

State of South Carolina )  
County of Abbeville )  
Dwayne Eddie Starks )  
Petitioner )

In The Court of Appeals  
South Carolina  
Appellate File No;  
2013-000869

VS

Request for Permission  
Amend Initial Brief

State of South Carolina )  
Respondent )

**RECEIVED**

NOV 19 2014

**SC Court of Appeals**

To Respondent:

This matter comes before Deputy Clerk  
V. Claire Allen of Court of Appeals Pursuant  
to Request For Permission Amend Initial  
Brief.

I Dwayne Eddie Starks, 253926, Hereby  
moves before this Honorable Court of Appeals  
pursuant to trial court constructive Amend-  
ment my indictments by change location  
"one stop Gas station by amend indictments  
to "Shell station" and this is a violation  
of my Due Process of Law 14th Amend-  
ment and is a violation of SC Code of Laws  
Ann 17-19-100; Amendment of indictments  
proceedings after Amendment.

This constructive Amendments occur  
during the petitioner Jury trial by the  
trial court. see cite similar as the Pet-  
itioner case. cite At Stirone v. U.S. 212

217-19 (1960), Amendment and Variances;  
Because the Fifth Amendment guarantees  
a defendant the right to be tried on only  
those offense presented in an indictment  
returned by a grand jury, substantive Am-  
endments indictments to indictments are  
reversible error, cite At Stirone v US 217,  
217-19 (1960) (Amendment of indictments  
violate Fifth Amendment of indictment  
per se violation of grand jury clause,  
see Also cite at compare Stirone, 361 US  
At 217, Amendment occur when the Pros-  
ecution or the court either literally  
or constructively alters the charging  
terms,

Petitioner Pro, Bond Counsel  
Mr. Robinson filed a Frivolous issue  
on Direct of Appeal within the court  
of Appeals that does not have any  
legal merits and there is a conflict  
between client and counsel because this  
issue is preserve on record and trial  
court did commit a constructive  
Amendment during trial cite At  
trial transcript pg(71) Line(15)-(25), pg(72) Line  
(1)-(14), see Attachment exhibit-(A)

see cite At united states v. Schable 939 F2d  
197 203 4th Cir 1991) Thus A constructive  
Amendment Violates the Fifth Amendment  
right to be indicted by a grand jury, is  
error Per se, and must be corrected on  
Appeal Even when the defendant did not  
preserve the issue by objection, see cite  
At united states v. Floresca 38 F3d 706, 712-  
13 (4th Cir. 1994) (En banc).

### Conclusion

Therefore Respondent's should granted  
my Request for Permission Amend Initial  
Brief by Pro, bono counsel.

Dated 11 - 12 - 2014

s/ Dwayne Eddie Starks  
DWAYNE EDDIE STARKS  
386 Redemption way  
McCormick, S.C. 29899

State of South Carolina) In the Court of Appeals  
County of Abbeville | South Carolina  
Dwayne Eddie Starks | Appellate Note  
# 253926 | 2013-000869  
Petitioner |  
vs |  
State of South Carolina |  
Respondent |

---

To Respondent

I Dwayne Eddie Starks, 253926, hereby  
serving a true copy of my Request for  
Permission Amend Initial Brief By Placing  
A copy in the United States mail address  
below.

1) SC. Court of Appeals  
V. Claire Allen  
Deputy Clerk  
Court of Appeals  
Post office Box 11629  
Columbia, S.C. 29211

**RECEIVED**

NOV 19 2014

**SC Court of Appeals**

(2) Attorney At Law  
John Edward Robinson  
P.O. Box 670  
Charleston, S.C. 29401

Sworn before me this  
Day 12 of November 2014  
Notary J. Franklin  
Expires 12-16-2019

Dwayne Eddie Starks  
Dwayne Eddie Starks  
386 Redemption Way  
McCormick, S.C. 29889

EXHIBIT  
(A)

STATE OF SOUTH CAROLINA ) IN THE EIGHTH JUDICIAL CIRCUIT  
COUNTY OF ABBEVILLE ) THE COURT OF GENERAL SESSIONS  
) 2012-GS-01-00391,00392  
THE STATE OF SOUTH CAROLINA,) )  
) )  
PLAINTIFF, ) )  
) )  
VERSUS ) )  
) )  
DWAYNE EDDIE STARKS, ) )  
) )  
DEFENDANT. ) )  
DATE: April 1-3, 2013  
ABBEVILLE, SOUTH CAROLINA

TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JR.

A P P E A R A N C E S:

DAVID STUMBO, ESQUIRE  
YATES BROWN, ESQUIRE  
ATTORNEYS FOR THE STATE

PATRICIA BOLEN, ATTORNEY AT LAW  
JANNA NELSON, ATTORNEY AT LAW  
ATTORNEYS FOR THE DEFENDANT

PROVIDED FOR: SCCID - SCCID

FOR COPIES CONTACT: JO RICE  
jrice@sccourts.ORG  
OFFICIAL SC COURT REPORTER

1 she, Ms. Williams, had to leave to pick up her kids. I  
2 thought she was in the back, but I guess we inadvertently  
3 released her. We can call her first thing in the morning  
4 before the jury's sworn.

5 THE COURT: All right. We'll deal with it then, the  
6 first thing tomorrow morning then. All right. Anything  
7 else today? What is her name?

8 MR. STUMBO: Nakelia Williams.

9 THE COURT: Nakelia Williams.

10 MR. STUMBO: She's the first name on the list.

11 THE COURT: Yeah. I see it. I see it. I see it.

12 All right. So anything else we can deal with today, then?

13 MR. BROWN: Judge, one other thing.

14 THE COURT: Excuse me. Go ahead.

15 MR. BROWN: I talked with the Defense and the  
16 indictment says the location was One Stop Gas Station. The  
17 gas station was a One Stop at one point. It's now a Shell  
18 Station. We would just move to amend the indictment to  
19 reflect the name of the Shell Gas Station.

20 THE COURT: Well, what was it called when it happened?

21 MR. BROWN: Shell Gas Station.

22 THE COURT: It was?

23 MR. BROWN: Yes, sir.

24 THE COURT: Any objection to that?

25 MS. BOLEN: No objection, Your Honor. I've discussed

PRE-TRIAL MOTIONS

72

1 this with my client. He's ---

2 THE COURT: What?

3 MS. BOLEN: I've discussed this with my client. He's  
4 indicated he's ---

5 THE COURT: So, what do you want me to put in here?  
6 What do you want? Y'all write it in there the way you want  
7 it, then.

8 MR. BROWN: Yes, sir.

9 THE COURT: Look at it and make sure they put it on  
10 there -- you look, Ms. Bolen, and you look and make sure  
11 they write it on there right.

12 MR. BROWN: Thank you.

13 (Whereupon, the indictment was amended by Mr. Brown  
14 and Ms. Bolen.)

15 MR. BROWN: The indictments. (Documents handed up to  
16 the Court.)

17 THE COURT: All right. Anything else?

18 MS. BOLEN: Very briefly, Your Honor. There's just  
19 two things I wanted to really put on the record. We do  
20 have a motion to sequester witnesses. We've told the State  
21 about ---

22 THE COURT: Any objection to sequestering witnesses?

23 MR. STUMBO: Just, under the law, Your Honor ---

24 THE COURT: You can keep the chief investigating  
25 officer in here.

EXhibit  
(A)

347

**CERTIFICATE**

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ABBEVILLE COUNTY, SOUTH CAROLINA ON APRIL 1-3, 20013, AT THE ABBEVILLE COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

AUGUST 30, 2013



JO RICE

**RECEIVED**

NOV 19 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA VERSUS DWAYNE STARKS

Dwayne Eddie Starks, 253926  
386 Redemption Way  
McCormick, S.C. 29899

Dated 11-12-2014

Appellate File No 2013-000869

Dear V. Claire Allen Deputy Clerk  
of Court of Appeals:

Enclosed Please find my Request for  
Permission Amend initial Brief along with  
proof of service. It would be a great honor  
if you may assist me with this matter,

Respectfully Submitted  
Dwayne Eddie Starks

C.C. D. E. S

C.C. V. C. A. D. C. C. A.

**RECEIVED**

NOV 19 2014

**SC Court of Appeals**

Dwayne Eddie Straks, 253926  
386 Redemption way  
McCormick, S.C. 29899

Dated 11-12-2010

Appellate File No 2013-000869

DEAR Mr John Edward Robinson:

Sir Enclosed Please Find A copy of my Request For permission Amend Initial Brief based on the issue of constructive amendment; and I pray that you will take A second chance to review my trial transcript to see where the solicitor constructive amendment my indictment.

It would be A great Honor if you will assist me with Amend my Initial Brief.

Respectfully Submitted  
s/Dwayne Eddie Straks

e:c: D: E: S:  
e:c: J: E: R:

Pwayne Eddie Starks #253926  
MCL I-F2-B-232  
386 Redemption Way  
McCosmick, S.C.  
29809

**RECEIVED**

NOV 19 2014

**SC Court of Appeals**

V. Claire Allen  
Deputy clerk  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C.  
29211

49  
(20)