

THE SOUTH CAROLINA COURT OF APPEALS

ATT: JUDGE JOHN C. FEW

A COURT ORDER WAS ISSUED TO MY COUNSEL TO BRIEF ALL ARGUABLE MERIT: IN MY CASE? I INFORMED HER BY MAIL ABOUT OTHER ISSUES IN MY CASE THAT I WOULD LIKE FOR HER TO ADDRESS WHICH I SENT HER ON TWO SEPARATE OCCASIONS THE LAST BEING JULY, AND SHE STILL REFUSES TO ARGUE MY ISSUES EVEN AFTER BEING COURT ORDER SO I WOULD LIKE TO RESPECTFULLY HAVE HER MOVE AS MY COUNSEL DO TO INEFFECTIVE COUNSEL I HAVE INCLUDED MY LAST LETTER TO HER INFORMING HER OF THE ISSUE SURROUNDING MY CASE. I WOULD GREATLY APPRECIATE YOUR ATTENTION IN THIS MATTER. I AWAIT YOUR RESPONSES IN ADDRESSING THIS CONCERN OF MY.

RECEIVED

JUL 11 2014

SC Court of Appeals

RESPECTFULLY YOURS,

MR. CHRISTOPHER J. SHIPPY #222423

Kershaw Correction Inst.
4848 Goldmine Hwy.
KERSHAW, S.C 29067

RECEIVED

JUL 11 2014

SC Court of Appeals

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Christopher Jerome Shippy, #222423
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July 2, 2014

Dear Ms. Hackett:

The Court of Appeals ordered that all my merit issues were to be brief correct. (See letter dated 9-13-2013 from S.C. Court of Appeals) within this letter the courts denied your request to be relieved and ordered you to brief the following: "Did the trial court err in admitting Rita Chapman's in-court identification of Shippy? In addition to issues regarding suggestiveness and reliability, the parties should address whether the State's action of showing a photo of Shippy to Chapman immediately before trial constituted an IDENTIFICATION PROCEDURE" Now, you say you disagree with my assessment, but according to statute, and S.C. Codes I was sentenced under created violations of my Fourth, Fifth and Fourteenth Amendment rights. (See S.C. Const.) I have no criminal history of property crimes, that fits the criteria of these two indictments. I do not have two (2) priors of the same charges as the law clearly states I must have, to fall into this criteria. I do not have two (2) Grand Larcenies, nor do I have two, (2) Malicious Injury to Real Property. You cannot take one Petty Larceny, which is a misdemeanor heard in municipal court, and bind it in a category of Grand Larceny which is a General Sessions charge. As well as a different statute, and category altogether in General Sessions Court. To try and make it a second prior in order to enhance for a third when the charge itself does not fit the criteria of the statute for enhancement. See R.F. Moser 1998 WL 746938, which brings us back to the indictments themselves. The Court erred in subjecting me to an unconstitutional proceeding. When the court denied me Due-Process of arraignment on the two (2) new indictments. When the court and my attorney failed to inform me, or consult with me the issues surrounding him (Trial Attorney) waiving my rights to arraignment on these indictments. See Tr.pg.9.) which forfeited my right to contest the facts within the indictments. The solicitor however came up with a price value to stipulate the charge being Grand Larceny. He stated the value as being Four Thousand Dollars on something that was ten (10) years old at the time of the incident. Which does not constitute Grand Larceny third (3rd), nor Malicious Injury to Real Property third, (3rd). Which was a direct violation of my rights.

CAN THE STATE OF SOUTH CAROLINA MAINTAIN A CONVICTION THAT RESULTED FROM AN ILLEGAL GRAND JURY, A VOID INDICTMENT AND CRIMINAL ACTS?

A) Convening Outside of the Statute

Here is proof that the STATE knowingly and willfully employed the use of unlawful procedures for the return and publication of its TRUE-BILL INDICTMENTS. The State of SOUTH CAROLINA mainly Spartanburg COUNTY employs unlawful tactics on many occasions. They use the impanelment of GRAND JURIES outside the jurisdiction of the COURT of GENERAL SESSION. In doing this they knowingly and willfully cause false and misleading information to be printed in indictments. This has been documented in newspaper in different parts of the State. (See attachments) Consequently, the unlawful and illegal acts committed by State and counties has caused many citizens of this State to be wrongfully prosecuted. The citizens of the State have not been protected by the very Constitution that is supposed to protect them. The Fifth Amendment of the Constitution clearly states "NO persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a GRAND JURY..."thus these citizens of this State's indictments should be considered NULL AND INVALIDATED.

B) INVALID PROCEEDINGS ON VOID INDICTMENT

This is not a challenge to the court's grant of authority to hear and determine cases. That authority is rightfully granted by our Constitution. GENTRY V. STATE, 635 SC 93, 510 SE 2d 494(2005) and will not be an issue here. However, the Solicitor in Spartanburg COUNTY in the Court of General Session fails to comply with statutory law jurisdictional in nature, specifying the manner and means for lawful return of TRUE-BILL INDICTMENTS.

"The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution, the laws of the State and it's fundamental." STATE V. HEYWARD, 365 SE 2d 379(SC App.2002)(citing ANDERSON V. ANDERSON 299 SC 110,115, 362 SE 2d 897, 900(1989)(Emphasis added). Subject matter jurisdiction may not be waived even with the consent of the parties, and may be raised at any time,BROWN V. STATE 343 SC 342, 540 SE 2d 846 (2001).

No indictment may be TRUE-Billed by the Grand Jury when the circuit court lacks jurisdiction, since Grand Jury's jurisdiction is co-extensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry....STATE V. McCLURE 0& SC 432, 289 SE 2d 158(SC 1982) and STATE V. FLINDERBURY 0%(SC 256, 191 SE 2d 520(1972).

The primary question is whether S C Code Ann.§14-9-210 is jurisdictional in nature and whether it requires that all Criminal Indictments must be issued through a Grand Jury impaneled before The Court of General Sessions, and whether State's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceeding INVALID and its indictment NULI..

The statutory provisions at issue are contained in section 14-9-210 and provide in pertinent parts that: "The County Solicitor shall prepare and through the presiding judge of the General Sessions must submit to the Grand Jury while in attendance upon The Court of General Sessions bill of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the Grand Jury. The Grand Jury shall act thereon and shall report its action to the presiding judge of the Court of General Sessions and said judge shall direct the Clerk of Court of General Sessions to report the same to the presiding judge of the county at its next ensuing term...."

The statutory terms above are clear, unambiguous and require the County Solicitor to prepare and submit bills of indictment through the presiding Judge of the Court of General Sessions to a Grand Jury impaneled under the authority of the Court of General Sessions. This is with NO EXCEPTIONS. It is cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. HOOPER V. TALLEY 341 SC 79,25, 533 SE 2d 573,581 (2000), STATE V. MARTIN 294# SC 46, 358 SE 2d 679 (1987). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. CAROLINA POWER&LIGHT CO. V. CITY OF BENNETTSVILLE 314 SC 137, 139, 442 SE 2d 177, 179 (1994) Words must be given their plain and ordinary meaning without resort to subtle or force construction to limits or expand the statutes operation. BRYANT V. CITY OF CHARLESTON 0(% SC 408, 368 SE 2d 899 (1998).

564 SE 2d 372 (SC App.2002); STATE V. BROWN 570 SE 2d 599 (Ct. App. 2002); STATE V. FELDER 437 SE 2d 43 (SC 1993); STATE V. RICHBURG 304 SC 162 40 3 SE 2d 315(1991); STATE V. LEFTIN-275 SE 2d 575 (SC 1981); GRAY V. STATE--- 276 SC 634, 281 SE 2d 226 (SC 1981); STATE V. BRUNSON 274 SC 220, 262 SE 2d 44 (1980); STATE V. CASTLEMAN 64 SE 2d 250 (1951) and many more.

Keeping with the mandatory provisions of the above mentioned statute the County has no jurisdiction to issue return of TRUE-BILL INDICTMENT except during a time when the Court of General Sessions is lawfully convened to oversee the Grand Jury process. Any acts of the court taken outside these statutory restrictions would by necessity be NULL and VOID. In fact our Supreme Court has already determined that NO INDICTMENT may be TRUE-BILLED by a Grand Jury when The Court lacks jurisdiction. The Grand Jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of indictment can take place. See STATE V. McCLURE, STATE V. FUNDERBURK and STATE V. WHEELER.

Therefore since NO Court of General Sessions was to convene during the month of JUNE 10, 2010 the date of the alleged TRUE-BILL the Grand Jury proceedings would therefore by necessity be held INVALID and its ILLEGALLY issued indictment NULL and without binding legal effect.

C) COURT RULES, ORDER OR OTHER PROCESS

It should be noted that sections 14-9-210 are not a local rule or statute but a general provision applicable to the courts in every county, and as shown mandates that the Grand Jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a TRUE-BILL INDICTMENT can take place. Thus these sections clearly are jurisdictional statutes and set forth the only process allowed for a lawful return of indictment.

No local rule of court, administrative order, policy or other procedure can take precedent over statutory law which is always controlling. See SC Const. Art. §1,4 and STATE V. COTTINGHAM 77 SE 2d 897(1953) (statute override rules of court if in conflict); STATE V. DUNCAN @§§ SE 2d 421 (SC 1980) (Circuit Court rule promulgated by individual judicial circuit was unconstitutional and void). However, the issue of whether or not the local rule, order, policy or procedure was utilized for the process and return of the indictment on June 10, 2010 is relevant because by State Law it would still have to be in agreement with provisions within section 14-5-710, 14-9-170 and 14-9-210 for it to be constitutional.

D)

Constitutional Right Being Violated

Article V Section IV of our constitution provides in pertinent part: "The Supreme Court shall make rules governing the practice and procedures in all such Courts". (Emphasis added) and, SC Code Ann. §14-5-310 RULES OF COURT: "The circuit court may make and establish all necessary rules for the orderly conducting of business in said court, provided such rules are not repugnant to the laws of the State or the rules prescribed by the justices of the Supreme Court and circuit judges". (Emphasis added)

Thus, under these requirements NO RULE can be made or established for process and return of indictment unless it comports with sections 14-9-170 and 14-9-210. Otherwise it would be unconstitutional and NULL without binding legal effect.

Additionally it should be noted that The Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of TRUE-BILL criminal indictments. "The Court is made up of The Court of Common Pleas which hears CIVIL case... See DOVE V. GOLDKIST INC, 115 SC 235, 44 SE 2d 598,600 (SC 1994) also See.. SC Constution Art.V. §1. Thus, there is no grant of concurrent jurisdiction, and therefore NO TRUE-BILL criminal indictment can be lawfully issued through Grand Jury proceedings held before a Court of Common Pleas.

Lastly, it should be noted that a Circuit Court Judge retains NO authority on his own standing to conduct and oversee Grand Jury proceedings outside the bounds of lawfully convened Court of General Sessions.

Under our judicial system the presiding judge in circuit court loses jurisdiction with the adjournment of the term.... See STATE V. BEST 939 SC 361, 186 SE 2D 272(1972)(citing STATE V. THOMPSON 122 SC 407, 115 SE 2d 326. Also S See STATE V. RINEHART*430 SE 2d 536 (SC App. 1993). Therefore, if raised by the STATE there would be no merits to the contention that a judge on his own standing retains authority to impanel a GRAND JURY after the close of term of court. The SC Code Ann. §14-5-710 clearly shows close of a term of court. The SC Code Ann. §14-5-710 clearly shows that NO TERM of General Sessions court can be held in the Seventh Circuit on June 11, 2010 this is according to the legislative law in this State. As established before, a judge no longer has jurisdiction with the adjournment of court thus NO TERM of court NO LAWFUL judicial authority.

Accordingly, NO COURT RULES ORDER or other practices of law invoked or cited by State or County to save its unlawful GRAND JURY process, and resulting NULL and VOID INDICTMENTS. Therefore, in this matter executing justice and righteousness should not be a problem.

E)

CRIMINAL VIOLATIONS

Also brought to judgement are violations of SC Code Ann. §16-9-10 "OFFENSE AGAINST PUBLIC" and SC Code Ann. §16-17-410 and §16-17-739. We know that the law is good if one uses it in a lawful manner.

(OFFENSE AGAINST JUSTICE)

SC Code Ann. §16-9-10 "perjury and subornation of perjury" State in pertinent parts (A)(2), it is unlawful for a person to willfully give false, misleading or incomplete information on a document, record or report on forms required by the laws of this State. (B)(2) A person who violates the provision of subsection (A)(2) is guilty of a misdemeanor and upon conviction must be imprisoned not more than six months, or fined not less than one hundred dollars or both. (C) A person may be convicted under this section if he/she commits perjury by his/her own act consent or agreement. As shown in subsection (A) INVALID PROCEEDINGS AND VOID INDICTMENTS SC Code Ann. §14-9-210 mandate that the County Solicitor shall prepare and process bill of indictment through the jurisdiction of The Court of General Sessions. Also, established in subsection (A) was the fact that the indictments TRUE-BILLED STAMPED on June 10, 2010 were sealed and signed by the Solicitor/Assistant Solicitor and contained false information incorrectly printinting that it had been processed "At a Court of General Sessions convened on June 10, 2010". However, as stated in SC Code Ann. §14-5-710 there is no term of General Sessions Court in the Seventh Circuit on June 10, 2010. Thus, the TRUE-BILL INDICTMENTS that are both sealed and signed by the Solicitor/Assistant Solicitor had to be TRUE-BILLED outside of the statute thus deeming them unconstitutional in their origin.

It should be noted that criminal indictment is a document required by law of this State. In GENTRY OUR Supreme Court determines that an indictment is a notice document required by the State Constitution and Statute...See STATE CONSTITUTION ART. §11 (footnote omitted) SC Code Ann. §17-19-10(2003) ("No person shall be held to answer in any court for an alleged crime or offense unless upon

indictment by a constitutional formed Grand Jury") This as established prior must be a Grand Jury convened within the Statutes§14-5-710, §14-9-170, §14-9-210, §14-5-910 and §14-5-920 outside of this there was an unconstitutionally convened Grand Jury in which the indictment would be NULL and VOID.

Most importantly it must be emphasized for purpose of blame that a/a/ Solicitor/Assistant Solicitor holds full knowledge an understanding of the laws of this State. It is a requirement of the high office of a prosecutor. The prosecutor occupies a quasi-judicial position and must see that justice is done that no conviction takes place except in strict conformity with the law. See e.g., STATE V. QUARTERBUAN 338 SE 527 SE2D 105(SE 2000), STATE V. BURDEN 264 SE 86, 212 SE 2d 587(1975); STATE V. KING SE 108, 71 SE 2d 793(1952), hence the Solicitor's office is required to not only know the law but to obey the legal mandate of SC Code 14-9-210 and lawfully empanel Grand Jury accordingly.

According to statutes stated above instead of discharging his responsibilities in conformity with the law the Solicitor/Assistant Solicitor broke his/her OATH OF OFFICE. The Solicitor/Assistant Solicitor intentionally violated the provisions of the SC Code Ann.§14-9-210 by unlawfully processing indictments outside the jurisdiction of The Court of General Sessions and then by willfully printing false, misleading information in the indictments incorrectly stating that it had been returned June 11~~th~~, 2010 "At a Term of General Sessions Court."

WRONGFUL ARREST

Under the SC Code of Laws§17-13-50 false answer by officer as to grounds (or) reason for arrest.(A)(1)(2)(3)(4), as well as STATE V. FRAZER 394 SE 213, 715 SE 2d 650 (SC App. June 19, 2011 No.4818), 35 K 63, 4th Amend. Probable or Reasonable Cause 35 k 63 4th Amend. (2) k. Also Albright v. Oliver 510 U.S. 266, 144 S.Ct. 807, U.S. Fl., 1998 Jan.24, 1994, State v. Rodriguez 323 S.C. 484, 476 S.E. 2d 161(S.C. App. 1996 Aug. 12, 1996) See key cite ref. 3-4 Readnotes.

Moreover penal statutes must be construed strictly against the State and in favor of defendant. STATE V. BLACKMON 304 SC 270,403 SE 2d 660(SC 1991).

According to sections 14-9-170 and 14-9-210 which both require strict compliance with its provisions, and mandated that the Grand Jury must be impaneled under the jurisdiction of The Court of General Sessions before lawful return of a TRUE-BILL INDICTMENT can take place.

The Terms of The Court of General Sessions for Spartanburg COUNTY are fixed by SC Code Ann. §14-5-710 which does not offer provisions for a county to be open in the month of June. All indictments handed down in Spartanburg COUNTY on June 10, 2010 should be NULL and VOID. There is no way the county could have lawfully returned its indictments. "At a term of Court of General Session convened on June 10, 2010 as they falsely allege in an indictment of June 10, 2010. This is true because there is no term of court on June 10, 2010 in Spartanburg COUNTY. It has been established that there was no special term of court ordered for the month of June 10, 2010 in Spartanburg COUNTY. Special terms of court would be ordered under S C Code Ann. §14-5-910 or §14-5-920 both of which come from the S C Supreme Court.

Therefore please recognize the jurisdictional requirement set forth in sections 14-9-170, 14-9-210, 14-5-710 mandating the only the only process allowed for impaneling a lawful Grand Jury. So according to the statutes provided above there is no way the Grand Jury could have been impaneled and returned a legal and binding indictment if first the statutes were not followed. That indictment by a mode of procedure that it had no lawful authority to adopt.

Legislation enacted limits the manner in which something can be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an unlawful mode of procedure not allowed under sections 14-5-710, 14-9-170 and 14-9-210. State lacked jurisdiction to Complete return of its TRUE-BILL INDICTMENT.

As established above, sections 14-5-710, 14-9-170 and 14-9-210. XXXXXX are clearly a jurisdictional statute, and states forth mandatory procedures to be utilized by County for lawful return of a TRU-BILLED INDICTMENT. A substantial body of SOUTH Carolina Law holds that a failure to comply with statutory law jurisdictional in nature deprives the court. STATE V. LEE

CONCLUSION

The holding in EVANS should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared unlawful. Judicial integrity will have been lost if the State is not constrained by its own statutory criminal laws. Basic U.S. Constitutional DUE PROCESS LAW dictates with authority that under no circumstances can a State commit a criminal act against its citizens in the name of judicial economy.

The statements made in this memorandum will clearly point out the criminal acts committed by the State and clearly establish the essential elements of fraud on the court. In addressing any case involving fraud on the court the U.S. Supreme Court explained that to be granted relief under the provisions of RULE 60(b)(3) Fed. R. CIVIL Proc., the issue turns to whether the alleged misconduct "HARMS" the integrity of the judicial system.

"Tampering with the administration of justice in this manner undisputedly shown here involves far more than injury to a single litigant. It is wrong against the institution set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so important they must always be mute and helpless of deception and fraud: HAZEL-ATLAS GLASS CO. V. HARTFORD EMPIRE CO. 322 U.S. 238, 264, 64 S.Ct. 997, 1001, 88 L.ed 1250(1944). Fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Thus, fraud on the court is very evident here. The evidence provided shows that the Solicitor/Assistant Solicitor committed a "SHAM LEGAL PROCESS" which is a direct violation of the law of South Carolina's Constitutional and statutory laws of the jurisdictional nature. Thus, my June 11, 2010 Indictment was unlawfully obtained. Thus violating my Constitutional Rights to be put on notice. This ongoing violation of my rights carried over to my trial. When the Solicitor Zack Ellis read the charges that were performed on the unlawfully obtained indictment.

With all these willfull violations of my rights my conviction should be overturned and I should be set free. There is no reason for my my conviction to be upheld.


It is only through the Criminal Act of Conspiracy that my case even came before a judge. Failure to protect my Constitutional Rights, the very rights the Judicial System was setup to protect.

I also reread the brief the Attorney General prepared and I noticed threw out they did not directly address the issues presented inmy brief. They deviated from the issues within the brief to bring up other events that are irrelevant and do not pertain to the issues presented in my brief. This is why I asked you to do a responding brief, to address the behavior and actions of this agency, which refuses to abide by the rules of the Appeals Court, but venture off on other issues, and not addressing the issues filed with the brief I submitted. I await your response to my concerns as well as my issues pertaining to the court that should be presented.

Thank you very much for any time and attention tou give this case.

May God richly bless you in all that you set out to accomplish in the Name of Jesus Christ.

Sincerely,


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Date: July 9, 2014