

THE SUPREME COURT OF SOUTH CAROLINA
DANIEL E. SHEAROUS, CLERK OF COURT
P.O. Box 11330
Columbia, S.C. 29211

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APR 15 2015

S.C. Supreme Court

RE RICKY W. LOWERY V STATE.

APPELLATE CASE NO. 2015-000664

ENCLOSED PLEASE FIND A WRITTEN EXPLANATION AS TO
WHY THIS DETERMINATION BY THE LOWER COURT WAS
IMPROPER. I HAVE WRITTEN A LETTER TO SHOW WHERE
MY FIRST SUBMITTED PAPER WORK WITH MY NOTICE
OF APPEAL AS A DIRECTION TO SHOW WHAT I'M TRYING
TO EXPLAIN.

PROSEC. RICKY W. LOWERY 281915

TYGER RIVER CORR INST

200 PRISON RD

ENUREE SC 29335

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APR 15 2015

STATE OF SOUTH CAROLINA

S.C. Supreme Court

IN THE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

FROM SPARTANBURG COUNTY

COURT OF COMMON PLEAS

APPELLATE CASE NO: 2015-000664

Ricky W. Lowery #281915,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENTS

PURSUANT TO RULE 243(C) OF THE SOUTH CAROLINA APPELLATE COURT RULES REQUIRES A WRITTEN EXPLANATION AS TO WHY THE DETERMINATION OF THE LOWER COURT IMPROPER.

THE PETITIONER SUBMITS THAT IN A CASE WHERE THE STATE DOES NOT ESTABLISH THE CORPUS DELICTI OF A CRIME, THE

COURT HAS NO SUBJECT MATTER JURISDICTION TO TRY A DEFENDANT FOR THAT PARTICULAR CRIME. SEE STATE V SMITH 328 S.C. 602, 493 S.E.2d 506, 508 (S.C. APP 1997)...

WHERE THERE IS NO CORPUS DELICTI OF A CRIME, THE DEFENDANT IS ENTITLED TO A DIRECT VERDICT STATE V. EPES 39 S.E.2d 796 (1946)...

WHEN A DEFENDANT IS CLAIM HIS FACTUAL INNOCENCE WHILE PLEADING GUILTY, A COURT IS CONSTITUTIONALLY REQUIRED TO ESTABLISH A SUFFICIENT FACTUAL BASIS FOR THE PLEA.

FARMER V. TRENT 531 S.E.2d 711 (W.VA. 2001) CITING N.C. V. ALFORD
91 S. CT 167 (1970) WALLACE V. TURNER 695 F.2d 545, 548 (11th 1983)
U.S. V. MASTRAPA 509 F.3d 652 @ 659 (4th cir 2007).

IN LIGHT OF THE EVIDENCE OF THE VICTIM CHARLES HUNT
HAD WENT OUT OF TOWN ON AUG 03, 2005, AND THE BREAK IN
WAS NOT DISCOVERED UNTIL VICTIM RETURN ON AUG 06, 2005,
THERE WAS NO EYEWITNESS TO THE BREAK IN, AND NO
EVIDENCE WAS SHOWN IN THE RULES MOTION OF DISCOVERY,
DEFENDANT WAS ARRESTED ON AUG 10, 2005. THE POLICE SPECULATED
THAT THIS OFFENSE OCCURED WITH NO PROOF OF ALIENDE OF
CORPUS DELICTI TO SUPPORT WARRANT, INDICTMENT, OR SUBSEQUENT
PLEA. STATE V. JOHNSON, 654 S.E.2d 835 (S.C. APP 2005).
THE STATE FAILED TO SHOW ANY EVIDENCE IN ITS RECORDS
AT TRIAL SHOWING PETITIONER INVOLVEMENT IN THIS
CRIME OR WRONG.

(A) WHEN REVIEWING THE RECORD OF TRIAL TRANSCRIPT ON PAGE 6,
WHERE SOLICITOR BARNETTE PRESENTS THE FACTS BEHIND THESE
INDICTMENTS, NO WHERE DOES IT STATE THAT PETITIONER
ENTERED THIS DWELLING.

(B) WHEN REVIEWING THE SUPPLEMENTAL INCIDENT REPORT, THE ONLY
THING SAID BY OFFICER WAS THAT ON 8/10/05 I MADE CONTACT
WITH THE VICTIM IN THIS CASE, HE STATED THAT HE HAD NO LEADS

OR SUSPECTS, ALL OTHER STATEMENT REFERRED TO THE STOLEN VEHICLE.

- (C) NEITHER DEFENSE COUNSEL NOR TRIAL COURT EXPLAIN DURING THE ENTIRE COLLAGY, THE ELEMENT OF FIRST DEGREE BURGLARY IN RELATION TO THE FACTS. PETITIONER CONTENDS THE FORMAL LEGAL ELEMENT TO PROVE A BURGLARY FIRST WAS NOT EXPLAIN OR READ TO HIM IN COURT. THE TRIAL COURT HAS THE OBLIGATION TO TELL THE DEFENDANT WHAT THE ELEMENT HAS TO BE PROVEN TO THE JURY BEYOND A REASONABLE DOUBT.

PETITIONER HAD NO REAL NOTICE OF WHAT HE HAD TO DEFEND AGAINST. HIS PLEA WAS NOT VOLUNTARY, IN A SENSE THAT WHEN ENTERING SUCH A PLEA YOU MUST UNDERSTAND NOT ONLY THE NATURE OF THE CHARGE BUT ALSO THE CONDUCT THAT ACTUALLY FALLS WITHIN THE CHARGE. THE TRIAL JUDGE MUST ESTABLISH THAT THE CONDUCT WHICH THE DEFENDANT ADMITS CONSTITUTES THE OFFENSE CHARGE IN THE INDICTMENT TO WHICH DEFENDANT IS PLEAD GUILTY. THE COURT FAILED TO INQUIRE THE BASIS FOR THE DEFENDANT BELIEF OF BEING GUILTY. AS SHOWN IN THE RECORD IS DEVOID OF ANY ELEMENT OF FIRST DEGREE BURGLARY, AS THE LAW IN SOUTH CAROLINA UNDER S.C. CODE § 16-11-311.

THE BODY OF THE INDICTMENT TO WHICH THE PETITIONER WAS SENTENCE UNDER IN SOUTH CAROLINA CODE ANN. 16-11-311.

- (D) THE DEFENDANT ENTER THE ~~HOME~~ DWELLING OF CHARLES HUNT WITHOUT CONSENT, AND WITH THE INTENT TO COMMIT A CRIME.

- (2) THE DEFENDANT did arm himself while inside THE RESIDENCE.
- (3) THE DEFENDANT HAS AT LEAST TWO OR MORE PRIOR CONVICTIONS FOR BURGLARY.

(A) NOWHERE IN THE FACTS THAT SOLICITOR BARNETTE PRESENT TO THE COURT DOES IT STATE PETITIONER ENTER THIS DWELLING.

(b) THE TRIAL JUDGE NEVER ASK PETITIONER DID HE ENTER THIS DWELLING.

(c) WHEN PLEADING UNDER ALFORD THE PETITIONER ADMITS TO NO FACTS WHICH WOULD MEET ANY OF THE REQUIRED ELEMENTS OF THE OFFENSE OF BURGLARY.

(d) WITH NO PROOF OF ENTERING THE DWELLING BY EVIDENCE OR WITNESS TESTIMONY OR BEING IN POSSESSION OF A FIREARM THERE IS NO ELEMENT OF BEING ARMED.

(E) PETITIONER HAS PRIOR HOUSEBREAKING CONVICTION NO TWO OR MORE CONVICTIONS.

PETITIONER SUBMITTED ~~NEW~~ NEWLY DISCOVERED CASE LAW ON ALFORD PLEAS NOT KNOWN ABOUT OR AVAILABLE AT TIME OF PLEA. SHAPARD V. U.S. 544 U.S. 13 (2005)

U.S. V. ALSTON 611 F.3d 219 (2010 4th Cir)

PETITIONER ALSO SUBMITTED A COPY OF P.C.R. ~~BRICK AND 5961~~ MOTION IN APPEAL NOTICE.

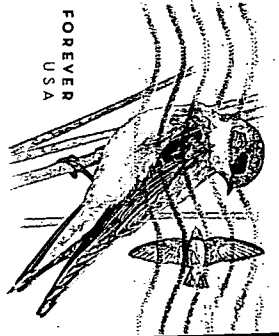
RESPECTFULLY SUBMITTED

Ricky Lowery 281915

Ricky W. Lowrey # 281915
Tyger River Corr. Inst
200 Prison Rd US-110X
Evonne, SC. 29335

KOENIGVILLE SC 296

13 APR 2015 PM 11



FOREVER
USA

Bank Swallow

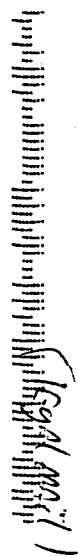
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The SUPREME COURT of South Carolina
DANIEL E. SHEAROUS, Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

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S.C. DEPARTMENT OF CORRECTIONS.