

STATE of South Carolina
IN the Court of Appeals

Appeal from Horry County

Honorable Benjamin H. Culberson
Circuit Court Judge

The STATE

Respondent

RECEIVED

V.

AUG 28 2026

SC Court of Appeals

Mack Allen DAVIS

Appellant

Appellant Case # 2025-001964

Motion for Leave to Supplement
Record on Appeal pursuant
To Anders v California

Written By
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Argument: The Lower Courts erred in legal adequacy. Prosecutor Violated due process clause of the fifth Amendment. During Preliminary hearing Prosecutor Acted with genuine Animus, when defective warrant could not be used and Later indicted four times for two transactions. Defendant would have not been prosecuted if not for the Animus in the prosecution. Solicitor did use a constructed indictment with a fatal Variance to the offense. Solicitor advance charges from a Simple possession carrying three years to distribution 3rd carrying from 10 to 30 years, Defendant was forfeited Arraignment, preliminary hearing and motion discovery and his record of arrest was expunged to hide forfeiture. Defendant is Convicted and Sentence for a charge other than in his indictment. After exercising right to preliminary hearing Solicitor became animus towards charges changing them from a misdemeanor to an high degree felony. _____ 4

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Statement of Issue On appeal

The lower Court erred in allowing Prosecutorial Vindictness at preliminary hearing. Defendant may not be punished for exercising protected statutory or Constitutional right. Prosecution error on disclosure of exculpatory evidence as a matter of fundamental fairness. District Attorney is a Vindictive Seeker. Did void the exclusionary rule violating my fourth amendment right. In false arrest and false imprisonment, malicious prosecution.

STATEMENT of the Case

Appellant Mack Allen Davis was found guilty of distribution of Methamphetamine (third or subsequent offense) per Jury trial held during September 2025 term of the Horry County General Session Court Before Benjamin Culbertson Judge, who Sentence him to imprisonment for a period of fourteen years. Attorney Johnny Gardner represented appellant at trial and Assistant Solicitors David Beamer and Catherine Johnson prosecuted the Case.

Appellant appealed. This Brief follows

Standard of review

In criminal cases appellate Court sits to review errors of Law Only State v. Barcus 367 SC 41 625 SE 2d 216 2006. Trial Court abuse its discretion by allowing Solicitor to Broaden Jury instruction for Conviction other than what was presented in the indictment Clark v. Cantrell 339 SC 369 529 SE 2d 528 (2000) Warrantless Arrest Indictment without Search warrant or Affidavit Is a clear error violation to defendant fourth Amendment. An abuse of discretion occurs when trial Court ruling is based on a error of the Law or even when grounded in factual conclusion is without evidentiary support. Courts did allow inadmissible evidence in from warrantless illegal Search and testimony of CI as well as double jeopardy and violation to the rules of evidence 608, 403, 404(B) Government must prove Constitutional of warrantless arrest by preponderance of evidence Pretrial Motion of defective warrant to shift the burden to the Government to justify warrantless arrest or search. A Court can not permit a Defendant to be tried on charges that are not made up in his indictment. Solicitor has expunge record and pretrial motion Relevancy and its limits US v. Chandler United States Court of Appeals 4th Circuits whether the allegations in an indictment fail to state a offense is a legal question that the court of appeal review as DeNovo United States v. Brewbaker Fed R Crim P 12(B)(3)(B)(v)

4.

Argument

The lower court erred in allowing prosecutorial Vindictiveness Defendant would not have been convicted if not for the Animus in the prosecution. Under Brady Defendants are entitled to disclosure of evidence which is a constitution obligation regarding disclosure duties of prosecuting attorney reviewing district court denial of Brady motion Appellant Court legal Conclusion is denovo and it's factual findings clear for error. Evidence favorable to the Defendant require disclosure under brady not only when it tends substantively to negate guilt But also when it tends to impeach the key witness credibility for the prosecution Evidence is Material if there a reasonable probability that the evidence had been disclose to the defense the result of the proceedings would have been different. Prejudured testimony knowingly use by the State Authority to obtain a conviction and deliberate suppression by those same Authorities of evidence favorable to the defendant sufficient charge. A deprivation of rights guaranteed by the federal constitution and when proven would entitle him to release Pyle V Kansas 317 US 213, 216, 63 S. Ct. 177, 178, 87 LEd 214. Page 10 of the transcript lines 20-25

Defense speak of animus vindictiveness of the State prosecution to change charges from a simple possession to a Pwld / Distribution then at trial I was Sentence for Distribution 3rd without Offense included in the indictment which was illegal

At the preliminary hearing for possession charges Solicitor became a Vindictive Seeker for Vengeance And Once she realize she could not prosecute possession charge became giddy and did a warrantless arrest with indictment and used inadmissible evidence and testimony from possession charges and suppress and forfeited proceedings for the distribution charges suppressing evidence in bad faith Washington v. Pellegrini 125 F. 319 This made the Prosecution vindictive and Animus towards the Defendant moore v. Maryland 163 F. 4th 828 Suppressed evidence in bad faith non disclosure evidence was favorable to defendant common wealth must try a fairly and the District Attorney is not a vindictive seeker for vengeance mooney v. Idaho 294 US 103 55 S. Ct 340 79 LEd 791 When a court abuses it's descretion when it commit a legal Error Impeachment of evidence favorable to the defense as the element of the Brady claim for prosecution failure to disclose such evidence Government fail to disclose was cumulative material for Brady Violation Prosecutor Vindictness was intent and the Government did abuse it descretion of Law.

5. The purpose of the exclusionary rule is to deter law enforcement officers from committing fourth Amendment violations State v. Moore Supreme Court Feb, 19 2020 4129 SC 465 839 S.E. 2d 882 A warrantless search is a violation to the fourth amendment. The Government violates the Constitution due process clause if it with holds evidence that is favorable to defense and material to the defendants guilt or punishment Turner v. US Supreme Court of the United States June 22, 2017 582 U.S. 313 137 S. Ct. 1885 Under Brady, the State violates a defendant rights to due process if it with hold evidence. That is favorable to the defense and material to defendant guilt or punishment Smith v. Cain Supreme Court of the United State January 10, 2012 US 73 | 132 S. Ct. 627 Solicitor through vindictive prosecution Refused to provide Defendant with discovery, instead did violate exculpatory evidence by using evidence and defective warrant of possession that was not on trial. Solicitor knew there were no Certificate for Service for Search Warrant. Yet exclude relevant facts from possession motion and added making it a trial by Ambur Transcript page 12 line 13 Solicitor lied about delivery of discovery Evidence is exculpatory and favorable for the Brady purposes if it make difference between conviction and acquittal had it been disclosed and used effectively Wolfe v. Clarke 819 F. Supp 2d 538 | 2011 WL 3251494 Motion would have prove no excoberation Between CI and Detective had no Search Warrant for Control buy The Purpose of the exclusionary rule is to deter law enforcement from committing fourth Amendment Violation by admitting illegally Obtain information through fourth admendment violation United State v. Williams District Court Florence Division 321 F. Supp 3d 594 Vacatur of convictions ten years must pass before conviction realease from full confinement refers to relief from all convictions LEGAL DAVIS-186290

Full pages 13, 14, 15 of transcript show Animus prosecution. Solicitor forfeited all court appearances and violated the rules of Evidence 608 by refusing three Lawyers production of evidence after Brady V. Maryland had been filed by three different Lawyers. Being there was no record of arrest, Solicitor's office expunged record of arrest to further hide forfeiture. There was never arraignment for arrest. There was no motion of discovery only Prosecutorial misconduct of the Solicitor.

Page 16 of transcript line 5 to line 15 shows misconduct displaying bad faith callous indifference to rights of the other Party and discovery process. The Motion from 2023 was dismissed without being indicted. Therefore that motion would not be involved in a distribution if it was for Simple possession. Page 18 4-25 Judge refused to quash warrant for Simple possession which was double jeopardy to take me to court for Simple possession and swear in the Jury on Dist. 3rd as well. As to Use Narrative and evidence from Simple possession charge to convict me on distribution charge. This prosecution was animus and extremely vindictive towards Defendant. The three elements of the Brady Violation is that, the evidence was favorable to the accused, and intentionally suppressed by Solicitor. The outcome would have been different because there was no search warrant nor Affidavit for probable cause to issue Search warrant. Possession charge discovery was inadmissible evidence to distribution. Motion done 08-15-2025 on constructed indictment

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7. Prosecution knew about the evidence and fail to disclose it for the purpose of defective warrant could not be use along with CI and detective testimony. A distribution charge must have a search warrant or it a violation to the Defendant's fourth amendment, which is known to illegal search and procedure. which Solicitor understood that's why both poss. was dismissed without being indicted. The suppression by the Prosecution of evidence favorable to an accused upon a request violates due process where the evidence is material either to the guilt or to the punishment, irrespective of the good faith or the bad faith of the prosecution Weary v Cain 517 US 385 136 S. Ct. 1002 Suppression by the Government of evidence favorable to the defense that is material to the outcome of a trial or sentencing proceeding violates due process, irrespective of the motive of the Prosecutor US v. White 238 F.3d 537 2001 WL 87453 Prosecution deprives defendant of due process when it suppresses evidence that is favorable to the accused Fullwood v Lee 290 F.3d 663 2002 WL 1020683 Evening assuming that the Courts had ancillary jurisdiction to consider former criminal defendant petition to expunge his formal record criminal rec. Based on his fact of arrest and conviction had been ruled unlawful as violation to his fourth amendment rights judicial determination that police officers violated his fourth amendment rights, in arresting the Defendant and that he was improperly convicted based on evidence obtained as a result of a fourth amendment violation did not present the kind of extreme circumstances warranting expungement of criminal records.

8. United States v. Mettetal 2017 | 714 Fed. Appx 230 | 2017
W/ 6003365 Plain Error View Government must prove constitution
of a warrantless arrest by preponderance of evidence although
the burden of production and persuasion generally rest upon the
movant in Suppression hearing if the defendant produces that he
was arrested or subject to a search without a warrant the
Burden shift to the government to justify the warrantless arrest
or search Criminal Law Constructed amendment of indictment
is error *pro se* and is independent grounds for reversal even
when not preserved by objection on record. Because a Court
can not premit a Defendant to be tried on charges not made
on his indictment where the error has been properly
Preserved reviewing court conclusively presumes that the
Defendant has been prejudiced by Constructive amendment.
The Animus of the vindictive prosecution forfeited arraignment
Culley v. Marshall 2024 601 US 377 144 S.Ct. 1142 218 LEd 2D 372
The Defendant is entitled to be sufficient apprised in the Offense
So he can prepare his defense State v. Reddick June 2016
383 Fed Appx 288 2010 WL 2465179 Violation of Defendant
5th amendment when indictment is altered to change the elements
of Offense of charge, fatal Variance when Defendant is convicted
of a charge other than what's in the indictment C/A by distr
Court are erroneous *pro se* and required reversal regardless
of preservation. State v. Redd 161 F.3d 793 State v. Guthrie
352 SC 103 amendments are permissible if they do not change
the Offense of the charge. If defendant plead guilty to the
charge, Defendant took Jury trial. And the charge **LEGAL**
was not remanded to a lesser charge here **DAVIS-186290**

9. Vacatur of Labor arbitration award is appropriate when the exclusion of relevant evidence so affects the rights of a party that it may be said that he was deprived of a fair trial hearing. International Union, United Mine Workers of America v. Marabone Adv. 14 2000 Culley v Marshall May 09, 2024 601 US 377 144 S. Ct.

In considering these equities court must be cognizant that the power to expunge is a narrow one and should not be used whenever a criminal prosecution ends in a acquittal, but should be ~~reserved~~ reserved for the unusual or extreme case when a court abuses its discretion when it commits illegal error State v Ball April 17 2023 WL 2966035 District court lacked subject matter jurisdiction to expunge defendant's record where there was no constitutional provision nor any federal statute that granted the courts subject matter jurisdiction to entertain defendant's expungement motion United States v Sims August 24, 2021 556 F. Supp. 3d 569

District court could not expunge records. Defendant was not sworn. The trial court received no affidavit and no factual allegations. Vindictiveness of prosecution where Solicitor Earsen Defendant criminal record violating the rules of evidence and Defendant right to a fair trial. Animus indifference abuses of Defendant right to due process; violating Statutes of Law. A court is required to state reasons for its decisions to seal a court document supported by specific findings and reasons for rejecting alternatives to sealing in order to provide ruling court with sufficient information for meaningful appellate review Media General Operations Inc v Buchanan United States of Appeal Fourth Circuit Aug 01, 2005 417 F.3d 424 2005 WL 1799341 Sealing or unsealing a court record proceeding is reviewed for abuse of discretion. When judge ruling is based upon an error of the law, when a judge is vested with discretion but the ruling reveals no discretion or when ruling does not fall in range of permissible decisions applicable in particular case. The right of appeal arises from and is controlled by the statute law. Solicitor was vindictive in expunging defendant arrest record where he was charged and took to court for six charges on criminal record at once. District court never provided any documents or request to seal. There was no risk of records being open. They were just expunged without order. A violation to my first fourth fifth sixth eighth and fourteenth Amendment violating my due process and Brady rights. Oshcraft v Conoco Inc. United States of Appeal Fourth Circuit July 06, 2000 218 F.3d 288 2000 WL 870205 What is the action impact of a vacated conviction, criminal Defendant whose judgment of conviction has been unratified is to be treated going forward as if he was never convicted.

Criminal Defendant may prove due process violation base on prosecution failure to preserve evidence if evidence possesses exculpatory value that was apparent before evidence was destroyed and if its such a nature that the Defendant would be unable to obtain comparable evidence by other reasonably available means United States V Johnson Court of appeals Fourth Circuit April 30, 2021 996 F 3d 200 Showing of bad faith is required to establish due process violation based on Prosecution failure to preserve evidence when lost evidence can only be said to be Potentially useful to defendant because its contents are unknown. Impeachment of evidence favorable to the defense as element of Brady Claim for prosecution failure to disclose such evidence was cumulatively Material for Brady Violation while the fundamental fairness standard of the due process clause requires Criminal defendants to be given a meaningful opportunity to present a complete defense to set forth a due process violation. A criminal Defendant must demonstrate either the state destroyed evidence that possess an exculpatory value that is that is apparent before the evidence was destroyed State V Henley Court of appeals of South Carolina Dec 11, 2019 428 SC 649 Impeachment of Evidence As well as exculpatory evidence falls within the Brady rule State V Brown Supreme Court of South Carolina September 29, 2023 441 SC 464 / 894 SE 2d 525 Solicitor did expunged Seal criminal arrest records along with improper disclosure and forfeitures to exclude relevant facts the outcome would have been different if not for disclosure Brady Not Only when it tends substantively to negate guilt But also when it intends to impeach the credibility of the key witness. Disclosure of warrantless arrest would have prove no search warrant making the warrantless arrest illegal. Testimony and Key Witnesses statements inadmissible and violation to the fourth amendment violation to the exclusionary Rule. Evidence is inadmissible if it violates Defendant fourth amendment rights. Attorneys for the defense fail to object disclosure Being ineffective as counsel violating Defendant Sixth amendment right to effective Counsel to the point of a disagreement In response to ineffective assistance claim counsel can't assert trial strategy as a defense for failure to object to comment which constitute an error of law and thus was inherently prejudicial. Failure to object prejudiced the Defendant and thus was ineffective Washington V. State 445 SC 233 Objection made at the time the evidence presented Allegro Ina V Scally LEGAL July 2012 400 SC 33 Motion improper discovery, disclosure. DAVIS-186290

Page 116 lines 1-116 show where Defense violates prejudice Defendant Substantial right by failing to object to improper disclosure rendering ineffective counsel. Page 13 line 5 Defense again stated he was not disputing the discovery. Deficient performance of defense Counsel was Animus along with Judge as page 13 line 21-25 How could the Discovery go back to arrest of 2023 when I was arrested on a warrantless indictment. The Criminal record was Seal Violation Statutory Law, warrant was not quash and Judge showed impartialness in reading Section of the warrant, which was double Jeopardy Possession warrant and distribution third. Sixth Amendment right is the right to effective counsel Being Defense was not function as guaranteed by the Sixth amendment By not objecting to Structural error and I myself objected to improper disclosure at trial, and Defense disagreed against me. Attorneys error prejudice the defense. A defendant has a right to effective representation. The result of the proceeding would have been different if not for Unprofessional conduct of Counsel refusing to be effective about the improper disclosure of evidence and violations of due process. He did not maintain a fundamental fairness of the proceeding. Transcript page 10 lines 20-25 shows Defense is working with Solicitor motions Page 7 line 13-25 proves that Attorney intently meant to be ineffective in performance and cooperated with Solicitor vindictiveness through out the proceedings. Solicitors motive intent to scheme through bad faith violating Defendant Right to Grand Jury Right to effective Counsel Right to confront Accusor, Right to disclosure Right to due process along with violations to constitutional rights 1st 4th 6th 8th 14th amendments.

Conclusions Based on these facts of the foregoing Argument. Appellant request that his conviction be reverse and remanded to Lower Court for dismissal.

Mack Allen Davis
Appellant
08-19-2026

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