PETITION FOR A WRIT OF CERTIORARI TO THE COUR OF APPEALS

THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT

APPEAL FROM CHEROKEE COUNTY COURT OF COMMON PLEAS J. DERHAM CBE, CIRCUIT COURT JUDGE.

THOMAS DRUID GORDON V. V. STATE OF SOUTH CAROLINA.

2013-000418

I AM SUBMITTED MY PRASE RESPONSE, THIS ARE THE ISSUES I WANT TO GET HEARD.

VIOLATION OF DUE PROCESS. IN THAT: A

THE PROSECUTOR IMPROPERLY INTRODUCED TESTIMONY OF PRIOR BAD ACTS CONCERNING THE POSSESSION OF MARIJUANA TO SECURE THIS CONVICTION! P.P 223

APPLICANT CONTENDS THAT THE PROSECUTOR IMPROPERLY INTRODUCED TESTIMONY OF PRIOR BAD ACTS CONCERNING THE POSSESSION OF MARIJUANA TO SECURE THIS CONVICTION, WHICH IN THE SETTING DENIED APPLICANT DUE PROCESS AND EQUAL PROTECTION OF LAW TO A FAIR TRIAL. IT HAS BEEN WELL ESTABLISHED THAT A PRIOR BAD ACT MUST FIRST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE TO BE ADMISSIBLE. EVIDENCE OF PRIOR BAD ACTS IS INADMISSIBLE TO PROVE THE SPECIFIC CRIME CHARGED UNLESS THE EVIDENCE TENDS TO ESTABLISH (1) MOTIVE; (2) INTENT; (3) THE ABSENCE OF MISTAKE OR ACCIDENT; (4) A COMMON SCHEME OR PLAN EMBRACING THE COMMISSION OF TWO OR MORE CRIMES SO RELATED TO EACH OTHER THAT PROOF OF ONE TENDS TO ESTABLISH PROOF OF THE OTHER; (5) IDENTITY OF THE PERSON CHARGED WITH THE PRESENT CRIME - STATE V. LYLE, 125 S.C. 406, 118 S.E. 203 (1923); ALSO RULE 404 (B) SCRE IN THE PROSECUTION OF ONE CRIME, PROOF OF ANOTHER DIRECT SUBSTANTIVE CRIME IS NEVER ADMISSIBLE UNLESS THERE IS SOME LEGAL CONNECTION BETWEEN THE TWO UPON WHICH IT CAN BE SAID THAT ONE TENDS TO ESTABLISH THE OTHER OR SOME ESSENTIAL FACT IN ISSUE. STATE V. PARKER, 315 S.C 230; 433 S.E. 2d 887 (1993). THUS. DECIDING TO APPLY THE LYLE EXCEPTION FOR ADMISSION OF PRIOR CRIMES, THE COURT MUST ALWAYS DETERMINE IF THE PROBATIVE VALUE OF THE EVIDENCE OUT WEIGHS ITS PREJUDICIAL EFFECT. THE CONNECTION BETWEEN THE PRIOR BAD ACTS AND THE CRIME MUST BE MORE THAN JUST A GENERAL SIMILARITY; THERE MUST BE A CLOSE DEGREE OF SIMILARITY OR A CONNECTION BETWEEN THE PRIOR BAD ACTS AND CRIME. STATE V. RATFADT, 318 S.C. 110 456 S.E. 2d 390 (1995) HERE, THE TESTIMONY CONCERNING THE DROPPING OF THE MARIJUANA. WAS NOT NECESSARY TO ESTABLISH THE APPLICANTS IN THIS MATTER. TROOPER STEPHEN POOLE TESTIFIED THAT HE KNEW MOREOVER, THE APPLICANT MADE A STATEMENT. WHICH IS DIRECT EVIDENCE THAT HE HAD THE CRACK COCAINE AND THAT HE THREW IT DOWN WHEN HE WAS RUNNING FROM OFFICER POOL. TR. PT1 LINE 6-13 THERE FORE USING AN EXCESE THAT MATTER RELATED TO A CRIME CHARGED IS UNNECESSARY. THERE IS NO CONNECTION BETWEEN THE CRIME CHARGED AND THE POSSESSION OF MARIJUANA AS THE COURT WOULD LIKE MAKE PEOPLE THINK OR THAT FOR THE STATE TO PROVE AND ARE INSUFFICIENT TO COME WITHIN THE FRAMEWORK OF THE COMMON SCHEME OR A PLAN EXCEPTION. INDEED, THE PURPOSE OF THE STATE USE OF THE EVIDENCE APPEARS TO ESTABLISH THE RESISTING ARREST CHARGE. IN WHICH THE STATE WAS NOT TRYING TO PROVE A COMMON OR PLAN: BUT THIS EVIDENCE WAS ONLY TRYING TO CONVINCE THE JURY THAT THEY SHOULD CONVICT THE APPLICANT OF RESISTING ARREST FOR RUNNING THIS IS THE PRECISE TYPE OF INFERENCE PROHIBITED BY LYLE. STATE V. CAMPBELL 317 S.C. 448. 454 S.E. 2d 889 (1994) FURTHERMORE THE LYLE RULE IS "GROUNDED ON THE POLICY THAT CHARACTER EVIDENCE IS NOT ADMISSIBLE FOR THE PURPOSES OF PROVING

That The Accused Possesses A Criminal Character or has a Propensity to Commit The Crime with which he is Charged." Thus. The Procedure utilized To Convict A Person must have Been Fundamentally Fair. That is in accordance with The commands of The Fourteenth Amendment And Iss of S.C. Constitution "No State shall deprive any Person of life, liberty or Property without due Process of law' are Implicit in The concept of ordered liberty."

(2) Counsel was Ineffective For Failing To Object To An Incomplete Chain of Custody. Thus Rendering The Evidence Inadmissible Against Applicant

Rule 6 SCRCim P. (B) Certified or Sworn Statement.

For The Purpose of Establishing A Chain of Physical Custody or Control of Evidence Entered under Part A of This Rule, A Certified or Sworn statement Signed by Each Successive Person Having Custody of The Evidence That he or she Delivery To The Person stated is Evidence That The Person Had Custody And made delivery as stated without The necessity of The Person who Signed The Statement: In keeping with The Requirements of The Procedures, a Complete Chain of Evidence, Tracing Possession From The Evidence's Initial Control to it Final Analysis, must Be Established As Far As Practicable. If a Substance Has Passed Through several Hands it must Not be left to Condecture Concerning who had The Evidence and what was done with It between The Taking And The Analyze. State v. Chisolm, 584 S.3.2d 461 (2003) Therefore, As An Alternative To Presenting The Testimony of The Intervening Custodians. The State could Have utilized The Prodedures In Rule 6 (B) SCRCim.P. To Establish The Chain of Custody. While The Chain of Custody "Need not Negate all Possibility of Tampering" The State is Required to Show That The Chain is Complete. Thus in Establishing The Procedures That could Have Been Taken To Show and Prove A Complete Chain of Custody. We are Forced To Analyze The Issue At Hand. Pursuant To SLED Rules, R93 70 Number 23 Two Person Rule: A system to Prohibit A Single Individual From Have Access To or Exercising Custody over Controlled Substance Evidence by Requiring The Presence At All Time of At least Two Authorized Persons, Each Capable of Detecting Incorrect or Unauthorized Procedures That is set By This Rule.

Turning To The Merits. This Court Has long Held that Party Offering Into Evidence Fungible Items such as Drugs or Blood Samples must Establish a Complete Chain of Custody As Far As Practicable Benton v. 202 S.C. 26, 33, 100 S.E.2d 534, 537 (1957) where an Analyzed Substance That Has Passed Through Several Hand. The Identity of Individuals who Acquired The Evidence and What was done with The Evidence Between The Taking and The Analysis must Not Be left To Conjectures Id at 33-34 100 S.E.2d at 537, Accordingly. if The Identity of Each Person Handing The Evidence is Established, And The Manner of Handing is Reasonably No Abuse of Discretion by Trial Court is shown in In Admitting The Evidence A Bona Fide Proof of Tampering Bad Faith or Ill-Motive. State v. Taylor 240 S.C. 18, 25, 598 S.E.2d 735, 737

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THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM. THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.