

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No.2013-001415

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The State

Respondent,

v.

Fritz Allen Timmons

Appellant.

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APPELLANT'S RETURN TO RESPONDANT'S  
MOTION TO STRIKE AND REQUIRE FILING OF AMENDED INITIAL BRIEF OF  
APPELLANT OR THE HAVE THE COURT DISREGARD

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**SC Court of Appeals**

The MOTION TO STRIKE AND REQUIRE FILING OF AMENDED INITIAL BRIEF OF APPELLANT OR THE HAVE THE COURT DISREGARD is not available to the Respondent due to that the Appellants **Final Brief** and **Record on Appeal** has already been filed and was not contested by the State.

The Respondent states “any issue presented to this court to consideration on appeal must have been raised to and ruled upon below.” and “specifically, the circuit court may not consider a question not presented to the magistrate,” of which the question of the Constitutional Rights of the Appellant was raise as to the unconstitutional Search and Seizer conducted by Chesterfield County Animal Service and Chesterfield County Sheriff Office along with the magistrates office as to the issuing of the unconstitutionally issued warrant, ipso facto, a Sham Legal Process for the purpose of the Chesterfield County Animal Shelter to obtain purebred dogs for profit due to Danielle Bowe being Director of Both the Chesterfield County Animal Service and Chesterfield County Animal Shelter. The issue of Probable Cause has been raised in Both magistrate and circuit Courts as to the **Lack off**. Of which no probable cause has been established by the State to intrude upon the privacy or property of the Appellant. Therefore, any possible evidence submitted by the Affidavit would have been construed through Constitutional Intrusion by the State and inadmissible in a court of law. The State claims to have an E-mail as Probable Cause, No evidence as to the existence of said E-mail by the State has been provided and if there is existence of said, then it would violate State Code §22-3-710, and due to the Appellant numerous requests for this so call E-mail, the State has fail to provide it, thus violating Rule 5(1c) SCRCrimP. Thereby raised the possible Torte accusation against Judge Paul M. Burch as to the violations of Rule 501, SCACR cannon

3 produced to letters from the Clerk of Court of Darlington as in regards to another case. Thereby causing a possible search and seizer to be conducted out of retaliation.

In response to this motion, The State has failed to file the motion in respect to the Appellants Initial Brief in a timely manor. The Appellants Initial Brief and Designation of Matter was filed on **Oct 15**, 2013 and the Appellants **Final Brief** and **Record on Appeal** was filed on **Feb 18**, 2014. Therefore causing this to be a frivolous motion violating Rule 269, SCACR. With the States violating Rules 208(a,2), 209(a), SCACR and after withdrawing from this appeal, the Attorney Generals Office has reentered the case without petitioning the court violating Rule 264, SCACR and without good cause shown. The State has also violated Rule 264(a,b), SCACR by substituting Adam M. Foard with William B Rogers without petitioning the court. A Motion to Review the Order of April 18, 2014 by Judge Paul E. Short is pending that has permitted the Attorney Generals Office to reenter case and violate numerous Court Rules based solely on confusion by the Attorney Generals Office.

The above said contradicts the motion's own statement "(T)he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with and orderly mechanism through which to guide appeals in this State.". Therefore when the Lower Courts produce a Sham Legal Process, does the Appellant Court continues this Sham Legal Process that continues the violations of the Constitutional Rights of the Appellant or does the Appellant Court uphold the Constitutional Rights of the Appellant.

The Court Order does not permit the respondent to challenge the Appellants Initial Brief, Appellants **Final Brief**, Designation of Matter nor **Record on Appeal**.

The Court Order also does not permit the respondent to **REPLACE** the Record on Appeal with the Supplemental Record.

Due to the Respondents violation of Rule 208(a2), SCACR, Thereby causing the Rule 208(a4), SCACR to be enacted that states “Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper”, of which in this case that the Constitutional Rights of the Appellant are upheld and that the charges for the Sham Legal Process to be filed (as described in Appellants Brief) would be most proper action of this Court.

The Respondent also request the strict enforcement of Court Rules after the Court Rules has already been subverted in favor to the Respondent. Therefore, with the Respondent adamant to follow Court Rules, the respondent should have follow Rules 208(a2), 209(a) SCACR instead of withdrawing from the case with the excuse of confusion as explained in the pending Motion to Review.

The Court Rules does not provide a guideline when a Sham Legal Process is produced by the conspiracy to violate Constitutional Rights and State Codes by the members of the lower Courts. **THEREFORE**, Court Rules should be relaxed to provide **JUSTICE** when involved in a Sham Legal Process, and not to relax Rules only for the State to continue a Sham Legal Process and to prevent State Employees from being charge for violation of State and Federal Laws and Regulations. **STATE EMPLOYEES are not ABOVE THE LAW!**

With the knowledge of the Attorney Generals Office as to the Constitutional violations by the State and has purposely and knowingly joined to defend these violations of the Constitution, does this constitute as conspiring with the State employees for the

purpose to continue a Sham Legal Process? If so, does this constitute filing charges of and promote the prosecution of and by whom?

With the respondents being members of the South Carolina Bar Association of which “The purposes of the Bar shall be to uphold and defend the Constitution of the United States and the Constitution of the State of South Carolina to protect and maintain respect for representative government to continually improve the administration of justice throughout the State to require the highest standards of ethical and professional conduct, and uphold the integrity and honor of the legal profession” and to defend a Sham Legal Process that violates the United States Constitution and the South Carolina Constitution, ipso facto, violates its own purpose.

Prior to the Respondents Procedural History, and as explained in the Appellants Brief, the State conducted a search and seizure without probable cause, a warrant nor probable cause to obtain a warrant at the Appellants Residency on March 4, 2013.

On March 5, 2013, the State produced an Affidavit and a Search Warrant that without particular requirements nor supposedly timing of occurrence of any possible violations, ipso facto, violates the FOURTH AMENDMENT and STATE CONSTITUTIONAL RIGHTS of the Appellant. THEREFORE, a Sham Legal Process (§30-9-30 (4) (a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property., and (b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political

subdivision of a state.) was conducted by County and State Officials and at the magistrate and circuit judicial levels. The Record of the lower Court was falsified due to the introduction of evidence that was not provided in the magistrates hearing on March 18, 2013, the said matter is for the sole purpose of an emotion response that the Respondents has included in their Supplemental Record.

Without probable cause established by affidavit, (Carlyle v. Tuomey Hosp., 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991), Conner v. City of Forest Acres, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005), State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997)), and without reason stated for probable cause (State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979), McDonald v. United States, 335 U.S. 451, at 455-456, 69 S.Ct.191, 93 L.Ed. 153 (1948)). The Itemized list was not provided with the Search warrant return and was filed two days after on March 7, 2013. The Itemized list also was conducted by the Director of the Animal Control and Animal Shelter, Danielle Bowe, not by any deputy and was not taken in the presence of anybody else, also list does not include a pet carrier and a bag of dog food that was also taken during the search and seizer as explained in the Appellants Brief. Therefore the copies of this Warrant Return list, 1<sup>st</sup> copy from magistrates office that's dated March 7, 2013 does not comply with the warrant Return that's dated March 5, 2013 and 2<sup>nd</sup> copy from the "RETURN OF THE CRIMINAL APPEAL" filed in the Chesterfield County Clerk of Courts Office does not provide a date and neither the Return nor Return list was provided to the Appellant at time of being served the warrant the day after the search and seizer was conducted

With county uniform ordinance summons that violates State Code §56-7-80(A) and contradicts **ATTORNEY GENERAL'S OPINION** "The uniform summons cannot

be used for the enforcement of laws other than county and municipal ordinances and whether or not the state laws can be incorporated by ordinance in order to use the summons would depend on the content of the ordinance and penalty provisions of the state statutes in question. 1994 Op Atty Gen, No. 94-67, p. 143.” Therefore, the Appellant was charged with only fraudulent charges and construed by illegal and unconstitutional means. Also the county uniform ordinance summons was not written at time of said occurrence with ticket numbers 1993 through and including 1997 as to being written for Pamela Conley in an almost identical case (Case No. 2013CP1300231) that is currently stalled since Order filed Oct 10, 2013 in Chesterfield County Court System. With only 21 tickets written for 31 dogs, with 3 different charges and found guilty and not guilty on same charges, therefore what dogs was the charges for and which ones was not, why was the dogs that had no charges also taken by Chesterfield County Animal Service and Chesterfield County Sheriff Office. Also why was there only five Veterinarian Exams presented (from elderly dogs and two recovering from a Parvo and/or Circovirus outbreak, of which the carcasses that was unearth and found by Animal Services, died from several months earlier) and not for **ALL** dogs

The motion states “the court determined there was sufficient probable cause”, without evidence of an E-mail of which Animal Control bases their probable cause to constitutionally intrude, of which the Affidavit is based and without the particular requirements met in the Affidavit or Search Warrant, Without substantial evidence (Richardson v. Perales, 402 U.S. 389, 401 (1971), Estate of Teed (1952) 112 Cal.App.2d 638, 644, Kruse v. Bank of America (1988) 202 Cal.App.3d 38, 51-52), nor with prima facie evidence along with perjury by Danielle Bowe (§16-9-10(A)(1))(as described in

Appellants Brief).

Therefore the determination of the court has no prima facie nor substantial evidence to be based on, ipso facto, continuing the Sham Legal Process (as described in Appellants Brief). Therefore the Appellant can only conclude that the probable cause to constitutionally intrude was based solely on Torte or Fraud (as described in Appellants Brief) and by Judge Paul M. Burch which happens to be involve in the Appellant case No. 2013-002356 and the probable cause for the Torte accusations.

With the only form available to the Appellant that appeals a magistrate case to court of common pleas is that of a civil appeal and not of a criminal appeal. Regardless of the “CIVIL” or “CRIMINAL” on the notice to appeal, the facts remain, with the circuit court bound by Appellant Court Rules, Judge J. Michael Baxley violated Rule 204(a), SCACR. Although the Circuit Court handles both civil and criminal cases and in front of the same judges.

The Respondent claims as to the residency surrounded by woods and broken into during working hours is not presented to the trial court nor included in the record, the picture of the 1/10 mile driveway through woods to the residency (in Record of Appeal) and the search and seizer conducted by Chesterfield County Sheriff Office and Chesterfield County Animal Service during working hours proves otherwise.

As to the Supplemental Record of the respondent, the Court Order filed on April 18, 2014 does not permit the substitution of Record on Appeal with the Respondents Supplemental Record. The Order only permits the addition of matter to be supplemented to the Record on Appeal. The Supplemental Record contains the following;

(A) matter that is not relevant to the Appeal that violates Rule 209(b), SCACR, that is

not permitted by Court Order, pp 1, 2, 5, 6, 10, 45-51, 68, 69, 80

- (B) matter that was not contested for the sole purpose of emotional Psychological manipulation (photos of unearthed canine corpse found that was not contested ) and not relevant to the Appeal and violates Rule 212(b), SCACR, and added to the Record after the hearing of March 18, 2013. pp. 52-58,61-62
- (C) portion of matter that is not relevant to the Appeal that violates 210(b), SCACR and is not permitted by Court Order
- (D) Portions of Record on Appeal that is contained in the Respondents Supplemental Record and is not permitted by Court Order, pp. 7, 11-38, 41-44, 64-66, 72, 73, 74, 75, 77, 78, 79, 81
- (E) Pages 1, 2, 5, 6, 11-38, 41-43, 52-63, 69-73, 80, and 82 of the Respondents Supplemental Record are not specifically reference to in the Respondents Initial Breif
- (F) the Respondents Supplemental Record fails comply to Rule 210(c), SCACR

Therefore the Supplemental Record should be stricken.

As to the Respondents claim as to the Order of March 18, 2013, this is the only error (clerical) in the Record on Appeal and should be list in the index as the Order of March 5, 2013. The Order is and Order from a Preliminary Hearing held the day after the Chesterfield County Animal Service and Chesterfield County Sheriff Office conducted a search and seizer on Appellants property and is referenced by the testimony of Danielle Bowe (testimony was during the preliminary hearing on March 5, 2013) in the Magistrates Return. This order is substantial evidence that the said E-mail supposedly

used by Chesterfield County Animal Service totally fraudulent and possibly torte. With the Appellant being the only one in the Appellant residency in over four years and with 15 of the dogs, that includes the 6 one week old puppies, therefore it is impossible for Chesterfield County Animal Service to have received any possible information as to the number of dogs being over 30, ipso facto, the said probable cause was produced **AFTER** the search and seizer was conducted. Also no substantial evidence has been provided for the probable cause.

As to the Respondents claim as to the photos in the Record of Appeal, under Rule 210(f), SCACR, Photographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size, Therefore, the separation of the individual photos and the enlargement portion of each said photo for proper viewing, would be to the same effect as the combining of separate photos onto a single page as produced in the Respondents Supplemental Record. Each of the photos are in the record of the lower court.

Therefore the State has failed:

- (A) to prove probable cause existed prior to the Affidavit
- (B) to prove the Affidavit meets the particular requirements of the FOURTH ADMENDMENT
- (C) to prove the Search Warrant meets the particular requirements of the FOURTH ADMENDMENT
- (D) to prove Search Warrant Inventory was conducted lawfully (Rule 41(f1A), FRCrP)

Without Due Process of Law in the Lower Courts that violates Constitutional Rights of the Appellant, the State

- (1) constitutionally intruded upon the Appellant's property without Probable Cause and conducted a search and seizer.
- (2) obtain an unlawful Search Warrant with an unlawful Warrant Return
- (3) attempted Back Male by State Employees for the relinquishment of ownership of Appellants dogs
- (4) conducted a Sham Legal Process without Substantial evidence at the Magistrate Level that includes;
  - (a) unlawfully issued uniform ordinance summons for fraudulent charges
  - (b) duplicity in warrant
  - (c) three separate Multiple Double Jeopardy Charges
  - (d) no evidence of Abandonment of dogs in Appellants own yard
  - (e) no evidence of Neglect of Appellants dogs
  - (f) only partial and misleading evidence and not full evidence
  - (g) Animal Control not under Oath during March 18, 2013 Hearing
  - (h) Deputy on Warrant NOT present during March 18, 2013 Hearing.
  - (i) Perjury by Animal Control Officer
  - (j) Conspiracy among Chesterfield County Animal Control, Chesterfield County Animal Shelter, Chesterfield County Sherriff Department and Chesterfield County Magistrates Office for the purpose of obtaining purebred dogs for profit

- (5) Evidence introduced in Record that was not presented during March 18, 2013 Hearing. For the sole purpose of emotional Psychological manipulation (photos of unearthed canine corpse found that was not contested that is also in the Respondents Supplemental Record)
- (6) continued a Sham Legal Process at the Circuit Lever still without Probable Cause

The Respondent construes that this Appeal is from a proper Judicial Lower Court System that abides by the Constitution of the United States, the Constitution of South Carolina, Federal and State Rules and Regulation, and State Codes. When in fact, the Lower Court System is a Shame Legal Process of which is proven by the evidence of the Case that is backed by the Constitution of the United States, the Constitution of South Carolina, Federal and State Rules and Regulation, and State Codes. The Respondent has not provided any Rules, Codes, or Citations to uphold the Violations of the Lower Courts but only to hinder the Justice in the Court System. Nor has the Respondent provide any evidence to support the Unconstitutional Affidavit and Warrant,

**THEREFORE,** the Appellant preys that this Court defends the **CONSTITUTION OF THE UNITED STATES** and upholds **JUSTICE** of which the Appellant has not had in the Lower Courts of this State. The Appellant Also preys that this Court abides by Rule 208(a4), SCACR. “Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper” and believes in, if members or not of South Carolina Bar Association, 410(b), SCACR. “shall be to uphold and defend the Constitution of the United States and the Constitution of the State of South Carolina; to protect, and maintain respect for, representative government; to

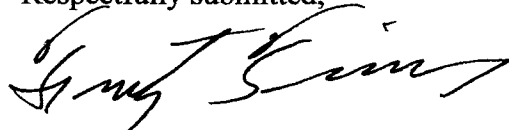
continually improve the administration of justice throughout the State; to require the highest standards of ethical and professional conduct, and uphold the integrity and honor of the legal profession". In conclusion, the State has failed to provide any Fact, Law, Rule, Citation, or Order that would prevent this Court from upholding the Constitution of the United States.

In short, the Respondent wishes this Court to strictly enforce the Court Rules for a Pro Se with limited resources and limited time due to full time work that is in no means related or trained as that of a lawyer while, **AFTER COURT RULES HAS BEEN SUBVERTED IN FAVOR OF** the Respondent of which is a large group of highly trained and experienced Full Time lawyers and associates with members of the South Carolina Bar Association that is **AGAINST** the defense of the **CONSTITUTION OF THE UNITED STATES** and **CONSTITUTION OF THE SOUTH CAROLINA**, of which has full resources of the State.

If the order of the court is to enforce Court Rules then also, ALAN WILSON, SALLEY W. ELLIOTT, and WILLIAM B. ROGERS must be removed as Attorneys for Respondent and ALL the Respondents motions to be denied and stricken along with Respondents Initial Brief and Supplemental Record for the violations of Rules 208, 209, 210, 211, 212 and 264 SCACR.

May 27, 2014

Respectfully submitted,



Fritz A. Timmons, Pro Se  
P. O. Box 367  
Hartsville, SC 29551

SOUTH CAROLINA

CHESTERFIELD

SEARCH WARRANT

Form Approved by S.C. Attorney General Section 17-13-160 March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF CHESTERFIELD

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

1857 TABERNACLE CHURCH A.D. OFFICE

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ABANDONED OR NEGLECTED ANIMALS

2013 MAR 28 PM 4 03 JAYE L. COLLINS CLERK OF COURT CHESTERFIELD COUNTY, S.C.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

JUDGE JOHN DAVIS - 843-625-9009

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Chesterfield, S.C. March 4, 2013

[Signature]

Signature of Judge (L.S.)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

AFFIDAVIT

Personally appeared before me, one JAMES LEWIS who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

1827 TREEMACLE CHURCH RD. MERGE

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

PROPERTY AND DWELLING

REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

MALNOURISHED AND DEAD ANIMALS OUTSIDE AND EVIDENCE OF MORE ANIMALS OUTSIDE. NO FOOD OR WATER FOR ANIMALS

2013 MAR 28 PM 4 03 FAYE L. SELLERS CLERK OF COURT CHESTERFIELD COUNTY S.C.

Sworn to and Subscribed before me this 14th day of March, 2013.

[Signature] (L.S.) Signature of Judge

[Signature] Affiant

Address SCOTCH RD. CHESTERFIELD, SC. Phone 623-2101

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No.2013-001415

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State Of South Carolina

Respondent,

v.

Fritz A. Timmons


Appellant.

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PROOF OF SERVICE

I certify that I have served the APPELLANT'S RETURN TO RESPONDANT'S MOTION TO STRIKE AND REQUIRE FILING OF AMENDED INITIAL BRIEF OF APPELLANT OR THE HAVE THE COURT DISREGARD by depositing a copy of it in the United States Mail, postage prepaid, on May 28, 2014, addressed to his attorney of record, Adam M. Foard, 120 N. Pearl St. Pageland SC 29728, Salley W. Elliott, Senior Assistant Deputy Attorney General, P. O. Box 11549, Columbia, SC 29211. Also served to William B. Rogers, Solicitor, Fourth Judicial Circuit, P.O. Box 616, Bennettsville, SC, 29512

May 28, 2014

  
Fritz A. Timmons, Pro Se  
P. O. Box 367  
Hartsville, SC 29551

RECEIVED

MAY 28 2014

SC Court of Appeals

May 28, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

RE: The State v. Fritz A. Timmons Appellate Case No. 2013-001415

Dear Jenny Abbott Kitchings

Enclosed is the original and six copies of the APPELLANT'S RETURN TO RESPONDANT'S MOTION TO STRIKE AND REQUIRE FILING OF AMENDED INITIAL BRIEF OF APPELLANT OR THE HAVE THE COURT DISREGARD 2014 along with proof of service in the above referenced case.

Sincerely,



Fritz A. Timmons, Pro Se  
P. O. Box 367  
Hartsville, SC 29551

**RECEIVED**

MAY 28 2014

**SC Court of Appeals**

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29551

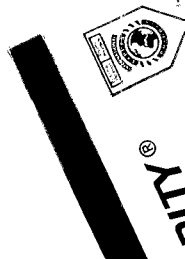
7012 3460 0001 1929 7806

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL**



7012 3460 0001 1929 7806



**FEDERAL EXPRESS**

FEDEX.COM

© 2008

**RECEIVED**

NOV 19 2008

**SC Court of Appeals**

**Jenny Abbott Kitchings  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211**