

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

DATE: March 16, 2026

APPEAL FROM BERKELEY COUNTY  
COURT OF COMMON PLEAS

RECEIVED

MAR 20 2026

JUDGE R. Kirk Griffin, Circuit Court Judge\_s.c. SUPREME COURT

CASE NO.

2020-CP-08-01349

Appellant NO.

2024-001521

STATE OF SOUTH CAROLINA, RESPONDENT

V.

Mr. Emory W. Roberts Jr., APPELLANT

(NAME OF DOCUMENT)

Addendum/Supplement To Appeal

DATE OF ORDER

February 10, 2026

Counsel for Appellant Certifies that the Rulings on  
his Rule 59(e); Rule 60B, were made on the above date,  
February 10, 2026

Mr. Emory W. Roberts Jr. 373 393

Attorney for Appellant Pro se,  
Request Appeal Be Taken Out Of Abeyance,  
And Addendum/Supplement To Appeal Added,  
And Declaratory Judgment dated 1-7-2025 to be  
Issued/Declared and Taken Out Abeyance

Enclosure: Marked Exhibits A and J

: Declaratory Judgment

Pleading dated 1-7-2025

: Affidavit dated Dec. 30, 2025

made by Justin Hunter (Co-defendant)

Clerk OF Court: Please Clock, Date,  
Stamp, File, and Return Copy,  
Thanking You In Advance.

\* STATEMENT OF THE CASE \*

On April 12-13, 2016, Assistant Attorney Generals Joshua Underwood and David Fernandez willfully entered into an agreement with James R. Parks (Former Clerk of State Grand Jury) for the false and illegal return of Indictment # 2016-05-47-02 (See Exhibits A and J). Mr. Roberts proceeded to trial on July 24-28, 2017, and was convicted. This conviction was obtained or procured by fraud upon the court, perjury, rubber-stamped indictments, and a collusion between the trial judge, prosecutors and Mr. Roberts Attorney. At trial "ineffective assistance of counsel", "a partial judge", and the collusion with States Attorney's infringed Mr. Roberts rights under Federal Constitution, and State Constitution.

Enclosed are Exhibits A and J - which indisputably demonstrates that the independent role of the State Grand Jury - its integrity, had been usurped by prosecutorial misconduct resulting in extrinsic fraud, suppression of exculpatory evidence, and massive due process violations. The exculpatory evidence has its source from this very Court - South Carolina Supreme Court, therefore, Mr. Roberts claims and contentions are very real and not imagined. At trial, trial judge was improperly influenced to partake in a fraud upon the Court, and fraud upon the legal rights of Mr. Roberts. Judge Jefferson violated Mr. Roberts due process right to have a "impartial adjudicator" assigned to his case [without] the desire to influence the outcome of the proceedings, resulting in [Structural Error] - as the [adversarial process] did not exist as a result of her erroneous rulings made to "conceal documents during the course of a litigation" (or lack of as the S.G.J. impanelment documents do not legally exist). Mr. Roberts was infringed his right to "effective assistance of counsel"; his right to an impartial finder of fact; his Sixth Amendment right to make and present a defense; his 14th Amend. right to "mount or prepare a defense"; his 14th Amend. right to "Notice"; his Sixth Amend. right to be informed of nature and cause of accusation against him; his rights under South Carolina State Constitution, pursuant to Art. I. § 3, Art. I. § 11, and Art. V. § 22. Mr. Roberts was also infringed his Sixth Amendment right to Confrontation. Mr. Roberts contends that because trial counsel abandon Mr. Roberts 6th Amend. right to effective counsel that there was [no] adversarial process - resulting in [Structural Error] - as there was [no] adequate defense put forward. Mr. Roberts contends that prosecutors suppressed exculpatory evidence in violation of Brady, and infringed Mr. Roberts Sixth Amendment to a fair trial, this is rooted in the record and observed by the contents of Exhibits A and J (Enclosed).

Exhibit A, states: "You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is [no] court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available" (Emphasis).

Exhibit J, states: "This is in response to your letter (Co-defendant Justin Hunter) that we received on September 6, 2018, requesting information so that you may contact the Court Reporter who covered the April 12-13, 2016, meeting of the State Grand Jury. Please [note] that our [records] do not show that the State Grand Jury met that week. Accordingly, trial judge lacked the jurisdiction to convict on the matter. There exist a want of jurisdiction in the trial court - Judge Jefferson exceeded her sentencing authority on July 28, 2017. As the PCR court has ruled on February 10, 2026 - Mr. Roberts submits this addendum/supplement to his Appeal held in abeyance and ask that Appeal and Declaratory Judgment dated 1-7-2025 be also taken out of abeyance so that Court may Declare rights and legal relations.

\* Questions Presented To The Court \*

1.) Did the Court of Common Pleas err in holding <sup>that</sup>.... Mr. Roberts "was not" denied due process of law under Art. I, §3 pursuant to State Constitution and the Fourteenth Amendment to the United States Constitution, when under the Standard of Brady V. Maryland, 373 U.S. 83 (1963); and Evans V. State, 363 S.C. 495, 611 S.E. 2d 510 (2005), trial judge erroneously denied discovery in a criminal case and infringed his 14th Amend. right to "mount or prepare a defense"? (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

2.) Did the Court of Common Pleas err in hold<sup>ing</sup> that.... Mr. Roberts "was not" denied due process of law, under the Standard of Faretta V. California, 422 U.S. 806, 840 (1974), when trial judge infringed his Fundamental right to present or make a defense? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

3.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law when trial judge infringed Mr. Roberts right under State Constitution pursuant to Art. I, §11, and Art. V, §22, to challenge whether he had been indicted by a legally constituted and established grand jury? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

4.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law when trial judges erroneous rulings prevented him from "preparation of a defense" and from "ensuring protection of his due process rights pursuant to §§ 14-7-1700, 14-7-1720(A) and (D), 14-7-1770?"

5.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law, when "subornation of perjury by an Attorney (Joshua Underwood, David Fernandez) and/or the intentional concealment of documents by an Attorney (Judge Jefferson) constituted extrinsic fraud because they defeat the opposing party's opportunity to litigate the matter? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

6.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied his fundamental right to a fair trial under the Sixth Amendment and due process of law under the 14th Amend. by the erroneous rulings by trial judge denying the right to "mount or prepare a defense"? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis).

- 7.) Did the Court of Common Pleas err in holding that... Mr. Roberts' "defense" was not prejudiced, under the Standard of Hunt V. Mitchell, 261 F.3d 575, 583 (6th Cir. 2001), when he was not afforded discovery before voir dire? (Tr. Page 15, lines 5-9).
- 8.) Did the Court of Common Pleas err in holding that... Mr. Roberts' was not "denied due process of law, when" restriction of defense discovery not only undermine the search for truth, which is thought to be enhanced by liberal discovery, but would also harbor constitutional defects like those of preclusion to the extent that the defendant has a [constitutional right to pretrial discovery]? (Tr. Page 15, lines 5-9; Page 19; lines 8-16)
- 9.) Did the Court of Common Pleas err in holding that... "Fusing of prosecutorial and Judicial functions" "did not" infringe on constitutional rights to 1.) a fair trial; 2.) Preparation of a defense; and 3.) Right to an impartial adjudicator?
- 10.) Did the Court of Common Pleas err in holding that... Denial of the right to an impartial adjudicator "did not" constitute a structural error where prejudice is presumed?
- 11.) Did the Court of Common Pleas err in holding that... Under the Standard held in United States V. Baldi, 195 F.2d 815 (C.A. 3), cert. denied 345 U.S. 104, reh. denied 345 U.S. 946, Mr. Roberts' "was not" denied due process of law, when the State Grand Jury "impanelment documents" (or rather, lack of) was suppressed by the trial judge and prosecutors to [conceal] their non-existence (See Exhibits A and J)?
- 12.) Did the Court of Common <sup>E.P.</sup> Pleas err in holding that... Trial Counsel's performance "did not" fall below an objective standard of reasonableness - and prejudice to Mr. Roberts' defense, when counsel failed to [assist] defendant in his attempts to gain access to the State Grand Jury "impanelment documents" (or lack of) and was erroneously denied by the trial judge?
- 13.) Did the Court of Common Pleas err in holding that... Trial counsel's "function" in representing a criminal defendant is [not] to [assist] defendant and hence, "does not," owe client a duty of loyalty, and "does not" have a duty to avoid conflicts of interest... regarding substantial right to "mount or prepare a defense," and his procedural rights pursuant to §§ 14-7-1720(A) and (D) and Rule 5, SCRCP, 14-7-1770 (C); and Evans V. State, (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510?
- 14.) Did the Court of Common Pleas err in holding that... Trial Counsel "was not" ineffective assistance of counsel causing prejudice to his defense, when under the Standard of U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), counsel failed to object and cite controlling precedent (Brady V. Maryland) in regards to the denial of discovery by the trial judge? (Tr. Page 15, lines 5-9; Page 19, lines 8-16).

15.) Did the Court of Common Pleas err holding that.... Trial counsel "was not" ineffective assistance of counsel causing prejudice to his defense, under the Standard of U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), when counsel failed to object and cite the controlling precedent (Evans V. State) (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510, regarding obtaining "impanelment documents" (or rather lack of)? (See Exhibits A and J).

16.) Did the Court of Common Pleas err in holding that.... Trial counsel's function "was not" [an assistant to defendant] and "did not" derive the overarching duty to [advocate] defendant's [cause].... in obtaining the State Grand Jury "impanelment documents" (or lack of) under the Standard of Strickland V. Washington?

17.) Did the Court of Common Pleas err in holding.... Trial counsel "was not" ineffective assistance of counsel, under the Standard of Williams, 529 U.S. 393, when "ineffective assistance of counsel" did deprive defendant of a substantive (right to mount or prepare a defense) or procedural right (§§ 14-7-1720(A) and (D) and Rule 5, SCRCP), to which the law entitles him?

18.) Did the Court of Common Pleas err in holding that.... Trial Counsel "was not" ineffective assistance of counsel, under the Standard of U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), when trial counsel failed to object and cite the controlling precedent (Crawford V. Washington) regarding Mr. Roberts right to Confrontation under the Sixth Amendment when Agent Justin Wingo violated that right, when he testified to "testimonial hearsay" lab reports "to prove the truth of the matter asserted"?

19.) Did the Court of Common Pleas err in holding that.... Trial Counsel "was not" ineffective assistance of counsel, under the Standard of U.S. V. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999), when trial counsel failed to object and cite controlling precedent (Crawford) regarding Mr. Roberts right to Confrontation that was violated when Misael Vasquez testified to testimonial hearsay lab reports "to prove the truth of the matter asserted"?

20.) Did the Court of Common Pleas err in holding.... Trial counsel "was not" ineffective assistance of counsel when counsel failed to [advocate] and protect Mr. Roberts rights under the State Constitution pursuant to Art. I, § 11, and Art. V, § 22, under the Standard of Strickland V. Washington; and as a persuasive authority, U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999) and Williams, 529 US 393?

21.) Did the Common Pleas Court err in holding that... Trial counsel "was not" "ineffective assistance of counsel," when "defense" counsel, without consent or colloquy under the Standard of State V. Orr, 304 S.C. 185, 403 S.E. 2d 623 (1991), waived challenge to Chain of Custody, thereby effectively infringing Mr. Roberts procedural right to Confront witnesses against him, under the Standard of Williams, 529 US 393, where ineffective assistance of counsel "did deprive defendant of a substantive (Sixth Amend. right to Confrontation) or procedural right (Rule 6, SCR Crim.P.) to which the law entitles him?"

22.) Did the Court of Common Pleas err in holding that... Prosecution "did not" deny due process of law to Mr. Roberts, under the Standard of Brady V. Maryland, when prosecutors repeatedly suppressed exculpatory evidence in the form of the State Grand Jury "impanelment documents" (which do not legally exist) (See Exhibits A and J)?

23.) Did the Court of Common Pleas err in holding that... Prosecution "did not" infringe Mr. Roberts substantive right to "mount or prepare a defense," and also "did not" violate his procedural due process of law pursuant to §§ 14-7-1700, 14-7-1720(A) and (D) and Rule 5, SCRCP, under the Standard of United States V. Baldi, 195 F.2d 815 (C.A.3) cert. denied 345 U.S. 104, reh. denied 345 U.S. 946?

24.) Did the Court of Common Pleas err in holding that... Prosecution "did not" violate due process of law of law owed to Mr. Roberts when prosecution failed to accede to Mr. Roberts request for Discovery in the form of the State Grand Jury "impanelment documents" (or rather, lack of)? (See Exhibits A and J)

25.) Did the Court of Common Pleas err in holding that... The withheld evidence (impanelment documents, or rather lack of) "was not" [critical] to defendant's [ability] to "present a complete defense" under the Standard of United States V. Agurs, 427 U.S. 97, 112 (1976)?

26.) Did the Court of Common Pleas err in holding that... When the government withholds material, exculpatory evidence - whether knowingly or inadvertently - it "does not" deny the defendant a fair trial?

27.) Did the Court of Common Pleas err in holding that... The withholding of exculpatory evidence "does not" impair the preparation or presentation of the defense case? (See Exhibits A and J)

28.) Did the Court of Common Pleas err in holding that.... Under the Standard of Montgomery v. Louisiana, Supreme Court of the United States - Jan. 25, 2016, 577 U.S. 190 "A conviction or sentence imposed in violation of a substantive rule of constitutional law (Brady v. Maryland - Brady Rule) is not just erroneous but contrary to law and, as a result, void and it follows, as a general principle, that a court has the authority to... [leave in] place a conviction or sentence that violates a substantive rule?

29.) Did the Court of Common Pleas err in holding that.... Preparation of a defense is a factor that goes to the very heart - the integrity of the [adversarial process], and on this principle, Mr. Roberts alleged structural error, in that.... 1.) the suppression of exculpatory evidence prevents the presentation of a complete defense; 2.) trial judges erroneous rulings infringed Mr. Roberts due process of law to "mount or prepare a defense" - [did not] directly affect the very framework of the [adversarial process]?

30.) Did the Court of Common Pleas err in holding that.... Trial counsel's errors "did not" contaminate the trial and manifest a "breakdown" in the "adversarial process" rendering defendants trial fundamentally unfair when trial counsel: 1.) stipulated to the Chain of Custody (Tr. Page 74, lines 4-25; Page 75, lines 1-7), without consent or colloquy, relieving prosecutors' burden of proof, and infringing his Sixth Amend. right to Confrontation, as well as his procedural right pursuant to Rule 6, S.C.R.Crim.P.; 2.) failing to advocate defendant's cause in obtaining impanelment documents (or lack of); 3.) failing to object and cite controlling precedent regarding his substantive right to "mount or prepare a defense" and his procedural rights pursuant to §§ 14-7-1700, 14-7-1720 (A) and (D) and Rule 5, S.C.R.C.P.; 4.) failed to advocate and protect under State Constitution pursuant to Art. 1. § 3, Art. 1. § 11, and Art. V. § 22; 5.) failed to protect his Sixth Amendment right to a fair trial and due process of law; and 6.) counsel failed to protect his right to "notice" and his Sixth Amendment right to be informed of the nature and cause of accusation"....?

31.) Did the Court of Common Pleas err in holding that.... Fraud upon the Court "was not" shown or demonstrated when Judge Jefferson acted with an [intent] to [defraud] when at trial, before the swearing of the jury, Mr. Roberts moved for the production of the State Grand Jury impanelment documents (or lack of) (Tr. Page 15, lines 5-6) and Judge Jefferson stated/ruled: "You [don't] get those, sir. [In] South Carolina, [All] Grand Jury proceedings are [secret]. [Nobody] gets those (Emphasis) (Tr. Page 15, lines 7-9)?"

32.) Did the Court of Common Pleas err in holding that... The judicial impartiality "was not" polluted by erroneous rulings by the trial judge denying discovery in a criminal case - in the form of the State Grand Jury impanelment documents (or rather lack of) in order to intentionally aid and abet and to suppress or conceal exculpatory evidence in a collusion with the State to manufacture and obtain a fraudulent conviction procured by a fraud upon the court, causing a legal perversion?

33.) Did the Court of Common Pleas err in holding that... Joshua Underwood's "improper influence, fraudulent scheme, considered unconscionable," did not "defraud the judicial machinery, such that the court <sup>could</sup> not perform its function as a neutral arbiter of justice?" (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 85, lines 5-7).

34.) Did the Court of Common Pleas err in holding that... Fraud upon the Court "did not" occur when an officer of the court - such as a prosecuting Attorney (Joshua Underwood) - engaged in misconduct that corrupted the judicial process itself (See Exhibits A and J), preventing a full and fair presentation of the case?

### \* Conclusion \*

Due to massive violation of Due Process of Law; Suppression of Exculpatory Evidence; Violation of Fundamental rights, substantial rights; Extrinsic Fraud Upon the Court; Structural Error; Prosecutorial Misconduct shocking to the Universal sense of justice; and want of subject-matter jurisdiction, Mr. Roberts asks that Indictment # 2016-GS-47-02 be dismissed with prejudice, as Judge Jefferson lacked subject matter jurisdiction to convict Mr. Roberts suffer prejudice to his Sixth Amendment right to a fair trial.

\* Violation Of Due Process of Law Pursuant To The Fourteenth Amendment Right To Mount OR Prepare A Defense; And Violation of The Sixth Amendment Right To A Fair Trial; As Well As The Violations of South Carolina State Constitution Pursuant To Art. 1. § 3; Art. 1. § 11; Art. V. § 22.\*; Ineffective Assistance of Counsel

Defendants are entitled to discovery in criminal cases, pursuant to the constitution, statute, and rule. See., Brady v. Maryland, 373 U.S. 83 (1963); Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005); S.C. Code Ann. § 14-7-1700; Rule 5 SCR Crim. P.

Despite the constitution, statutory law, and Rule - Judge Jefferson violated Mr. Roberts Due Process of Law and infringe his right to "mount or prepare a defense"; his fundamental right to present or make a defense; his Sixth Amendment right to a fair trial; his Due Process of Law right to "an impartial finder of fact without the desire to influence the outcome of the proceedings"; his rights under the State Constitution pursuant to Art. 1. § 11 and Art. V. § 22; his due process pursuant to State Constitution pursuant to Art. 1. § 3. For example: At Mr. Roberts trial, before the swearing of the jury, Mr. Roberts moved for the production of the State Grand Jury impanelments documents, as it was [incumbent] upon him to do so "being entitled" by law to view them in order to prepare a defense and ensure [protection] of his due process rights pursuant to U.S.C.A. Const. Amend. 14; Code 1976, §§ 14-7-1700, 14-7-1720, 14-7-1770, Rules Crim. Proc. Rule 5; Mr. Roberts states: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, Page 15, lines 5-9), to this, the trial judge ruled: "You don't get those, sir. In South Carolina, all Grand Jury proceedings are secret. [Nobody] gets those." Next, trial judge states: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. Page 19, lines 8-10), to this Mr. Roberts states: "Well, I'm actually going to show that no State Grand Jury even occurred" (Tr. Page 19, lines 11-12) (Emphasis) (See Exhibits A and J); Next, Mr. Roberts states: Article 1, Section 11, states "no person may be held the jurisdiction over which is not a part of the magistrate's court, unless on presentment or indictment..." (Tr. Page 73, lines 3-6), to this trial judge states: "Sir, we have special legislation that's been passed that deals with the State Grand Jury. Everything they did to you was permissible" (Tr. Page 73, lines 7-9); and again, Mr. Roberts states: "I asked to challenge the jurisdiction of the State Grand Jury. Nothing" (Tr. Page 85, lines 5-6), to this, trial judge states: "You have no basis to challenge it" (Tr. Page 85, line 7) (Emphasis).

The repeated denials of "discovery" in a criminal prosecution violated the components of Due Process of Law and Mr. Roberts rights under State Constitution pursuant to Art. 1. § 3, Art. 1. § 11, Art. V. § 22 - as well as Mr. Roberts Sixth Amend. right to a fair trial, and his Federally protected right to "mount or prepare a defense", and his right to an "impartial finder of fact" without the desire to influence the outcome of the proceeding, resulting in Structural Error and massive procedural due process violation where the Court should find that the defendant was denied his Federally protected right to a fair trial pursuant to the Sixth Amendment to the United States Constitution and Art. 1. § 3 of the State Constitution.

South Carolina Statutory Law provides :

- 1 : A defendant is allowed to obtain and use the impalement documents in preparing a defense and ensuring protection of his due process rights. EVANS V. STATE (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510 ;
- 2 : Removing veil of secrecy after a defendant has been indicted was consistent with legislative intent expressed in statute. EVANS V. STATE (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510 ; Code 1976 § 14-7-1770, SC ST § 14-7-1770 ;
- 3 : Subject to the limitations of Section 14-7-1720 (A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials ;
- 4 : Section 14-7-1770 (C) " A defendant has the right to review the documents to determine whether to timely challenge the legality of the State Grand Jury which indicted him "
- 5 : Due Process requires that in a criminal prosecution, government must disclose to defendant evidence favorable to him if suppression of that evidence would deny him a fair trial. U.S. Const. Amend. 14 ;

Contrary to the above statutory law and defendants rights to obtain the "alleged" state grand jury impalement documents - the State failed to accede to defense (Mr. Roberts) request for disclosure of some specific kind of exculpatory evidence. For example, when the trial judge stated: " I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record? " (Tr. July 24-28, 2017, Page 19, lines 8-10); Mr. Roberts replied: " Well, I'm actually going to show that no State Grand Jury even occurred " (Emphasis) (Tr. Page 19, lines 11-12) - that is the kind of exculpatory evidence Mr. Roberts was trying to reveal - Exhibits A and J demonstrates plain and very clear that the State Grand Jury's independent role was usurped by prosecutorial misconduct, this is indisputable and the very reason for trial judge's erroneous rulings denying access to "impeachment documents" because she had direct knowledge that the "documents" did not exist and entered into a collusion with the State to obtain a fraudulent conviction (Emphasis). 10.)

Without question, Mr. Roberts' desire to view the "documents" related to the grand jury proceedings was well-founded in the law. See, EVANS V. STATE, 363 S.C. 495, 509-514, 611 S.E.2d 510, 518-520 (2005) (explaining a multitude of ways a criminal defendant may challenge an indictment based upon the state grand jury's proceedings and the "documents" to which a defendant [is] entitled during the discovery phase regarding the State Grand Jury's proceedings). A defendant has a constitutional [right] to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. See S.C. Const. Art. 1, § 11 and Art. V, § 22 "[O]ne who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, liberty or property without due process of law in violation of the State Constitution.

An indictment or "notice document" issued by a grand jury which is established or constituted illegally is deemed a nullity. An indictment which is a nullity would be insufficient, as a matter of law, to give the required notice to a defendant. In such cases, a defendant's challenge "does not assert a disqualification which affects only a member of a body otherwise lawful, nor a mere irregularity in doing [that] which the law requires, which assumes a power to act; but it goes to the existence of the grand jury as a body, that it is void as such (see Exhibit J), and that its indictment is therefore a nullity. State V. Edwards, 68 S.C. 318, 322, 47 S.E. 395, 396 (1904) (where legislative act under which grand jury was created and impaneled was later declared unconstitutional, grand jury was an illegal body and thus murder indictment issued was a nullity and incurable); See also, State V. Sanders, 251 S.C. 431, 438, 163 S.E.2d 220, 224 (1968). In sum, a defendant is entitled to review impanelment documents in order to determine, by a timely motion to quash an indictment made before the jury renders its verdict, whether the state grand jury which indicted him was legally established or suffered from any lesser irregularity [which implicates the defendant's constitutional right to have his case considered by a grand jury which is properly constituted under the law. (Strong Emphasis).

In the instant case here, Mr. Roberts' Federally protected right to Due Process of Law to "mount or prepare a defense," as well as his due process pursuant to Art. 1, § 3 and Art. 1, § 11; and Art. V, § 22 were infringed repeatedly (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), in order to shield an unfounded prosecution. Mr. Roberts contends that his fundamental right to present a defense - the right to present the defendant's version of the facts to the sentencing jury, is a fundamental element of due process of law. U.S.C.A. Const. Amend. 14. Mr. Roberts also contends that the infringement of the right to "mount or prepare a defense" is a [Structural Error] that, without doubt, calls into question the "structural integrity of the tribunal," and the infringement of Mr. Roberts' Sixth Amendment right to a fair trial (Emphasis).

To establish ineffective assistance of counsel, the defendant must prove: 1.) that counsel's performance fell below an objective standard of reasonableness, 466 U.S., at 688, 104 S.Ct. 2052; and that the deficient performance prejudice the defense, which requires a showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *id.*, at 694, 104 S.Ct. 2052.

Counsel's performance fell below an objective standard of reasonableness - when counsel failed [to assist] defendant in his attempts to gain access to the "State Grand Jury" impanelment documents and was erroneously denied by the trial judge (Tr. July 24-28, 2017, Page 15, lines 5-9). Defense Counsel failed to object and cite controlling precedent (Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510); Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure; and Section 14-7-1770(C). And again, defendant moved for the production of the State Grand Jury impanelment documents, when he stated: "I asked to challenge the jurisdiction of the State Grand Jury. Nothing" (Tr. Page 85, lines 5-6), trial judge ruled: "You have no basis to challenge it" (Tr. Page 85, line 7); Defense counsel absolutely fails to object and cite controlling precedent (Brady v. Maryland, 373 U.S. 83 (1963)); At one point, Mr. Roberts states: "Article 1, Section 11, states no person may be held the jurisdiction over which is not a part of the magistrate's court, unless on a presentment or indictment"... (Tr. Page 73, lines 3-6), again, trial counsel refuses to advocate the defendant's cause when counsel fails to object and cite controlling precedent (Art. 1, § 11, Art. V, § 22). When the trial judge states: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. Page 19, lines 8-10); to this, defendant responds: "Well, I'm actually going to show that no state grand jury even occurred" (Tr. Page 19, lines 11-12) (Emphasis). Trial judge consistently denied discovery of the State Grand Jury impanelment documents (which do not legally exist), and not once had trial counsel objected and cited defendant's right to "mount or prepare a defense" or his procedural right pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRPC; and Brady v. Maryland. Ineffective assistance of counsel did [deprive] defendant of a substantive or procedural right to which the law [entitles] him. See, Williams, 529 U.S. at 393; See also, U.S. v. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999) (counsel's failure to cite directly controlling precedent was ineffective assistance of counsel because it was objectively unreasonable and resulted in prejudice to defendant). Counsel's deficient performance rendered the result of the trial unreliable and the proceeding fundamentally unfair. 466 U.S., at 687, 104 S.Ct. 2052. From counsel's function as assistant to defendant derive the overarching duty to [advocate] defendant's cause - trial counsel did not and as a result prejudiced the defense and Mr. Roberts 6th Amend. right to "effective counsel."

## \* BRADY VIOLATION \*

In Brady v. Maryland, the Supreme Court held that due process, pursuant to the 14th Amend. requires the prosecution to disclose evidence favorable to an accused upon request (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), when such evidence is material to guilt or punishment (see Exhibits A and J (Enclosed)). "The Brady disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." State v. Simpson, Court of Appeals of South Carolina, Jan. 23, 2019 425 S.C. 522. Compliance with Brady evidence disclosure requirements is a [constitutional] requirement; the Brady disclosure rule is grounded in the defendant's [fundamental] right to a [fair trial] "mandated by the Due Process Clause" of the Fifth and Fourteenth Amendments. U.S.C.A. Const. Amends. 5. 14. State v. Proctor, 348 S.C. 322, 559 S.E. 2d 318 (Ct. App. 2001). "Exculpatory evidence is evidence the suppression of which would undermine confidence in the verdict." U.S. v. Ruiz, 536 U.S. 622, 628 (2002) (quoting Giglio v. U.S., 405 U.S. 150, 154 (1972)). Evidence is exculpatory and "favorable," for purpose of determining whether its suppression by prosecution violates Brady, if it may make the difference between conviction and acquittal had it been disclosed and used effectively. U.S. v. Bartko - U.S.C.A., Fourth Circuit. "Brady applies to both impeachment and exculpatory evidence." State v. Durant, Supreme Court of South Carolina, May 6, 2020 430 S.C. 98. U.S. v. Bagley, 473 U.S. 667, 676-77 (1985) (impeachment evidence, as well as exculpatory evidence, is subject to Brady disclosure). In United States v. Bagley, the Court held that evidence is material if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceeding. See, Bagley, 473 U.S. at 678, 682; see also, Kyles v. Whitley, 514 U.S. 419, 434 U.S. (1995) (defendant must show that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict).

Accordingly, Exhibits "A" and "J" clearly establishes the usurpation of the State Grand Jury's independent role as a result of prosecutorial misconduct. Exhibit A is "direct evidence" from South Carolina Supreme Court, Court Administration, that informed Mr. Roberts that "no court reporter was assigned to record grand jury proceedings, therefore, there is [no] transcript available" - for the date of Mr. Roberts indictments; this is contrary to statutory law pursuant to § 14-7-1700. Exhibit J is "direct evidence" from South Carolina Supreme Court, Court Administration, who informed Mr. Justin Hunter, who's a codefendant listed on the same indictment (2016-GS-47-02), that "their record doesn't show that the State Grand Jury met the week of Mr. Roberts and Mr. Hunter's date of indictments," stated in pertinent part: "This is in response to your letter that we received on September 6, 2018, requesting information so that you might contact the Court Reporter who

covered the April 12-13, 2016, meeting of the State Grand Jury. Please note that our records do not show that the State Grand Jury met that week" ... (See Exhibit J) (Emphasis). Exhibit J corroborates Exhibit A, and it is Mr. Roberts' contention that these "exhibits" demonstrate why the "State Grand Jury impanelment documents" (or rather lack of AS they don't legally exist) was suppressed by the prosecution at trial of defendant. Prosecution failed to accede to Mr. Roberts' request for the "alleged" documents because there were "no documents" and the Prosecution suppressed exculpatory evidence/information that there was no convening of the State Grand Jury on dates of indictments AS evidenced by Exhibits A and J (Emphasis). Brady disclosures are fundamental to a Criminal Trials truth-seeking function and to prevent wrongful convictions. Brady seeks to ensure that criminal trials are just and the resulting verdicts worthy of confidence. United States v. Bagley, 473 U.S. 667, 675, 682 (1985); United States v. Agurs, 427 U.S. 97, 112 (1976) With held evidence is critical to defendant's [ability] to "present a complete defense." Holmes v. South Carolina, 547 U.S. 319, 324 (2006). The overarching purpose of Brady is "to ensure that a miscarriage of justice does not occur." Bagley, 473 U.S. at 675. Our adversarial system of criminal justice depends on the effective functioning of the Brady doctrine. Strict compliance with Brady's disclosure rule helps mitigate the unavoidable information imbalance between government investigators and criminal defendants, thereby affording the accused a "fair opportunity to present a complete defense to the jury." See Brady, 373 U.S. at 87.

When the government withholds material, exculpatory evidence - whether knowingly or inadvertently - it denies the defendant a [fair trial] and risks convicting an innocent. Withholding exculpatory evidence may impair the "preparation or presentation of the defendant's case." Bagley, 473 U.S. at 683. (Emphasis). Suppression of exculpatory information rises to the level of materiality under Brady when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles, 514 U.S. at 435.

In the instant case, prosecutor's suppressed exculpatory information that "a State Grand Jury had not convened to find probable cause" in violation of their constitutional obligation under Brady, and Art. I, § 11 and Art. V, § 22. The State Grand Jury's role had been usurped by prosecutorial misconduct, this fact is evident, clear, and plain - and supported by direct evidence from this very Court, South Carolina Supreme Court; the State cannot overcome this evidence presented as Exhibits A and J.

Relying on Supreme Court precedent, the Court held in, Montgomery v. Louisiana, Supreme Court of the United States - Jan. 25, 2016 577 U.S. 190, "A conviction or sentence imposed in violation of a substantive rule of constitutional law is not just [erroneous] but [contrary] to law and, as a result, [void] and it follows, as a [general principle], that a court has no authority to leave in place a conviction or sentence that violates a substantive rule."

### \* Prejudice \*

Prejudice is damage or detriment to one's [legal rights]. Accordingly, defendant was prejudiced his procedural due process right to:

- "review and to reproduce the stenographically or electronically recorded materials" (though they don't legally exist), pursuant to §14-7-1720(A) and (D) and Rule 5, SCRPC;
- his due process right to Section 14-7-1770(C);
- Art. I. § 11, Art. V. § 22; Effective Assistance of Counsel (6th Amend);
- his rights to discovery under Brady v. Maryland, 373 U.S. 83 (1963)
- his due process right to a fair trial under the Sixth and Fourteenth Amendments;
- his due process right to the "effective assistance of counsel" under the Sixth and Fourteenth Amendments;
- his due process right to have an "impartial finder of fact" assigned to his case;
- his right pursuant to Section 14-7-1700;
- his due process right to "mount or prepare a defense" and to present that defense to the sentencing jury;
- his due process right under State Constitution pursuant to Art. I. § 3.
- his due process rights under Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005);
- his due process of law pursuant to the Fourteenth Amendment.

It is well established that in a criminal prosecution the government must either make all potentially exculpatory material in its possession available to the defense, or abandon the prosecution. See, e.g., Dennis v. United States, 384 U.S. 855 (1966); Brady v. Maryland, 373 U.S. 83 (1963); Rovario v. United States, 353 U.S. 53 (1957); Butler v. Maroney, 319 F.2d 622, 627 (3rd Cir. 1963).

Presentation of a defense is a factor that goes to the very heart - the integrity - of the [adversary process], on this principle, Mr. Roberts alleges structural error in that ... 1.) the suppression of exculpatory evidence prevents the presentation of a complete defense; 2.) trial judges erroneous rulings infringed Mr. Roberts due process of law to "mount or prepare a defense", which directly affected the very framework of the adversary process. These appear to be at least three broad rationales for finding an error to be structural. One is when the right at issue does not protect the defendant from erroneous conviction but instead protects some other interest - like the defendant's [right] to conduct his own defense - where harm is irrelevant to the basis underlying the right. See United States v. Gonzalez-Lopez, 548 U.S. 140, 149, n. 4, 126 S.Ct. 2557, 165 L.Ed. 2d 409. (Emphasis).

"Structural error" is that which affects the basic framework within which the trial proceeds and which so undermines the proceedings that the trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. When State [repeatedly] suppressed exculpatory evidence and trial judge [repeatedly] infringed Mr. Roberts right to "mount or prepare a defense" (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), this resulted in "structural error", not subject to harmless error analysis.

\* Violation of the Sixth Amendment Right to "Effective Assistance of Counsel" / Due Process of Law and the Sixth Amendment Right to the Confrontation of Witnesses against him \*

S.C. Const. Art. 1, § 14 - "The right... to be confronted with the witnesses against him". There can be no doubt that a defendant has a constitutional right to be confronted by the witnesses against him. Art. 1, Section 18, of the 1895 Constitution of South Carolina provides: "In all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him; This constitutional right is restated in Section 17-506 of the 1952 Code of Laws of South Carolina, which provides: "Every person accused shall, at his trial, have a right to meet the witnesses produced against him face to face. The defendant cannot be denied the right to cross-examine the witnesses against him. State v. McNinch, 12 S.C. 89. The personal presence of a witness is required so that the accused may cross-examine him. State v. Bigham, 133 S.C. 491, 131 S.E. 603. Affidavits and depositions are inadmissible in evidence in a criminal case. State v. Hester, 137 S.C. 145, 134 S.E. 885; State v. Murphy, 48 S.Ct. 1, 25 S.E. 43. Despite controlling case law and the State Constitutional provisions; as well as the provision of the Sixth Amendment's Confrontation Clause, ineffective assistance of counsel - Timothy Griffith stipulated to Chain of 16.)

Custody", thereby depriving Mr. Roberts of a substantive or procedural right to which the law entitles him (Sixth Amendments Confrontation Clause as a substantive right; Rule 6, S.C. Rules of Criminal Procedure as a procedural right) (Emphasis). (Tr. July 24-28, 2017, Page 74, lines 4-25; Page 75, lines 1-7). This "stipulation" was made without: 1.) Without Mr. Roberts consent; 2.) Without on record Colloquy to establish a waiver of a "constitutional or statutory" right. In State V. Orr, 304 S.C. 185, 403 S.E. 2d 623 (1991), the Supreme Court of South Carolina held that waiver of a constitutional or statutory right [must] be knowingly and voluntarily established on the record by colloquy between either the court and the defendant, or between the court and defendant's counsel, or both. There was no colloquy established on the record, nor would have Mr. Roberts consented to such. The Defendant, pursuant to Rule 6, S.C. Rules of Criminal Procedure - would have required that any [chemist], [analyst], and [all] persons within the chain of custody appear in Court for the purpose of personally testifying. Defendant thus objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, S.C. Rules of Criminal Procedure. Defendant requested on the grounds that it is [essential] to [insure] the Defendant's [right to a fair trial], [right to Confrontation of witnesses], the [right to effective counsel] and [due process of law guaranteed] by the South Carolina Constitution and the United States Constitution. In violation of Mr. Roberts Sixth Amendment right to "effective assistance of counsel"; his Sixth Amendment right to Confront witnesses; his due process of law; and his procedural due process pursuant to Rule 6, S.C. Rules of Criminal Procedure, trial counsel ineffectively, at critical stage of trial proceeding, "stipulated" to the Chain of Custody to "accommodate prosecution" to "greatly truncate" the States "long list of witnesses," [thereby relieving prosecutions burden of proving his case (Tr. July 24-28, 2017, Page 74, lines 4-25; Page 75, lines 1-7)]. Trial counsel's errors contaminated the trial and manifest a "breakdown in the adversarial process" rendering defendant's trial fundamentally unfair by "stipulating" to the chain of custody and relieving prosecutions burden to prove his case; but also when trial counsel failed to object to the admission of testimonial hearsay statements read into the record by Agent Justin Wingo (Tr. July 24-28, 2017, Page 703, lines 6-12; Page 710, lines 15-23; Page 713, lines 4-12), and officer Misael Vasquez (Tr. July 24-28, 2017, Page 658, lines 11-15; Page 659, lines 20-24; Page 660, lines 21-25; Page 675, lines 9-12; Page 675, lines 16-18), to prove the truth of the matter.

In Crawford, the court held that, absent a prior opportunity for cross-examination, a testimonial statement by an unavailable witness, offered against a defendant [to prove the truth of the matter] asserted, is categorically barred by the Confrontation Clause. In the case where the prosecution used certificates from State laboratory analyst to prove that material linked to the defendant was cocaine, the U.S. Supreme Court ruled this practice violated the defendant's Sixth Amendment rights under the Confrontation Clause. This clause [guarantees] a defendant the right to confront their accusers in court. The Court, citing the Crawford v. Washington decision, determined that the certificates were equivalent to testimony that should have been presented in person at trial, as they were critical in proving the nature of the substance involved. The Supreme Court rejected arguments that these certificates were just neutral, scientific results or akin to traditional official records, emphasizing that the analyst's who prepared them needed to be available for cross-examination. The case was reversed and remanded, reaffirming that testimonial evidence cannot be used against a defendant without giving them the opportunity to cross-examine the witness who created such evidence. See, Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009); See also, Bullcoming v. New Mexico, 564 U.S. 647 (2011). The U.S. Supreme Court ruled that the Confrontation Clause of the Sixth Amendment requires that forensic laboratory reports used as evidence in criminal trials must be presented by the analysts who conducted the tests. The case involved Bullcoming, whose DWI charge conviction was based on a lab report that stated his blood-alcohol level was above legal limits. The analyst who performed the test, Caylor, did not testify; instead, another analyst, Razatos, who was familiar with the testing procedures but did not perform Bullcomings test, testified. The Supreme Court found this substitution inadequate, emphasizing that the accused has the right to confront the specific analyst who prepared the testimonial report, unless that analyst is unavailable, and the defendant had a chance to cross-examine the analyst before the trial. This decision highlights the court's commitment to ensuring that defendants can challenge the reliability and credibility of forensic evidence used against them. The testimonial hearsay statements that Agent Justin Wings and officer Misael Vasquez testified to violated the Confrontation Clause and due process of law and as a result in the infringement of Mr. Roberts right to the "effective assistance of counsel". Trial counsel ineffectively failed to object to out-of-court statements testimonial in nature.

When trial counsel, Timothy Griffith "stipulated" to the Chain of custody - he infringed Mr. Roberts due process of law pursuant to Art. I, § 3 and the Fourteenth Amendments due process of law resulting in the violation of Mr. Roberts Sixth Amendment right to Confrontation. "Ineffective Assistance of Counsel" did [deprive] defendant of a substantive or procedural right to which the law [entitles] him. See., Williams, 529 U.S. at 393. Prejudice component of the Strickland test focuses on the question whether counsel's deficient performance - renders the result of the trial unreliable or the proceeding fundamentally unfair. 466 U.S., at 687, 104 S.Ct. 2052; See., Kimmelman, 477 U.S., at 393, 106 S.Ct. 2574 (Powell, J. concurring). Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him. In the instant case, defendant was deprived his substantive right under the Sixth Amendment to Confrontation; and his right pursuant to Rule 6, S.C. Rules of Criminal Procedure.

Counsel's deficient performance prejudiced the defense. Counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. When Agent Justin Wingo and officer Misael Vasquez read into the record "testimonial hearsay" [to prove the truth of the matter] and trial counsel failed to object and cite controlling precedent - his inaction prejudiced Mr. Roberts defense. U.S. v. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999) (counsel's failure to cite directly controlling precedent was ineffective assistance because it was objectively unreasonable and resulted in prejudice to defendant). Trial Counsel "prejudiced" Mr. Roberts Sixth Amendment right to Confrontation and his right pursuant to Rule 6, S.C. Rules of Criminal Procedure - in order to "greatly truncate prosecutions long witness list (Emphasis) (Tr. July 24-28, 2017, Page 74, lines 4-25; Page 75, lines 1-7). Defense counsel has duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. U.S.C.A. Const. Amend. 6. Counsel's errors/acts/omissions were outside wide range of professional competent assistance - counsel's function is to make adversarial testing process work in a particular case. U.S.C.A. Const. Amend. 6. In the instant case, Counsel: 1.) Stipulated to all the evidence to accommodate prosecutions "long witness list" (without consent of defendant), thereby infringing Mr. Roberts right to the Sixth Amendment Confrontation Clause; 2.) failed to object and cite controlling precedent pursuant to Crawford v. Washington, regarding "testimonial hearsay statements" made by Agent Justin Wingo and Misael Vasquez (U.S. v. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999)); 3.) was ineffective assistance of Counsel that did deprive defendant of a substantive (Confrontation) or procedural right (Rule 6, S.C.Rim.P) to which the law [entitles] him. Williams, 529 U.S. at 393. (Emphasis). "Actual or constructive denial of assistance of counsel altogether is legally presumed to result in prejudice. U.S.C.A. Const. Amend. 6.

\* Extrinsic Fraud \*

\* Fraud Upon The Court \*

Fraud upon the court occurs when an officer of the court - such as a prosecuting Attorney - engages in misconduct that corrupts the judicial process itself, preventing a full and fair presentation of the case. See., Chewning V. Ford Motor Co., 354 S.C. 72 (2003); Ray V. Ray, 374 S.C. 79 (2007). On April 12-13, 2016, South Carolina Attorney General, Alan Wilson/or his Agents - Assistant Attorney Generals Joshua Underwood, and David Fernandez conspired with former Clerk of the State Grand Jury, James R. Parks to usurp the State Grand Jury's independent role by prosecutorial misconduct resulting in the willfully "rubber-stamping" of Petitioners indictments, and thus, committing fraud upon the Court. Mr. Roberts sham indictments were filed and then submitted to the court. This corrupted the judicial process and prevented Mr. Roberts from fully and fairly presenting his case during trial constituting extrinsic fraud. Fraud upon the Court will be found where the fraudulent scheme, considered unconscionable, defrauds the [judicial machinery] or is perpetrated by an officer of the court such that the court cannot perform its function as a neutral arbiter of justice. Martina Theatre Corp. V. Schine Chain Theatres, Inc., 278 F.2d 798, 801 (2d Cir. 1960). Accordingly, the Attorney General/or his Agents "improper influence exerted on the court by an attorney, which the integrity of the court and its ability to function impartially was directly impinged was demonstrated by a "deliberately planned and carefully executed scheme to defraud not only Mr. Roberts, but the Court itself." The judicial impartiality was polluted by erroneous rulings by the trial judge denying discovery in the form of the State Grand Jury "impanelment documents" (or rather lack of) in order to aid and abet and to suppress or conceal exculpatory evidence in a collusion with the State to manufacture and obtain a fraudulent conviction procured by a Fraud upon the Court causing a legal perversion. Supporting Mr. Roberts contentions and claims are Exhibits A and J, establishes the fraud upon the court occurred - as well as the suppression by willful intent of the trial judge; failed obligations under Brady V. Maryland by the prosecution; and failure to [object] by trial counsel each time Mr. Roberts moved for the production of "alleged" impanelment documents (that do not legally exist) (Emphasis). Trial judges erroneous rulings "deprived Mr. Roberts of the opportunity to be heard"; and "concealing of documents by an attorney during the course of litigation constitutes fraud upon the court (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis). Fraud upon the court requires a showing that one has acted with an intent to [deceive] or [defraud]... At trial, before the swearing of the jury, Mr. Roberts moved for the production of the State Grand Jury impanelment documents" when he stated: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, lines 5-6). Trial judges ruling shows she acted with an intent to [deceive] and demonstrates she intended to [defraud] when she erroneously and fraudulently ruled: "... You [dont] get those. In South Carolina, [All] Grand Jury proceedings are secret. [Nobody] gets those" (Tr. Page 15, lines 7-9) (Emphasis) - Trial judge's ruling was in fact "a lie"; a crime of moral turpitude and a fraud upon the court that corrupted the judicial process; Judge concealed documents (or lack of) during course of a litigation constituting fraud upon the Court.

## \* Prosecutorial Misconduct \*

"A prosecutor must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional rights or privileges." In re Richland County Magistrates Court, Supreme Court of South Carolina, Sept. 7, 2010 389 S.C. 408.

"Substantive due process" protection prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Yarbrough v. East Wake First Charter School.

Defendant was accused of crimes not investigated by a State Grand Jury, and prosecutor's allowed government agents to make false and misleading statements prejudicing defendant. See., U.S. v. Hogan, 712 F.2d 757, 761-62 (2d Cir. 1983). Although deliberate introduction of perjured testimony is perhaps the most flagrant example of misconduct, other prosecutorial behavior, can/did cause improper influence and usurpation of the grand jury's role. The incidents related are flagrant and unconscionable. Taking advantage of his special position of trust, the Attorney General/his agents Joshua Underwood, David Fernandez conspired with James R. Parks to impair the grand jury's integrity as an independent body and prevent defendant from exercising his 1.) Fourth Amend. right to probable cause; 2.) Sixth Amend. right to be informed of the nature and cause of accusation against him; 3.) Fourteenth Amend. right to "Notice" and "preparation of a defense"; 4.) Sixth Amend. right to a fair trial; 5.) Fourteenth Amend. right to due process; 6.) Mr. Roberts rights under South Carolina State Constitution pursuant to Art. I. § 11 and Art. V. § 22.

"Reference to relevant statute in caption of an indictment does not validate an invalid indictment; caption of an indictment [is not] a part of the 'finding of the grand jury'." State v. Knuckles, 348 S.C. 593, Court of Appeals of South Carolina. Under the applicable guidelines prosecutors have an [ethical obligation] strictly to observe the status of the grand jury as an independent legal body. See., American Bar Association, Standards For Criminal Justice Standard 3-3.5 at 3-48 (2d ed. 1980).

Defendant's trial proceedings were marred by a fundamental defect that inherently resulted in a complete miscarriage of justice, or in omissions inconsistent with rudimentary demands of fair procedure.

The State Grand Jury's unlawful indictment process and subsequent criminal acts committed by prosecutors and Clerk of State Grand Jury (Farmer), resulted in an illegal grand jury, void indictment, and a violation of every component of the Due Process "Notice" requirement owed to Mr. Roberts by this State.

Prosecutors Joshua Underwood, David Fernandez and co-conspirator James R. Parks undermined the integrity of the grand jury as an independent legal body and prosecutors offered/encouraged perjured testimony at defendant's trial. See., Ortega V. Duncan, 333 F.3d 102, 108-09 (2d Cir. 2003) (due process violated by admission of perjured testimony). Supporting Mr. Roberts contention that the State Grand Jury's independent role had been usurped by prosecutorial misconduct is indisputable exculpatory evidence/direct evidence from South Carolina Supreme Court, Court Administration,

Exhibit A, which states: "You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available"; (Enclosed)

Exhibit J, which states: "This is in response to your letter <sup>Co-Defendant</sup> (Justin Hunter) that we received on September 6, 2018, requesting information so that you might contact the Court Reporter who covered the April 12-13, 2016, meeting of the State Grand Jury. Please note that our [records] "do not show" that the State Grand Jury [met that week]..."; (Enclosed)

Suppression of exculpatory evidence at trial of those very same documents, or rather, lack of: (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis).

"The indictment is the charge of the State against the defendant, the pleading by which he is informed of the fact, or of the nature and scope of the accusation, as evidenced by Court Admin. (Exhibit A) correspondence to Mr. Roberts - "there was no court reporter assigned to record state grand jury proceedings," State V. Baker, 411 S.C. 583, Supreme Court of South Carolina, Feb. 11, 2015; and as evidenced by Court Admin. (Exhibit J) correspondence to Justin Hunter (Co-defendant) - "Supreme Court [records] do not show that the State Grand Jury [met that week]" (Emphasis); and as evidenced by the suppression of "alleged" state grand jury minutes at trial (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7); nor has Ind. # 2016-BS-47-02 in harmony with S.C. Code Ann. § 14-7-1640, as the indictment was not "certified," nevertheless, Exhibits A and J makes it abundantly clear the grand jury had [not] been convened (Emphasis).

## \* Violation of the Right to an Impartial Adjudicator \*

"Some constitutional rights are so basic to a fair trial that their infraction can never be treated as harmless error." The right to an impartial adjudicator, be it judge or jury, is such a right. Gray v. Mississippi, 481 U.S. 648, 668 (1987) (quoting Chapman v. California, 386 U.S. 18, 23 (1967)). The Court has held that "a fair trial in a fair tribunal is a basic requirement of due process", and that "a necessary component of a fair trial is an impartial judge. Weiss v. United States, 510 U.S. 163, 178 (1994) (internal citation omitted). Fairness requires not only "an absence of actual bias in the trial of cases", but also rules and safeguards "to prevent even the probability of unfairness". In re Murchison, 349 U.S. 133, 136 (1955). As the Court has held, due process requires, at a minimum, that defendant's be afforded "a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." Hamdi, 542 U.S. at 533. The impermissible fusing of prosecutorial and judicial functions is particularly problematic. As the Court has explained, "it would be very strange if our system of law permitted a judge to act as grand jury and then try the very persons accused as a result of his investigations." In re Murchison, 349 U.S. at 137. Having been involved in the "accusatory process" a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. *Id.* The Court has "jealously guarded" the right to trial by judge who has [no stake] in the outcome, because the principle of impartiality "ensures that no person will be deprived of interest in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." Marshall v. Jerico, Inc., 446 U.S. 238, 242 (1980). The trial judge must act with absolute impartiality in the performance of judicial duties. State v. Pace, (S.C. 1994) 316 S.C. 71, 447 S.E. 2d 186.

Trial judge deprived defendant of his fundamental rights "shocking to the universal sense of justice." Commonly accepted norms of fundamental fairness includes: "Notice" and "preparation of a defense"; "to be informed of the nature and cause of accusation"; "right to a fair trial an impartial adjudicator"; "right to Self-Representation"; and to due process of law - Judge Jefferson violated these fundamental rights, colluded with the prosecution to bring about an obtain a conviction based or procured by a Fraud upon the Court. Judge Jefferson violated Mr. Roberts due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceedings. U.S.C.A. Const. Amend. 14. 23)

Government commits outrageous misconduct when it behaves in a manner that violates "fundamental fairness" and "shocks... the universal sense of justice."

There are two types of substantive due process rights: (1.) claims asserting denial of a right, privilege, or immunity secured by the Constitution or by Federal statute, and (2.) claims directed at official acts which may not occur regardless of procedural safeguards accompanying them.

### Example 1. Denied Fundamental Right To Mount OR Prepare A Defense.

At trial, before the swearing of the jury, Mr. Roberts moved the Court for the production of the State Grand Jury "transcript," when defendant stated: "I would also like the State Grand G. Jury minutes" (Tr. July 24-28, 2017, Page 15, lines 5-6); to defendant's request, the trial judge stated:

"You don't get those, sir. In South Carolina, All Grand Jury proceedings are secret. Nobody gets those." (Tr. Page 15, lines 7-9)

Not only does this ruling by the judge constitute a violation of procedural due process and statutory law pursuant to the 14th Amend. and Section 14-7-1720(A) and (D) and Rule 5, S.C. R. Crim. P.; and Section 14-7-1770(C); but this ruling also infringes upon the defendant's right to "mount or prepare a defense" and ensure protection of his due process rights. See, EVANS V. STATE (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. This ruling was erroneous; "a lie and a crime of moral turpitude" and a fraud upon the Court that corrupted the judicial process itself, preventing a full and fair presentation of the case and persisted throughout the course of the proceedings (Tr. Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) See Chewing V. Ford Motor Co., 354 S.C. 72 (2003); also Ray V. Ray, 374 S.C. 79 (2007); Accordingly, an attorney who conceals documents during the course of a litigation commits extrinsic fraud upon the court, which defrauded the judicial machinery - which was an "Official Act" which may not occur regardless of procedural safeguards accompanying them. Defendant was deprived of his fundamental right to "Notice" and "right to mount or prepare a defense"; his Sixth Amendment right "to be informed of the nature and cause of accusation against him"; and his fundamental right to a fair trial pursuant to the Sixth Amendment and the due process of law pursuant to Art. 1, § 3 of the State Constitution and the 14th Amend. of the U.S. Const. At one point, Judge Jefferson questioned: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. July 24-28, 2017, Page 19, lines 8-10); Mr. Roberts answered and replied: "Well, I'm actually going to show that [no] State Grand Jury even occurred... or convened" (See Exhibits A and J) (Tr. Page 19, lines 11-12) (Emphasis). What use the petitioner might have made of the knowledge wrongfully [denied] him or what profit he might have gained by it may not be assumed. Even if that assumption might be made, such a substantial error spoils all it touches. Infringements upon constitutional rights may never be so lightly regarded. Stroble V. California, 343 U.S. 181, 198. In United States V. Baldi, 104 F. Supp. 321, 328 (E.D. PA.) "the defendant was denied due process of law by the States suppression

24.)

of evidence relevant only to the degree of punishment for felony murder. The court set aside the ... trial, verdict, conviction and judgment of sentence ... and granted the writ of habeas corpus. The decision was affirmed by the Court of Appeals in, United States v. Baldi, 195 F.2d 815 (C.A.3), cert. denied 345 U.S. 104, reh. denied 345 U.S. 946.

When the Court of Appeals found that the Petitioner had been deprived of due process of law, that court was not free to [speculate] upon what part of the trial might not have been tainted by the State's [suppression] of evidence. Griffin v. United States, 336 U.S. 704, 708-709; Blackburn v. Alabama, 361 U.S. 199, 206.

Mr. Roberts was prejudiced his right to an impartial adjudicator. Mr. Roberts contends that the infringement of this right is deemed [structural]. Because structural errors are defects in the constitution of the trial mechanism, they defy analysis by harmless-error standards. Structural errors deprive defendant's of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. Judge Jefferson's partiality is rooted in the record affecting substantial constitutional rights and procedural rights that render Mr. Roberts trial "fundamental unfair" causing prejudice to his Sixth Amendment right to a fair trial.

### \* CONCLUSION \*

In sum, in light of deprivation of a specific constitutional guarantee, the Constitution's articulation of a remedy for such a deprivation and the pernicious effects of such a deprivation, the Court should hold that the error that occurred is structural. To hold otherwise, as would effect a fundamental change in the criminal process.

I, Mr. Emory W. Roberts Jr., attest, Under the Penalty of Perjury that all claims herein are true and accurate and that I have enclosed this "Addendum/Supplement Brief" to my already filed Appeal that's being held in Abeyance along with a Pleading for Declaratory Judgment dated 1-7-2025 pursuant to a "January 16, 2025 correspondence from Patricia A. Howard of South Carolina Supreme Court (Enclosed). Also enclosed is a correspondence from the Clerk (Patricia A. Howard) dated 1-29-2025 regarding obtaining a transcript from P.C.R. proceeding (April 18, 2023), that I would ask be taken out of Abeyance, and instructed on how to proceed on obtaining the transcript for I've written to the Court Reporter and the Court Administration, and Supreme Court at least 3 times already - I'm an indigent prisoner. Also enclosed is Exculpatory Evidence - Marked as Exhibit A and J... and an Affidavit from Justin Hunter (Co-defendant) dated December 30, 2025

Further Affiant Sayth Not.

Sworn to and Subscribed  
before me this 17<sup>th</sup> day of  
March, 2026

  
Notary Public For South Carolina

  
Affiant/Appellant

Mr. Emory W. Roberts Jr. 373393  
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430 Oak Lawn Road  
Pelzer, SC 29669

The Supreme Court of South Carolina  
Patricia P. Howard, Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**  
MAR 20 2026  
S.C. SUPREME COURT

**RECEIVED**  
MAR 17 2026  
FBI MAILROOM

LEGAL MAIL