

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM OCONEE COUNTY  
Court of General Sessions

S.C. Supreme Court

R. Lawton McIntosh, Circuit Court Judge

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Appellate No.: 2012-206186

Indictment No. 2010-GS-37-364A

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The State..... Respondent,

v.

Anthony Clark Odom..... Appellant,

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**APPELLANT'S PETITION FOR REHEARING**

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Now Comes the Appellant in this matter, Anthony C. Odom, by and through his counsel of record Brian D. McDaniel, Esquire of the Law Office of Brian McDaniel, LLC Beaufort, South Carolina. The Appellant (Odom) pursuant to Rule 221(a), SCACR does request of this Court for rehearing. The grounds for this petition are as follows:

Appellant placed before the Court the following issues on appeal:

- I. Was it unconstitutional, and not subject to harmless error, for the trial court to take conclusive judicial notice of an element of the crime charged, and to also instruct the jury, after the beginning of**

**deliberations, to disregard legal evidence on the element of “Official Capacity”?**

- A. The trial court’s unconstitutional taking of conclusive judicial notice of a crime element, and the application of harmless error.**
- B. Trial court instructions to the jury, after the jury had begun deliberations, to disregard legal evidence, which interfered with its fact finding role on the element of “Official Capacity”, and the application of harmless and cumulative error.**

As to Issue on Appeal I (A). The Appellant respectfully asserts that the Court, while finding the taking of Judicial Notice did in fact violate Appellant’s Constitutional Rights, overlooked and/or misapprehended the following in its Order:

1. That this was a structural trial error not subject to harmless error analysis, as it was mandatory and allowed no further jury inquiry into the facts.
2. While the Court found Appellant stated his age as 40 in online chats in May 2006, the Appellant was not in fact age of 40 in May of 2006, the date of the alleged offense, and was in real life years younger. While the trial occurred in November of 2011, five years after the alleged commission of the crime. The Appellant had still not obtained the biological age of 40.

As to Issue on Appeal I (B). The Appellant respectfully asserts to the Court that in basing its conclusion on a finding that the trial judge made no error in refusing to instruct the jury on the law of bonding, and in ruling that “there is no evidence that the undercover officer, Officer Patterson, was not bonded.” this Court misunderstood and/or overlooked the following:

1. That no request for a charge as to the law of bond was ever requested by Appellant.
2. That evidence of the fact that Officer Patterson had no bond was present by testimony of Jennifer Adams (Adams) {before the jury}, the city clerk and treasurer for the City of Westminster (R p. 121, lines 15-24). Adams was asked if the City of Westminster or Officer Mark Patterson had a bond at the time Patterson worked as a police officer for the City of Westminster. Adams stated to her knowledge he did not, and further stated that if there was a bond she would think she would know. (Rp. 122, lines 7-22). This testimony is clearly evidence that Officer Patterson did not have a bond.
3. That the importance of the fact that Officer Patterson had no bond was presented by the Chief of Police for the City of Westminster, Chief Bannister. Chief Bannister testified before the jury that a bond was required:

Q. Okay. And that's the requirement that every police officer in the State of South Carolina has to have in order to lawfully have the power of arrest, is to be sworn under oath and to have a bond, correct?

A. Correct.

(Rp.89, lines 3-21)

4. Importantly, after allowing all this evidence of the need for bond, and the fact that Officer Patterson had no bond, the Appellant's defense counsel was allowed to argue to the jury that the lack of bond went to the crime element of official capacity over the objection of the State (R p. 154, lines 10-25;R p. 155, lines 1-19). After all evidence and argument was concluded and the jury was sent out for deliberations the trial judge, after ruling that such were facts in evidence and that the jury had a right to **rehear** it, instructed the jury it could not use any of these facts in its deliberations on more than

one occasion. (R. pp 162 ln. 11- 164 ln. 25; R. p165 ln 12-23; R. p.166 ln 8- 25; R. p. 167 ln 7- 25; R. p. 168 ln 16 – p. 169 ln 9; R. p. 170 ln. 17- 25; R. p. 170 ln 23 – p. 171 ln 12) These are the foundations for the arguments of Appellant, concerning judicial interference with the jury's fact finding role in a criminal trial. The Supreme Court's order in this matter appears to have overlooked this evidence, and it is believed that these are critical facts which compel the court to rehear and/or reverse the current ruling.

## **II. Did the trial court err in failing to dismiss the indictment due to vindictive prosecution?**

As to Issues on Appeal II: The Appellant respectfully asserts that the Court, while finding that there was neither a vindictive prosecution nor even evidence to raise a rebuttable presumption of vindictiveness, this Court misunderstood and/or overlooked the following:

1. That the Appellant does not have to prove actual animus and the actions of the State detrimental to the Defendant (Appellant) that were taken (namely, prosecution of the Appellant in Oconee County) after the exercise of a legal right by the Appellant (namely, seeking materials through subpoena in a separate matter), create an appearance of vindictiveness for which the State put forth no evidence to rebut.<sup>1</sup>

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<sup>1</sup> . See United States v. Goodwin, 457 U.S. 368, 372, 102 S.Ct. 2485, 73 L.Ed.2d 74 (1982); (North Carolina v. Pearce, 395 U.S. 711, 724, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) (penalizing those who choose to exercise' constitutional rights, 'would be patently unconstitutional.'”)

2. The evidence<sup>2</sup> (see Final Brief of Appellant which is incorporated herein by reference) all indicates that the State never intended to prosecute the Appellant until the Appellant's attorney sought discoverable material related to the Spartanburg Charge. The State admitted that its prosecution of Odom was borne out of frustration, and such circumstances demonstrate a "realistic likelihood of vindictiveness" (Blackledge v. Perry, 417 U.S. 21, 27 (1974)). That the State put forth no evidence to rebut the presumption and therefore the charges should have been dismissed.

**III. Did the trial court err in failing to dismiss the charges due to S.C. Code §16-15-342 being unconstitutional under the equal protection clauses of the South Carolina and United States Constitution?**

**IV. Does S.C. Code § 16-15-342, as interpreted at trial and as being enforced, violate the free speech clauses of the South Carolina and United States Constitutions?**

**A. Is it protected speech and how to construe S.C. Code § 16-15-342 and S.C. Code § 16-15-375(5) together. And application of the "Chilled Speech Doctrine".**

**B. Conduct of sting operations in Adult rooms with no emphasis on minor children. And application of the "Chilled Speech Doctrine".**

As to Issues on Appeal III & IV (A) and (B). The Appellant respectfully asserts that the Court, while finding no violation of Appellant's Constitutional Rights to equal protection or free speech, this Court overlooked and/or misapprehended the

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<sup>2</sup> Evidence includes among other things: waiting nearly 4 years to prosecute the Defendant, failing to do an incident report, admitting they "never intended to charge" and the direct statement of Megan Wines as testified to by attorney Jim Huff

following in its Order:

1. These issues were resolved summarily in the Court's April 22, 2015 Order and are without analysis. However, the Order appears to overlook that at all times the alleged conduct occurred in a chat room specifically limited to adults by the host provider. Further, Appellant is unable to state specifics as required under Rule 221(a), SCACR, but reserves any issue(s) there under, and requests the Court to review these significant Constitutional issues in more detail and hereby references and incorporates the Final Brief of the Appellant as to the arguments made with regard to those issues.

#### CONCLUSION

For these reasons, and as set forth in the Appeal Brief of the Appellant in this matter (which is incorporated herein by reference), the Appellant requests a rehearing and/or a reversal of the April 22, 2015 Order of this Court and an entry of reversal in favor of the Appellant.



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S.C. Supreme Court

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APPEAL FROM OCONEE COUNTY  
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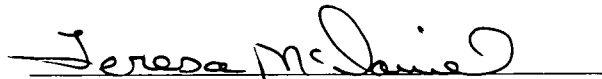
v.

Anthony Clark Odom.....Appellant,

PROOF OF SERVICE

I Teresa McDaniel, Legal Assistant for the Law Office of Brian McDaniel, LLC, certify that I have served the **Appellant's Petition for Rehearing** upon The Office of the South Carolina Attorney General by First Class US Mail, postage prepaid, on May 5, 2015, addressed to the attorney of record, William M. Blich, Jr., Esquire, Assistant Attorney General, P.O. Box 11549, Columbia, SC, 29211

May 5, 2015



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