

MAY 04 2015

3) Did the trial court erred where at the close of the trial, when the case was to be given to the jury for

consideration as to the evidence and allegations charged within the indictment, in entertaining and granting the prosecutor's to amend offense charged in the indictments to a greater or more onerous offense, in chambers, thereby altering the punishment of the original offense and causing the court to lack subject matter jurisdiction to entertain the improperly amended indictment?

Elder P. Leach ("Appellant") contends the trial court lacked subject matter jurisdiction on the basis of an improper amendment to the original indictment at the close of the case and evidence at trial.

Appellant was indicted for Trafficking Crack Cocaine in violation of **S.C. Code Ann. §44-53-375 © (1) - CDR Code: 450, and §44-53-375© (2) - CDR Code: 392**. At the close of the case and evidence at trial the prosecutor requested that they go back in chambers to make sure the indictment numbers were correct.(Tr. p. 249) Appellant has copies of the indictment from the discovery, i.e., Rule 5 Brady, that were provided him prior to trial, that demonstrates the indicted offense was for second offense.

After trial was concluded and Appellant was found guilty, the charge was enhanced to Trafficking Crack Cocaine in violation

of S.C. Code Ann. §44-53-375 © (1) - CDR Code: 452, and §44-53-375 © (2) –CDR Code: 349. This is clear evidence that the nature of the offense were changed from second offense to third offense.

**S.C. Code Ann. §17-19-100** permits the amendment of an indictment, provided the nature of the offense charged is not changed. Here the amendment increases the lesser charge of Trafficking Crack Cocaine second offense, to Trafficking Crack Cocaine third offense. Clearly the offense charged was changed, and therefore, the court lacked subject matter jurisdiction to convict and sentence Appellant.

We must observe the appropriate analysis is whether the amendment to the indictment changed the nature of the original offense charged, not whether the amendment in any way surprised or prejudiced the Appellant. **State V. Lynch**, 344 S.C. 635,641, 545 S.E. 2d 511, 514 (2001); **State V. Gentry**, 363 S.C. 93, 610 S.E. 2d 494 (2005), applies only to permissible amendments, those which do not change the nature of the offense charged.

**State V. Means**, 367 S.C. 374, 626 S.E. 2d 348 (2006);

(1). When the State before trial amends an indictment previously issued or true billed by the Grand Jury, the court first should determine whether the existing indictment is sufficient to place the defendant of a particular offense, and identifying the nature of that offense; (2) The court should determine whether the

amended indictment would be sufficient to place the defendant on notice of a particular offense, and if so, identify the nature of the offense; and (3) The court should determine if the proposed amendment changes the nature of the offense set forth in the original indictment. **If it does, the motion to amend must be denied.**

Amendments to an indictment are permissible only if: (1) they do not change the nature of the offense: (2) the charge is a lesser included offense of the crime charged in the indictment: (3) The defendant waives presentment to the Grand Jury and pleads guilty.

The amendment of the indictment at the close of evidence clearly exceeds the terms of the statutes. **State V. Riddle**, 301 S.C. 211, 391 S.E. 2d 253 (1990)(Amendment of indictment at close of evidence to charge assault with intent to commit first degree criminal sexual conduct, rather than assault to commit third degree criminal sexual conduct was improper; amendment increased charge and possible punishment): S.C. code Ann. §17-19-100 (1976). Such a change to the nature of the offense has been previously held to deprive the court of subject matter jurisdiction.

The State has conceded, **Hope V. State**, 328 S.C. 78, 492 S.E. 2d 76 (1997), amendment was improper and deprived the court of subject matter jurisdiction; Matters of subject matter jurisdiction may be raised at any time. **Browning V. State**, 320 S.C. 366, 465 S.E. 2d 358 (1995): **Slack V. State**, 311 S.C. 415,

429 S.E. 2d 801 (1993); and Hopkins V. State, 317 S.C. 7, 451 S.E. 2s 389 (1994).

An indictment is a notice document: the primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, this is, to apprise him of the elements of the offense, and to allow him to decide whether to plead guilty of stand trial; and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. S.C. Code Ann. §17-19-20: Edwards V. State, 372 S.C. 493, 643 S.E. 2d 738 (2007). In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all surrounding circumstances: S.C. Code Ann. §17-19-20; and §17-19-90.

State V. Gentry, 363 S.C. 93, 610 S.E 2d 494 (2005), the trial court lacks subject matter jurisdiction to convict a defendant for an offense, when there is no indictment charging him with that offense, when the jury is sworn. Whether the trial court has the power to hear a case, and whether the indictment is sufficient.

Appellant is of the position and belief that the indictment in question did not meet the sufficiency standard, and placed him upon trial as to allegations no indicted at the time of the swearing of the jurors. There is no record of any evidence neither presented, nor purportedly obtained that would justify any amendment for the greater offense that Appellant is aware of or tried upon. This type of circumstance has the propensity in which to cause this Appellant to be tried without benefit of

notice, and present a viable defense to the purported allegations. This is a deprivation which violated the very core of the Due Process Clause and should cause this court to reverse the conviction and vacate the indictment for failing to provide the essential notice related to these types of matters.

### **Conclusion**

Wherefore, for the foregoing reason Appellant prays this Court reverse the conviction, and vacate the indictment due to the above argued violations and deprivations.

## Table of Authorities

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State V. Riddle 301 S.C. 211, 391 S.E. 2d 253 (1990)

Hope V. State 328 S.C. 78, 492 S.E. 2d 76 (1997)

Browning V. State 320 S.C. 366, 465 S.E. 2d 358 (1995)

Slack V. State 311 S.C. 415, 429 S.E. 2d 801 (1993)

Hopkins V. State 317 S.C. 7, 451 S.E. 2d 389 (1994)

Edwards v. State 372 S.C. 493, 643 S.E. 2d 738 (2007)

State V. Gentry 362 S.C. 93, 610 S.E. 2d 494 (2005)

State V. Lynch 344 S.C. 635, 641, 545 S.E. 2d 511, 514 (2001)

State V. Means 367 S.C. 374, 626 S.E. 2d 348 (2006)

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# Statues

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SC Court of Appeals

S.C. Code Ann. § 17-19-20

S.C. Code Ann. § 17-19-20

S.C. Code Ann. § 17-19-100

S.C. Code Ann. § 44-53-375



legal rights, I hereby waive presentment to the Grand Jury.

**WITNESSES**

DEU Harrelson

**The State of South Carolina  
County of York**

Defendant

**COURT OF GENERAL SESSIONS**

I  
hereby appear in my own proper person and  
plead guilty to the within indictment or to

**March 20, Term 2014**

sg

**ARREST WARRANT NUMBER**

2013A4610200841

Defendant

**THE STATE**

**vs.**

Witness:

C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY**

**ELDER PRESCOTT LEACH**

Foreperson of Grand Jury  
Date:

**VERDICT**

**Indictment for**

**TRAFFICKING IN CRACK COCAINE**

SC Code: 44-53-375(C)(2)  
CDR Code: 0392

Foreperson of Petit Jury  
Date:

After being fully advised as to my



legal rights, I hereby waive presentment to the Grand Jury.

**WITNESSES**

DEU\Harrelson

**The State of South Carolina**

County of York

Defendant

COURT OF GENERAL SESSIONS

March 20, Term 2014

I hereby appear in my own proper person and plead guilty to the within indictment or to

sg

**ARREST WARRANT NUMBER**

2013A4610200840

Defendant

**THE STATE**

vs.

Witness:

C.C.C. PLS. AND G.S.

**ACTION OF GRAND JURY**

ELDER PRESCOTT LEACH

Foreperson of Grand Jury

Date:

**VERDICT**

**Indictment for**

**TRAFFICKING IN CRACK COCAINE**

SC Code: 44-53-375(C)(1)

CDR Code: 0450

Foreperson of Petit Jury

Date:

After being fully advised as to my



Lorri Rodgers <lorri@michaellbrownlaw.com>

# State v. Elder Leach - discovery confirmation/ + supplemental discovery & proposed protective order

1 message

Shelton, Matthew <Matthew.Shelton@yorkcountygov.com>

Wed, Mar 19, 2014 at 2:57 PM

To: "Lorri Rodgers (lorri@michaellbrownlaw.com)" <lorri@michaellbrownlaw.com>, "Michael Langford Brown Jr." <mbrownjr@comporium.net>

State v. Elder Leach - LE case # 201300020225

*Tessa's Rap & Stateme*

Mike & Lorri,

Please confirm receipt of the following as discovery in this case

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**SC Court of Appeals**

- #1 - Copy of LE case file for all charges (19 pages)
- #2 - Certified copies of prior convictions (24 pages) ✓
- #3 - Jail Commitment paperwork (2 pages)
- #4 - Drug report for case # 2013-20225 (1 page)

I also have the following discovery to give you. I'd like to drop by tomorrow to deliver it and discuss the case with Mike - either a little after 9pm or around 230pm - if Mike is available. Please let me know as soon as you can...

*1 DVD ✓*

- Copy of tapes # 3568E, 3569E, 3571E on one DVD (subject to Order of Protection - attached is a proposed Consent Order of Protection - see below)
- ① - DEU Surveillance report (1 page)
- ② - Copy of photo line-up shown to CI (2 pages) (again, subject to Order of Protection)
- ③ - Copy of buy money (8 pages) ✓
- ④ - Elder Leach RAP *not bringing ✓*
- ⑤ - Complete chain of evidence (1 page) ✓
- ⑥ - Drug report for court (1 page) ✓

If Mike agrees with the proposed Consent Order of Protection, I'll go ahead and give him a copy of the tapes and reveal the identity of the CI at our meeting.

As a reminder, this case is on the trial docket for the week of March 31, 2014. I will not be able to start the trial until Tuesday April 1, 2014 at the earliest. At this point I am not sure what day I can call the case to trial but will let you know ASAP. For your convenience I've also attached a copy of the indictments going to the Grand Jury tomorrow (March 20, 2014).

Thanks,


Matt


**CONFIDENTIALITY NOTICE:** This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential, proprietary, and/or privileged information protected by law. If you are not the intended recipient, you may not read, use, copy, or distribute this e-mail message or its attachments. If you believe you have received this e-mail message in error, please contact the sender by reply e-mail or telephone immediately and destroy all copies of the original message.

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**3 attachments**

 **Leach, Elder - CI video protective order (trial).docx**  
23K

 **Leach, E 2013A4610200840.docx**  
18K

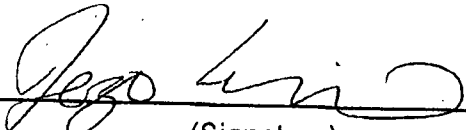
 **Leach, E 2013A4610200841.docx**  
18K

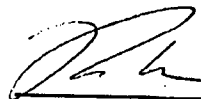
YORK COUNTY MULTIJURISDICTIONAL  
DRUG ENFORCEMENT UNIT

Page 2 of 2

PERSONALLY appears before me: Tezo Nevada Ervin  
who deposes and says: I make this statement of my own free will and accord, without  
reward or hope of reward. I have not been mistreated or threatened in any way. All of  
the above is the truth, the whole truth and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 2 pages and have  
received a copy of same"

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Witness)

SWORN TO AND SUBSCRIBED TO BEFORE ME  
THIS 19<sup>th</sup> DAY OF June, 2013

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES ON 07/28/2018

STATEMENT TAKEN ON June 19, 2013 AT 2:50 PM AM PM  
STATEMENT SIGNED ON June 19, 2013 AT 3:07 PM AM PM

STATEMENT FROM- TAPE ( ); WRITTEN NOTES ( ); DICTATED (X); INTERVIEW ( ).

STATEMENT PREPARED BY: R. Gander (YCMDEU)

YORK COUNTY MULTIJURISDICTIONAL  
DRUG ENFORCEMENT UNIT

Page 1 of 2

PERSONALLY appears before me; Tezo Neveda Ervin who after  
being duly sworn deposes and says. "My name is Tezo Neveda Ervin

Date of Birth 04-13-980 Social Security Number: [REDACTED]

My address is: [REDACTED]

Place of Employment: Unemployed

Home Phone Number: [REDACTED] Work Phone Number- [REDACTED]

I have completed 12 years in school and I can () cannot () read and write".

On June 19, 2013 I met with Officer Rainier at the Rock Hill Police Department to set up a crack deal with Elder Leach. I met with officers and placed a few phone calls to Leach. I was able to get a hold of him and we set up a deal for 3 ounces of crack for \$3,300. I was to meet him near Wildcat Creek Rd and to call him when I got close. As we were getting ready to go Leach called me and said that we were going to have to put off the deal till a little bit later in the day. About two hours later around noon time Leach called my cell phone and said that he was good to do the deal then. I went with Officers to my car where it was searched and wired by Officer Harrelson. He didn't find any drugs or contraband in the car. I was searched by Officer Rainier and he didn't find any drugs or contraband on me either. I was given audio and video equipment to use during the deal. I got into my car and drove out to the area around Wildcat Creek Rd in Rock Hill where Leach told me to go. Once I got into the area I pulled into the parking lot of the Elks Lodge and called Leach. I told him that I was in the area and he told me to come down Wildcat Creek Rd. I drove down the road and saw his car in the driveway of house and pulled down in there. I pulled into the driveway and saw that he was still sitting in his car. I parked and moved to get out but he motioned me to stay, got out of his car, opened the passenger side door of mine, and leaned in. When he leaned in he tossed the crack in the car and I handed him the money that was provided to me by the Officers to use for the deal. He started counting the money and handed me back \$300. He continued telling me about future deals that he could do with me. As he was talking Officers in unmarked cars pulled down the driveway. Leach jumped back and walking away back towards his car. I got out of my car and dropped to the ground so that officers could put handcuffs on me. Leach was also arrested by the officers. I was handcuffed and put into the front seat of a unmarked car and driven back to the police station. Once there I was searched again by Officer Rainier, who didn't find any drugs or contraband on me. I then gave this statement to Officer Gander.

*Tezo Neveda Ervin*



2006-07-26-01

SC Court of Appeals

# The Supreme Court of South Carolina

## ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. CONST. Art. V, §4,

IT IS ORDERED that the following procedures shall be followed in the management and disposition of all complex common pleas cases now pending or hereafter filed in each circuit:

On the Chief Administrative Judge's own motion or on motion of counsel on an **approved form**, a copy of which is attached and made a part of this order, made after the filing of the original complaint, the Chief Administrative Judge can designate a case as complex, establish a date prior to which the case will not be called for trial and assign the case to a judge assigned to the circuit or an adjoining circuit who will be given exclusive jurisdiction to handle that case from beginning to end.

The motion may be granted on the information contained in the motion or the Chief Administrative Judge may require a hearing to determine whether the case justifies special handling.

If the motion is granted, the case will not be called for trial prior to the date designated in the order. The Chief Administrative Judge will assign the case to a judge assigned to the circuit or an adjoining circuit and all pretrial motions and other matters pertaining to that case will be under the exclusive jurisdiction of the judge assigned to the case. When appropriate, the case should be given a date certain for trial with the trial of the case also handled by the assigned judge.

If the Chief Administrative Judge believes that the case is not so complex as to require the assignment of a specific judge to handle the case from beginning to end, the Chief Administrative Judge can partially grant the motion by providing a date in his or her order before which the case cannot be called to trial. This will allow counsel adequate time to prepare the case for trial without the necessity of having to attend roster meetings and justify a continuance. Continuances beyond the date established in the scheduling order should not be requested or granted by the Chief Administrative Judge without exceptional circumstances being shown. Once the continuance has expired, the case will be handled in the same manner as all other normal cases.

If the Chief Administrative Judge does not believe that the case is complex or requires additional time for preparation, the motion will be denied and the case will be placed on the trial roster and handled in the same manner as all other normal cases.

If the motion is granted and a specific judge is assigned to handle the case from beginning to end, copies of the motion and order granting the motion will be provided by the clerk of court to counsel of record and the judge assigned to the case.

Order of the Chief Justice. All previous Orders regarding procedures to be followed in the management and disposition of complex common pleas cases are hereby rescinded.

s/Jean Hoefler Toal  
Jean Hoefler Toal  
Chief Justice

July 26, 2006  
Columbia, South Carolina

~~South Carolina Court of Appeals~~  
Elder Leach #197673  
~~Jenny Abbott Kitchings, Clerk~~  
Lieber Corr. Inst WB-134  
Post Office Box 203  
Columbia, South Carolina  
Ridgeville, South Carolina  
29472

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South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
P. O. Box 11629  
Columbia, South Carolina

29211

THE DEPARTMENT OF CORRECTIONS HAS NOT  
INSPECTED OR CENSORED THIS ITEM; THEREFORE,  
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR ITS CONTENTS.

LIEBER CORRECTIONAL INSTITUTION  
S.C. DEPARTMENT OF CORRECTIONS