

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

THE STATE,

RESPONDENT,

V.

LEON LILLY,

APPELLANT

APPELLATE CASE NO. 2015-000179

RECEIVED
NOV 09 2015
SC Court of Appeals

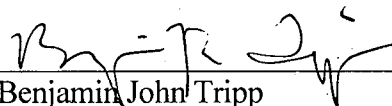
Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

**MOTION TO SUSPEND APPEAL AND
FOR LEAVE TO FILE MOTION FOR NEW TRIAL
BASED ON AFTER-DISCOVERED EVIDENCE
IN THE COURT BELOW**

Respondent Leon Lilly, having already initiated appeal in this Court, moves pursuant to Rule 240, SCACR and Rule 29(b), SCRCrimP, to suspend the appeal and asks for this Court to grant leave for Respondent to file a motion for new trial based on after-discovered evidence in the Edgefield County Court of General Sessions. A copy of his motion for a new trial is attached.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

This 9th day of November, 2015.

August 24, 2015

RECEIVED

OCT 26 2015

Leon A. Lilly, #3627806
Allendale C.I.
P.O. Box 1151
Fairfax, SC 29827

ATTORNEY GENERALS
OFFICE

The Honorable Shirley F. Newby, Clerk
Edgefield County, Clerk of Court
P.O. Box 34
Edgefield, South Carolina 29824-0034

RE: State of South Carolina v. Leon A. Lilly
Case No.: 2013-GS-19-570

Dear Ms. Newby:

Enclosed for filing please the original Motion for After-Newly
Discovered Evidence in connection with the above-reference matter. Please
file the original and return the clocked copy to my courier.

Thank you for your assistance in this matter.

Sincerely,

Leon A. Lilly
Leon A. Lilly, #362785

cc: Alan Wilson, Attorney General

RECEIVED

OCT 27 2015

Referred to amwa/pm
Answered _____

August 24, 2015

Leon A. Lilly, 362785
Allendale C.I.
P.O.Box 1151
Fairfax, SC 29827

Alan Wilson, Attorney General
Office of the Attorney General
P.O.Box 11549
Columbia, SC 29211

RE: State of South Carolina v. Leon A. Lilly
Case No.

Dear Mr. Wilson:

Enclsod please find a copy of the Motion for After-Newly Discovered
Evidence in the above reference matter.

Thank you for your assistance in this matter.

Sincerely,

Leon A Lilly

Leon A. Lilly, #362785

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)
)
State of South Carolina)

IN THE COURT OF GENERAL SESSIONS

CASE NO.

Plaintiff

2013 - GS - 19 - 570

v.
Leon A. Lilly, #362785

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Defendant.

Plaintiff's Attorney: <u>N/A</u> , Bar No. _____ Address: _____ phone: _____ fax: _____ e-mail: _____ her: _____	Defendant's Attorney: <u>Leon A. Lilly</u> , No. <u>362785</u> Address: <u>P.O. Box 1151</u> <u>Fairfax, SC 29827</u> phone: <u>N/A</u> fax: <u>N/A</u> e-mail: <u>N/A</u> her: <u>N/A</u>
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Motion for After-Newly Discovered Evidence</u> Estimated Time Needed: <u>30 Min.</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<u>Leon A. Lilly</u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	<u>August 19, 2015</u> Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: _____ <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input checked="" type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

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However, here evidence will establish that the General Assembly did not enacted a [Term of Court] that set forth in 14-5-760 (1) for fifth Wednesday in October.

S.C.Code Ann. § 14-5-760. Terms of Court in eleventh circuit. Which provides:

- ° The court of the eleventh judicial circuit shall be held as hereinafter provided.
- ° (1) Edgefield County.- The court of general sessions for Edgefield County shall be held at Edgefield on the first Monday in March, the second Monday in July, and the fourth Monday in October.

The Court find in Ex Parte Lilly, 7 S.C. 372, 1876 WL 5977, to be controlling in this matter. Which analyzed a [Term of Court] very similar to the one involved here. As set forth, the Solicitor did committed [fraud] upon the Courts and Obstructing and Impeding the Administration of Justice by willfully impaneling its Grand Jury out side the [Term of Court] that set forth in 14-5-760 (1). See also State v Henderson, 134 S.E. 364, 136 S.C. 363, (S.C. Aug. 16, 1926). Here, the South Carolina Supreme Court set standard for the [Term of Court] in South Carolina. Thus, the record will establish that the Defendant was indicted in [November Term 2013].

In the case at hand the indictment reads as follow:

- ° At a Court of General Sessions, convened on October 30, 2013 the Grand Jurors of Edgefield Court present upon their oath:

One additionald piece of evidence very clearly settle the matter of State's FALSE condition. The information contained in the record also establishes that no special term of the Court of General Sessions was convened on October 30, 2013 on the fifth Wednesday or November Term 2013, under the provisions of either Section 14-5-410, Section 14-5-920. Here, the Solicitor violated **Article I § 8 Separation of Power Doctrine**. Where the Solicitor are assigning to hereself the role of implementing Statutes in the S.C.Code of Law that were not law when he was indicted. The implementation of New Laws is an assignment of the legislature, not the Solicitor or judicial branch. The judicial branch of our State government can only follow the statutes after they have been signed into law by the legislature.

Pursuant to Rule 77, (e), SCRCP (e) Cancelling or Ordering Terms of Court. No term of court shall be cancelled nor addition term scheduled without the prior approved of the Chief Justice. When the local bar requests that a week of common pleas court be not held, or the solicitor requests that a week of general sessions court be not held, the clerk shall immediately notify the Court Administrator of this State.

Finally, the Solicitor alter the [Term of Court] that set forth in 14-5-760 (1),. When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Solicitor utilized an lawful mode of procedure not allowed under section 14-9-210, Stae lacked the requite jurisdiction to complete return of its true-billed indictment.

CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant the Defendant's Motion to vacate the conviction and sentence as a matter of law.

This the 19th day of August, 2015

Respectfully submitted,

Leon A Lilly
Leon A. Lilly, #362785

SWORN to and subscribe before

me this 19th day of August

Debbie L. McCook (L.S.)
Notary Public

My Commission Expires: 7-10-24

27

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

, IN THE COURT OF GENERAL SESSIONS
, ELEVENTH JUDICIAL CIRCUIT
, CASE NO.: 2013-GS-19-570

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SC Court of Appeals

State of South Carolina

vs.

Leon A. Lilly, #362785

Defendant.

CERTIFICATE OF SERVICE

I, Leon A.Lilly, hereby served a copy of the Motion for After-Newly Discovered upon the Respondent Attorney by depositing such in the United States Mail with the proper Postage, addressed to:

Alan Wilson, Attorney General
Office the Attorney General
P.O.Box 11549
Columbia, South Carolina 29211

Leon A. Lilly
Leon A. Lilly, #362785

27

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

THE STATE,

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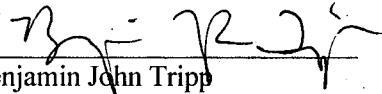
LEON LILLY,

APPELLANT

APPELLATE CASE NO. 2015-000179

CERTIFICATE OF SERVICE

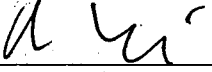
The undersigned attorney hereby certifies that a true copy of the Motion to Suspend Appeal in the above-entitled case has been served upon Salley W. Elliott, Esquire, this 9th day of November, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 9th day
of November, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.