

{ PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT }

{ THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT }

RECEIVED

NOV 02 2015

{ APPELLATE CASE NO. 2013-000361 }

SC SUPREME COURT

{ APPEAL FROM GREENVILLE COUNTY  
R. LAWTON MCINTOSH CIRCUIT COURT JUDGE }

{ UNPUBLISHED OPINION NO. 2013-LP-435  
HEARD MARCH 2, 2015 FILED AUGUST 19, 2015 }

DATED 10/27/15

RESPECTFULLY SUBMITTED

S. *Christopher K. ...*

PRO SE APPELLANT

MICORMICK Ct F-2-B-134

386 REDEMPTION WAY

MICORMICK, SOUTH CAROLINA

29899

{ LEGAL AUTHORITIES }

{ STATE V. PAGAN }	9
{ STATE V. COMPTON }	9
{ STATE V. HAMILTON }	9
{ STATE V. GENTRY }	9
{ STATE V. FARRON }	9, 10
{ TURNER V. LOUISIANA }	11
{ STATE V. BRYANT }	11
{ GONZALES V. BETO }	11
{ PEOPLE V. CLUMMING }	12
{ PEOPLE V. GUERRA }	12
{ PEOPLE V. RUNDLE }	12
{ BASS V. STATE }	12
{ STATE V. FLOWERS }	12
{ STATE V. BARROSO }	12
{ STATE V. DUNCAN }	12
{ SCRCRIMP RULE 5(A) }	12
{ STATE V. NICHOLSON }	12
{ SCRCRIMP RULE 5 (a)(2) }	12
{ STATE V. TROTTER }	13
{ STATE V. BECKHAM }	13
{ STATE V. POWERS }	14
{ STATE V. BACCUS }	14
{ STATE V. JONES }	15
{ FRANKS V. DELAWARE }	15
{ STATE V. JENKIN }	15, 16

{ S. C. CODE ANN. 17-18-140 (2000) }	15, 16
{ STATE V. SAMPSON }	15, 16
{ STATE V. RUCID }	15, 16
{ STATE V. SWEET }	16,
{ STATE V. PRIMUS }	16,
{ DOUGLAS V. STATE }	17-19
{ STATE V. SHARDING }	17-19

1/

{ ARGUMENT }

THE COURT OF APPEALS FOR THE STATE OF SOUTH CAROLINA ERRED IN ITS FACTUAL DETERMINATION OF THE FACTS AND OVERLOOKED AND MISAPPREHEND THE FOLLOWING IN ITS DETERMINATION THAT THE REBUTTAL TESTIMONY OF THE COURTROOM DEPUTY WAS NOT PRESERVED, THE COURT ALSO ERRED IN ITS FACTUAL DETERMINATION IN DENYING APPELLANT MOTION TO SUPPRESS EVIDENCE PURSUANT TO A SEARCH WARRANT THAT CONTAINED FALSE INFORMATION, THE COURT ALSO ERRED IN ITS FACTUAL DETERMINATION BY DENYING RUSSELL'S MOTION FOR A MISTRIAL AFTER THE SOLICITOR IMPROPERLY AND FLAGRANTLY COMMENTED UNCONSTITUTIONALLY UPON APPELLANT ALIBI.

11/19

{ PRESENTATION OF THE ISSUE WITH  
CITATION OF LAW IN SUPPORT }

1) AS TO WHETHER THE CIRCUIT COURT ERRED IN ALLOWING THE REBUTAL TESTIMONY OF THE COURTROOM DEPUTY

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION OF THIS ISSUE BECAUSE THIS ISSUE WAS PROPERLY RAISED TO AND RULED UPON BY THE TRIAL JUDGE AND WAS PROPERLY PRESERVED FOR APPELLATE REVIEW.

{ SUPPORTING FACT }

RUSSELL PRESENTED AN ALibi DEFENSE IN THE PRESCRIBED MANNER, DEPUTY SMITH, COURTROOM SECURITY DEPUTY WAS NOT ON THE SOLICITOR WITNESS LIST AND WAS NOT IDENTIFIED AS A REBUTAL WITNESS IN RESPONSE TO RUSSELL'S NOTICE OF ALibi DEFENSE

TR. TR. pg. 408 L-9-18

MR. MOYER: WELL YOUR HONOR, I WOULD SAY THIS, I BROUGHT IT TO THE COURT ATTENTION DURING MY CASE IN CHIEF IF YOU WILL RECALL

THE COURT: RIGHT

MR. MOYER: THAT I WANTED TO CALL THE OFFICER AT THAT TIME.

THE COURT: RIGHT AND THE OFFICER WASN'T ON YOUR WITNESS LIST, AND MS. ROSS SAID I OBJECT AND I SAID YOU HAVE TO WAIT AND DO IT IN REPLY.

DEPUTY SMITH WAS PRESENT IN THE COURTROOM DURING

THE TESTIMONY OF THE WITNESSES DURING RUSSELL'S TRIAL AND AFTER HEARING THE EVIDENCE VOLUNTEERED TESTIMONY REGARDING AN ALIAS WHICH WAS NOT PROPER REBUTTAL TESTIMONY.

TR. TR. PG. 422 - 423

{ PROBATIVE FACT }

THE APPELLANT HAS DEMONSTRATED THAT THE ISSUE WAS PROPERLY RAISED TO AND RULED UPON BY THE TRIAL JUDGE.

ACCORDING TO THE TRIAL JUDGE THE SOLICITOR ORIGINALLY ASKED TO HAVE DEPUTY SMITH TESTIFY DURING THE STATES CASE IN CHIEF BUT THE JUDGE REFUSED TO PERMIT THE TESTIMONY AT THAT TIME BECAUSE DEPUTY SMITH WAS NOT ON THE STATE'S WITNESS LIST.

TR. TR. PG. 412

RUSSELL'S COUNSEL OBJECTED TO DEPUTY SMITH TESTIFYING BECAUSE HIS TESTIMONY WAS NOT IN RESPONSE TO RUSSELL'S ALIBI DEFENSE.

TR. TR. PG. 412 - 14

AFTER HEARING THE ARGUMENTS OF COUNSEL THE TRIAL COURT OVERRULED COUNSEL'S OBJECTION AND PERMITTED DEPUTY SMITH TO TESTIFY TO THE JURY.

TR. TR. PG. 415 - 24

THE APPELLANT HAS DEMONSTRATED THAT THE ISSUE WAS RAISED TO AND RULED UPON BY THE TRIAL JUDGE. THE APPELLANT SUBMITS THIS WAS A MANIFEST ABUSE OF DISCRETION THAT WAS ACCOMPANIED BY PROBABLE PREJUDICE.

THE TRIAL COURT ABUSED ITS DISCRETION WHICH RESULTED IN A COMPLETE MISCARRIAGE OF JUSTICE AND IT WAS HIGHLY PREJUDICIAL FOR DEPUTY SMITH TO TESTIFY THAT APPROXIMATE THREE TO FOUR YEARS AGO HE SAW RUSSELL WITH A CAMOUFLAGE JACKET ON RIDING A BICYCLE AT THE APARTMENT COMPLEX DEPUTY SMITH TESTIFIED THAT HE ASKED RUSSELL HIS NAME AND RUSSELL RESPONDED HIS NAME WAS "PONCHO"

TR. TR. PG. 482-33

DEPUTY SMITH TESTIMONY CLEARLY HAD SOME EFFECT ON THE JURY BECAUSE THE JURY INQUIRED ABOUT DEPUTY SMITH DURING DELIBERATIONS.

TR. TR. PG. 503

THE JURY SENT A NOTE TO THE TRIAL COURT ASKING:

"WAS THE DEPUTY ON THE ORIGINAL LIST OF WITNESSES?"

{ COURT'S EXHIBIT 6 }

DEPUTY SMITH WAS NOT IN FACT ON THE STATES LIST OF WITNESSES.

TR. TR. PG. 504

THE TRIAL COURT SUMMONED THE JURY AND INSTRUCTED THEM:  
ALL RIGHT MADAM FORELADY LADIES AND GENTLEMEN OF THE JURY YOUR QUESTION WITH REGARDS TO DEPUTY SMITH AS A WITNESS AND WHETHER OR NOT HE WAS ON THE ORIGINAL WITNESS LIST LET ME -- I ALWAYS HATE TELLING - NOT ANSWERING A QUESTION THAT JURORS SEND OUT TO ME, HOWEVER THE RULES REQUIRES THAT YOU HAS TO MAKE YOUR DECISION BASED UPON THE EVIDENCE AND TESTIMONY THAT YOU HAVE HEARD IN THIS COURTROOM OKAY AND THATS WHAT I WIE TRIED

TO BRING FORTH TO YOU. THAT IS NOT INFORMATION THAT IS IN EVIDENCE AND SO I'M NOT ALLOWED TO COMMENT ON IT. THE JUDGES ARE NOT ALLOWED TO COMMENT ON THE FACTS OR HAVE AN OPINION OF THE FACTS. YOU'LL JUST HAVE TO MAKE YOUR DETERMINATION WITHOUT ANY FURTHER RESPONSE FROM ME, AND I'M SORRY I CAN'T BE ANYMORE CLEARER OKAY.

TR. TR. PG. 504-05

RUSSELL'S COUNSEL OBJECTED TO THE TRIAL COURT'S INSTRUCTIONS AND THE APPELLANT SUBMITS THAT THE COURT'S INSTRUCTIONS WAS WITH SUFFICIENT PROBABLE PREJUDICE THE TRIAL COURT ERRED BY ALLOWING THE REDUNDANT TESTIMONY OF THE COURTROOM DEPUTY WHO SAT IN THE COURTROOM THE ENTIRE TRIAL, WHO WAS NOT DISCLOSED AS A WITNESS, DID NOT TESTIFY AS TO ANY OF DEFENDANT'S EVIDENCE, AND PROVIDE THE ONLY TESTIMONY TO SUBSTANTIATE A CLAIM BY THE STATES STAR WITNESS THAT RELATED TO APPELLANT'S IDENTIFICATION OF THE DEFENDANT AS HIS ACCOMPLICE.

THE ADMISSION OF EVIDENCE IS WITHIN THE DISCRETION OF THE TRIAL COURT AND WILL NOT BE REVERSED ABSENCE AN ABUSE OF DISCRETION.

{ STATE V. PAGAN } 201 SC 201, 208 621 S.E. 2d 262, 265 (2006)

AN ABUSE OF DISCRETION OCCURS WHEN THE TRIAL COURT'S CONCLUSION LACKS EVIDENTIARY SUPPORT. *Id.*

THE TRIAL COURT RULING ON ADMISSIBILITY OF EVIDENCE MAY ALSO BE REVERSED IF IT IS BASED ON A LEGAL ERROR THAT RESULTS IN PREJUDICE TO THE DEFENDANT.

{ STATE V. COMPTON } 366 S.C. 674, 677 623 S.E. 2d 661, 664 (CT. APP. 2006)

91  
{ STATE V. HAMILTON } 344 S.C. 353, 543 S.E. 2d 586, 591 (CT. APP. 2001)

{ STATE V. GENTRY } 303 S.C. 93 610 S.E. 2d 494 (2005)

THE TRIAL COURT ABUSED ITS DISCRETION IN PERMITTING DEPUTY SMITH TO TESTIFY FOR THE STATE IN REPLY BECAUSE DEPUTY SMITH WAS NOT A PROPER REBUTTAL WITNESS.

ALTHOUGH THE ADMISSION OF REPLY TESTIMONY IS ORDINARILY WITHIN THE DISCRETION OF THE TRIAL COURT REPLY TESTIMONY SHOULD BE LIMITED TO REBUTTAL OF MATTERS RAISED BY THE DEFENSE.

{ STATE V. FARROW } 332 S.C. 190, 194 504 S.E. 2d 131, 133 (CT. APP. 1998)

THE IMPROPER ADMISSION OF REPLY TESTIMONY IS A BASIS FOR REVERSAL IF IT IS PREJUDICIAL. Id.

{ 504 S.E. 2d AT 133 }

IN THE CASE AT BAR DEPUTY SMITH TESTIFIED THAT APPROXIMATELY THREE TO FOUR YEARS AGO HE SPAN THE APPELLANT WEARING AN IDENTICAL CAMOUFLAGE JACKET THAT WITNESSES TESTIFIED TOO, THIS WAS HIGHLY PREJUDICIAL.

IN { FARROW } A CASE INVOLVING THE ARMED ROBBERY OF A CONVENIENCE STORE, THE STATE PUT ON EVIDENCE THAT THE DEFENDANT WAS WEARING A SHIRT IDENTICAL TO THE SHIRT OF THE ROBBER AS FILMED ON THE STORE'S SURVEILLANCE VIDEO.

{ FARROW } 332 S.C. AT 191 504 S.E. 2d AT 133

AFTER THE FIRST DAY OF TRIAL, A JUROR SUBMITTED QUESTIONS ABOUT THE TECHNICAL ASPECT OF THE SURVEILLANCE SYSTEM. Id

{ 504 S.E. 2d AT 132 }

THE TRIAL COURT DECIDED TO ALLOW THE STATE TO PRESENT EVIDENCE DURING REBUTTAL TO ADDRESS THE JUROR'S QUESTION

19  
§ 504 S. E. 2d AT 132

INSTEAD THE SOLICITOR CALLED DEPUTY SMITH TO BOLSTER THE TESTIMONY OF THE STATE STAR WITNESS, WILLIAMS, THAT RUSSELL WAS KNOWN BY THE NAME "PONCHO" AND SET UP THE STATE'S CLOSING ARGUMENTS THAT RUSSELL COMMITTED THE CRIME BECAUSE DEPUTY SMITH TESTIFIED HE SEEN RUSSELL WEARING A CAMOUFLAGE JACKET IDENTICAL TO THE ONE TESTIFIED TOO BY WITNESSES AS RUSSELL DID ON THE DAY DEPUTY SMITH SEEN HIM APPROXIMATELY THREE OR FOUR YEARS AGO.

DEPUTY SMITH TESTIMONY DID NOT REPUTE ANY EVIDENCE PRESENTED BY RUSSELL AND IT WAS IMPROPER AND SHOULD HAVE BEEN EXCLUDED.

THE TRIAL COURT NOTED DEPUTY SMITH TESTIMONY WAS NOT RESPONSIVE TO THE DEFENSE EVIDENCE.

THE COURT: WELL LET ME STOP YOU. I HEAR YOU. LET ME ASK YOU THIS DO YOU WANT TO RISK DIRTYING UP THE RECORD, BASED UPON A PROCEDURAL POSTURE IN THE CASE, BY INTRODUCING EVIDENCE THAT WAS NOT RESPONSIVE TO THE DEFENSE?

REGARDLESS OF MY MISTAKE OR NOT?

MR. MOYER: YOUR HONOR I REALLY DON'T HAVE A PROBLEM WITH IT.

THE COURT: I DO.

TR. TR. PG. 415-16

DEPUTY SMITH TESTIMONY UNCONSTITUTIONALLY AND IMPROPERLY INFLUENCED THE JURY CRIMINAL DEFENDANTS HAVE A FOURTH AMENDMENT DUE PROCESS TO TRIAL BY AN

9/

IMPARTIAL JURY UNTAINTED BY IMPROPER INFLUENCES.

{ TURNER V. LOUISIANA } 379 US 466 474 (1965)

{ STATE V. BYRANT } 254 SC 290, 395 581 S.E. 2d 157, 160 (2002)

THE SUPREME COURT OF THE UNITED STATES HELD THAT WHEN A LAW ENFORCEMENT OFFICER PLAYS THE DUAL ROLES OF KEY TRIAL WITNESS ANY JURY BALIFF THERE INHERENT PREJUDICE WARRANTING REVERSAL.

{ GONZALES V. BETO } 405 US 1052 95 S. CT. 1503, 1505 (1972)

AS SUCH, HE JUST LIKE THE BALIFF IN (TURNER) MAY HAVE BEEN VIEWED BY THE JURY AS MORE CREDIBLE THAN A TYPICAL WITNESS WHEN HE TESTIFIES BECAUSE HE OBSERVE HIM IN A POSITION OF AUTHORITY IN THE COURTROOM, INDEED THE JURY OBVIOUSLY TOOK NOTE OF THE DEPUTY TESTIMONY BECAUSE THE JURY ASKED THE TRIAL COURT A QUESTION ABOUT IT DURING DELIBERATIONS.

THE TRIAL COURT OVER COUNSEL OBJECTIONS DECLINED TO GIVE THE JURY ANY GUIDANCE IN RESPONSE TO THEIR QUESTIONS AND NEVER INSTRUCTED THE JURY TO GIVE DEPUTY SMITH TESTIMONY THE SAME WEIGHT AS THAT OF ANY OTHER WITNESSES.

TR. TR. PG. 504-05

NOTHING WAS DONE TO PREVENT THE JURY FROM GIVING UNDUE WEIGHT TO DEPUTY SMITHS TESTIMONY.

{ PEOPLE V. CUMMING } 850 P. 2d 1, 37-38 (CA1 1993)

{ PEOPLE V. GUERRA } 129 P. 2d 364 (CA1 2000)

{ PEOPLE V. PLUNDIE } 180 P. 3d 224 (CA1 2005)

{ BASS V. STATE } 674 S.E. 2d 255 257-58 (GA 2002)

- { STATE V. FLOWERS } 489 S.E.2d 391 402 C.N.C. 1977)
- { STATE V. BARROSO } 320 S.E. 1, 23, 462 S.E. 2d 863, 876 (1986)
- { STATE V. DUNCAN } 274 S.C. 379, 382 264 S.E. 2d 421-423 (1980)
- { SCRCPMP RULE 5 (A) }
- { STATE V. NICHOLSON } 366 S.C. 568, 579 623 S.E. 2d 100, 105 (CT. APP. 2005)
- { SCRCPMP RULES (E) (2) }
- { STATE V. TROTTER } 317 S.C. 411, 414 453 S.E. 2d 905, 907 (CT. APP. 1995)
- { STATE V. BECKHAM } 344 S.C. 300 312-15 518 S.E. 2d 606, 611 (1999)

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION OF THIS ISSUE AND THE APPELLANT HAS DEMONSTRATED THAT THIS ISSUE WAS RAISED TO AND RULED UPON BY THE TRIAL JUDGE. THE APPELLANT WAS PREJUDICED BECAUSE THE TRIAL COURT NEVER POLLED THE JURY TO SEE IF ANY JUROR KNEW OR WERE RELATED TO DEPUTY SMITH, THE SOLICITOR INITIALLY SUGGESTED THAT THE JURY BE ASKED IF ANY OF THE MEMBERS KNEW DEPUTY SMITH WHOSE NAME WAS NOT CALLED OUT TO THE JURY DURING VOIR DIRE.

TR. TR. PG. 410

THE TRIAL COURT NEVER DID SO BEFORE DEPUTY SMITH TESTIFIED.

TR. TR. PG. 431

IDENTIFYING WITNESSES TO THE JURY PANEL DURING VOIR DIRE IS NECESSARY TO SEE THAT AN UNBIASED, FAIR AND IMPARTIAL SET OF PERSON IS IMPANELED.

- { STATE V. POWERS } 381 SC 37, 43-44 561 S.E. 2d 116, 119 (1998)

THE TRIAL COURT ERRED BY NOT ASKING THE JURY IF THEY KNEW DEPUTY SMITH BEFORE HE TESTIFIED AND APPELLANT WAS

19  
PREJUDICED BY THE TRIAL COURT'S ERROR.

THIS HONORABLE COURT SHOULD REVERSE RUSSELL'S CONVICTION AND REMAND THE MATTER FOR A NEW TRIAL AS A RESULT OF DEPUTY SMITH'S IMPROPERLY INFLUENTIAL TESTIMONY REGARDING RUSSELL IDENTITY.

a) AS TO WHETHER THE CIRCUIT COURT ERRED IN DENYING RUSSELL'S MOTION TO SUPPRESS EVIDENCE PURSUANT TO A SEARCH WARRANT THAT CONTAINED FALSE INFORMATION.

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION BECAUSE THERE WERE NO EVIDENCE TO SUPPORT NOT GRANTING APPELLANT MOTION TO SUPPRESS.

{ STATE V. BACCHUS } 367 S.C. 41, 44-45 625 S.E. 2d 211, 220 (2006)

{ STATE V. JONES } 342 S.C. 181, 128-536 S.E. 2d 675, 679 (2000)

{ PROBATIVE FACT }

ON FEBRUARY 11, 2013 THE APPELLANT PROCEEDED TO TRIAL BEFORE THE HONORABLE R. LAWTON MCINTOSH AND A JURY.

THE STATE OBTAINED DATA FROM THE SECOND PHONE PURSUANT TO A SEARCH WARRANT DATED FEBRUARY 7, 2013 ONLY (96) NINETY SIX HOURS PASSED FROM DATE OF DATA AND DATE OF TRIAL. INVESTIGATOR A. I. BAILEY REQUESTED THE SEARCH WARRANT BUT DID NOT TESTIFY.

RUSSELL'S COUNSEL'S MOVED TO SUPPRESS THE RECORDS PRODUCED BY THE FEBRUARY 7, 2013 SEARCH OF THE SECOND CELLPHONE BEFORE THE STATE PRESENTED ITS CASE ARGUING THE SEARCH WARRANT DID NOT ESTABLISH PROBABLE CAUSE.

TR. TR. pg. 41-43

ESSENTIALLY THE STATE ALLEGED IN ITS SEARCH WARRANT AFFIDAVIT THAT THE SECOND CELL PHONE FOUND IN THE VEHICLE BELONGED TO RUSSELL BASED ON A STATEMENT WILLIAMS MADE TO LAW ENFORCEMENT.

TR. TR. pg. 46-47

HOWEVER NO STATEMENT OR OTHER INFORMATION FROM WILLIAMS IDENTIFYING THE SECOND CELL PHONE AS HAVING BELONGING TO RUSSELL WERE EVER PRODUCED TO RUSSELL PURSUANT TO {BRADY V. MARYLAND} RULE 5(A)(1) + (2) + (3)

TR. TR. pg. 48-49

THE TRIAL COURT INITIALLY DENIED RUSSELL MOTION WITHOUT ACTUALLY RECEIVING ANY EVIDENCE

TR. TR. pg. 50

AT TRIAL THE STATE INTRODUCED THE SECOND CELL PHONE INTO EVIDENCE THROUGH WEINER SUBJECT TO AN OBJECTION

TR. TR. pg. 253

WEINER AGREED THAT NO VIDEO OR WRITTEN RECORD EVIDENCED WILLIAMS STATEMENT.

TR. TR. pg. 255-257

WEINER ADMITTED THAT THE SECOND CELL PHONE CARRIER DID NOT HAVE ANY RECORD REGARDING OWNERSHIP.

TR. TR. pg. 256-57

WEINER ADMITTED THAT THE PHONE DID NOT HAVE ANY FRINGERPRINT ON IT.

TR. TR. pg. 260

19  
A SEARCH WARRANT MAY ONLY BE ISSUED UPON A SWORN AFFIDAVIT THAT ESTABLISHES THE GROUND FOR THE WARRANT.

{ S.C. CODE ANN 17-13-140 }

{ FRANKS V. DELAWARE } 438 US 154 171-79 (1978)

RUSSELL'S COUNSEL PROVIDED SUFFICIENT GROUNDS TO BE ENTITLED TO AN EVIDENTIARY HEARING BUT THE TRIAL COURT NEVER CONDUCTED ONE.

TR. TR. PG. 249-50

INSTEAD THE TRIAL COURT RELIED UP WEINER'S TESTIMONY BEFORE THE JURY TO OVERRULE RUSSELL'S { FRANKS } MOTION.

{ STATE V. JONES } 342 S.C. 121, 125 336 S.E. 2d 675, 677 (2000)

IN THE CASE AT BAR ALTHOUGH { BAZLEY } AFFIDAVIT STATED THAT WILLIAMS IDENTIFIED THE SECOND CELL PHONE AS RUSSELL'S { BAZLEY } NEVER TESTIFIED AND { WEINER } CONCEDED THERE WAS NO VIDEO TAPE OF THE CONFESSION AND THAT WILLIAMS SWORN STATEMENT DID NOT ACTUALLY IDENTIFY THE SECOND CELL PHONE AS BELONGING TO RUSSELL.

TR. TR. PG. 258-59

THE STATEMENT IN THE SEARCH WARRANT AFFIDAVIT WAS A MISREPRESENTATION BECAUSE IT WAS NOT SUPPORTED BY THE CONTENTS OF WILLIAMS SWORN STATEMENT. THIS MISREPRESENTATION IS MATERIAL BECAUSE IF WILLIAMS ALLEGED STATEMENT WAS STRICKEN FROM THE SEARCH WARRANT AFFIDAVIT THERE WOULD NOT HAVE BEEN A SUBSTANTIAL BASIS FOR THE MAGISTRATE TO FIND PROBABLE CAUSE, BECAUSE THE STATEMENT WAS THE ONLY INDICATION

91

ARE EACH ALONE SUFFICIENT TO JUSTIFY A NEW TRIAL BUT IN COMBINATION THEY WORK TO DEPRIVE APPELLANT OF A FAIR TRIAL AND JUSTIFY REVERSING THE VERDICT AND REMANDING FOR A NEW TRIAL.

DATED 10/27/45

RESPECTFULLY SUBMITTED  
*Christopher D. Smith*

PRO'SE

MC CORMICK C/I F-2-B-134

386 REDEMPTION WAY

MC CORMICK, SOUTH CAROLINA

29899



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

September 16, 2015

The Honorable Paul B. Wickensimer  
Courthouse  
305 E North St  
Greenville SC 29601-2121

## REMITTITUR

Re: The State v. Christopher E. Russell  
Lower Court Case No. 2011GS2301118, 2011GS2301122,  
2011GS2301123, 2011GS2301124  
Appellate Case No. 2013-000381

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Christopher Russell, 158392  
Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire  
David Bryant Morgen, Esquire  
Mark Reynolds Farthing, Esquire  
Laura Ruth Baer, Esquire  
Jennifer Ellis Roberts, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

September 17, 2015

Christopher Russell, 158392  
McCormick Corr. Inst.  
386 Redemption Way  
McCormick SC 29899

Re: The State v. Christopher E. Russell  
Appellate Case No. 2013-000381

Dear Mr. Russell:

The Court has received your petition for rehearing. Because you are represented by counsel, we are returning your filings to you. See *Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel.").

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Robert Michael Dudek, Esquire  
Alan McCrory Wilson, Esquire  
David Bryant Morgen, Esquire  
Mark Reynolds Farthing, Esquire  
Laura Ruth Baer, Esquire  
Jennifer Ellis Roberts, Esquire

{ THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT }

RECEIVED

NOV 02 2015

{ APPELLATE CASE No. 2013-000281 }

SC SUPREME COURT

{ PROOF OF SERVICE }

I, THE APPELLANT IN THE ABOVE NAMED ACTION AND DOES HEREBY  
CERTIFY THAT I HAVE SERVED THE PETITION FOR WRIT OF  
CERTIORARI ALONG WITH ATTACHMENTS UPON OPPOSING COUNSEL  
BY DEPOSITING A COPY OF THE SAME IN THE UNITED STATES MAIL  
POSTAGE PREPAID AND ADDRESSED AS FOLLOWS:

ALAN MCCORY WILSON  
ATTORNEY GENERAL FOR S.C.  
POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA

29811

DATED 10/22/15

RESPECTFULLY SUBMITTED  
s. *Christy A. Small*

MC CORMICK #1 F-2-B-184

386 REDEMPTION WAY

MC CORMICK, SOUTH CAROLINA

29819

{ THE STATE OF SOUTH CAROLINA }  
IN THE SUPREME COURT

{ APPELLATE CASE NO. 2013-000381 }

RECEIVED

NOV 02 2015

SC SUPREME COURT

AFFIDAVIT  
{ CERTIFICATION }

I AM THE APPELLANT CHRISTOPHER RUSSELL AND DO HEREBY CERTIFY THAT I DID PETITION FOR A REHEARING IN THE COURT OF APPEALS IN ACCORDANCE WITH APPELLATE PROCEDURES RULE 234

THE PETITION FOR A REHEARING WAS REQUESTED IN A TIMELY MANNER AND ATTACHED TO THAT PETITION FOR A REHEARING WAS A LETTER FROM THE SOUTH CAROLINA INDIGENT DEFENSE WHICH INDICATED THAT AGENCY HAS CLOSED APPELLANTS CASE.

THE APPELLANT PROCEED TO DO A PRO'SE PETITION FOR A REHEARING WHICH WAS SUBMITTED IN A TIMELY MANNER THE APPELLANT RECEIVED CORRESPONDENCE FROM THE COURT OF APPEALS SEPTEMBER 16, 2015 AND SEPTEMBER 17, 2015 IN WHICH THE CLERK OF COURT INADVERTENCE DID NOT RETURN APPELLANT FILINGS AS THE LETTER INDICATES?

RESPECTFULLY SUBMITTED  
*S. Christopher Russell*

SWORN OR AFFIRMED BEFORE ME THIS 27<sup>th</sup> DAY OF October 2015  
*Michael Canare*  
Michael Canare

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES July 9 (20)25

Christopher Russell #158392

924 J-2-B-134

McCormick Correctional Institute  
336 Redemption Way  
McCormick, SC 29899

The South Carolina Supreme Ct.  
Post office Box 11330  
Columbia, S.C.  
29202

**RECEIVED**

OCT 27 2015

MCCI  
MAIL ROOM

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

MCCORMICK CORRECTIONAL INST.  
S.C. DEPARTMENT OF CORRECTIONS

LEGAL MAIL  
MAIL ROOM



9 X 12

