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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY

J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT

V.

CHRISTOPHER JERMANE HICKS,

APPELLANT

APPELLATE CASE NO. 2014-000392

BRIEF

Here comes now Appelate who file this Brief in support of Deputy Chief Appellate Defender WANDA H. CARTER and motion pursuant to RULE 221 (a) of the following'(S) :

FACT'(S)

Appellant Christopher Jermaine Hicks was Convicted to 10 years at trial before J. Micheal Baxley, which was held on Febuary 27, 2014, in Darlington County on Indictments number 2012-GS-16-1304 for Possession with intent

[redacted]-1307

to distribute Marijuana, 1305 Possession with intent to distribute crack (Cocaine) cocaine.

The State put up a circumstantantial evidence case against Appellant, the State failed to prove that Appellant was in actual or constructive Possession of the druss found at the scene. Therefore Assuming all the facts to be true, which the evidence tends to establishing they may yet be accounted for upon any hypothesis which does not include guilt of Appellant. Then the proof fails, the reason for this is that all presumptions of law independent of evidence are in favor of innocence. And every person is presumed to be innocent until he is proven guilty. The Rule requiring establishing of guilt of criminal charge by proof beyond reasonable doubt is accepted in common law jurisdiction as measure of persuasion by which prosecution must convince trier of all essential elements of guilt.

The Appellant drove his vehicle into the driveway of a stranger residence and the contents of that residential homeowner trash can belong not to appellant but rather to the homeowner and the occupants who lived with the Homeowner. Appellant was in the vicinity of a third part's trash can in a yard where he was not been invited and for those reasons the state asserted that Appellant put druss in the Homeowner trash can.

On January the 6th, 2012 resulting from a roadblock that Appellant was arrested at the intersection of High Hill Road and Potato House Road in Darlington County.

1. The question is, did law enforcement exhibited to much discretion in initiating this checkpoint?
2. Did the state show this Roadblock was constitutional.

Appellant saw what he thought was a Roadblock there was no lighting at the

intersection of High Hill Road on the night of January 6th 2012 Appellant Position is that he went on the Property of Shanon Windham because because he did not know what was going on up ahead of him. He saw what he thought was a roadblock, but he was unsure. Appellant knew he was driving without a license and didn't want to go into that area and expose himself or anyone else to him driving without a license. He pulls into this driveway of Shanon Windham and proceeds to call a Cousin at least several attempts unable to make contact with his Cousin on the Phone" Realizes then "he's Park in Someone's driveway. He gets out of the car and goes to ask by knocking on the door for Pemission to be on the Property. Appellant didn't know what what was going on at the intersection, no one At the residence is home at this Point Appellant was approach by An officer Benjamin weatherford which testified that he saw where Appellant was walking from while walking from the residential Home-owner Shanon windham door And that he never saw Appellant beside the trash can. See Tr.15 line 20 P.16. line 1-4 factors that are Probative of whether a reasonable Person would have felt free to leave. As would show whether a Particular encounter was a seizure within the meaning of fourth Amendment or Consensual encounters; include time And Place of encounter; the number of officers Present and whether they were uniformed; the length of dention; whether the officer indicated to the Person (Appellant) that he was suspected of a Crime And whether the officer retained; the Person (Appellant) document's or exhibited threatening behavior or Physical contact. The courts Chief Concern in issues with Roadblocks that a Roadblock is; in fact a seizure; and if Your not able to determine how effective a roadblock is its not constitutional.

Supreme Court of the United States case, Michigan Department of State Police V. Sitz, sets forth requirements that the Supreme Court deems necessary for a Roadblock to be upheld as constitutional. That the location selection be supported by empirical data; that supervisors are on scene. And do as they are supposed to do. The safety is of paramount concern; that publicity; that the Roadblock is publicized; record Keeping; that records are kept properly of the time duration and the length of time of drivers are detained; and this is done on non-random basis pursuant to the United States Constitution and the South Carolina Constitution this Roadblock was illegal and unconstitutional. Corporal Chun Lui, of the Darlington County Sheriff's office was assigned as the DUI officer for the department and was in charge of all the checkpoints in the county. Which entails corporal Chun Lui to decide locations and the personnel that will be working these checkpoints. The operational sobriety checkpoint Plan that the state submitted into evidence was for June 27th, 2012. Appellant was't arrested on June 27th, 2012 but on January 6th, 2012 Tr. Ps. 7 line 18-25, Ps 8 line 1-6 - Ps 9 line 23 and Ps 10 line 1-11.

Corporal Chun Lui submitted documentation for June 27th, 2012 in reference to the date of January 6th, 2012 where Appellant was unreasonable seized by officers upon oath or affirmation falsified documents of the statement within the warrant using persured testimony, and false allegation'(s) to obtain a warrants and lodge drug charges against Appellant. Appellant was never stoped at the intersection of High Hill Road and

Pasto House Road see Tr. P. 77 line 19-25 P. 80 line 1-3 P. 110 line 22-25. P. 111. line 1-19. The Officers Conducting or Assisting Cobra/Lui on the night of January 6th 2012 didn't have Probable Cause to Arrest Appellant. Appellant have the right to be Secure in his Person and effects against unreasonable Search and Seizure Pursuant to the fourth Amendment of the United States Constitution And Article I Section 10. Appellant Saw what he thought was Ahead of him some form of A road block Seeing the reflection of flash light(s) the Appellant At that time didn't know for Sure, And then making the decision to Stop and release then turning into the driveway And At that Point finding himself on Someone Property, At this time the Appellant made A Phone Call to Contact his Cousin who had valid license to come A Pick up the vehicle because Appellant didn't have valid South Carolina drivers license. Appellant Could not Get through on the Phone Call to his Cousin Appellant decided to Get out the vehicle realizing that he was on Someone Property because the fact that he Appellant Could not move the vehicle or Chose not to move the vehicle, the Appellant Came to the Property And Knocked on the door Several or so times And there wasn't An Answer At this Point the Appellant was walking back to his vehicle before Getting back to the vehicle the Appellant was Approached by A Plain Clothes male who later identified himself as Law Enforcement office Weatherford. If officer Weather had any Probable Cause to Question the Appellant About being on the Property Tr. P. 112 line 15-25 and P. 113 line 1-25 As well Pg. 114 line 1

The officer Benjamin weatherford did not have any form of Probble Cause to Question Appellant having a driver license because the Appellant was not Pulled over by any officer(s) at the scene the Appellant was at this Point out of the vehicle when officer weatherford Seen the Appellant. The Appellant was initially Charged or Allegedly being Charged for illegal (Improper turn signal) and Dus 2nd Another Tactic Cause Charged the Appellant with drug offenses when the Allesed drugs was Allesedly found or discovered by officer Cause in a trash can on the Property of homeowner Shanon windham And at the bench trial held January 27, 2014 the State Asserted that those drugs found was Appellant's drugs and lodged Possession Just because the Appellant was in the ~~vicinity~~ neither officer of either Charging Seen or testified they Seen Appellant Put the Allesed drugs in the trash can nor was there any witnesses Produced by the State that came forth to say or witness that Appellant did in fact Put those Allesed drugs in the trash can of Shanon windham. Appellant was Illegally seized and Arrested and Charged on false Assumptions of Possession with intent to distribute marijuana, crack cocaine, and cocaine. Pursuant to the sixth Amendment of the Constitution the Appellant may enjoy the rights "to confront witnesses against him (Appellant") The State only witness who testified that She Searched the Homeowner Property by herself; but there was not Plain view "sight" of the officer to Assert by Affidavit And Swore that drugs that She found was Ascertain by law She being a witness when the State could not Produce no evidence Against Appellant to establish Possession or intent to distribute any of those drug charges based Against Appellant. See Tr. Pg. 62 line 3-25 P. 104 line 1

The indictment pursant to the south carolina code of law section 44-53-370. Prohibited acts a, penalies. which state in it partinet part: , (a) Except as authorized as authorized by this article it shall be unlawful for any person: (2) To creat; distribute, dispense, deliver, or purchase, or and, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchas, or possess with intent to distribute, dispense, deliver, or purchases a countyfeit substance.

(b) A person who violates subsection (a) with respect to: (2) [for a second offense, or if, in the case of a first offense violation of any provision of this subsection, the offender previously has been convicted of the United States or of any State, territory, or district relating to norcotic drugs, Marijuana etc.]

The Appellant show the fact'(s) that, 1. The state charge the Appellant with the charge a second offense of, "Possess with intent to distribute" the State did not show that the Appellant have ever been charge with a first offense as accordingly to the statutory provision of law. The Rule that penal laws are to be construed strictly..... is founded on the Plain principle that the power of punishment is vested in the legislature not the Court'(s) which is to define a crime and ordain it's punishment.

Appellant never had any drugs in his Possession nor did Appellant attempt or intended to manufacture, distribute, dispense, deliver, purchase, aid abet, or conspire to manufacture; distribute; dispense

deliver, or purchase a countyfeit substance.

Sergeant Gause of the Darlington County Sheriff's(S) officer who Working in the Narcotic division who assisted the special enforcement unit which Corporal Chun Lui is a part of was working for Darlington County sheriff's office with other officer's who set up a DUI Checkpoint at the Intersection of High Hill and Potato House Road, on January 6th, 2012

Officer Sergeant, Gause testified under oath that on the night of January 6th, 2012 prior to set up good proably 10 to 15 minutes give take they had their first vehicle come down on High Hill Road

See Tr. Pg 78 line 8-25 and Pg 79 line 1-25

Sergeant Gause also testified under oath that she pass Appellant to make visual contack with Appellant See Tr. Pg 80 line 1-9

At this point how can Sergeant Gause seen the Appellant do anything illegal while within or out of the vehicle when she was radio by officer Sergeant, Weatherford that she pass the Appellant ?

The Appellant was arrest for the allege traffic violation and place in the car of officer Sergeant, Weatherford See Tr. Pg 84 line 1-25 and Pg. 86 line 1-14 After Sergeant Gause does an exploratory search of the Homeowner Shanon Windham property and find a package See Tr. Pg 87 line 7-25 and Pg 88 line 1-3.

The search conducted was without dudicial process without prior approval by dudge or magistrate are unreasonable under fourth Amend. but subjected only to a few specifically established and well delineated exceptions which are jealously drawn.

The search done by Segeant Grause was in fact illegal Pursuant to the requirement of a warrant clause; which read "no warrant shall issue, but upon Probable cause, Supported by oath or Affirmation, And Particularly describing the Place to be Searched, and the Persons or things to be seized" Sergeant Grause did not have any reason to assume that Appellant had in fact Possessed drug(s) so the officer(s) At the scene At such time was looking for drugs; Appellant did not give officers any reasonable suspicion to Explore the Property of Homeowner Shanon windham. The State never Proved that Appellant was in Actual or Constructive Possession of the drugs lodged Against him(Appellant) The Arresting officer(s) who Alleged and lodged Charges Appellant never had any Probable Cause for the unreasonable search or seizure of the Appellants Person or did the officer who searched the Property of Shanon windham without a warrant had legal Justification to Search?

The State Argued and the Court Agreed that the Appellant doesn't have a Constitutional right to Argue Standing Concerning the trash can Search of the Homeowner Shanon Windham. See TR. 54 line 1-25 P. 55 line 1-5 and P. 59 line 7-25 if the Appellant didn't have a constitutional right to Argue the drugs was found on someone else Property; The Appellant have the legal right to Argue those drugs wasn't in his Possession, Control or dominion because it was not his Property to have ownership of the drugs in the trash can on the Property of Shanon windham. The fact is the Constitutional

right to argue the warrant pursuant to the fourth Amendment oath and affirmation of an officer

The Affidavit's(s) are invalid on the grounds that, "it was never proven that Appellant put druss in the trashcan of Shanon Windham in plain view of the officer's(s) that would Constitutionally give reason to serch warrantlessly and to arrest warrantlessly for seeing the act of hiding the evidence of druss and that was not such the case.

The State relied on the affidavits of officer, Gause and supplement reports of officer, Weatherford who under oath, persured their testimony with conflicting Statements of events and confessions of corrupt motive to obtain a case by their corrupted method and actions by way of charsing the accused See Tr. Ps 101 line 1-25 and also Ps 102 line 1-9 Indictment Ps 104 line 9-6 Ps 105 line 13-25 and Ps 106 line 1-8.

It is a standard for these officer's(s) to charse individual's(s) with, "Possession with intent to distribute druss."

In this situation Appellant happen to be in the wrons place at the wrons time, See Tr. Ps 84 line 1-25 Ps 85 line 1-2 Ps 86 line 1-5. These officer's(s) Created a scenario which they took advantages of (by)

1. Establishing their own form of Probable Cause.
2. By approaching Appellant on Shanon Windham property for no apparent Lesal reason.
3. Appellant was being arrested for an allesed traffic violation in which appellant was never pulled over; that alons is enough to esbtablish and show there was no Probable Cause See Tr. Ps 112 line 2-10 Ps 115 line 21-25 Ps 116 line 1-4 and Ps 115 line 10-13.

ARGUEMENT (S)

14th Amendment Due Process and Equal Protection Clause

ARTICLE I Section 3.

When reviewing denial of motion for directed verdict in criminal cases court of Appeals views evidence in light most favorable to State; because issue is existence or non-existence of evidence reasonably tending to Prove Guilt; Court of Appeals must find motion was Properly denied. In case At bar. the State's case lacked competent evidence of drug Possession Against Appellant, which in turn meant that trial Judge "erred" in failing to grant Appellant's motion's for directed verdicts in the case. The State failed to Prove every element of the offense charged as Required via the fourteenth Amendment Due Process Clause and Article I Section 3 of the South Carolina State Constitution. See State v. Heath 320 SC. 326, 635 S.E 2d 184

The State failed to Establish an Essential Element of the crime Charged. See Also Jackson v. Virginia 443 U.S. 307 (1979) The trial Judge erred in denying Appellant's motions for directed verdicts of Acquittal on the drug offenses Charged against him Parrell to Heath the Appellant is Entitled to directed verdict when the state fails to Produce evidence of the offense charged. "Appellate Defender Wanda H. Carter made known in her brief that she didn't see legal merit sufficient to warrant a new trial and that Appellant request the Court to reverse Appellants conviction's and enter direct verdicts of Acquittals. Appellate Defender Wanda H. Carter failed to mention that Appellant is Constitutionally Entitled by this Court to have his

Judgement as in his sentence, "set Aside," as in vacating the Judgement of the trial Court. Appellant court if it concludes that the decision of the trial court is wrong may, "Vacate the Judgement of the trial Court". Pursuant to the 14th Amendment Due Process and Equal Protection Clause of Article I section 3 of the United States Constitution Appellant is entitled to have his sentence Vacated by this court. All are equal before the law and are entitled without any discrimination to equal protection of the law.
All are entitled to equal protection against any discrimination of this declaration and against any incitement to such discrimination, pursuant to Article 7 of declaration of Human rights.
Pursuant to South Carolina code statute §44-53-370. Prohibit Acts (a);

(a) except as authorized by this Article it shall be unlawful for any person.

(1). Manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, dispense, deliver, or purchase a controlled substance or a controlled substace analose.

The Rule that penal laws are to be contrued strictly. . . . is founded on the plain principle that the power of Punishment is vested in legislature, not the court which is to define a crime and ordain its punishment.

Did the State prove the element for enhancement?

According to Apprendi each element for charging a crime must be proved.

Enhancement constitutes an element of the offense any time it increase the maxium sentence.

See Apprendi V. Newdesey, 530. U.S. 495, Cite as 120 S.Ct 2348 (2000) When a state takes a fact that has always been considered by sentencing courts should give that fact in setting a defendants sentence, that relevent facts need not to be proved to jury beyond a reasonable doubt as would an element of those offense. The State never presented or showed within the record and through Appellant's criminal record proof that appellant had prior intent to distribute marijuana, cocaine, or caccainebased. The Appellant's record was read into the transcript as proof for the enhancement of the druss charges lodged against Appellant; the court errored and misconstrued the statutes — [44-53-370 (B)(1)] [44-53-370 (B)(2)] [44-53-375 (B)(3).]

See Tr. Pg167 line 5-25 Pg 172 line 4-25 Pg173 line1-8

It is the legislature not the court which defines a crime under a penal Statute § 44-53-370 (b)(2) states a person who violates Subsection (a)

(2) For a second offense, or if in the case of first offense of any Provision of this subsection the offender previously has been convicted of the laws of the United States or of any state, territory, or district relating to narcotic druss, marijuana, depresent, and upon conviction must be imprisoned not more than 4 years or fined more than ten thousand dollars or both. An upon conviction must be imprisoned not less than five years nor more than twenty years or fined not more twenty thousand dollars or both. Except in

the case of conviction for a first offense the sentence must not be suspended and probation must not be granted.

[§44-53-370(B)(2)] specifically states: (b) a person who violates subsection (a) Prohibited act (a); Penalties. It shall be unlawful for any person to Manufacture, distribute, dispense, deliver, Purchase, or purchase a controlled substance or controlled substance analogue. The State failed to prove the elements for enhancement pursuant to statute. The state never served Appellant; "stating in writing the previous convictions to be relied upon and facts regarding which prior convictions to be relied upon.

Appellant had a right to be at the sentencing which is a critical stage in his trial proceedings. The court errored in allowing the State to enter evidence without notice of the enhancement and giving Appellant the right to be heard in his defense, Violating his 6th Amendment and 14th Amendment right's which is guaranteed by the constitution of the United States of America.

The enhanced charges the court allowed the state to enter against Appellant was vindictive and persudic in its execution.

Prosecutor Kendall Burch used the word "We" stating we were going to plea some of these charges down so that he would be facing five years. See Tr Pg 166 to Pg 169 - line 1-22.

Appellant never agreed to plea to any of the charges lodged against him nor did Appellant ask for a plea agreement.

The court errored in allowing the state to enter enhancement and sentencing Appellant under the enhancement without

Jurisdiction to do so, the Judge was not sitting impartially in his duties abusing his discretion. See Tr Ps 175 line 15-25 Ps 176 line 1-7.

The Court lacked subject matter Jurisdiction to hear or try Appellant on the charges based on the information of the officer's(s) testimony against the Appellant, the court didn't have Jurisdiction to convict, try, or enhance Appellant on charges lodged against where the State was procedurally and statutory barred pursuant to South Carolina title section [44-53-370(b)(1)] [44-53-370(b)(2) [44-53-375(B)(3)] causing a due process violation where the court errored in his interpretation of the statutes. The power of punishment is vested in the legislative, not the court which is to define a crime and ordain its punishment. It is not the court's place to change the meaning of a clear and unambious statutes

The court errored pursuant to the statute [44-53-370(b)(2)] wherein it "States clearly" the offender previously been convicted for a second offense or, if in the case of first offense of any provision of this subsection [44-53-370(b)(2)] The State never proved within the statute Appellant commited a violation of this statute in the first.

The State presented in the transcript record Appellant's Record which consisted of misdemeanor simple Possession of Marijuana charge which the State submitted as evidence for enhancement which was 30 day simple possession charge.

where in 1995 where appellent had a optron to do 30 days for marijuana charge lodged against him which Appellant Paid to make bond and upon going to trial the Charges were dismissed And Appellant funds Returned to him. In 1998 Appellant did 30 day Sentence for marijuana Charge lodged against him while Incarcerated on Probation Violation, where Appellant Never Enter A Plea nor was a fine Given or Entered For the marijuana Charge, the County failed to bring Appellant to Court on Charge due to Appellant being Committed to the Dept-ment of Corrections for Probation Violation. The Evidence the State State entered on the Record is Proof that Appellant was Never Previously Charged with drug Charges lodged Against him Possession with the Intent to Distribute marijuana, Cocaine, or Cocaine base. Appellant wasn't Given Opportunity to Speak for himself by himself to Clarify these Issues in his Defense" This is a Clear Charging And Enhancement error Causing A Jurisdiction Issue on the error Concerning Statutory Requirements which Procedually bar Certain acts of the Court Statutorily.

The Appellate Court has the Jurisdiction to Correct that error. The Court lack <u>Subject matter Jurisdiction</u> to Sentence, to hear, try or Enhance Appellant on Second with intent to distribute marijuana, And other Charges of Possession with intent to Distribute Cocaine, and Cocaine base. The Court didn't have Jurisdiction

to Sentence Appellant where the element of the enhancement of Crime has not been Proved. The Indictments brought against Appellant is Illegal and void.

South Carolina Code section [44-53-370(b)(1)] Possession with the intent to distribute Cocaine.

(b) States: A Person who Violates Subsection (a) with

(1) A controlled substance Classified in Schedule I(b) And

(C) which is a narcotic drug is Guilty of a felony And

upon conviction for a first offense must be imprisoned not more than fifteen years or fined not more than twenty-five Thousand dollars or both: for a Second offense in the case of a first conviction of violation of any Provision of the Subsection: the offender Previously been convicted of violation of the laws of the laws of the united States or any State, territory, or district relating to narcotic drugs, the offender must be imprisoned not less than five years or more than thirty years, or fined not more than fifty thousand dollars or both.

South Carolina Code section [44-53-370(b)(1) (A Second offence or if in case A) Specifically States: Person who: Previously been convicted any Provision of Subsection violation of the laws of the United States of any State, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs the offender must be imprisoned not less than five years nor more than 30 years or fined not more than fifty thousand dollars or both.

Pursuant to South Carolina Code section [44-53-470 (A)(3)] a Second or Subsequent offense if: for an offense involving a controlled substance other than marijuana Pursuant to this Article, the offender has been convicted within the Previous (10) Ten years of a first violation of a controlled Substance offense, Provision of this Article or of another "State" or federal "Statue" relating

to Narcotic drugs, depressants, stimulants, or hallucinogenic drugs. Pursuant to South Carolina Code Section - 44-53-370(b)(1) The Judge erred in finding Appellant Guilty of Possession with intent to distribute Second or Subsequent offense when the state never never Proved the first Possession with intent to distribute marijuana or Prior Possession with intent to distribute cocaine, and cocaine base. The Judge erred in finding Appellant Guilty of Possession with intent to distribute cocaine where the State Produced no evidence to support the Charge or Evidence to survive the element's for enhancement. The state was relying on the Pretext that the Appellant had Prior drug offenses on his record and that the State could enhance the Charges lodged against appellant due to Appellant having offenses which are not under the Charged Statue for the Crime Charged to be an enhanced offense. This is a Clear Error because the Crime Charged is Plain and Clear by the Statue. The Court was Procedurally and Statutorily barred "from Sentencing Appellant Pursuant to the Fifth Amendment "which States" No Person shall be held to answer for a CAPtial, or "Infamous Crime unless on Presentment or indictment of a Grand Jury" which Guarantees Appellant to Know the Charges against him. Appellant due Process rights have been Violated Causing him to be deprived of his life, and liberty whereas Appellant is entitled to the equal Protection of the laws in the State of South Carolina and the Procedural and Statutory safeguards of the Constition of South Carolina and the united states of America. The indictments and Sentence is illegal and error by the Court's Prejudicial inadequate in regardless of lawful duty or Justice to sit Impartially.

Pursuant to South Carolina Code Section [§ 44-53-375(B)(3)] (CITE.) Possession with intent to Distribute Cocaine Base Specifically States:

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of violation of this subsection. Notwithstanding any other provisions of law for a first offense or second offense may have the sentence suspended and probation granted is elisible for parole, supervised furlow, community supervision, work release, work credits, education credits, and good conduct credits, not withstanding any other provision of law A person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A) may have the senterce suspended and probation granted.

Subsection (A) states: A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 110 - Cite: 44-53-110. is guilty of a misdemeanor and upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars or both. for a second offense the offender is guilty of a felony and ubon convistion, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars or both.

Pursuant to South Carolina Code Section [§ 44-53-110] "Controlled Substace" means a drug, substance, or immediate precursor in schedules I through II.

"Controlled Substance Analogue" means a substance that is intended for human consumption and that either has a chemical structure substantially similar to that of a controlled substance

In Schedules I, II, or III has a Stimulant Depressant, Analgenic or Hallucinogenic effect on Central Nervous System that is Substantially similar to that of a Controlled Substance In Schedules I, II, or III. Controled Substance Analogue Does not Include Controlled Substance.

On January 27, 2014 Forensic Scientist Lawrence Zivkovich From South Carolina Law Enforcement Division Testified At the bench trial which was held and Explained he has been employed by sled Seven and A half years and that he Analyze Submitted Substances to determine whether the Substance is or Contains Cocaine. Forensic Scientist Lawrence Zivkovich Also testified that he have analyzed Five to seven thousand Chemical Substances that would Contain Cocaine, Crack Cocaine or Ecstacy And he Average twenty to thirty Cases A week. See Tr. P 70 line 21 = P. 72 line 1-25. Forensic Scientist Lawrence Testified that there was no crack Cocaine Submitted As evidence Clearly Seperating the two substances And making known Just Cocaine base was Submitted into evidence which Cocaine base is Commonly known As Crack but is not Crack. See Tr. P. 75. line 3-25 The Indictment lodge Against Appellant Reads:

Possession with Intent to Distribute
Cocaine Base
CDR: 3089 44-53-0375(B)(3)

That Christopher Jermaine Hicks did In Darlington County on or About January 6, 2012 Possess with the Intent to distribute, dispense, or deliver a Quanity of Crack Cocaine, A Controlled Substance Under the Provisions of Section 44-53-110 et. seq. Code of laws of South Carolina 1976, As Amended, Such distribution not having been Authorized by law And being in violation of Section 44-53-375(B) Sc. Code of laws 1976, As Amended.

South Carolina code section [44-53-375(B)(2)] Refererced to methamphetamine or cocaine base.

Cocaine base is Analogy Commonly known as Crack Cocaine. The Indictment lodged Against Appellant fix in the mind that Appellant (Possessed) Possessed Crack cocaine, when Cocaine base is recoginized to distinguish one from Another. "Cocaine is Just An ingredient of crack." Crack Cocaine" Contains substances formed through Chemical Process As oPosed to those of natural origin, the substances cannot be seperated into simpler ~~form~~ Substance by Chemical means which "Crack Cocaine is A highly Addictive Purified Cocaine which is known As "Crack Cocaine.

Pursuant to South Carolina Codesection. [44-53-110] A controlled Substance Analogue "does not" Include A Controlled Substance which means "Crack Cocaine" is A Controlled Substance of it's Kind And Identified As Crack cocaine not Cocaine base.

Analogue - is one of A (group) of Chemical Compounds similar in structure but different in composition.

Pursuant to Section [44-53-110] Cocaine base is An Analogue to Crack Cocaine ~~base~~ because "Crack Cocaine" is made with two or more substances And therefore Cocaine base And Crack Cocaine Are Identified because Cocaine base Is A Controlled Substance which does not Include A Controlled substance.

The Indictments lodged Against Appellant Are fraudulent And the Court lacked Jurisdiction to Allow these Charges lodged Against the Appellant to leave the magistrate Court And hear or try And Sentence Appellant where the Essential Elements of Possession or Elements for enhancement have been Proved beyond A reasonable doubt. The Court errored In sentencing Appellant, Enhancing the Charges on Crimes that never Committed the Indictments lodged Against Appellant Are Void. And The Court lack Subject matter Jurisdiction to Sentence or Hear this Case.

The State failed to Establish the Essential Elements of the Crimes Charged "Possession". The State is trying to Establish Possession but inferring that the Appellant intended to distribute the drugs lodged against Appellant that was allesedly found In the Home owner Shanon Windham trash can and the State Enhanced the Charges lodged against Appellant in Violation of Statue [redacted] because the State failed to meet the Statue requirement to Enhance or Convict Appellant for Possession with intent to distribute Cocaine, Cocaine base, or marijuana. Pursuant to [44-53-370(b)(1)] [44-53-370(b)(2)] and [44-53-375(b)(3)] There was Insufficient evidence to Sustain that Appellant Constructively Possessed the drugs in Question see, U.S. V. Tefter A Cite As 985 F2d 1082 [DC Cir. 1983] The Evidence the State lodged against Appellant was Insufficent for a reasonable [redacted] Juror to find beyond A reasonable doubt Appellant was Guilty of Possession of Cocaine, Cocainebase, and marijuana. Jackson V. Virginia Established that the Essential Elements of A Crime must be Established to convict of offense Charged. See Jackson V. Virgina 443 U.S. 307 (1979) Appellant Is Illegally being detained And Ask this Court to uphold The laws and Constitutional requirements of South Carolina Constitution and the Rights of the People meaning Humans and Human Rights the Appellant And his family, Community and friends has Suffered enough from this Grave miscarriage of Justice not even the Court believe he took the oath which he Swore to uphold and Just Pushit to the side by Sitting Partial in his Ruling See. TR P. 171 line 21-25 - P. 172 line 1-3 and P. 175 line 17-25 - P. 176-177. The Public Community has been Affected by this unjust And unusal Punishment. Pursuant to State V. Heath 370 S.C 322, 635 S.E2d 181 (2006) Appellant Sentence Should be Vacted As In set Aside.

LIMITATION OF AUTHORITY

APPRENDI V. NEW JERSEY 530 U.S. 495 CITERS 120 SCT 2348

1. IT WAS HELD IN APPRENDI THAT ENHANCEMENT CONSTITUTES AN ELEMENT OF OFFENSE AND ANY TIME IT INCREASES THE MAXIMUM SENTENCE, AND WHEN IT COME TO A DEFENDANT SENTENCE, THE RELEVANT FACT NEEDED NOT BE PROVED TO A JURY BEYOND A REASONABLE DOUBT AS WOULD AN ELEMENT OF THE OFFENSE CHARGED.

PURSUANT TO SOUTH CAROLINA SECTION CODE [§44-53-470](B)

STATES: IF A PERSON IS SENTENCED TO CONFINEMENT AS A RESULT OF A CONVICTION PURSUANT TO THIS ARTICLE THE TIME PERIOD SPECIFIED IN THIS SECTION BESINS ON THE DATE OF THE CONVICTION OR ON THE DATE THE PERSON IS RELEASED FROM CONFINEMENT IMPOSED FOR THE CONVICTION WHICH EVER IS LATER.

APPELLANT WAS CHARGED, INDICTED, AND SENTENCED PURSUANT TO [§44-53-370(b)(1)] [§44-53-370(b)(2)] [§44-53-375(B)(3)]

SECTION [§44-53-470] "SPECIFICALLY DEFINE" SECOND OR SUBSEQUENT OFFENSE. AN OFFENSE IS CONSIDERED A SECOND OR SUBSEQUENT OFFENSE IF PRIOR TO HIS CONVICTION OF THE OFFENSE, THE OFFENDER HAS AT THE TIME BEEN CONVICTED UNDER THIS ARTICLE OR ANY STATE OR FEDERAL STATUE RELATING TO NARCOTIC DRUGS, MARIJUANA, DEPRESSANT, STIMULANT OR HALLUCINOGENIC DRUGS. THE EVIDENCE THE STATE PRESENTED TO PROVE THE STATE CASE CONCERNING THE ELEMENT OF ENHANCEMENT WAS READ INTO THE RECORD AND THE STATE FAILED TO ESTABLISH OF THE OFFENSES CHARGED. SEE TR. P. 167 LINE 8-25.

The Appellant In this matter ask this Court to Carefully review the record and strictly Address Authority. Integrity is the uncompromising adherence to moral and Ethical Principles. I was Sentenced to 10 years to the Department of Corrections where I committed no crime to be here, It's Illegal to Sentence an individual for exercising a right that he's entitled to. Appellant has been deprived of his life And liberty and ask this Court to release me from unconstitutional Illegal Confinement. I ask the record become Part of this brief because the record is what must be reviewed. Judicial records are not only necessary but indispensable to the vitality of a Court the Court hears Argument upon its records, it decides upon its records; it Acts by its records; openings And Sessions and Adjournments can be Proved only by its records its Judgements can only be evidence by its records— In other words, without its records it has no vitality the Acts of a Courts records are known by its records alone And cannot be Established by Parol testimony. the Court speaks only through it's records, and this rule Applies in case of a Judge. futhermore the records of a Court cannot be impunged upon matters within its Jurisdiction when offered in evidence by counter evidence. The record is Evidence of my Illegal sentencing where I wasn't Allowed at my sentencing. I Ask this Honorable Court to Release me from Confinement this Court has the Power to Vacate Im Asking this Court to Vacate/set aside free me back outside.

CERTIFICATE OF SERVICE

I Christopher J. Hicks, who have filed this Pro Se Brief in the South Carolina Court of Appeal, certify that the Pro se Brief was filed with the Clerk of Appeal Court that Proof of service was mailed November 21ft 2014 within said Proof service requesting that a Clock stamp copy be sent to the Assistant Attorney General.

Christopher J. Hicks
#246896
Kershaw Correctional Institution
4848 Goldmine HWY
Kershaw S.C. 29067

Christopher Jermaine Hicks
CHRISTOPHER JERMAINE HICKS

Sworn to And Subscribed before me
This 21 day of November 2014

Cathrine A Anaxy
Notary Public of South Carolina

My Commission Expires December 22, 2018

Signature
Date: 11-24-2014

To: Clerk

Jenny ~~Abbott~~ Kiettings

Dear ms Kiettings,

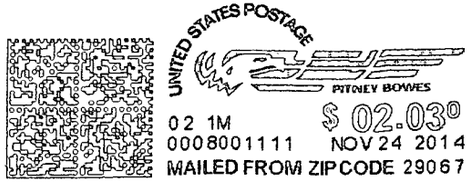
I would like to request these documents be clocked stamped and copy returned to me if possible.

Thank you

P.S. I also would like to request all other motions be served Thanks again

Sorry so sloppy

#60
246896 Palmetto Bennt
KERSHAW C.F
4848 Goldmine Hwy.
Kershaw SC, 29067



The South Carolina Court
of Appeals
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