

State of South Carolina  
County of Orangeburg  
Joseph Dinkins

v.

In the Court of Appeals  
First Judicial Circuit  
Case no. 2012-GS-38-1754

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SEP 28 2015

SC Court of Appeals

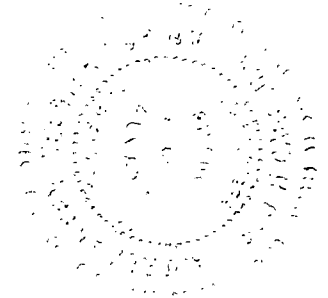
State of South Carolina

*Affidavit of Service*

The undersigned hereby certifies that true copies of the following Initial Brief has been submitted. Upon due diligence in the above referenced case has been served upon the South Carolina Court of Appeals Jenny Abbot Kitchings, Clerk P.O. Box 11629 Columbia SC, 29211 Office of the Attorney General P.O. Box 11549 Columbia S.C. 29211

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 24 DAY OF September, 2015.  
AUDREY AILEEN WEBSTER HORTON

NOTARY PUBLIC, STATE OF SOUTH CAROLINA  
My Commission Expires 02/07/2024



Joseph Dinkins

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14. State v. Rayfield 101 SE2d 505

B. The subsequent issues will be addressed in the initial brief in numerical order.

1. Court lacked subject matter jurisdiction on the basis of ineffective assistance of counsel.
- 2) The Courts evidence was insufficient to support conviction.
3. The legal error that deprived the petitioner of a fair trial
4. Ineffective assistance of appellant and trial counsel.

C. The subsequent issues listed in this initial brief are in concerns to the trial of State v Joseph Dinkins case no: 2012-GS-381754 which was a jury trial in absence of the defendant that occurred November 6, 2012 in which the defendant was found guilty on the date of November 7, 2012

# Arguments

## 1) Lack of Subject Matter Jurisdiction

The appellant asserts to this Honorable court that the Orangeburg Court of General Sessions lacked subject matter of jurisdiction. Concerning the charge of criminal domestic violence of a high and aggravated nature (CDVHAN). On the basis of the petitioners preliminary hearing which transpired on the date of 10/3/12 pursuant to SC code §22-5-320; the adjudicating officer evaluating the evidence, determined at that hearing, the court lacked a sufficiency of evidence to predicate the high and aggravated nature charge. Which can be substantiated in the preliminary hearing transcript yet the petitioner is having difficulty obtaining and humbly request that the honorable Supreme Court retrieve this information on the petitioners behalf, to assist in a fair trial and equal protection of the law USCA 5<sup>th</sup>, 14<sup>th</sup> SCC. Article 1 §3. The presiding Judge during this hearing was the Honorable Judge Robinson and the petitioner is now inquiring upon what new evidence was submitted after Judge Robinson made that ruling in hindsight of the preliminary for him to bound that charge over to general Session when there was an agreement to the charge of CDV.

## 2. Legally Insufficient Evidence to support conviction

The petitioner questions and specifically requests that the Supreme Court scrutinize the appealable issue which was preserved by his previous trial counsel, Concerning the request for a direct verdict from the Honorable Judge Dixon. When there was no evidence legally sufficient to support the conviction located in the record to substantiate all the elements of (CDVHAN) and the denial of this request by the adjudicating officer on the record on more than one occasion.

The State failed to aver the subsequent element of (CDVHAN). The appellant neither caused physical harm or injury, attempted to cause cause physical harm or injury, nor did the petitioner have the apparent ability to cause harm or injury. The state further failed to evince that an assault had ever -

occurred. Assault which is defined by Black's Law Eighth Edition 2. Criminal Law is an attempt to commit battery requiring the specific intent to cause injury, which was not substantiated by the evidence, which was in fact antithetical to the conviction. On the basis of the statements by the S.L.C.D. forensic scientist on pg 154 Lines 10-13: "The results of this test were that I didn't find any ignitable liquids of evidentiary<sup>value</sup>". Furthermore, the victim Crystal Allen whom never<sup>stated</sup> she was attacked, hit or sustained any physical abuse or injury by the petitioner. The victim's supporting witness Kara Dooling also predicated this in her testimony pg 108 Lines 1-25; 109 1-25 stating "She was standing over near him and I pulled her arm and pulled her towards me. Which evinces that the adjudicating officer of the court, could not substantiate, based upon the evidence introduced by the state Mens Rea even with a illicitly submitted letter which should have been objected too. The court could not confirm any intent to cause injury; additionally could not predicate a deadly weapon based upon forensic scientist Michael Moskals testimony and no injury had occurred. Also the letter stated that there was<sup>water</sup> placed in the jug. Pursuant to the subsequent case law *Gadsden v ECO services of SC, Inc.* 648 S.E.2d 585 (2007) id. *Howard v. Roberson* 654 S.E.2d 877, id. *Parrish v Allison* 656 S.E.2d 382. An appellate Court will reverse the lower courts ruling on a motion for directed verdict or judgement not with standing the verdict when there is no evidence to support the ruling or when the ruling is controlled by an error of law. Assault being a offense element as well as the intent to cause injury. The state is required to prove every element of the charged offense to obtain a conviction. *State v Alhards* 211 S.E.2d 868. Being that these elements could not be substantiated Judge Dixon created reversible error or an error of law in allowing the jury to adjudicate the matter without properly charging them of the elements, specifically the assault element. Which was a abuse of discretion which occurs when at the conclusion of the trial, controlled by an error of law or are based on unsupported factual conclusions *Layman v State* 658 S.E.2d 320

## Legal error that deprived appellant of fair trial

The petitioner also wishes to contest another error of law concerning the juror Mrs. Michelle Craven, Tammy Cravens sister in law which was the states victims advocate the wife of Mr. Cravens brother. Which was saliently discovered by the court subsequent to a recess taken from 2:36 p.m. to 2:47. Antecedent to this recess, the trial Judge failed to instruct the jurors not to confer about the case among themselves. In which the possibility of Mrs. Cravens influence could have contingently persuaded or biased the other jurors opinions.

Furthermore the judge failed to inquire from the remaining jurors if this had occurred as predicated on pg 110 lines 20-25 and 111 1-25. Petitioners trial counsel still yet failed or refused to object albeit this was grounds for a new trial, mistrial or dismissal predicated ineffective assistance, Pursuant to S.C. code § 14-7-1030 all objections to jurors called to try prosecutions, actions, issues or questions arising out of actions or special proceedings in the various courts of this state. If not made before the juror is impaneled for or charged with the trial of the prosecution action issue or question arising out of an action or special proceeding is waived and if made thereafter is of no effect.

What the petitioners trial counsel would have needed to expound upon for a new trial on the basis of the disqualification of that juror was that it is incumbent or a obligation are duty for counsel to show the disqualification, that such disqualification was unknown before the verdict and that the movant was not negligent in failing to make or address discovery of the disqualification before the verdict *Spencer v. Kirby* 106 S.E.2d 883 (1959) *State v. Rayfield* 101 S.E.2d 505 *State v. Johnson* 144 S.E.2d 348 which is untenable and a clarion violation of the petitioners substantive due process rights.

## 4 Ineffective assistance of appellate and Trial Counsel

Appellant asserts ineffective assistance of appellant counsel on the basis of counsels refusal to address and raise the significant and obvious issues

that were listed antecedently yet refused addressing them in the Anders brief. Specifically the issues in which the petitioners trial counsel had objected to and preserved on the record. Appellant counsels failure to raise these issues in the brief predicate deficient performance, which would have contingently prejudiced the petitioners direct appeal if not asserted to the record. Based upon the precept if the appellant court failed to consider those claims on direct appeal. The petitioner would procedural default from collaterally attacking them resulting in a fundamental miscarriage of justice Benjamin v SC not reported FSupp 2d 2008 WL 3411733 Riddle v State 443 SE2d 557 Id. Crawford v Washington 124 S.Ct. 1354 (2004)

Ohio v Roberts 100 S.Ct. 2531 pursuant to Gray v Greer 778 F2d 350 if appellant counsel has failed to raise a significant obvious issue (failure could be viewed as deficient performance and if the issue not raised may have resulted in reversal of conviction or order for new trial failure was prejudicial, ineffective assistance will overcome. Pursuant to Ertiff v Lucey 469 U.S. 387 a defendant is entitled to effective assistance of counsel from appellate counsel on first appeal

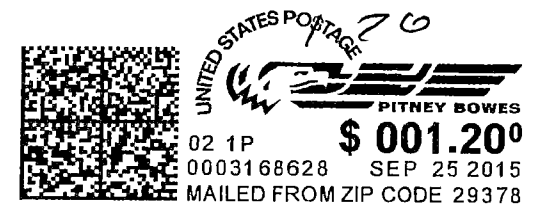
The appellant also wishes address ineffective assistance of trial counsel, on the basis of counsels failure to object, these issues are ambiguous to the petitioner on direct appeal albeit the petitioner has discovered this is permitted pursuant to Martinez v Ryan 132 S.Ct. 1309 (2012). Counsel failed to object to the indicted charge of (DVHAN) when he was present at the preliminary and knew that Judge Roberson; that the evidence was insufficient for the (MVA) saw the material variance and still failed to object Bailey v State 709 SE2d 679 2011. Counsel also failed to assert court lacked subject matter jurisdiction. Counsel failed to object to the continuance of the trial subsequent to the illicit disqualification of a juror and the judge not inquiring if they conferred with this juror. Counsel failed to object to the jury instructions and failed in requesting the lesser included offense without objection and also counsels acquiescence in not requesting a charge to the jury of the elements of assault. Trial counsels failure to challenge the indictment and the court didnt constitute a valid trial strategy Padgett v State 474

101(1997)

### Conclusion

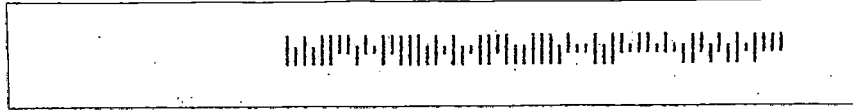
In conclusion trial counsel allowed the petitioners USCA 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup>, 10<sup>th</sup> and South Carolina Constitution Article 1 §3, 14, 11, 24 to be violated. The petitioner wishes that the honorable Supreme Court makes an expedited disposition within the next 60 days reverse the judgement and grant the petitioner a new trial in his presence.

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