Clock & Return Copy

Alan L. Burns, #143218
Lee C.I., Richland D-141
990 Wisacky Hwy.
Bishopville, SC 29010-1775

Oct. 30, 2014

Hon. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Col., SC 29211

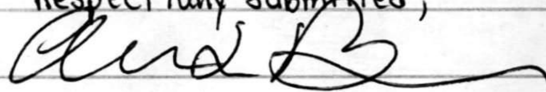
Re.: *State v. Burns*, Appellate Case No.: 2012-21-2760

Dear Ms. Kitchings:

Enclosed for filing please find my Motion for Leave of Counsel and Stay of Proceedings with supporting Exhibits.

Please Clock and Return the additional copy of each document via *Inter-Agency Mail*.

Respectfully submitted,



ALB/alb
Enclosures
cc: S.C. Attorney General's Office
Susan Hackett, Esq., Appellate Defense Office

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SC Court of Appeals

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State Of South Carolina
Court Of Appeals

Appeal From Charleston Co. Court Of General Sessions
R. Markley Dennis, Jr., Judge
Indictment No.: 2011-GS-10-3387 etal
Appellate Case No.: 2012-21-2760

State of S.C. Respondent,

vs.

Burns, Alan L. Appellant.

Certificate Of Service

Appellant hereby certifies that he has served the S.C. Attorney General at P.O. Box 11549 Col., SC 29211; and Appellate Defense Counselor Susan Hackett at P.O. Box 11589 Col., SC 29211-1589, on this 30th day of Oct. 2014, a true copy of his *Motion For Leave Of Counsel and Stay of Proceedings* by placing same in the mail.

I so move:

Dated: Oct. 30, 2014

s/

Alan L. Burns, # 143218
Lee C.I., Richland D-141
990 Wisacky Hwy.
Bishopville, SC 29010-1775

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SC Court of Appeals

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The State Of South Carolina
Court Of Appeals

Appeal From Charleston Co. Court Of General Sessions
R. Markley Dennis, Jur., Judge
Indictment No.: 2011-GS-10-3387 et al

RECEIVED
NOV 06 2014
SC Court of Appeals

Appellate Case No.: 2012 212760

State of S.C. Respondent,

vs.

Burns, Alan L. Appellant.

Motion For Leave Of Counsel
And
Stay Of Proceedings

Comes Now the Appellant above named who hereby respectfully moves this Court for Leave of Counsel and to Stay All Proceedings for an additional SIXTY (60) DAYS.

Please Take Notice That, this motion is based upon the following facts:

1) That Appellant by and with the assistance of several family members are hiring private counsel (Ms. Tricia A. Blanchett) to represent Appellant in this appeal,
2) That Appellant's presently appointed counsel has already proven to be *Ineffective Assistance of Counsel*, in that Appellant represented himself through the pre-trial and trial proceedings. That immediately upon receipt of several pre-trial transcripts Appellant did inform present appointed counsel (Susan Hackett) that several of the transcripts were inaccurate. He specifically requested that she challenge the accuracy thereof. SHE REFUSED. The Appellant attempted to file challenges himself. Please see **EXHIBIT - B**,
3) That one Court Reporter (Ms. Anne Bouley Meyer) took opportunity and did review the record and discovered that Appellant was correct, the transcript was not accurately recorded and required correcting. Please see **EXHIBIT - C**,
4) That present counsel, Ms. Hackett, is being further *Ineffective* by refusing to include clearly appealable issues in her Brief with total disregard to Appellant's desire and insistance and the fact that Appellant specifically preserved the issue during request for directed verdict at close of both the State's case and Defense's case.

5) That these clearly appealable issues are herewith attached in *Brief of Appellant* at Arguments 1 through 4, Issues of Territorial Jurisdiction and Direct Verdict Abuse of Discretion. Territorial Jurisdiction can be raised for the first time on appeal and does not require prior notice. Please see **EXHIBIT - A**,

6) The Appellant here asserts that Ms. Hackett's refusal to include these appealable issues will in fact violate Appellant's 4th, 5th, 6th, 8th and 14th Amendment Rights to Due Process and Effective Assistance of Counsel.

7) That Ms. Hackett's refusal to include this issue will prohibit Appellant from raising these issues of Territorial Jurisdiction in Federal proceedings.

Please Take Additional Notice That Appellant further states that Ms. Hackett's refusal to include these appealable issues is a violation of Rule 1.2, RPC, Rule 407, SCACR (2009), which states:

> *"Subject to paragraphs (c) and (d), a lawyer* ***shall abide by a client's decisions concerning the objectives*** *of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.---"*

Rule 1.4, states in pertinent part:

> *"(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0 (f), is required by these Rules; ---"*

Rule 1.0(f), states:

> *"'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the risks of and reasonably available alternatives to the proposed course of conduct."*

That Appellant has since filing of the notice of appeal in this action, inform Ms. Hackett that he specifically wanted this issue raised to be preserved for Federal review.

Please Take Further Notice that this motion is based upon the fact that appointed counsel, Ms. Hackett is supposed to include and raise all appealable issues whether she thinks it will be prevailing or not. And to leave out an outright clearly appealable issue because she do not think it will be prevailing is in fact a violation of Appellant's Due Process Rights.

This equals and amounts to a criminal defense lawyer refusing to put forth a defense, the only defense because she/he don't think the jury will believe the defense. The defense has to be made if it is the defendant's decision and it does not violate the law in any respect.

Please Take Final Notice That Appellant hereby respectfully request a STAY OF PROCEEDINGS for an additional SIXTY (60) DAYS to effect hiring private counsel.

Appellant here submits as EVIDENCE IN SUPPORT of this Motion for Leave of Counsel and Stay of Proceedings, *"Appellant's Brief"* marked

EXHIBIT - A.

I so move:

Dated: Oct. 28, 2014

Alan L. Burns, # 143218
Lee C.I., Richland D-141
990 Wisacky Hwy.
Bishopville, SC 29010-1775

Docket Return Copy

Exhibit A

RECEIVED
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SC Court of Appeals

Alan L. Burns, #143218
Lee C.I., Ker So 1163
990 Wisacky Highway
Bishopville, S.C. 29010-1775

May 16, 2014

Susan B. Hackett, Esq.
S.C. Office of Appellate Defense

RECEIVED
MAY 22 2014
SC OFFICE OF
APPELLATE DEFENSE
RECEIVED
NOV 06 2014
SC Court of Appeals

Re.: State v. Burns, Your File No.: 12-472
(My Brief)

Dear Ms. Hackett:

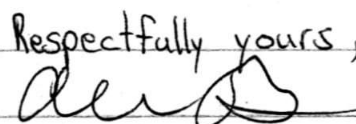
Enclosed please find a Brief that I've written and would like to know if you would please file it with the Court on my behalf..

I don't want my brief filed in place of yours... I want yours filed first and then mine filed as is done when an Anders or Johnson Brief' is filed.

Would you please make and return four (4) copies to me?

Have you had a chance to review the materials I sent you? Would you please also review the enclosed brief and give me your 'Opinion'.

Respectfully yours,



Please return a copy of this letter with copies and your reply...

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Questions Of Issues On Appeal

1) Did The Lower Court Error In Denying The Defendant's Motion To Suppress State's Evidence On The Basis That The Motion Was Untimely And Without Prior Notice?

2) Did The Lower Court Error By Failing To Make A Determination As To Whether The Mt. Pleasant Police Department Was Acting Outside Of Their Territorial Jurisdiction?

3) Did The Lower Court Error By Failing To Make A Determination As To The Validity Of The Contracts?

4) Did The Lower Court Abuse Its Discretion In Denying The Defendants' Motions For Directed Verdict?

5) Did The Defendant Have A Right To Grand Jury Impanelment Documents To Challenge The Legality Of The County Grand Jury That Indicted Him?

6) Did The Lower Court Error In Denying The Defendant's Request To Receive And Review County Grand Jury Impanelment Documents?

7) Did The Denying Of Knowledge Of What County Grand Jury Impanelment Documents Are By The Solicitor, The Pre-Trial Hearing Judges And The Trial Judge An Acknowledgement That The Defendant Was Not Indicted By A Legally Constituted Grand Jury?

8) The Appellant Sufficiently Preserved All Issues For Appellate Review.

Statement Of The Case

In 2010, the Mount Pleasant Municipal Police Department, launched a specific criminal investigation against the appellant ALAN L. BURNS, for alleged criminal acts committed between the years 1981 to 1985 and between 1997 and 1998. The alleged criminal acts occurred at the resident located at 1719 Ranns Hill Road Mt. Pleasant, S.C., formally 1246-A Venning Road, formally Rural Route 2 Box 76. (The location address was renumber and renamed for mailing purposes due to growth and developement over the years). However, at all times this address location was and still is in RURAL Charleston County, outside the boundaries of the Town of Mount Pleasant's jurisdiction.

At the time the investigation was launced the Appellant was residing in Marlboro County, S.C.

The Appellant was arrested, charged and indicted on twelve (12) felony charges.

The Appellant represented himself through out all pre-trial and trial proceedings. They were a total of nine (9) pre-trial hearings held before several different judges.

Mr. W. Ted Smith, Esq., and Ms. Lori Proctor, Esq., of the Charleston County Public Defender's Office, were appointed to assist the Appellant.

Charleston County Assistant Solicitor Deborah Herring-Lash, prosecuted the case for the State of South Carolina.

On August 6, 2012, the Appellant was tried before R. Markley Dennis, Jr., Judge, in the Ninth Judicial Circuit Court of General Sessions, Charleston County.

On August 10, 2012, the Appellant was convicted by a jury and sentenced on all counts of indictments.

THIS APPEAL FOLLOWS.

ARGUMENT 1

Did The Lower Court Error In Denying The Defendant's Motion To Suppress State's Evidence On The Basis That The Motion Was Untimely And Without Prior Notice

It is a fundamentally clear understanding in our jurisprudence that a a question or issue of territorial jurisdiction can be raised for the first time at any point in the proceeding and as such, prior notice is not required. It was held in ***State v. Dudley***, 364 S.C. 578, 582, 614 S.E.2d 623, 625-26 (2005), "

> *Although territorial jurisdiction is not a component of subject matter jurisdiction, **we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding.*** " (Emphasis added).

State v. Dudley, at 625-26. See also ***Williamson v. Richards***, 155 S.E. 890 (S.C. 1930), holding that,

> "*Objection to jurisdiction to entertain action **can be made at any time in circuit court without statutory notice.*** "
> (Emphasis added).

Even though Appellant was not required to preserve this issue at trial he did dilligently do so. At the beginning of trial colloquy occured:

THE COURT: *All right. Any additional Motions?*

MR. ALAN BURNS: *Yes, sir. I have another Motion.*

THE COURT: *All right.*

MR. ALAN BURNS: *If you will give me one second.*

THE COURT: *Sure.*

MR. ALAN BURNS: Your Honor, at this time I would like to move the court to suppress all the State's evidence, mainly all the victim witness statements and all oral testimony. Your Honor, I would like to at this time call witnesses to give testimony in regard to -- this motion is being made in regard to the jurisdiction of the Mount Pleasant Police Department. The Mount Pleasant police officers that investigated this case investigated the entire case in violation of Section 23-1-215 of the South Carolina Code of Laws and did not have jurisdiction to investigated the case. If I may, ---

THE COURT: No, sir, I am not going to have you call witnesses. That Motion -- is there a formal Motion that you've made to suppress some documents?

MR. ALAN BURNS: No, Your Honor.

THE COURT: Then there is ---

MR. ALAN BURNS: I am making the Motion now.

THE COURT: Well, your Motion is not timely. You certainly have a right to object to any testimony given in this trial. That will be done, then you will argue your basis for your -- my not allowing a witness to testify to certain things. But there is no formal Motion pending, so you can't make a Motion now. You have to give notice of your motion and the basis for your motions. ***

(Trial Transcript Pp. 129 line 25 through Pp. 131 line 14).

There is no-doubt, error was committed by the court, ruling that the Appellant's Motion was not timely and without prior notice.

ARGUMENT 2

Did The Lower Court Error By Failing To Make A Determination As To Whether The Mt. Pleasant Police Department Was Acting Outside Of Their Territorial Jurisdiction?

Through out the entire presentation of the State's case during trial the State did not present any evidence or witness testimony sufficient to substantiate the legal authority that authorized Detective Michelle Bacon of the Mt. Pleasant Municipal Police Department to investigate, arrest and prosecute alleged crimes outside her authorized territorial jurisdiction.

The alleged crime(s) took place between 1981 and 1985, and between 1997 and 1999, at the residential address of 1719 Ranns Hill Road, formally 1246-A Venning Road, formally Rural Route 2 Box 76.[1] See **Defense EXHIBIT 21** and **22**, also **EXHIBIT 12**

The alleged crime(s) scene address was never annexed into the Town of Mt. Pleasant in accordance with **S.C. Code Ann. § 5-3-150 (2004)**. Annexation is only accomplished upon the enactment of an ordinance and requires the annexing municipality to publish notice of a public hearing. Summerville v. North Charleston, 662 S.E.2d 40, 41 (2008).

No ordinance has ever been enacted annexing this address location.

The jurisdiction of a municipal police officer, absent statutory authority, generally does not extend beyond the territorial limits of the municipality. **62 C.J.S *Municipal Corporations* § 574, p. 1108 (1949 & Supp. 1988); State v. Harris, 299 SC 157, 159, 382 S.E.2d 925, 926 (1989).**

Mr. Richard Beasley, GIS Techician, Charleston County Planning & Zoning GIS Maping Department, testifing for the defense, testified that he prepared a map

---

FN 1 At all times past and present this address location was and still presently is a private resident in rural Charleston County, outside the boundaries of The Town of Mt. Pleasant. The address was renumbered for mailing purposes and was never annexed into the town of Mt. Pleasant.

encompassing the alleged crime scene address and that said map clearly showed the county/town boundary lines. Trial Transcript Pp. 580 line 18 through Pp. 581 line 14; **Defense EXHIBIT 22**.

Mr. Beasley identified the alleged crime scene address area on the map and further testified that that area was not located in the Town of Mt. Pleasant, that it was in "*County Jurisdiction*." Trial Transcript Pp. 579 line 1 - 20; Pp. 580 line 12 - Pp. 581 line 22; **Defense EXHIBIT 22**.

Ms. Susan Bettelli, Planner 3, Town of Mt. Pleasant Planning & Zoning Department, testifing for the defense, testified that she prepared a Town of Mt. Pleasant Jurisdiction Map, that encompassed an area between Hidden Lakes and Venning Road and from Labor Camp Road to the Intercoastal Waterway. Ms. Bettelli, further testified that she prepared the map in such a manner that the two (2) territorial jurisdictions would be clearly distinguishable. The following colloquy between the Defense (Mr. Burns on Direct Examination) and the witness (Ms. Bettelli) transpired:

Q. *This is Exhibit 12, do you remember preparing this map?*

A. *Yes, sir.*

Q. *On this map, did you include the jurisdictional lines for the town of Mount Pleasant?*

A. *Yes, **it's the lines for what has been annexed into the Town** versus what is under the Charleston County planning's jurisdiction.*

Q. *Okay. On this map, I specifically requested an area between Hidden Lakes and Venning Road and between Labor Camp Road and the intercoastal waterway. Is that correct? But you covered a much larger area, is that correct?*

A. *I would assume so. I made the map as requested.*

Q. *On this map you outlined the town of Mount Pleasant jurisdiction in what fashion?*

A. *Basically the black outline is the Town of Mount Pleasant and **the hatched outline is what is in Charleston County**.*

Q. *So anything on this map that is hatched out is in Charleston County, outside the Mount Pleasant jurisdiction?*

A. *As far as the planning department is concerned.*

Trial Transcript Pp. 572 line 17 — Pp. 573 line 19 (Emphasis added); See also Defense Exhibit 12.

Ms. Bettelli, clearly testified that the hatched in area had not been annexed into the Town of Mt. Pleasant. Defense Exhibit 12 unequivocally depicts the entire Ranns Hill Road section within the hatched in area of Rural Charleston County outside the boundaries of the Town of Mt. Pleasant.

ARGUMENT 3

Did The Lower Court Error By Failing To Make A Determination As To The Validity Of The Contracts?

In 1993, the Charleston County Sheriff's Department entered into a contractual agreement with the Town of Mt. Pleasant Municipal Police Department. The core term of the contract was thus stated:

> "*ARTICLE V, Term and Consideration 1. The term of the contract shall be from December 1, 1993, to November 30, 1994. ****"

State's EXHIBIT 22, Pp. 4 of 5. That contract expired and was forgotten until 1998.

After several years in 1998, the Charleston County Sheriff's Department and Mt. Pleasant Police Department entered into a new contractual agreement. The core term of

this new contract was thus stated:

> "ARTICLE V, Term and Consideration 1. The term of the Contract shall be from January 1, 1998 to December 31, 1998. Thereafter this Contract will automatically renew for successive one-year terms unless affirmatively terminated by a vote of either Party's Governing body."

State's EXHIBIT 22, pp. 3. However,

In year 2000, the Legislature promulgated **section 23-20-50** to require County approval of multi-jurisdictional agreements. This section states:

> "(A) An agreement entered into pursuant to this chapter on behalf of a law enforcement authority must be approved by the appropriate state, county, or local law enforcement authority's chief executive officer. A state law enforcement authority must provide a copy of the agreement to the Governor and the Executive Director of the State Budget and Control Board no later than one business day after executing the agreement. An agreement entered into with a local law enforcement authority pursuant to this chapter must be approved by the governing body of each jurisdiction. **For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction.**"

S.C. Code Ann. § 23-20-50 (A) (2007) (emphasis added).

Several agencies interpreted the Legislature's use of the word 'may' to mean that governing bodies did not have to formally approve agreements that were drawn prior to 2000, for their agreements to remain valid. The Court disagreed.

The Legislature's use of the **phrase** "may be ratified" was to give choice. In 2011, our Most Honorable Supreme Court, when faced with this very same question

held in **State v. Boswell**, 707 S.E.2d 265, 2011,

> "Given this statute was in effect at the time of Boswell's arrest, we must assess the validity of the 1999 agreement. The last sentence of subsection A states that "the agreement may be ratified by the governing bodies of each jurisdiction." The State construes the phrase "may be ratified" to mean that the governing bodies of Calhoun and Lexington counties did not have to formally approve the 1999 agreement after the 2000 amendment. We disagree.
>
> **In contrast to the State's interpretation, we construe subsection A as requiring governing bodies to formally approve a pre-existing agreement if it is to retain its validity.**[8] Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority."

State v. Boswell, 707 S.E.2d 265, 270 (2011); **S.C. Code Ann. § 23-20-50 (A)**(2007) (emphasis added).

The governing bodies could keep their existing contracts by ratifing it or they could elect to go forward without a multi-jurisdictional agreement. That was the conclusion of the **Boswell's Court**, which now stands as precedent.

In this instant case, the governing bodies elected to go forward without a multi-jurisdictional agreement inplace. Now for the sake of this case, the state wants to rely upon the agreements that are now invalid, by way of not being ratified by both the Town of Mt. Pleasant and the County of Charleston.

ARGUMENT 4

Did The Lower Court Abuse Its Discretion In Denying The Defendant's Motions For Directed Verdict ?

The Appellant properly moved for a Directed Verdict at the close of the State's case. The Appellant raise several issues. First, he challenged that the state had not over comed the burden of proof with physical, scientific or medical evidence. Trial Transcript Pp. 560 line 12 – 19.

The Appellant then raise the issue of territorial jurisdiction. Although at times Appellant simply used the term "jurisdiction" rather than "territorial jurisdiction" there were never any misunderstanding by the court. The Appellant spoke as follows:

MR. ALAN BURNS: * * *

Your Honor, the State has also failed to prove jurisdiction in these cases, in two ways. First, the State has failed to prove that an agreement existed allowing Mount Pleasant police to investigate cases within rural Charleston County pursuant to South Carolina Code 23-1-215 (a), which specifically states, (reading):

"In the event of crimes or crimes that have occurred where multiple jurisdiction, either county or municipal, are involved, law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigation ***only if a written agreement between or among the law enforcement agencies involved has been executed****. This limitation on law enforcement activity shall not apply to any activity authorized by Section 17-13-40."*

Your Honor, Section 17-13-40 – – –

Trial Transcript Pp. 560 line 20 – Pp. 561 line 15. (emphasis added). The Appellant went further by arguing:

MR. ALAN BURNS: * * *

I have -- the second reason is that the State has failed to prove jurisdiction by providing testimony of the county in which they allege that these events occurred. I cite **State v. Williams**, 468 S.C. 2nd 626, at 630.

Your Honor, at this point there is still the open issue whether the Mount Pleasant police officers were acting outside of her lawfully vested jurisdiction. The State has not provided any prove that Detective Michelle Bacon, the detective lead officer, was acting within the bounds of the statute and her vested authority with the Mount Pleasant Police Department.

Trial Transcript Pp. 562 lines 2 - 16. The court responded:

THE COURT: Thank you. First of all, with respect to the jurisdiction, there is an abundance of testimony that it doesn't have to be anything other than that, I believe that testimony is evidence. I believe that I tell the jury that every day. That being said, the witness testified that the area that she investigated was within the corporate limits of the Town of Mount Pleasant.

Trial Transcript Pp. 562 line 20 - Pp. 563 line 4.

The Appellant based the brunt of his defense on this severe jurisdictional defect. In addition to calling Mr. Beasley and Ms. Bettelli, both of whom certified that the alleged crime scene was not and is not incorporate/annexed into the Town of Mount Pleasant, he called Mr. Edward Knisley.

Mr. Edward Knisley, Deputy County Attorney for Charleston County, testified for the defense, was duly authorized to represent and speak for the Charleston County's Government in legal affairs. Trial Transcript Pp. 583 line 7 - 23.

Mr. Knisley testified that he first became aware of the cases and investigation against the Appellant when he was responding to a subpoena to Sheriff Al Cannon. In his response E-Mail, specifically stating in pertinent part,

> "*** neither Sheriff Cannon nor any other personnel with the Charleston County Sheriff's Office are aware of any type of agreement between the Sheriff's Office and Mt. Pleasant Police regarding the investigation which resulted in charges against Mr. Burns."

Defense EXHIBIT 23; Trial Transcript 583 line 24 - Pp. 585 line 14.

Mr. Ed Knisley unbeknownst substantiated the fact that **Section 23-1-215** was violated. He further substantiated the fact that the County played absolutely NO-ROLE in the investigation and arrest of the Appellant.

Mr. Knisley further testified that East of the Cooper River there are individual parcels that are not in the Town of Mount Pleasant and are in what are called 'Dough-nut Holes'. Trial Transcript Pp. 586 line 11 - 24.

Because Mr. Knisley had admitted that there were no county involvement in the investigation, arrest and subsequent charges of the Appellant, the Solicitor was making the ridiculous claim and argument that the investigation by Det. Bacon was some thing other than a specific investigation.

At the close of the defense the following colloquy transpired:

THE COURT: *We are at that state now for further motions and I will be happy to hear from you -- well, I assume that the State has not motions.*

SOLICITOR HERRING-LASH: *No, Your Honor.*

THE COURT: *Very well. Mr. Burns? If you need a moment to confer with your assistants, please feel free to do so.*

MR. ALAN BURNS: *At this time, I would like to again move for a directed verdict on the*

grounds of jurisdictional issues.

I cite as the authority Sections 5-7-60, 23-1-215, 23-1-210, 17-13-30, 17-13-40, 17-13-45, 23-20-50, 23-20-30 and State v. Boswell, 707 S.E.2d 265 (2011).

Your Honor, the State entered as evidence of jurisdiction two contracts.

One of the contracts that the State entered, on page five and four of the term, it states that the contracts was for one year, a one-year term. I believe that it was '93 to '94, somewhere back in the early '90s. That contract is expired.

The other contract that the State submitted, Your Honor, it actually violates the section of the Code of Laws that I just mention, whereas those sections of the Code specifically mandates that the Mount Pleasant police when coming out of their jurisdiction must comply with additional law.

The contract and the agreement under which they entered the contract, that statute only allows for a general patrol area. Beyond the general patrol -- in the contract, I think Section 5-7-30, that section allows for one jurisdiction to allow a municipality to enter a contract with the County for the purpose of general police patrol.

But when it comes to issues of criminal investigation, another statute comes into play, 23-1-215, which requires a specific contract drawn up for that specific investigation. That at the conclusion of an investigation that agreement expires.

There are specific statutes that deal with specific incidences where a contract must be entered.

Section 5-7-60 actually prohibits the type of contracts that the Mount Pleasant Police Department and Charleston County now have in place, where they can just

give unfettered jurisdiction to a municipality to police the entire county if they want to. The Legislature did not intend for 5-7-30 to give the County the authority to enter into a contract to just give the police the -- the local police, municipal police to over run the County with liberty in every policy matter.

If that were the case, they wouldn't have created the additional statutes that I named, such as 23-1-215. They wouldn't have created 17-13-30 or 17-13-40. These statutes wouldn't have been needed if all that had to do was to rely on 5-7-30. 5-7-30 was created solely to give the Mount Pleasant -- to give an unincorporated area general police patrol due to the fact of its isolation, not to give the other agency unfettered control to handle all police duties.

In addition to that, the contract itself in another way. Given that the Mount Pleasant has jurisdiction, they still recognize the boundaries of the Mount Pleasant police and the County in the jurisdictional issue. If the Mount Pleasant Police Department has jurisdiction to arrest someone for a misdemeanor, then they should have the authority to take that person in front of a municipal judge but the contract prohibits that and only requires them to be taken in front of a magistrate judge, which is an indication that the contract itself does not meet the standard of the additional statute or the holdings in <u>State v. Boswell</u>.

The other issue that I would raise is the issue of the grand jury, my request for the theoretical illegality of the grand jury. I raise that issue again.

And any other Motions I previously made are hereby renewed and I'd ask that those Motions be reconsidered again and made a part of this Motion

for directed verdict.

The State has not produced any evidence to substantiate the charges, they have not produced any physical evidence, any medical evidence, any scientific evidence or anything that would substantiate the charges brought against me.

I ask for a directed verdict.

THE COURT: Solicitor, do you wish to respond?

SOLICITOR HERRING-LASH: Your Honor, the statute that the County and the City relied on was 5-7-110, which gives the contracts rights.

Title 23 that he is referring to is when there is a specific investigation. I think that's what the e-mail with Mr. Knisley -- if they were asked to have a contract or an agreement regarding this case. That's what Title 23 provides, agreements between agencies for the purpose of specific criminal investigations.

5-7-110 is the statute on which these contracts were based, and that allows for police protection beyond corporate limits of a municipality.

THE COURT: Do you wish to reply?

MR. ALAN BURNS: Yes, Your Honor. The solicitor states that 23-1-215 is for specific investigations. She is absolutely correct. The investigation that Detective Michelle Bacon conducted was a specific investigation. She didn't just happen to come upon that as a part of some general patrol. This was a specific investigation, therefore the solicitor is right. 23-1-215 is the statute that should have been applied. Therefore, an agreement should have been written in accord with that specific investigation.

THE COURT: All right, sir. Thank you.

MR. ALAN BURNS: Thank you, Your Honor.

THE COURT: Motion is denied. The record is clear. * * *

Trial Transcript Pp. 719 line 10 — Pp. 724 line 22.

First and fore most, the Solicitor rambunctiously declared that Det. Bacon was acting under the contracts entered as evidence by the State and that those contracts were based on **Section 5-7-110**.

Fact: Neither contracts cite or reference or imply section 5-7-110. Further, **section 5-7-110** states in pertinent part:

> " — — — *that the municipality may contract with any* ***public utility, agency or with any private business*** *to provide police protection beyond the corporate limits by contract, — — —* "

S.C. Code Ann. § 5-7-110 (2011) (emphasis added). This statute, **5-7-110 only** allows for contract police protection of a public utility (electric or gas company, water or sewer, etc.); an agency (tax office, D.S.S., Highway Department, etc.); or a private business (convenient store, construction company, car lot, etc.). If this is indeed the statute inwhich the contracts are based, then the contracts would only give authorization if the investigation, arrest and/or charges originated or was in some manner linked to a person, thing or area covered by and under **Section 5-7-110**.

Section 5-7-110 does not in any manner apply to a private resident in a private residential neighborhood. This allege crime took place at a private resident located in a private family residential neighborhood. The nearest public utility, agency or private business was well over a full half mile away.

Clearly the court abused its discretion in denying the Appellant's motion for directed verdict at the close of the defense's case.

At this point in the proceeding, the court had before it undisputable facts and evidence that raised questions of law and proved as a matter of law that the case should not have been submitted to the jury. The court had: 1) the testimony of Ms. Bettelli, Planner 3, Town of Mt. Pleasant Planning & Zoning Dept., testifing that the area was not annexed into the Town of Mt. Pleasant; 2) it had the testimony of Mr. Beasley, GIS Techician, Charleston County Planning & Zoning GIS Maping Dept., testifing that the area was not in the Town of Mt. Pleasant it was in "County Jurisdiction"; 3) it had an official Town of Mount Pleasant Jurisdictional Map (Defense Exhibit 12) clearly showing the Ranns Hill Road Section outside the town boundaries; 4) it had an official Charleston County Map (Defense Exhibit 22) clearly showing the Ranns Hill Road Section outside the town boundaries in 'County Jurisdiction.

The court had more than sufficient proof that Det. Bacon of the Mount Pleasant Municipal Police Dept., was outside her territorial jurisdiction without statutory authority. That all charges and indictments were the product of '***Fruits of the Poisonous Tree.***' **State v. Copeland**, 468 S.E.2d 620, 624 (1996); **Wong Sun v. U.S.**, 371 U.S. 471, 83 S.Ct. 407 (1963).

Further it was held that:

> *"there can be no territorial jurisdiction where conduct and its results both occur outside the state's territory. ---Criminal jurisdiction has been premised on the concept of territorialism. Jurisdiction depends on where the crime was committed."*

State v. Dudley, 581 S.E.2d 171, 176 (2003). In this instant case, there is no allegation of criminal conduct or results in the Town of Mount Pleasant. The only tie any of the allege charges had to the Town of Mount Pleasant, was the desire

of Det. Bacon to increase her arrest and conviction record.

Because there is no evidence that the Appellant's conduct fell within the ambit of statutory law that authorized Det. Bacon to go outside her territorial jurisdiction, she and the State was without jurisdiction to prosecute and obtain convictions based upon charges, investigation and arrest made by an officer in violation of statutory laws. See **State v. Muldrow**, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002) (stating, *appellate courts are "bound to construe a penal statute strictly against the State and in favor of the defendant."* **State v. Dudley**, *supra* at 182.

Finally, even assuming that one or both contracts are valid, the terms neither covered the investigation, arrest and charges because, according to the Deputy County Attorney, Mr. Knisley, the Mt. Pleasant Police could only envade this jurisdiction in the event of emergency situations and when one jurisdiction specifically requested the assistance of the other. Trial Transcript Pp. 587 line 5-10; See also **S.C. Code Ann. §5-7-120.**

On the other hand, according to the Solicitor, the terms of the contract neither covered the investigation, arrest or charges as the contracts would only cover public utilities, agencies and private businesses or persons, things or areas associated with or connected to, that would be covered by **Section 5-7-110.**

In this instant case however, both contracts must be held as invalid because neither were ever ratified as required by current statute, **section 23-20-50.**

Additionally, the contracts as they are written are actually illegal as drawn because both contracts usurps other prevailing statutes such as

the entire "*Law Enforcement Assistance and Support Act*" (**S.C. Code Ann.** **§ 23-20-10, et seq.**); **23-1-215**; **23-1-210**; **5-7-120**, all of which would require a specific and different contract with different types of coverage, level of coverage and duration of coverage.

The South Carolina Legislature promulgated varying statutes to prevent an official from becoming abusive, using one law to circumvent all others. **In this case that** is exactly what the State has unlawfully done.

The S.C. Supreme Court closed the **Boswell** case by stating pointedly in regards to territorial jurisdiction violations and defects,

> "*In no way should our decision be construed as minimizing Boswell's disturbing conduct for which he has be incarcerated since 2001.* ***We cannot, however, ignore or capriciously disregard a jurisdictional defect in order to reach a more desirable result.***"

State v. Boswell, 707 S.E.2d 265, 272 (2011) (emphasis added).

ARGUMENT 5

Did The Defendant Have A Right To Grand Jury Impanelment Documents To Challenge The Legality Of The County Grand Jury That Indicted Him?

Evans v. State, 363 S.C. 495; 611 S.E.2d 510 (2005). The S.C. Supreme Court made several critical and binding holdings in this case that directly applies to this instant appeal.

First, the Court made it explicitly clear that like state grand juries, the legality and sufficiency of the **[COUNTY GRAND JURY]** could also be challenged. Second, the Court made it clear that the challenge had to be made prior to the petit jury returning from deliberation and rendering its verdict. The Court stated:

> "*Although this case involves the state grand jury,* ***we similarly conclude that challenges to the legality and sufficiency of the process of a [county] grand jury must be made before the jury renders a verdict*** *in order to preserve the error for direct appellate review.*"

__**Evans v. State**__, 611 S.E.2d 510, 518 (2005) (emphasis added).

Third and most important, the Supreme Court declared that a defendant had an absolute right to the grand jury impanelment documents and supporting materials to prepare his defense and protect his due process rights. The Court stated:

> "***A defendant has the [right] to review the documents to determine whether to timely challenge the legality of the state grand jury*** *which indicted him.* — — — ***A defendant is allowed to obtain and use the impanelment documents*** *in preparing a defense and* ***ensuring protection of his due process rights.***"

__Evans__, supra at 516 and 517. (emphasis added); **4th Amend. and 14th Amend.**

Next, the Supreme Court assigned strict responsibility and justification for such assignment. The Court stated:

> "***The burden of proof is on the State*** *to demostrate why the documents should not be released* ***because only the State***

possesses the necessary information to analyze the issue and explain to the court *why releasing the documents should be prohibited or delayed."*

Evans, supra at 520. (emphasis added).

From the very onset, the Appellant had reserves regarding the indictments and more importantly the legality of the county grand jury. The Appellant made distinct "***SPECIFIC BRADY REQUEST.***" **Brady** Request file date Feb. 3, 2011; **Brady** Request file date ______ ___, 20___. The Appellant also filed the necessary *Motions To Compel*. Motion To Compel file date Aug. 9, 2011; Motion To Compel file date Feb. 3, 2011; Motion To Compel file date Mar 10, 2011; Motion To Compel file date ______ ___, 20___.

Then; to ensure that the record was made replete and that there was absolutely no-mistake or misunderstanding of the fact that he was challenging the legality of the grand jury that had indicted him, the Appellant timely filed a 'Specific Motion' requesting the grand jury impanelment documents and supporting materials. See Motion filed July 31, 2012.

On August 1, 2012, a pre-trial hearing (herein after 'Pre-Trial Transcript') was held where the Honorable Stephanie P. McDonald, presided. At the hearing the Appellant was explicit, he was requesting the impanelment documents and he was challenging the legality of the county grand jury that had indicted him. At the hearing the following colloquy transpired:

THE COURT: *Well, I haven't ruled, but I'm happy to hear anything else you want to tell me.*

MR. BURNS: *I've got another motion I want to make. I want a motion for the grand-jury panel documents and any other supporting materials that was submitted*

to the grand jury.

Under the State Supreme Court ruling of --

THE COURT: Okay. I don't understand. I have no idea what you're talking about. Start back and tell me what you want.

[Whereupon, Mr. Burns and Ms. Proctor confer]

MR. BURNS: I should go ahead --

THE COURT: Yes. That would be very helpful. Yes, sir.

[Whereupon, Mr. Smith proffers documents to the Court]

MR. SMITH: This has not been filed yet. Just received it the other day.

THE COURT: All right. Mr. Burns, if y'all will give me a minute to read this, I appreciate it.

[Whereupon, the Court reviews documents]

THE COURT: Okay. I'm still not sure that I understand the motions, but I'm happy to hear from you.

MR. BURNS: I would like to request any grand-jury documents and any -- the application that was sent to the grand jury -- petition that was sent to the grand jury, proposed indictments, I would like to listen to any witnesses that testified at the grand jury, and I would like to listen to the evidence that was presented to the grand jury.

The secrecy of grand jury, according to the Supreme Court in Evans v. State of South Carolina, 611 S.E. 2d 510, states that the secrecy of the grand jury is removed once the grand jury renders its decision and indict.

THE COURT: Okay.

MR. BURNS: Therefore, the Supreme Court further states that a defendant have a right to review the documents to determine whether Laconde [phonetic] challenged

the legality of the state grand jury which indicted him.

So I would like to request all those documents.

THE COURT: All right. Sir, you're up for trial next week, aren't you?

MR. BURNS: Yes, ma'am; I am.

THE COURT: Okay.

Yes, ma'am. Happy to hear from you.

MS. HERRING-LASH: Your Honor, I don't know what he's talking about. We don't present anything to the grand jury. An officer goes in and gives testimony. They send a representative for each department.

It sounds like -- and I -- I am not aware of the case he's talking about -- but he's talking about the state grand jury. I think the state grand jury has a -- more of an investigative --

THE COURT: Uh-huh.

MS. HERRING-LASH: -- part of it than our just regular grand jury.

THE COURT: Okay. Have y'all given him everything that he's entitled to have in your **Rule 5** response and pursuant to **Brady v. Maryland**?

MS. HERRING-LASH: Yes, Your Honor.

THE COURT: Okay. Anything he's missing that he needs to have?

MS. HERRING-LASH: No, Your Honor.

THE COURT: Okay. Could Ms. Proctor or Ms. Smith -- or Mr. Smith enlighten me on something that I might be missing here?

MS. PROCTOR: [Indicates negatively]

THE COURT: No? Okay.

I'm going to look at your case real quick.

Do you have the date the grand jury has met?

MS. HERRING-LASH: *It has not been indicted yet. I'm meeting with three additional victims today.*

THE COURT: ***Once it's indicted, they'll send you a copy of the indictment,*** *which if it is true billed* ***it will show the date and time the grand jury met, but that's all you're entitled to.***

April 1, 2011, Motion To Compel Hearing Transcript Pp. 13 line 21 — Pp. 14 line 10, (emphasis added).

Then on July 31, 2012, after he had been indicted, the Appellant filed a Specific Motion titled "Motion For Grand Jury Impanelment Documents and Supporting Materials." In that motion his request and reason for requesting were clear.

In this instant case the Appellant had a right to receive the documents he was requesting as a matter of due process. He made his request well in advance of the day of trial. The burden of proof was upon the State to tell why they were not releasing the documents. The State in response feigned ignorance as to any function of the grand jury and claimed no involvement whatsoever in there process.

ARGUMENT 6

Did The Lower Court Error In Denying The Defendant's Request To Receive And Review County Grand Jury Impanelment Documents?

The South Carolina Supreme Court recognizes that the use of the documents ensures the protection of a defendant's due process rights. Denial of same without valid justification would therefore deny due process. **Evans**, *supra* at 516 and 517; **Fourth, Fifth** and **Sixth Amend. to the U.S. Const.**

In the Appellant's July 31, 2012, *Motion For Grand Jury Impanelment Documents and Supporting Materials*, he specifically stated that his motion was being based upon the fact that he want to and was challenging the legality of the grand jury as a part of his defense. See also Trial Transcript Pp. 121 line 23 through Pp. 128 line 13.

The Appellant presented this issue to three (3) different judges. Each one acted foreign to Appellant's request and even more so to what impanelment documents were. The Appellant presented the issue in this colloquy:

MR. ALAN BURNS: *I understand. What I am asking Your Honor is I'm raising a matter of subject matter jurisdiction.*

THE COURT: *Well, I -- based on what?*

MR. ALAN BURNS: *That if the grand jury that impaneled -- if the grand jury was illegally impaneled, then that would relieve this court of subject matter jurisdiction.*

THE COURT: ***Might***. *But that issue has been raised and denied. So your Motion now is denied further,* ***denied based on the fact that it has already been decided.***

MR. ALAN BURNS: *I just want to make sure that it's on the record for appeal.*

THE COURT: *Every Motion that has been -- for which you've been to court and Motions have been filed, all of those are part of the record of*

your case. It doesn't have to be heard by me. In fact, I can't hear it because I can't change the decision another judge has made. That's part of the record. The reviewing court will consider that and decide whether that judge made the correct determination.

MR. ALAN BURNS: ***That was simply the hearing judge. You're the trial judge*** *and ---*

Trial Transcript Pp. 127 line 11 — Pp. 128 line 13. (emphasis added).

First and fore most on this subject, this issue of subject matter jurisdiction was never raise before and ruled on by any other judge. In fact, no-other judge had ruled on the legality or illegality of the grand jury because that issue was never put before them.

The Appellant had only ask the hearing judges to order the State to produce the grandjury impanelment documents. **The Appellant correctly so reserved these questions for the *Trial Judge*:**

1) Was the grand jury that indicted him legally constituted?, and

2) If the grand jury was illegally impaneled would that relieve the trial court of subject matter jursidiction?

The trial court fell short of answering either of these question and that within itself is reversible error. The trial court did however admit that an illegally impaneled grand jury would relieve it of subject matter jurisdiction. Please see Trial Transcript Pp. 127 line 16 — line 20. But it refused to conduct a hearing to determine whether the grand jury was legal or illegallyconstitututed. This deprived the Appellant of due process. This is clearly reversible error.

The legality and constitutionality of a grand jury, beit state or county, when in question, can only be substantiated by and through the impanelment documents (i.e., the impaneling judges order, writ of venire facias, return of subpoenas, list of disqualified juries, list of exempt juries, etc., etc.) Please see **S.C. Code Ann. § 14-7-1510 to 14-7-1570**. See also **§ 14-7-130**.

ARGUMENT 7

Did The Denying Of Knowledge Of What County Grand Jury Impanelment Documents Are By The Solicitor, The Pre-Trial Hearing Judges And The Trial Judge An Acknowledgement That The Defendant Was Not Indicted By A Legally Constituted Grand Jury?

First and fore most, there can not be any claims made that the Appellant wasn't clear or that he had misspoken or that he was mis-understood. The Appellant made clear, he was requesting the grand jury impanelment documents and supporting materials.

The Appellant made it absolutely clear that he indeed wanted to challenge the legality of the grand jury that had indicted him.

The Appellant went so far and submitted to the court, as Court Exhibits, on more than one occasion, highlighted copies of ***Evans v. State***, *supra*. August 1, 2012 Hearing Transcript Pp. 12 line 22 – Pp. 13 line 8; Especially, Trial Transcript Pp. 124 line 2 – 17.

On each occasion the courts first response was always to pretend to be TOTALLY CONFUSED. Trial Transcript Pp. 122 line 3 – Pp. 124 line 17; Aug. 1, Hearing Transcript Pp. 12 line 14 – Pp. 13 line 10.

The court would then turn to the solicitor for the State's response. The State would then give a patented response. Aug. 1, Hearing Transcript Pp. 14 line 8 - 20; Trial Transcript Pp. 124 line 23 - Pp. 125 line 17.

At the Aug. 1 Hearing in response the solicitor stated:

THE COURT: *Okay.*

Yes, ma'am. Happy to hear from you.

MS. HERRING-LASH: *Your Honor, I don't know what he's talking about. We don't present anything to the grand jury. An officer goes in and gives testimony. They send a representative for each department.*

It sounds like -- and I -- I am not aware of the case he's talking about -- but he's talking about the state grand jury. I think the state grand jury has a -- more of an investigative --

THE COURT: *Uh-huh.*

MS. HERRING-LASH: *-- part of it than our just regular grand jury.*

Aug. 1, Hearing Transcript Pp. 14 line 8 - 20.

At trial in response the solicitor stated:

THE COURT: *I am going to hand you the case back, (tendering).*

What is your response, Ms. Herring-Lash?

SOLICITOR HERRING-LASH: *Your Honor, I am not exactly sure what he is referring to. I think that he went over this issue with Judge McDonald last week and the case that he handed up at that time regarded the statewide grand jury, which is a different -- which is an investigatory grand jury.*

THE COURT: (Affirmative nod).

SOLICITOR HERRING-LASH: *I don't know exactly what he -- at that time he was asking for witnesses and tapes that had to do with the grand jury. I don't know what he is talking about exactly. I didn't see the case. I don't know if it is the same case or not.*

Trial Transcript Pp. 124 line 23 — Pp. 125 line 17.

First, as to the assertion made by the solicitor, that the state grand jury is more of an investigative body and the county grand jury is just a regular grand jury with no-power.

Section 14-7-1610 states in pertinent part;

> "***This section does not limit the authority of a County grand jury***, solicitor, or other appropriate law enforcement personnel ***to investigate, indict, or prosecute offenses*** within the jurisdiction of the state grand jury."

S.C. Code Ann. § 14-7-1610 (I) (2011) (emphasis added).

The language of this section clearly depicts the fact that there is no level of difference in authority and duties of a state grand jury and county grand jury absent the fact that a state grand jury is vested with jurisdiction crossing county lines or involving multiple counties. This section makes clear that county grand juries are also vested with investigatory powers just as the state grand jury.

It was NOT the Legislature intent to create the state grand jury to over power and make inferior the county grand jury. Rather the

Legislature created the state grand jury to enhance the grand jury system. It was the Legislature intent in creating the state grand jury to have a grand jury inplace with subject matter jurisdiction over crimes that transpire with significance in more than one county of this State. **S.C. Code Ann. § 14-7-1610 (A)(2011).**

Next, as to the solicitor's assertion that *"I don't know what he's talking about. We don't present anything to the grand jury."*

In this instant case, the Appellant ask that that statement be construe as the truth. As such, the Appellant asserts that that is a statutorile violation. **Section 14-9-210** states in pertinent part:

> *" **The County Solicitor shall prepare and through** the presiding judge of the Court of General Sessions **submit to the grand jury while in attendance upon the Court of General Sessions, bills 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 the Court of General Sessions to report the same to the presiding judge of the county at it's next ensuing term*

S.C. Code Ann. § 14-9-210(   ).

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 S.E.2d 177, 179 (1994). And words of a statute must be given their plain and oridinary meaning without resort to subtle or forced construction to limit or expand the statutes operation. **Bryant v. City of Charleston**, 295 SC 408, 368 S.E.2d 899 (1998).

The statutory terms above are clear and very unambiguous. This statute specifically require the County Solicitor to prepare and submit bills of indictment to the grand jury, by way of the presiding judge of the Court of General Sessions.

The solicitor's statement within itself raises questions concerning the legality of the grand jury and the indictment. Clearly her statements depicts the fact that they (The State) did violate **section 14-9-210**. This section makes it absolutely clear what role the County Solicitor is to play in preparing and submitting indictments to the grand jury.

Further, the solicitor's statement depicts the fact that the solicitor also violated **Rule 3, SCRCrimP**. This rule states in pertinent part:

> "*(C) Action on Warrant.* ***Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action*** *on the warrant* ***by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court****, assigned a criminal case number,* ***and presented to the Grand Jury****; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.*"

S.C. Rule Crim. P., Rule 3 (c) (...) (emphasis added).

Then, above all else, the solicitor outlandishly declared in an mockingly ridiculous tone:

> "We don't present anything to the grand jury. An officers goes in and gives testimony. They send a representative for each department."

Are we suppose to believe that in Charleston County, police officers from varying agencies within the county hap hazardly go before the county grand jury without the solicitor's office involvement. That the case folders and files for a particular case isn't put together by the solicitor's office. That evidence isn't submitted by and through the solicitor's office.

That there is never a roster or docket for the grand jury. That the solicitor's office has no-involvement with the creation of the roster or docket.

What is outrageously ironic is the fact that neither judges (August 1, 2012, Hearing Judge Stephanie McDonald, or Trial Judge R. Markley Dennis, Jr.)[2] knew what grand jury [impanelment] documents were. Aug. 1, 2012, Hearing Transcript Pp. 13 line 1 – 10; Trial Transcript Pp. 122 line 3 – Pp. 127 line 25.

FN2 During the term of court the Appellant was indicted, Trial Judge Dennis was appointed and served as Chief Administrative Judge for General Sessions, for Charleston County, the indicting county. Which means he would have been responsible for signing the grand jury's impanelment order.

Additionally, the hearing judge and trial judge were provided highligted copies of the case *Evans v. State*, 363 S.C. 495, 611 S.E.2d 510 (2005).[3]

Surely the ignorance or act of feigning ignorance by the judges and solicitor does not suffice and thus, falls far short of the burden of proof required to delay or prohibit the releasing of the documents.

Even if we assume that one or all was in fact ignorant in this regard, this within itself would only substantiate the Appellant's claim that he was not indicted by a legally constituted grand jury.

Based upon the argument of the solicitor and the fact that neither the Aug. 1st hearing judge or the trial judge readily knew what impanelment documents were, it is only reasonable to insinuate that the officials in Charleston County do not utilize the county grand jury process.[4]

If they did, surely both or atleast one of the judges would have known what an [Impaneling Judge's Order] was. In this instant, neither did. The solicitor implied that a True Billed indictment was proof of the legality of the grand jury. That within itself is absurd.

FN3 The Evans case was entered upon the record as Court Exhibit by both judges.

FN4 It is rumored that cases in Charleston County do not actually go before a grand jury. That the solicitor's office has a true billed stamper, that they readily uses to stamp indictments 'True Billed'.

If the trial judge discovers or is made aware prior to or at the beginning of the trial that a pre-trial hearing judge made an error that would deny a defendant a crucial element of due process that would deny the defendant a fair trial, does the trial judge 1) have the authority to rule to correct the error; 2) have a duty to correct the error to prevent a miscarriage of justice; or 3) should the trial judge allow the error to stand and the defendant receive an unfair trial?

ARGUMENT 8

The Appellant Sufficiently Preserved All Issues For Appellate Review.

For all intents it has been held by this S.C. Court of Appeals that:

> *"The definition of "material" for purpose of **Rule 5** is the same as the definition used in the **Brady** context. Once a **Rule 5** violation is shown, reversal is required where the defendant suffered prejudice from the violation."*

State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214, 220 (Ct. App. 1998).

Although the trial judge seemed perplexed when the Appellant refered to his initial request as **Brady** motion, his exact statements were:

Pp. 122 line 10-12: *I also have copies of the -- in my original specific **Brady** request, **Rule 5**, I asked for these documents as well.*

Pp. 122 line 22-24: *And I would like to present, if I may, copies of the -- that is the original **Rule 5 Brady** request.*

Pp. 123 line 3-4: **** I had requested the grand jury documents in my **Rule 5**.*

Trial Transcript Pp. 122 lines 10-12, 22-24; Pp. 123 line 3-4.

The misunderstanding and/or confusion was **rectified** when the Appellant submitted the **Evans v. State**, case to the court and the court accepted same upon the record as a *COURT EXHIBIT*. With the accepting of the case as a court exhibit, the misunderstanding and confusion became error, REVERSIBLE ERROR.

It is the inherited duty of a trial judge to ensure that to the best of his abilities that a defendant receives a fair trial, to ensure that none of his due process rights are violated. And this to the extent if necessary, changing, altering, amending and even over ruling a pretrial hearing ruling made by another judge at a motions hearing.

It was held that,

> "***A ruling on the pretrial motion is preliminary, and is subject to change based on developments at trial.*** *Because* ***the evidence developed during trial may warrant a change in the ruling, the losing party must renew*** *his objection* ***at trial*** *when the evidence is presented* ***in order to preserve the issue for appeal.***"

State v. Mueller, 319 S.C. 266, 460 S.E. 2d 409, 410 (Ct. App. 1995) (emphasis added). It was further held,

> "***Even though a pre-trial motion in limine was previously made*** *as to admission of prior crimes, to preserve issue for appeal,* ***defendant was required to raise it in front of the trial judge and obtain a ruling.***"

State v. Moultrie, 316 S.C. 547, 451 S.E. 2d 34, 38 (Ct. App. 1994) (emphasis added).

At trial, Trial Judge Dennis, became visibly irritated when he discovered that the Appellant was making motions on issues that had been heard and denied previously in pretrial by other judges. The following colloquy occurred:

MR. ALAN BURNS: *In accordance with this case, this South Carolina Supreme Court case, it gives the defendant the right to timely challenge the legality of the grand jury that indicted him.*

THE COURT: *I understand.*

MR. ALAN BURNS: ***Upon that timely request, it's incumbent upon the court to verify that the grand jury was legally constituted.***

THE COURT: *How have you challenged it?*

MR. ALAN BURNS: *Yes, sir.*

THE COURT: *How have you timely challenged the ---*

MR. ALAN BURNS: *That's what I said. I made my request in my discovery and I also made my request by submitting -- if I may present you with a copy, (tendering).*

(Not included in transcript: Document tendered was July 31, 2012 Motion For Grand Jury Impanelment Documents)

THE COURT: *Thank you. (Upon review), this Motion that has been handed to me, this matter has been raised, ----*

MR. ALAN BURNS: *Right, this has been raised several times. This isn't the first time.*

THE COURT: *This is what you argued before Judge McDonald?*

MR. ALAN BURNS: *Yes, sir.*

THE COURT: *She denied the Motion.*

MR. ALAN BURNS: Yes, sir, for the impanelment documents.

THE COURT: Your Motion is then denied. It's a part of the record of this case. You don't raise that again. That's already been raised.

MR. ALAN BURNS: So I can't ask for the indictments to be ---

THE COURT: You can't ask me to do that. You've already asked Judge McDonald to do that, and she denied your motion.

MR. ALAN BURNS: I understand. What I am asking Your Honor is I'm raising a matter of subject matter jurisdiction.

THE COURT: Well, I -- based on what?

MR. ALAN BURNS: That if the grand jury that impaneled -- if the grand jury was illegally impaneled, then that would relieve this court of subject matter jurisdiction.

THE COURT: Might. But that issue has been raised and denied. So your Motion now is denied further, denied based on the fact that it has already been decided.

MR. ALAN BURNS: I just want to make sure that it's on the record for appeal.

THE COURT: Every Motion that has been -- for which you've been to court and Motions have been filed, all of those are part of the record of your case. It doesn't have to be heard by me. In fact, I can't hear it because I can't change the decision another judge has made. That's part of the record. The reviewing court will consider that and decide whether that judge made the correct determination.

MR. ALAN BURNS: That was simply the hearing judge. You're the trial judge and ---

THE COURT: *Sir, I -- you know what? I appreciate your request. It doesn't matter. I just simply stated and -- I know that you're not a lawyer, but one of the things you know is that -- in the Circuit Court, we're all Circuit Court judges.*

Trial Transcript Pp. 125 line 21 - Pp. 128 line 19 (emphasis added).

Therefore the Appellant appropriately and correctly so, renewed his motions before the trial judge and thereby has perfectly preserved his challenge of the legality of the county grand jury that indicted him and he has without a doubt perfectly preserved his motions requesting the impanelment documents and supporting material.

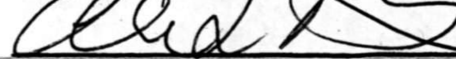
This appeal is ripe for full appellate reveiw.

CONCLUSION

Wherefore having briefed the legal issues of this appeal, Appellant respectfully ask this Honorable Court to **REVERSE** and **VACATE** all his convictions and sentences, as the errors and defects thereof are wholly incurable and totally prejudicial.

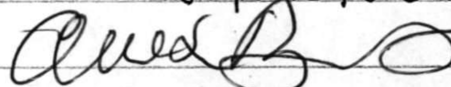
Dated:
May 16, 2014

Respectfully submitted,



Alan L. Burns, # 143218
Lee C.I., Ker So 1163
990 Wisacky Highway
Bishopville, S.C. 29010-1775

Oct. 30, 2014
original signature



APPELLANT

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Exhibit B

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EXHIBIT B

Attachment 15

The State Of South Carolina
Court Of Appeals

Appeal From Charleston County Court Of General Sessions
R. Markley Dennis, Jr., Judge
Indictment No.: 2011-GS-10-3387, et al

Appellate Case No.: 2012-212760

State Of South Carolina — Respondent

vs.

Burns, Alan L. — Appellant.

Rule 607(I), SCACR, Request For BackUp Tapes / Audio Disk

Appellant hereby gives notice and request pursuant to Rule 607(I), SCACR, the back up tape / audio recorded disk of the July 15, 2012, hearing, held before Judge R. Markley Dennis, Jr. Recorded by Anne Bouley Meyer, RPR.

Dated: 5/31/13

S/ [signature]

Alan L. Burns, #143218
Lieber C.I., EB-02
P.O. Box 205
Ridgeville, S.C. 29472

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SC Court of Appeals

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May 1, 2013

Alan L. Burns, #143218
Lieber Corr. Inst., EB-35
P.O. Box 205
Ridgeville, S.C. 29472

Susan B. Hackett, Esq.
Division of Appellate Defense
P.O. Box 11589
Col., S.C. 29211-1589

Attachment 12

EXHIBTT B

Re.: State vs. Burns

Dear Ms. Hackett;

Enclosed please find copies of my Rule 607 (I), SCACR, Request For Audio Disk/Backup Tapes.

Please follow up on these request by submitting the necessary vouchers.

I took the liberty of filing and serving these request to ensure that <u>we</u> made the deadline for making this request.

Please date stamp and return a copy of each of the herewith document.

Thank you in advance...

Sincerely,

[signature]

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ALB/alb
Enclosures

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EXHIBIT B

Attachment 13

The State Of South Carolina
Court Of Appeals

Appeal From Charleston County Court
Of General Sessions
R. Markley Dennis, Jr., Judge

GS # 2011-GS-10-3387, et al

State of South Carolina — Respondent

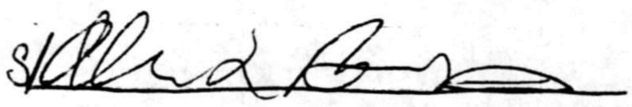
vs

Burns, Alan L., — Appellant.

Rule 607 (I), SCACR, Request For
Audio Recorded Disk

Appellant hereby gives notice and **request** pursuant to Rule 607 (I), SCACR, the audio recorded disk or backup tape of the August 1, 2012, Emergency Hearing, held before Judge Stephanie P. McDonald. **Recorded by Susan M. Perron.**

May 2, 2013



Alan L. Burns, # 143218
Lieber Corr. Inst., EB-35
P.O. Box 205
Ridgeville, S.C. 29472

Sworn to and subscribed before me on this
____ day of __________________ 2013

____

My Commission Expires: ____________.

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Attachment 14

EXHIBIT B

The State Of South Carolina
Court Of Appeals

Appeal From Charleston County Court
Of General Sessions
R. Markley Dennis, Jr., Judge

C/A #: 2011-GS-10-3387, et al

State of South Carolina — Respondent.

vs.

Burns, Alan L. — Appellant.

Rule 607 (I), SCACR, Request For
Audio Recorded Disk

Appellant hereby gives notice and **request** pursuant to Rule 607 (I), SCACR, the audio recorded disk/backup tape of the May 29, 2012, Hearing, held before Judge R. Markley Dennis, Jr. **Recorded by Deborah Garrison.**

May 2, 2013

S/ [signature]

Alan L. Burns, # 143218
P.O. Box 205
Ridgeville, S.C. 29472

Sworn to and subscribed before me on this

____ day of ______________ 2013

____

My Commission Expires: ______________.

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C

To all interested parties,

Upon receiving a challenge to the transcript produced in the matter of State v Alan Burns, I have made the following changes.

On the cover page I put the date of June 15, 2012 as I had put the erroneous date of July 15, 2012 on the original transcript.

I have included the disturbance which took place starting on Page 14 line 2, through 14 line 11.

This concludes any and all changes to the proceedings which have been transcribed in whole from start to finish.

Sincerely,

Anne Bouley Meyer

Anne Bouley Meyer

June 25, 2013

JUL 1 2013

EXHIBIT
C

cc Desiree Allen
Alan Burns

Copy of Amended transcript sent to:
Alan Burns
and
SCLID