITE OF THE APPLE BRIGHT LINE RULE THAT COUNSEL MUST ALWAYS CONSULT

WITH THE DEFENDANT REGARDING AN APPEAL. IN { DEGLIERA } THE HABEAS

PETITIONER ALLEGED THAT HE WAS ENTITLED TO RELIEF BECAUSE HIS COUNSEL

HAD FAILED TO FILE A NOTICE OF APPEAL, AND WHAT IS FURTHER THE TRIAL

COURT FAILED TO INFORM PETITIONER OF HIS RIGHTS TO APPEAL. AS REQUIRED

BY THE FEDERAL RULES OF CRIMINAL PROCEDURES (3a) (2) { 1 AT 25, 119 S. CT.

961 } THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO FILE A DIRECT

APPEAL

{ WHITE V STATE } 208 S. E. 2d 35, 39

{ KNIGHT V STATE } 325 S. E. 2d 535, 537

{ SHEPPARD V STATE } 594 S. E. 2d 462, 466

{ DAVIS V STATE } 342 S. E. 2d 60

{ JOHNSON V STATE } 480 S. E. 2d 733

{ MATTHEW V STATE } 387 S. E. 2d 858

{ TRIAL COURT ERRED IN PROCEEDING WITH TRIAL IN PETITIONER'S
ABSENCE }

IN ORDER FOR THE TRIAL COURT TO TRIAL PETITIONER IN HIS ABSENCE THE

TRIAL COURT MUST PUT TWO FACTS FINDINGS WITH RECORD AT THE

BEGINNING OF THE TRIAL

1) THAT PETITIONER WAS AWARE THAT IF PETITIONER DON'T SHOW UP FOR TRIAL THAT PETITIONER WOULD BE TRIED IN HIS ABSENCE.

2) THAT PETITIONER WAS AWARE OF TRIAL DATE.

BOTH OF THESE FACTS MUST BE PUT ON RECORD AT THE BEGINING OF TRIAL,

..... ON JUNE 8, 2010 PETITIONER WAS TRIED IN HIS ABSENCE BY THE HONORABLE EDWARD W. MILLER AND A JURY THE JURY WAS SWORN IN ON TRANSCRIPT PG-21 L-9-24

THE TRIAL COURT ERRED BY FAILING TO PROVE THE TWO FINDINGS OF FACTS ON RECORD (SCRPC) RULE (10)

TRIAL HELD IN ABSENCE OF A DEFENDANT WHO WAS CONVICTED OF ROBBERY AND ASSAULT AND BATTERY WAS REVERSIBLE ERROR WHERE PRIOR TO THE BEGINING OF TRIAL, THE TRIAL JUDGE HAD FAILED TO MAKE FACT FINDINGS,

{ STATE V JACKSON } 288 S.C. 24, 841 S.E. 2d 375

{ THE PETITIONER WAS ENTITLED TO A DIRECTED VERDICT }

{ STATE V BURROUGHS } 498 S.E. 2d 408, 328 S.C. 498 (1997)

WHEN RULING ON A MOTION FOR A DIRECTED VERDICT, THE TRIAL COURT IS CONCERNED WITH THE EXISTENCE OF THE EVIDENCE AND NOT ITS WEIGHT.

{ STATE V IVES } 492 S.E. 2d 802, 328 S.C. 458 (1997)

COURTS SHOULD GRANT A DIRECTED VERDICT ISSUE IN A CRIMINAL CASE IF THE EVIDENCE FAILS TO RAISE MORE THAN A MERE SUSPICION OF THE ACCUSED GUILT.

{ STATE V MITO } 257 S.E. 2d 154

A PLACE LIVED IN OR REGULARLY INTENDED TO BE USED AS A DWELLING PLACE THAT THE HOUSE IS THE PERSON OR PERSONS NAMED IN THE INDICTMENT ARE THE OWNERS THEREOF. . . . JUAN IS THE PERSON NAMED IN THE INDICTMENT, SO THAT IS THE PERSON WHO CAN GIVE CONSENT. . . . JUAN DID NOT COME TO TRIAL TO SAY WHETHER HE GAVE CONSENT OR NOT, THEREFORE THE STATE COULD NOT PROVE THE REQUIRED ELEMENT. . . .

{ FAREHA V CALIFORNIA } 422 US 806 95 S. CT. 8525 451 L. ED. 2d 62 (1975)

THE SIXTH AMENDMENT RIGHT TO CONFRONTATION NOTICE AND COMPULSORY PROCESS { GUARANTEES } THAT A CRIMINAL CHARGE MAYBE ANSWERED THROUGH THE CALLING OF INTERROGATORIES OF FAVORABLE WITNESSES AND IN THE ORDERLY INTRODUCTION OF EVIDENCE THESE BASIC RIGHTS ARE APPLICABLE TO THE STATES THROUGH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT ESSENTIALLY CONSTITUTIONALIZED OF THE RIGHT TO PRESENT A DEFENSE IN THE ADVERSARY CRIMINAL TRIAL.

{ MILES V. UNITED STATES } 103 US 304, 312 26 L. ED 2d 451 (1980)

THE UNITED STATES SUPREME COURT EXPLICITLY HELD THE DUE PROCESS CLAUSE PROTECTS THE ACCUSED EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH THE ACCUSED IS ON TRIAL.

{ STATE V FERRE DEE }

A CONVICTION OF BURGLARY WAS NOT WARRANTED WHERE THERE WAS NO ARGUMENT OR INHABITANT AGAINST WHOM

OFFENSE COULD HAVE BEEN COMMITTED AGAINST AND WHERE THE OFFENSE COULD NOT HAVE BEEN COMMITTED AGAINST THE OWNER OF THE APARTMENT BECAUSE THE OWNER NEVER OCCUPIED NOR INTENDED TO OCCUPY OR DWELL IN THE APARTMENT.

{ STATE V COFFIN }

THE ELEMENT OF FIRST DEGREE BURGLARY AT ISSUE IN THE CASE AT BAR

IS THE REQUIREMENT THAT THE PERPETRATOR ENTER A DWELLING WITHOUT CONSENT. S.C. CODE ANN {16-11-311} (2) THE TERM ENTER

A DWELLING WITHOUT CONSENT IS STATUTORILY DEFINED AS TO MEAN TO ENTER A BUILDING WITHOUT CONSENT OF THE PERSON

IN LAWFUL POSSESSION S.C. CODE ANN {16-11-310} (3) (4) SUPP 1997

THEREFORE PETITIONER CANNOT BE TRIED WITHOUT JUAN TESTIMONY

REGARDING CONSENT OR NOT.

{ STATE V TOLBERT } 488 N.W. 2D 11

{ STATE V LONG } 335 S.C. 57, 480 S.E. 2D 12

{ STATE V MOORE } 334 S.C. 411, 513 S.E. 2D 626

{ WALKER V CALDWELL } 476 F. 2D 213, 218 (5th CIR 1993)

HOLDING THAT PROVIDING AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS IS THE FUNCTION OF THE ACCUSED

APPOINTED COUNSEL

{ LARGERSTINER V HAMLIN } 407 US 25, 34 S.Ct. 2006 32 L.Ed. 2d

530 (1972) COUNSEL IS NEEDED SO THAT THE ACCUSED MAY

KNOW PRECISELY WHAT HE IS DOING SO THAT HE IS FULLY

AWARE OF THE PROSPECT OF GOING TO JAIL OR PRISON AND SO

THAT PETITIONER IS TREATED FAIRLY BY THE PROSECUTION.

{ PROSECUTORIAL MISCONDUCT }

THE PETITIONER WAS TRIED IN HIS ABSENCE THE PROSECUTING ATTORNEY ON REDIRECT EXAMINATION OF THE STATE WITNESS ELICITED THE FOLLOWING INFORMATION:

APP. 135 L-21-25

Q: WHAT WAS THE NATURE OF YOUR RELATIONSHIP? I BELIEVE YOU STATED IT WAS DRUGS. CAN YOU ELABORATE?

A: TOBY WAS A KNOWN DRUG DEALER IN THE AREA, I BOUGHT DRUGS FROM HIM.

THE PROSECUTING ATTORNEY UNCONSTITUTIONALLY PLACED THE PETITIONER CHARACTER AT ISSUE BEFORE THE JURY WHERE THE PETITIONER WAS NEVER CHARGED OR INDICTED FOR DRUGS.

{ STATE V WARREN } 500 S.E. 2d 128 330 S.C. 584 (1998)

ERROR RESULTING FROM TRIAL JUDGE REFUSING TO GIVE LIMITING INSTRUCTION ON PRIOR BAD ACT EVIDENCE WAS REVERSIBLE ERROR

AND WAS NOT SUBJECT TO HARMLESS ERROR ANALYSIS

{ STATE V KING } 514 S.E. 2d 578 334 S.C. 504 (1999)

ERROR IN ADMITTING OTHER BAD ACT TESTIMONY CONCERNING

MURDER DEFENDANT REMOTE PETTY THEFT REQUIRES REVERSAL

BECAUSE THE EVIDENCE WAS NOT OVERWHELMING AND ADMISSION

OF THAT EVIDENCE ALLOWED THE SOLICITOR TO INSINUATE TO

THE JURY THAT THE DEFENDANT HAD A DRUG PROBLEM.

RULES OF EVIDENCE RULE (404) (B)

{ STATE V SMITH } 424 S.E. 2d 496 309 S.C. 442 (1992)

ERROR IN ADMISSION OF DEFENDANT PRIOR RECORD AND PRIOR USE OF COCAINE WAS NOT HARMLESS, PREJUDICE OF THIS TESTIMONY WAS HIGHTENED WHEN THE STATE EMPLOYED IT TO IMPEACH THE DEFENDANT CHARACTER WITNESS AND IN CLOSING ARGUMENTS REFERENCED THE DEFENDANTS CHARACTER USE OF DRUGS WAS FUNDAMENTALLY UNFAIR.

{ UNITED STATES V FELIX } 500 US 378, 386 57 N.3 112 S.Ct. 1377 118 Ed 2d 25 (1992)

DISCUSSING THE LIMITATION ON BAD CHARACTER ADMITTED EVIDENCE

RULE (404) (B)

COURT APPOINTED COUNSEL WAS INEFFECTIVE BY FAILING TO MOTION THE TRIAL COURT TO HAVE THIS HIGHLY PREJUDICIAL INFORMATION THAT THE PROSECUTION ELICITED STRICKEN FROM THE RECORD.

App. 135 L-21-25

COURT APPOINTED COUNSEL WAS FURTHER INEFFECTIVE BY MAKING REFERENCES THAT PETITIONER WAS A DRUG DEALER THIS WAS HIGHLY PREJUDICIAL

App 234 L-20-25- pg 235 L-1-25- pg. 236 L-1-9

COURT APPOINTED COUNSEL WAS UNDUPLY INEFFECTIVE AND COUNSEL'S PERFORMANCE FEEL BELOW THE REASONABLE STANDARD

PURSUANT TO { STRICKLAND V WASHINGTON } 466 US 668 104 S.Ct.

2552 80 L. Ed 2d 674 (1984)

COURT APPOINTED COUNSEL WAS INEFFECTIVE PURSUANT TO STATUTE
{17-19-100} WHERE COUNSEL FAILED TO MOVE TO QUASH INDICTMENTS
BEFORE THE JURY WAS SWORN.

INDICTMENT 2009-GS-23-0476

FIRST DEGREE BURGLARY

THIS INDICTMENT IS FATALLY DEFECTIVE BECAUSE IT DOES NOT
INDICATE WHERE THE HOME OF JUAN GARCIA IS LOCATED AT?

App. 319

INDICTMENT 2009-GS-23-0477

ARMED ROBBERY

THIS INDICTMENT IS FATALLY DEFECTIVE BECAUSE IT CONTAINS AN
UNCONSTITUTIONAL ELEMENT AND IT CONTAINS A WRONG NAME

{OMAR MARCUS} NOT {OMAR ARCOS}

App. 323

INDICTMENT 2009-GS-23-00049

ARMED ROBBERY

THIS INDICTMENT CONTAINS AN UNCONSTITUTIONAL ELEMENT
AND SHOULD HAVE BEEN DISMISSED BECAUSE JUAN GARCIA DID
NOT TESTIFY AND PETITIONER COULD NOT CONFRONT AND CROSS
EXAMINE THE ALLEGED ACCUSER WHICH DENIED PETITIONER
DUE PROCESS RIGHTS

App. 325

{STRICKLAND V WASHINGTON} 466 U.S. 668 104 S.Ct. 2052 80.Ed.2d

674 (1984)

THE TWO PRONG TEST FOR DETERMINING WHETHER OR NOT COUNSEL WAS INEFFECTIVE (1) SHOWING THAT THE DEFENDANT WAS PREJUDICED THEREBY, THE PRELIMINARY CONSIDERATION UNDER THE FIRST PRONG WOULD SHOW WHETHER OR NOT COUNSEL PERFORMANCE WAS REASONABLE WITHIN THE RANGE OF PREVAILING NORMS, THE SECOND (2) PRONG MANDATES PROOF THAT COUNSEL'S DEFICIENCIES PREJUDICE PETITIONER TO SUCH A DEGREE THERE EXISTS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S ERRORS THE OUTCOME WOULD HAVE BEEN DIFFERENT.

ARTICLE (1) AND (1) OF THE SOUTH CAROLINA CONSTITUTION AND THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION BOTH GUARANTEES THAT NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY FROM WHICH IT FOLLOWS THAT A DEFENDANT MAY BE TRIED FOR A FELONY, ONLY ON THE CHARGES THE GRAND JURY APPROVES, AS IT APPROVES THEM AND NO OTHERS. IT IS THE EXCLUSIVE PREROGATIVE OF THE GRAND JURY FINALLY TO DETERMINE THE CHARGES; AND ONCE THAT HAS BEEN DONE NEITHER A PROSECUTOR, NOR A TRIAL JUDGE CAN CHANGE THE CHARGING PART OF AN INDICTMENT TO SUIT { HIS OR HER } OWN NOTION OF WHAT IT OUGHT TO HAVE BEEN OR WHAT THE GRAND JURY WOULD HAVE MADE IT, IF THEIR ATTENTION HAD BEEN BROUGHT TO THE SUGGESTED CHANGES.

{ EXPARTE RAIN } 121 US 1, 10, 7, S. CT. 781, 786. 30 L. ED 849 (1867)

IF AN INDICTMENT COULD BE SO SLIGHTLY DEPARTED FROM, THEN THE

GREAT IMPORTANCE WHICH THE COMMON LAW ATTACHES TO AN INDICTMENT BY A GRAND JURY AS A PREREQUISITE TO A PRISONER TRIAL FOR A CRIME AND WITHOUT WHICH THE CONSTITUTION SAYS; "NO PERSON SHALL BE HELD TO ANSWER" MIGHT BE FRITTED AWAY UNTIL ITS VALUE IS ALMOST DESTROYED... IN THE CASE OF {COM. V. DREW} 3 CUSH 279 CHIEF JUSTICE SHAW SAID: WHERE IT IS FOUND THAT THERE IS SOME MISTAKE IN THE INDICTMENT SUCH AS A WRONG NAME, ADDITION OR OMISSION OR THE LIKE AND THE GRAND JURY CAN AGAIN BE APPEALED TO AS THERE CAN BE NO AMENDMENT OF AN INDICTMENT BY THE COURT THE PROPER COURSE IS FOR THE GRAND JURY TO RETURN A NEW INDICTMENT AVOIDING THE DEFECT OF THE FIRST.

AN UNCONSTITUTIONAL AMENDMENT OF AN INDICTMENT OCCURS WHEN THE CHARGING TERMS ARE ALTERED EITHER LITERALLY OR CONSTRUCTIVELY SUCH AS WHEN THE TRIAL COURT INSTRUCTS THE JURY.

{ US. V. HELMSLEY } 941 F. 2d 71, 79

} CONCLUSION }

THE PETITIONER RESPECTFULLY SUBMITS THAT FOR THE ENCLOSED REASONS THAT THIS COURT SHOULD GRANT PETITIONER'S PETITION FOR WRIT OF CERTIORARI AND ORDER APPELLATE COUNSEL TO FULLY BRIEF THESE ISSUES. PETITIONER HAS PRESENTED SUFFICIENT FACTS TO SHOW THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FIRST DEGREE BURGLARY, IT IS FURTHER UNCONSTITUTIONAL TO CONVICT WITHOUT OPPORTUNITY TO CONFRONTATION AND COMPLUSORY PROCESS WHICH FURTHER DENIED PETITIONER DUE PROCESS OF LAW. THE PETITIONER'S CONVICTION AND SENTENCE SHOULD BE REVERSED AND REMANDED BACK TO THE LOWER COURT.

RESPECTFULLY SUBMITTED

s. John G. Kimble

THIS DAY OF Oct 22 2013 PRO'SE RESPONSE OF PETITIONER

JOHN G. KIMBLE[#]

McCORMICK O/I F-2-B-121

386 REDEMPTION WAY

MCCORMICK, SOUTH CAROLINA

2013

