

State of South Carolina  
County of Florence

**FILED**

In The Court of Common Pleas  
DATE: 2025-09-21-1059

2025 NOV 13 A 8:52

Christopher Lane

DORIS POULOS O'HARA  
CCCP & GS  
FLORENCE COUNTY, SC

Supplemental Response  
To Conditional Order  
of Dismissal

State of South Carolina

Comes now the plaintiff who at this time will enter his  
Supplemental Response to the Conditional Order of Dismissal.  
It is as follows:

The court intends to dismiss this application with prejudice  
unless applicant provides specific Factual or Legal reasons why  
the application should not be dismissed in its entirety and it is  
applying the summary judgment standard indicated and cited  
in §17-27-20(c) which authorizes the court to "grant a motion by either  
party for summary disposition of an application when it appears  
from the pleadings... that there is no genuine issue of material  
fact and the moving party is entitled to judgment as a matter  
of law."

In this present case there are genuine issues of material  
fact. The applicant alleges the following claims:

- 1) Illegal Arrest
- 2) False Imprisonment
- 3) Due Process Violation
- 4) Malicious Prosecution

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S.C. SUPREME COURT

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FLORENCE COUNTY, SC

EX-1

- 5) Ineffective assistance of Trial & PCR Counsel
- 6) Improper Jury Instruction; and
- 7) Actual Incompetence.

In the responsive pleading nor at any other stage of these proceedings have the respondents denied any of the applicants claims. Pursuant to SCRPC Rule 8 if they are not denied then they are admitted to, and these rules apply pursuant to §17-27-80 and South Carolina Court Rules. That pretty much makes it Law. Being that the claims were admitted to, and I deny all of the claims, then there should be no further discussion and plaintiffs relief should be granted.

Let the respondents move for summary Dismissal for the following reasons; Statute of Limitations, Successiveness, Doctrine of res Judicata, and Finality of Conviction, and they present a few case laws. However, these case laws and the principals of Law in those cases that were presented are nothing like the plaintiffs case, have nothing to do with the plaintiffs case and don't apply to the plaintiff case.

The applicant agrees with the court in Ake when it stated that:

"Finally must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendants imprisonment without review would amount to a gross miscarriage of justice."

The applicant contends though, that his case falls within the very rarest of exceptions when the system has simply failed a defendant and where to continue the defendants imprisonment without review would amount to a gross miscarriage of justice.

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Ex. I.2

The reason why it is one of the rarest exceptions is the fact that the applicant is actually innocent and the respondents admit that applicant didn't commit the crime on two (2) different occasions. (First in Exhibit A-11 pg 196 Lines 15-16. The second was by admission pursuant to SCRCP Rule 8.) Yet applicant was still prosecuted. That act alone shows that the system simply failed applicant. What further shows that the system failed applicant is when prosecutor went against rule 3.8 of the rules of professional conduct which were established for him to go by in order to protect my rights. That rule states he is not supposed to prosecute a case that he knows accused is not guilty of.

Why went to know how else prosecutent/respondents (which make the system) fail through their conduct? Simple. Prosecution actually coerced + tampered with state witness during trial + committed the crime of Subornation of perjury. See Exhibit H-11 pg 517 Lines 12-18. Napue v Illinois says he can't do that and so does so many other cases. Not only did he do it he admitted to it pursuant to SCRCP Rule 8. Then he improperly vouched for the same witness that he coerced + tampered with to commit the act of Subornation of perjury. See Exhibit C-11 pg 712 Lines 21-23 again he admitted to it pursuant to SCRCP Rule 8.

★ The Court knows that they cannot prosecute me for charges that they know I'm actually innocent of and admit that I didn't commit.

★ The Court knows that the prosecution + respondents can't even longer with and commit Subornation of perjury with state witnesses as shown and admitted Napue v Illinois.

★ The Court further knows that prosecution and respondents can't improperly vouch for state witnesses. Matthews v State 350 S.W. 2d 372 + Gilchrist v State 350 S.W. 2d 377.

★ This Court knows that their error should have been a joint trial.

EX-15

★ This court knows that the jury never should have been charged with any Conspiracy theories such as aiding ~~and~~ accomplice liability and Hand of One Hand of All especially after it was determined that I was not apart of any conspiracy at all. That is not supposed to happen, is illegal and contributed to applicant being found Guilty (of crimes they know he didn't commit) under False pretenses. Another improper jury instruction is when the judge didn't instruct the jury with the Life instruction required by the statute.

★ Furthermore, this court knows that Trial Counsel was ineffective for failing to object to any of the before mentioned, above mentioned errors which would have warranted a mistrial, a New trial or atleast would have preserved them for Appellant Review. That shows that his job and conduct fell well below professional norms & I'm prejudiced because had he done his job I wouldn't be convicted of a crime that they admit that I didn't commit and wasn't involved in a scheme or design with anyone to commit. Thus I would not have spent the last 32 years in prison, I would have been able to work, enjoy my family, travel etc etc. How did it prejudice me? They took something that didn't belong to them. Which is me, my rights, and privileges.

Now, Criminal Law XXX 1(C) 110 K 1980 states "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." That's the law! but as seen above, through the evidence and by their admissions that's not what happened. The only way to correct it is to have a New Trial without the errors. §

So as evidenced from the beginning of the trial until the end of the trial the proceeding was seen with

Ex-14

injustice and corruption. It appears to have been a plot from the beginning to secure a conviction. Not to see that justice was done.

For sure, the problem here that we face is that the respondents do not want the court to fix or correct the errors and injustices that they, along with other officials of the court did in order to secure a conviction illegally & violate Applicants Fundamental Rights. Right I remind you that their admission pursuant to rule 8 of SERCP and the presented documents show & prove that these irregularities and injustices did in fact happen. However, it is the courts Duty & obligation to fix it by granting a New Trial.

In *Sanders v. United States* the court held that "a court must adjudicate even a successive claim when required to do so by the 'Eeds of Justice' Id at 15-17" and that's not just in regards to Habeas Corpus. That is in regard to all available remedy, which is what a PCR is. In *Murray v. Carrier*, the court adopted the cause and prejudice standard in part because of its confidence that the standard would provide adequate protection to victims of a Fundamental Miscarriage of justice. "Which the applicant has proven that he is a victim of through supporting evidence & Admissions. Justice O'Connor noted that "In appropriate cases" (like Applicants) "the principle of comity and finally that inform the concept of cause and prejudice must yield to the imperative of correcting a Fundamentally unjust incarceration" and in *Kuhlmann v. Wilson* Justice Powell concluded that "a prisoner retains an overriding interest in obtaining his release from custody if he is innocent of the charge for which he is incarcerated."

All of that was said to say this, all of the Defenses that the respondents used do not apply in this present case and must yield to the imperative of correcting applicants Fundamentally unjust

Ex. I.5

incarceration because he is a victim of a fundamental miscarriage of justice of being prosecuted for crimes they know ~~that~~ <sup>he</sup> didn't commit and that he was not apart of a plan or a scheme to commit. So applicant has an over-riding interest in obtaining his release from custody because he is innocent of the charges for which he is incarcerated.

At this phase the court is applying the summary judgment standard. In applying the summary judgment standard the moving party must demonstrate the absence of a genuine issue of material fact. Here in this present case the respondents have failed to do that. The applicant in this case who is the non-moving party still came forward with evidence beyond the mere allegations contained in the pleadings to show that there is a genuine issue for trial.

The genuine issues of material fact in this case are <sup>1</sup> that the applicant is actually innocent of the crimes he is serving time for; <sup>2</sup> that prosecution/respondents knew that fact as well as admitted to that fact and still prosecuted him; <sup>3</sup> that solicitor/respondent committed the criminal act of Subordination of perjury by coaching and tampering with state witness during trial; <sup>4</sup> that the judge prevented counsel from objecting and preserving the issues for appeal; <sup>5</sup> that solicitor/respondents improperly vouched for state witness that he coached + tampered with; <sup>6</sup> Jury was given an improper instruction with law that did not apply to applicant; <sup>7</sup> that applicant was sentenced to a sentence out side of statutory provisions; <sup>8</sup> that trial counsel was ineffective for failing to move for a mistrial based on any/all of those errors, or atleast object to the erroneous conduct + preserve it for appeal.

The applicant has presented evidence to prove all of that and respondents admitted to it pursuant to SEREP rule 8. The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party, which is applicant, but the court "cannot weigh the evidence or

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Ex-I.6

or make credibility determinations." *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 569 (1<sup>st</sup> Cir. 2015). Which means that this case must go to jury. For they are the only ones charged with weighing the evidence and making credibility determinations.

The only way, and proper way, for that to happen is if a New trial is Granted to Fix the Irregularities and Injustices that did occur. So in his relief applicant request a New trial, and although this is a P.R. proceeding it is a Circuit Court and as stated in the Initial Response to the Conditional order of dismissal, "the power to grant New trials in cases tried by the circuit courts was one of their Inherent powers" *State v. David*, 14 S.E. 428 (1881) Applicant asserts this Inherent power to grant New Trials has not and can not be circumvented through any other rule of law or case law. That includes successive claims and all other defenses that respondents raised. (1) In Fact, "Circuit Courts have the power to Grant New Trials not only under specific provisions of the Criminal Code 1912 599, SEC; Code 1942 & 1030 but as an incident to their original jurisdiction" *State v. Williams* 23 S.E. 1006 (SC 1912) In case Subjudice it is clear that a substantial Injustice has been done and that this court has the power, jurisdiction, and duty to correct. Not with standing any other rule of Law/ case Law but as an "Inherent part of the original jurisdiction of the Court of General Sessions to correct errors, irregularities, and injustices in the proceedings." From the Forged arrest warrant (everything in Investigator Phil Harris Handwriting), the prosecutor prosecuting applicant for crimes they know & admit that he did not commit, Subornation of perjury by prosecution, Improper comments by judge, State Improperly Vouching for witness, Improper jury Instruction, erroneous sentence & Ineffective assistance of Counsel. Does this state comprise all of that?

EX-1.7

I should hope not because its against the Law and violated applicants rights and "There sits an inherent power in every court to see that Defendants / applicants Fundamental Rights are protected." State v. Kimbrough 46 S.E. 2d 273 (SC 1948)

Circuit Court has power, jurisdiction, and duty in Granting New trial to correct an injustice as has been set forth and in fact has broad discretion to do so. State v. Johnson 634 S.E. 2d 835 (SC App 2005)

Everyone of the before mentioned claims and the conduct used and exhibited by the respondents in order to obtain the applicants conviction was illegal and has been determined by the Supreme Court of the United States and the State of South Carolina to require reversal and a New Trial. These Courts as well as this court knows that a conviction obtained by and through the use of Illegal means is an Illegal Conviction and can not stand and must be corrected by reversal, vacation & New Trial.

Unless this court condones Illegal conduct, and if that is the case then it must remove & recuse itself from the case in the interest of justice.

The Claims and Illegal Conduct are on the record in Black and White as well as admitted to pursuant to SCRCP Rule 8 and nothing in the entire record can or does refute it. The respondents record has the same illegal conduct in it.

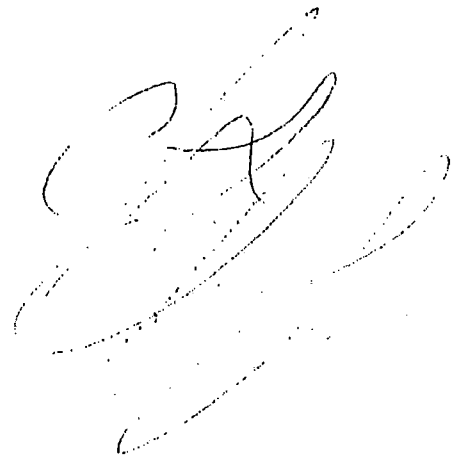
If this court for some reason determines that it is not going to use the inherent power, and jurisdiction and abide by its duty, to correct the substantial injustices and Irregularities pointed out by applicant, and that it is going to enforce and endorse the illegal conduct and Illegal Conviction, then Applicant ask the Court not to dismiss this case but to Forward and to change jurisdiction and Venue pursuant to rule 82 to the court that does have jurisdiction and will correct these injustices and Illegal matters by granting a New Trial

EX-1

and in accordance with the Law like they are supposed to.  
For Supporting Documentation See Attached Declaration and  
Affidavit of Christopher Lane with all Exhibits.

### CONCLUSION

Applicant has done as instructed by the court and provided  
specific Factual and Legal reasons why the application  
should not be dismissed. The Applicant has also provided  
specific Facts and Legal reasons that this court has the power  
jurisdiction and duty to grant a New Trial Which is what  
applicant seeks, or in the alternative Change jurisdiction and  
venue to a court that has competent jurisdiction to address  
the issues & Grant the Relief. Unless this court is willing  
to Alter, Amend, Modify or Rescind the applicants Conviction  
and Sentence. For Such relief does Applicant pray, Pursuant  
to Summary Judgment Standard this case should not be  
dismissed



360P52

EX-19

State of South Carolina  
County of Florence

The Court of General Sessions

Case # 2003-GS-21-00715

2005-CP-21-1039

Christopher Lane

DO NOT  
FORGIVE  
FORGIVE

Declaration and  
Affidavit of  
Christopher Lane

State

FILED  
DO NOT  
CLOCK IN CANCELLED  
NOT RECORDED

I, Christopher Lane, am the affiant in this case. The Following is true, correct, complete, and not meant to mislead.

• 1.) The day that my trial started the Solicitor Edgor L. Clements did come into a conference room that contained Trial Lawyer Paul Cannarella, My Granny Anna Blackmon, My Aunt Louise Brewer, My Aunt Mary Jane Watford, My mother Judy Rhodes, My Cousin Cheryl Hicks and myself; to talk to me and offer me a plea of accessory before and after the fact of Murder and kidnapping and Conspiracy.

• 2.) I told him that I wasn't going to plead guilty to those charges because I didn't do it or know that any of that was going to happen.

• 3.) He then stated "I know you didn't do it but the hand of one is the hand of all. Please take the plea I promise you'll get out a middle aged man." He then told me that I had an hour before trial started to talk to my family about it.

• 4.) He offered Anthony Driggers the same plea.

9/2/26

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Subscribed and sworn to before me  
CLERK OF COURT IN & C.O.  
FLORENCE COUNTY, S.C.

E-I.10

and it ended up being non violent. I was never made aware of any of the terms of the plan.

5.) The Solicitor then later told the court that Matthew Singletary killed James Miller (see Exhibit A). He did not say that Chris Lone did it or had anything to do with it. This is inappropriate + prosecutorial misconduct pursuant to rule 3.8 The prosecutor is not supposed to prosecute anyone on an offense that he knows they did not commit. However, that's exactly what he did to me.

6.) In order for him to obtain a conviction against me for an offense that he knew I didn't commit he exhibited more misconduct by coercing, coaching + getting State witness to change/redact his statement. SEE Exhibit B. Anthony admits to it + Solicitor doesn't deny it. You'll also notice in Exhibit B that the court was not fair + impartial because it stopped an attorney for even trying to preserve the right + address the misconduct. See Line 24.

7.) The prosecutor exhibited Further misconduct when he improperly vouched for states witness Anthony Driggers SEE Exhibit C Line 21-24, but I guess he thought he could do that seeing as though he helped him with his statement. Either way, it's still improper and Everyone of these conducts that I have raised in this motion and affidavit + have proven with exhibits are reversible errors and have had many new trials Granted

8.) If you look at Exhibit D you'll see that I was indicted for Murder + Kidnapping because it was alleged that I was a conspirator. However, the conspiracy was never proven and I was acquitted of that charge. That means that the conspiracy theories shouldn't have been instructed to the Jury. What should have happened is that I should have been given the due process hearing known as the Jones Hearing so that they would have

CLERK OF COURT S.D. FLORIDA COUNTY S.D.

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known not to charge the jury with the conspiracy theories. However because I was Denied the Due Process procedure of a James hearing Intentionally by the Court + the prosecutor the jury was instructed improperly and erroneously influenced their decision making process and all of these acts were intentionally done. So they knowingly + Intentionally denied me a Fair trial.

9.) If you'll also take Notice that on Exhibit D The Murder charge you'll see that it is missing essential elements and is not sufficient + that alone should have his sentence vacated. The Law to be applied and proves my claim cant be denied see Exhibit N.1 - D.9. The Court knew that this was the Law, the prosecutor maliciously prosecuted me and my trial counsel let them do it without reserving any of this for appeal. In no way is that a Fair trial and I'm bringing all of this to this court's attention in hopes that it Grant me a New Trial and abide by the oath in the South Carolina Constitution and the judges oath in the Oaths, and not join the Conspiracy against my civil Rights.

10. Finally, another reason that plaintiff should be given a New Trial is because he was sentenced to a sentence that is not provided in the statute. The only options in this case is Life or Death see exhibit E section A the highlighted area, and pursuant to this statute I have the right to have the jury instructed as to what life Imprisonment means. The only way that that can + will happen is if I'm Granted a New Trial before a competent jury of my peers so that they can hear the case in its totality + receive appropriate instructions. I request that,

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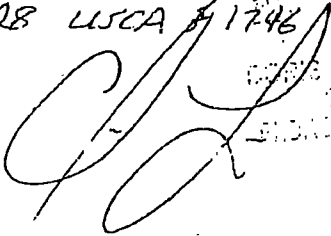
CLERK OF DISTRICT COURT  
FLORIDA COUNTY, FL

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Ex-I.12

I declare under penalty of perjury that the  
 Foregoing is true & Correct. Executed on the 5th  
 day of May 2023 pursuant to 28 USC § 1796

31   
 DAVID EASTMAN  
 SHERMAN COUNTY, SC

Sworn to and Subscribed  
 before me this day of 6/17/20  
 DE 18  
 151 ~~David Eastman~~  
 my Commission expires  
 3/3/2024



DAVID EASTMAN  
 SHERMAN COUNTY, SC

LEGAL  
 MAIL  
 ONLY

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 400852

EX-112

Exhibit  
A

196

1 came from furniture. They beat him severely supposedly  
2 over some funny money, some counterfeit money that was  
3 paid for Ecstasy is what the testimony will be. And then  
4 Mr. Miller got away and he ran away, then he was tackled  
5 about 71 yards away. And they beat him, beat him, and  
6 they tied him up and they threw him in the back of the  
7 truck. And he continued to moan. They tied him up with  
8 fishing line, tied him up with shoe strings. And then  
9 they didn't know what to do so they went on down the road  
10 and they made some phone calls about what to do  
11 purportedly to the drug dealers, what to do with him. And  
12 they didn't know what to do so they ended up going  
13 Road to Matt Singletary's house and talked about what to  
14 do with him and they beat him some more. And that's  
15 probably where the killing blow was struck by Matt  
16 Singletary with a Mag light. Then they drove back down  
17 the road. They drove over to the Planer Road and they  
18 stopped on a bridge there. They had him tied up. He  
19 wasn't making anymore sounds. They threw him over in the  
20 icy water, went to put him in the water underneath the  
21 bridge, threw his body. And he was found there by law  
22 enforcement after Anthony Driggers told them where he was.  
23 And then law enforcement went and got search warrants and  
24 they went looking for Matt Singletary and then they went  
25 looking for Christopher Lane. And pursuant to the search

or that they acted together to kill  
but he states specifically that Matthew  
Singletary killed.

~~10/5/25~~

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SW - A. DRIGGERS - CROSS

Exhibit B

517

1 BY MR. STROBEL:

2 Q Okay, I found it on page 20.

3 A All right.

4 Q Read that part.

5 A On page 20?

6 Q Yes, sir.

7 A I'm at page 20.

8 Q Three fourths of the way down, Lary says, okay, to go  
9 see where the body was, what was your answer?

10 A It says, yes, sir, I went and turned -- turned around  
11 the truck. They picked me up. Actually, I picked them up  
12 and Mat and Chris told me he dead but when I went back and  
13 redone my statement that Mr. Clements got I redone that  
14 part.

15 Q Where is that at? You said you redone this part?

16 A Yeah.

17 Q But it's -- the statement I have says that ---

18 A No, that's the one I redone yesterday.

19 Q Where is that at? What do you mean by you redone it?

20 A I left ---

21 Q You changed this?

22 A Left out detailing part of it.

23 Q Oh, that's kind of an ---

24 THE COURT: Questions, not comment, Mr. Strobel.

25 MR. STROBEL: Yes, sir.

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EX-1115  
EXHIBIT  
C 712

1 the witnesses on that witness stand. Y'all remember that?  
2 Well, I want you to judge that credibility. Anthony  
3 Driggers took that witness stand. Anthony Driggers has  
4 pled guilty. Anthony Driggers has not been sentenced.  
5 And Anthony Driggers told you, he said the State hadn't  
6 promised him anything. They hadn't made any kind of deal  
7 with him to get him up there to testify. He's hoping that  
8 when he gets sentenced that he's going to get 30 years and  
9 not life, which is what he told you he was looking at. So  
10 he didn't have any incentive to embellish anything or  
11 because the State promised anything. He got up there and  
12 he told you he wanted to make his heart right. So he told  
13 you what happened. I want you to remember what he looked  
14 like on that witness stand. I want you to remember his  
15 demeanor. The judge is going to tell you when you judge  
16 credibility of witnesses you bring your own common sense  
17 and experience that you've got throughout life, you look  
18 at if what -- somebody's got something to gain or  
19 something to lose, maybe a friend to reward or enemy to  
20 punish. Or you know, watch their demeanor, watch how they  
21 are on the witness stand. Well, I want to tell you,  
22 Anthony appeared to me to be pretty humble and ashamed to  
23 be here and very straight forward, didn't get confused,  
24 didn't get twisted up, told the truth. You know  
25 something, when you tell the truth you can tell it the

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## INDICTMENT FOR

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

MURDER, KIDNAPPING AND CONSPIRACY

At a Court of General Sessions, convened on JUNE 5, 2003, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - MURDER

That ANTHONY DRIGGERS, CHRISTOPHER LANE AND MATTHEW L. SINGLETARY did in FLORENCE County on or about January 1, 2003, violate Sections 16-03-0010, 0020 of the Code of Laws of South Carolina (1976), as amended, in that they did feloniously, wilfully and with malice aforethought kill one James Miller, by means of beating him about the head and body with a baseball bat and other objects, and that the said James Miller did die as a proximate result thereof.

COUNT TWO - KIDNAPPING

That ANTHONY DRIGGERS, CHRISTOPHER LANE AND MATTHEW L. SINGLETARY did in FLORENCE County on or about January 1, 2003, violate Section 16-03-0910 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one James Miller, without authority of law and by the use of force.

COUNT THREE - CONSPIRACY

That ANTHONY DRIGGERS, CHRISTOPHER LANE AND MATTHEW L. SINGLETARY did in FLORENCE County on or about January 1, 2003, violate Section 16-17-0410 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully, wilfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crimes of Murder and Kidnapping.

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

  
SOLICITOR

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EX-101  
The applicant alleges that his conviction for murder must be vacated because the indictment failed to allege the essential elements of murder as required by S.C. Code Ann. § 17-19-30 (1985). The applicant contends that in order to properly charge an accused with the crime of murder, an indictment must allege the time and place of the assault upon the deceased and the time and place of the death of the deceased. Thus, the applicant contends that the indictment does not satisfy the notice requirements of subject matter jurisdiction set forth in the South Carolina Constitution and statutes.

The Circuit Court does not ordinarily have subject matter jurisdiction to convict a defendant of an offense unless (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of presentment; or (3) the offense is a lesser included offense of the crime charged in the indictment. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773; *State v. Lynch*, 344 S.C. 635, 545 S.E.2d 511 (2001); *Joseph v. State*, 2002 WL 31296304 (S.C. 2002). Lack of subject matter jurisdiction can be raised at any time, including for the first time on appeal or PCR. *State v. Funderburk*, 259 S.C. 256, 191 S.E.2d 520 (1972).

An indictment for murder is sufficient "if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution." *State v. Owens*, 293 S.C. 161, 165, 359 S.E.2d 275, 277 (1987); *Joseph*, supra. South Carolina Code Section 17-19-30 states:

"Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology, of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, willfully and of his malice aforethought kill and murder the deceased."

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EX-178 D.2

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This statute is consistent with statutes enacted in 1880 and amended in 1887. S.C. Code Ann. § 17-19-30 (History). Based on case law interpretation as discussed herein, it appears this statute can be broken down and construed as follows:

1. the indictment must set forth the time and place "of murder." Although the words "of murder" are not part of the statute, cases have apparently read these terms into the statute;
2. the indictment must include a plain statement of the manner in which the death of the deceased was caused; and
3. the indictment must charge that the defendant, with malice aforethought, murdered the deceased.

S.C. Code Ann. § 16-3-10 (1985) defines murder as the killing of any person with malice aforethought, either express or implied. Although this statutory definition of murder exists, it remains, nevertheless, a common law crime. The statutory definition "in no wise affects the ingredients which are necessary to constitute murder, but leaves them exactly and in every particular as they stood at common law." State v. Judge, 208 S.C. 497, 38 S.E.2d 715, 719 (1946).

The crime of murder is a composite one. It includes the assault committed upon a person with intent to kill, and the resulting death from that assault. The assault alone does not constitute the crime. Neither does the death of the person of itself make the crime. The crime cannot become complete until after the death of the assaulted person has occurred. The State must prove not only the assault and the death occurring from it, but the time of the assault and the time of the death, as time is recognized in the law. In addition, the state must prove the place of the assault and the place of death. These necessary elements of the crime of murder must not only be proved, before a person accused may be lawfully convicted, but they must be alleged in the indictment returned against the accused by the grand jury.

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EX-1.20

D.4

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sufficiency of the allegation as to the place of death. Id. "It can hardly be necessary to cite authority to the fact that [sic] is absolutely essential in an indictment...that the place of death of the party killed should be alleged therein, and that, in the absence of such allegation, such indictment is fatally defective, and should be quashed on motion made; and...such a defective indictment is beyond the reach of amendment." Blakeney, 11 S.E. 637 at 637-638. A matter so vital as the place of death of the party killed is absolutely necessary to be alleged in a jurisdictional point of view and must be passed upon by the grand jury in accordance with the constitutional rights of the accused. Platt, 151 S.E. 205 at 211; Blakeney, supra. Thus, the court determined that this matter was jurisdictional in nature. The Platt court concluded, after "a somewhat exhaustive research," that no decision of the court for at least a third of a century tends to modify or weaken the holdings made in Blakeney.

\* An objection to a defect appearing on the face of an indictment usually must be raised before the jury is sworn. S.C. Code Ann. § 17-19-90 (1985); State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (Ct.App. 1999). Issues related to subject matter jurisdiction, however, may be raised at any time. Smalls, supra. The allegations of an indictment as to the place of an assault and the place of the death are generally regarded as essential allegations in an indictment for murder. State v. Bostick, 243 S.C. 14, 131 S.E.2d 841 (1963); Platt, supra. Such allegations affect the jurisdiction or the essential elements of the crime. Id. This issue has been determined to be jurisdictional in nature and thus is timely raised by the applicant.

Likewise, the time of death is also a critical jurisdictional element. Indictments for murder must also allege, in addition to the place of assault and death, the time of the assault and death. Bostick, supra; Rector, supra. The common law placed a limit on the time that could elapse between the injury

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and death, the conclusive presumption being that the injury did not cause the death if the interval exceeded a year and a day. State v. Sutton, 333 S.C. 192, 508 S.E.2d 41 (Ct.App. 1998)(affirmed as modified, 340 S.C. 393, 532 S.E.2d 283 (2000)). In Sutton, the Supreme Court acknowledges the existence of the "year and a day" rule, although it "questions the applicability of this rule with present day medical advances which could sustain a victim's life for an indefinite period." Id. at 395, fn. 1.

The applicant contends that the present indictment does not state the time and place of the murder sufficient to confer subject matter jurisdiction and does not set forth the manner in which the deceased was killed.

The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. Browning v. State, 320 S.C. 366, 465 S.E.2d 358 (1995). The indictment here alleges that an assault occurred, which allegation also asserts the time and place of the actual assault. However, the indictment in question fails as to the second element of the composite crime of murder set forth in Rector; it fails to allege the time or place of death of the deceased. Under Platt, an indictment for murder must contain the place of death of the deceased. Under Rector, an indictment for murder must also contain the time of death of the deceased. While the indictment at hand arguably establishes the requisite notice of the charge of murder, it nonetheless fails to include those quintessential jurisdictional requirements of the time and place of death. While this court may be constrained to act where notice is arguably present, this court is nonetheless bound by appellate court precedent, the most recent case of which acknowledges Rector's vitality.

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nature of the crime is such that the presence of the accused at the place and time of its commission is essential to his guilt, the burden is upon the State to prove beyond a reasonable doubt that he was then and there present."). The State's evidence does not place applicant at the scene of the murder, nor does the indictment properly allege the time and place of the composite crime of murder.

Also, the State failed to properly allege or prove a conspiracy or accessory theory under which applicant and the co-defendants could be found guilty of the murder. Had the State charged applicant with conspiracy, it could have pursued convictions against applicant and the co-defendants under the "hand of one, the hand of all theory." Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederates incidental to the execution of the common design and purpose. *State v. Woomey*, 276 S.C. 258, 277 S.E.2d 696 (1981). To admit evidence under this theory, the existence of the common design and the participation of the applicant against whom the evidence is offered should first be shown. *Id.* However, the State did not charge applicant or the co-defendants with conspiracy, so this approach was unavailable at trial. Had the State placed both applicant and the co-defendants at the scene of the murder, at a time and place properly alleged in the indictment, and shown a conspiracy between applicant and the co-defendants, then it would not be necessary to show applicant actually killed the victim.

Furthermore, the State did not pursue an accomplice liability theory. Under accomplice liability theory, "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." *State v. Langley*, -- S.C. --, 515 S.E.2d 98, 101 (1999); see also *State v. Leonard*, 292 S.C. 133, 355 S.E.2d 270 (1987)(to be liable as an aider

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