

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2013-001415

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AUG 01 2014

SC Court of Appeals

The State

Respondent,

v.

Fritz Allen Timmons

Appellant.

APPELLANTS RETURN TO RESPONDENTS MOTION TO REQUIRE
COMPLIANCE WITH COURT ORDER AND MOTION TO STRIKE OR
DISREGARD

Respondent claims a letter and an E-mail **APPEARS to rise from a completely different civil case and not the criminal matter involved in this pending appeal.** Without this anonymous E-mail (R. p.2, p.7 L 15-21) that is stated by Jim McGonigal as being used to get the search warrant and the Appellant was **REFUSED** access to this evidence several times, therefore violating Rule 5(1c,d), SCRCrimP (Brady v. Maryland, 373 U.S. 83 (1963), ipso facto, the State has also failed to provide the veterinarian Exams for **ALL** of the Seized dogs that also violate Rule 5(1c,d), SCRCrimP (Brady v. Maryland, 373 U.S. 83 (1963), for each of the charges Therefore committing spoliation of evidence. Suppression by the prosecution of evidence favorable to an accused who has

requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Due to the above said, the said letter (January 2013) was the bases for Torte accusations due to Judge Paul M. Burch violating the Appellants Rights to Due Process in the Circuit Court case number 2009-CP-16540 of which is now Appeal Case number 2013-002356 from under the same Circuit judge as this case but from another County. Judge Paul M. Burch happens to reside in same **Chesterfield County** of which has violated the Appellants Constitutional Rights. Without this supposedly anonymous E-mail, the Respondent must prove the existence of probable cause to Constitutionally Intrude upon the Appellants property and inside the residency, State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997), Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), Massachusetts v. Upton, 104 S.Ct. 2085 (1984). With Jim McGonigal stating “for more then 30 canines on property”(R. p. 2), referring to the said E-mail, of which, 6 of said canines was one week old at time of the search, therefore, the Respondent must prove that the said E-mail is not Fraud nor Torte.

With the Respondent claims to statements not in the Record, with the Appellants Constitutional Rights being violated at the Magistrate Court and at the Appeal at the Circuit Court, Therefore, without Court Rules providing a proper avenue for the Constitutional Rights Violations by the Lower Court, the Appellant must resolve to outside of the Record, especially with the Same Judge that issued an unconstitutional and unlawful Search Warrant and refused to dismiss the case for the Constitutional Violations has also recorded in writing the Record of the Magistrate Court. Ipso facto, the Respondent must prove that:

(A) "1827 Tabernacle Church Rd. McBee" on the Affidavit for the items sought complies to the particular Requirements of the Fourth Amendment in order to support the Search Warrant for the seized the Appellants dogs.

(B) "Property and Dwelling" on the Affidavit for the description of premises complies to the particular Requirements of the Fourth Amendment in order to support the Search Warrant to search the Appellants residency, barn, and yard although did not search the surrounding woods that is also part of the Appellants property.

(C) "Malnourished and dead animal outside and evidence of worse animals outside. No food or water for animals" on the Affidavit for the Reason for Belief that items sought is on the subject premises complies to the probable cause Requirements of the Fourth Amendment in order to support the Search Warrant. An Affidavit which fails altogether to state time of occurrence of facts alleged therein is insufficient. State v. Winborne, 273 S.C. 62, 254 S.E.2d 297 (1979). With photos of food and water on Record, ipso facto, perjury. How was "MALNOURISHED" determined other then by Assumption. A mere hunch, suspicion, guess or unfounded opinion that evidence or contraband will be produced by the search is not probable cause. State Code §47-1-10(1) establishes the meaning of an animal, "Animal" means a living vertebrate creature except a homo sapien, Therefore include all wildlife.

(D) "1827 Tabernacle Church Rd. McBee" on the Search Warrant for the description of premises to be searched complies to the particular Requirements of the Fourth Amendment in order to be a valid Search Warrant.

(E) "Abandoned or neglected animals" on the Search Warrant for the items sought complies to the particular Requirements of the Fourth Amendment in order to be a valid Search Warrant, ipso facto, was the Search Warrant intended for neglected animals or for abandoned animals. Therefore the Respondent must prove that the Appellants **give up ABSOLUTELY** the canines in the Appellants residency, yard and property (§47-1-70). The Respondent must also prove Neglect under State Code §47-1-70 as stated on Uniform County Ordinance Summons.

(F) With the Return Dated as March 5, 2013, and signed by Judge John Davis and Deputy Jay Louis, along with the List Dated as March 7, 2013, violating Ipso facto, Perjury and Conspiracy of Both.

The primary principle is that if evidence is unconstitutionally obtained, it may not be used against the defendant. This is the so-called exclusionary rule. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

Generally, personal knowledge and observations cannot be used as a basis for a search warrant when the facts were gained in violation of the Constitution (See Silverthorne Lumber Co. v. United States, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. [1920]).

With the **previous Motion to strike Factual Assertions, Statements, Arguments from Initial Brief of Appellant** being "**DENIED**" (order of July 7, 2014) (B.Platsky v. CIA, 953 F.2d 25, 26 28 (2nd Cir. 1991), "Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings."), Therefore, this is a **FRIVOLOUS APPEAL** (Rule 269, SCACR). Rule 208(b4), SCACR does not require that **ALL** facts alleged to contain citations. To remove said would be an **obstruction of justice** due to the Constitutional Violations of the Lower Courts.

Therefore, under Rule 208(b)(1)(C). SCACR, The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal.

With the Respondent Constantly trying to have this Court to Enforce Court Rules upon a Pro Se after the Respondent has already violated Rules 208, 209,211, 212, 264, 407, and now 269 with this motion along with the willful violation of Order of April 18, 2014 with the failure to serve the Respondent Final Brief.

Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233 - Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers.

Picking v. Pennsylvania Railway, 151 F.2d. 240 - Third Circuit Court of Appeals The plaintiff's civil rights pleading was 150 pages and described by a federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities."

Puckett v. Cox, 456 F. 2d 233 (1972) (6th Cir. USCA) - It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in Conley v. Gibson.

Sherar v. Cullen, 481 F. 2d 946 (1973) - "There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights."

Haines v. Keaner, et al. 404 U.S. 519,92 s. Ct. 594,30 L. Ed. 2d 652 - a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers"

Rabin v. Dep't of State, No. 95-4310, 1997 U.S. Dist. LEXIS 15718 - "The court noted that pro se plaintiffs should be afforded "special solicitude."

With the Respondent Constantly trying to have this Court to Enforce Court Rules upon a Pro Se after the Respondent has already violated Rules 208, 209, 211, 212, 264, 407, and now 269 with this motion along with the willful violation of Order of April 18, 2014 with the failure to serve the Respondent Final Brief.

Summary Court Judges Bench Book GENERAL A(2)(f) states "Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrates courts are summary. (S.C. Code Ann. § 22-3-730).", Therefore, there is no Record to be confined to as Respondent Claims. This case also was prosecuted by ACO Jim McGonigal in the magistrate court and not a County Attorney, Summary Court Judges Bench Book GENERAL A(5)) states "Prosecution of misdemeanor traffic violations in the summary courts may be made by the arresting officer or a supervisory officer assisting the arresting officer. County attorneys may prosecute violations of county ordinances in magistrates courts.", Ipso facto. Chesterfield Animal Control Officer Jim McGonigal was practicing law.

THEREFORE, this motion should be Denied in order for this Court to uphold the **Constitution of the United States** and the **Constitution of South Carolina** and to uphold **Justice**.

July 31, 2014

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

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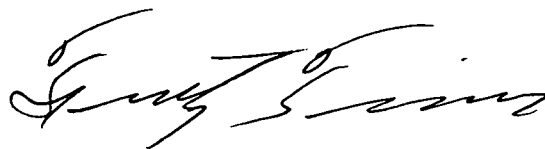
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PROOF OF SERVICE

I certify that I have served the APPELLANTS RETURN TO RESPONDENTS MOTION TO REQUIRE COMPLIANCE WITH COURT ORDER AND MOTION TO STRIKE OR DISREGARD by depositing a copy of it in the United States Mail, postage prepaid, on July 31, 2014, addressed to the attorney of record, .Adam M. Foard, 120 N. Pearl St. Pageland SC 29728, and also William B. Rogers, Solicitor, Fourth Judicial Circuit, P.O. Box 616, Bennettsville, SC, 29512, and Salley W. Elliott P. O. Box 11549 Columbia, SC 29211

July 31, 2014



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

July 31, 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 APPELLANTS RETURN TO RESPONDENTS MOTION TO REQUIRE COMPLIANCE WITH COURT ORDER AND MOTION TO STRIKE OR DISREGARD along with proof of service of the Motion.

Sincerely,



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

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