

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

\_\_\_\_\_  
J. Michael Baxley, Circuit Court Judge  
\_\_\_\_\_

Case No.2013-001415  
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Opinion No. 2016-UP-039  
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**RECEIVED**

JAN 29 2016

SC Court of Appeals

The State

Respondent,

v.

Fritz Allen Timmons

Appellant.

\_\_\_\_\_  
MOTION TO REHEAR  
\_\_\_\_\_

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Hartsville, SC 29551

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With the Constitution of the United States as Supreme Law of the Land and Supposedly known and defended by the Officers of this Court System, This Court can not and Shall not prevent any Rights granted by the Constitution by any method wither it be by State Code, State Regulation, Court process or procedure, nor by any Case Law. This Court Also does not have the Right and Shall not re-interpret nor produce an alternative interpretation to The plain language and meaning of the Constitution of the United States nor its Amendments. Any Actions to deprive a citizen of these Rights is a Criminal Action and considered as Treason against the Constitution. Any judge or lawyer that willfully ignores any illegality of a Warrant is not fit for office , ipso facto, neglects all Duties and Oaths of office and must be removed to ensure the integrity of the Justice System. Failure to remove such judge or lawyer only promotes corruption throughout the System.

With An Affidavit and a Search Warrant as substantial evidence “On its Face“ and in front of all judges and Lawyers involved, Both the Affidavit and Warrant must be considered as a Whole and pass ALL of the particulars and Probable Cause requirements of the Constitution. With Warrants signed by a judge and accompanied by an Affidavit, ipso facto, in its self. has been heard and Ruled upon, Therefore, is preserved for ANY and All Appeal Courts on ALL Constitutional arguments. Any Judge that willfully denies any Constitutional Rights is in direct violation of TITLE 18, U.S.C., SECTION 242, §16-5-10, §16-17-10, §16-17-735, §16-17-410 and many others as well as neglect of duty (§8-1-60), Rule 501, SCACR Canon 3, Judges Oath of Office (“will preserve, protect and defend the Constitution”) and Lawyers Oath of Office (“will preserve, protect and defend the Constitution”, where applicable). Ipso Facto, implements Criminal Intent.

Although the Record shows substantial evidence that Constitutional Intrusion and an unlawful search and seizer was conducted prior to the issuance of a warrant, Ipso Facto, provide the Criminal intentions of the Magistrate, Deputy, and Dog Catcher to cover up the Constitutional Violations by the State of which has been conspired by the Circuit Court, Lawyers and now by this Court by Court Procedure , the ignoring of substantial evidence, the violations of Federal and State Laws and the violations of Court Rules. With Both the Magistrate and Dog Catcher being subpoenaed as witnesses and Circuits Courts failure to permit the testifying of along with the Dog Catchers failure to comply with a disclosure subpoena for all Dogs seized, Ipso Facto, the Appellant was denied to present his case in full.

The provided Affidavit, Warrant, and itemized list is in Direct Violation of the Fourth Amendment of which Can not be denied by this Court. The **judge is obligated not to consider the evidence** from an unconstitutional search and seizure in determining the issue of the defendant's guilt. (Jackson v. Denno, 378 U.S. 368, 84 S.Ct., 1774, 12 L.Ed.2d 908 (1964),. There is no evidence in support of the States False Claims as to the Double Jeopardized Charges (that is not within the Jurisdiction of a County Dog Catcher's Authority, §4-9-145 B),“ the governing body of a county may appoint and commission as many **code enforcement** officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon **constables**” , Ipso Facto, enforcement of County Ordinances only, not State Codes.) that the Appellant abandoned and neglected animals inside Appellant's residency and Property's Curtilage. Animal Control and County Deputies unlawfully Broke into the Appellant's Residency without Cause and

without authority. The charges of Rabies fall under the “Fruit of the Poison Tree” Doctrine. Also, the Appellant was prosecuted by a Dog Catcher (Practicing Law without a license) in and determined to be by the Dog Catcher during the hearing, a Criminal Case. The Dog Catcher also using unlawfully issued and perjured **County** uniform summons tickets for **State Law** Codes. The Appellant was convicted and fined (of which part went to the County Shelter as Court own Record proves) by a Shame Legal Process and Still being continued through this Court System, Ipso Facto, Committing Barratry §16-17-10 and falls within the "**RICO**" statute.

With the Affidavit stating (and written in same hand writing as Warrant);

- (A) “1827 Tabernackle Church Rd. McBee” as items to be Seized., Ipso Facto. Fails to Meet the Constitution particularly Requirements and invalidates Affidavit. In said case, does not describe any K-9s, dog food nor pet carrier that was seized
- (B) “Property and Dwelling” as description of place to be searched, Ipso Facto. Fails to Meet the Constitution particularly Requirements and invalidates Affidavit. In said case, does not limit place to be search such as curtilage or surrounding woods nor barn or RV that was also searched and not listed.
- (C) “malnourished and dead animals outside and evidence of worse animals outside. no food or water for animals” as reason for affiants belief, Ipso Facto. Fails to Meet the Constitution Probable Cause Requirements and invalidates Affidavit In said case. does not state any action of nor timing of any criminal activity nor belief of any. Ipso Facto, Does not provide probable Cause nor support Warrant.

Many of the same points of law discussed under the Arrest Warrant section are applicable to search warrants. A search warrant may issue only upon a finding of probable

cause. *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997). A search is not reasonable unless there was probable cause to believe that the search would produce evidence of a crime or contraband. Probable cause is defined as a state of facts which would lead a man of ordinary care and prudence to believe that the object sought is presently located at the designated place. Therefore, the Affidavit Totally Fails to support the Warrant in any way possible. A mere hunch, suspicion, guess or unfounded opinion that evidence or contraband will be produced by the search is not probable cause. The person seeking the search warrant must reasonably believe that the evidence or contraband is there, and must be able to point to facts which would create in any prudent and careful man a similar belief.

As stated in **Supreme Court Opinion - 27473** (*The State v. Bryant Kinloch*), “ If no supplemental testimony is taken, a magistrate's probable cause determination is **limited to the four corners of the search warrant affidavit**. *See, e.g., State v. Herring*, 387 S.C. 201, 214, 692 S.E.2d 490, 497 (2009) “.

As stated in **Supreme Court Opinion - 25188** (*State v. Jones*). “the Court of Appeals reversed the trial court and remanded for a new trial. The Court of Appeals held that the evidence should be suppressed because the **false affidavit circumvented the affidavit requirement of S.C. Code Ann. § 17-13-140** (1985) and *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987). A defendant has the right to challenge misstatements in a search warrant affidavit. *See Franks v. Delaware*, <sup>2</sup> 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); *State v. Sachs*, 264 S.C. 541, 216 S.E.2d 501(1975). A defendant is entitled to an evidentiary hearing if the following criteria are met: (1) the defendant's attack is more than conclusory and is supported by more than a mere desire to

cross-examine; (2) the defendant makes allegations of deliberate falsehood or of reckless disregard for the truth which are accompanied by an offer of proof; and, (3) the affiant has made the allegedly false or reckless statement. Further, if the foregoing criteria have been met, and the remaining content is **insufficient to find probable** cause after the allegedly false or reckless material has been set aside, the defendant is entitled to his hearing, under the Fourth and Fourteenth Amendments. *Franks*, 438 U.S. at 171, 98 S.Ct. at 2684, 57 L.Ed.2d at 677. The General Assembly has imposed stricter requirements than federal law for issuing a search warrant. Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation. before probable cause can be found by an officer of the court, and a search warrant issued. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Additionally, the South Carolina Code mandates that a search warrant "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record. . ." S.C. Code Ann. § 17-13-140 (1985). " and ""so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923, 104 S.Ct. at 3421, 82 L. Ed. 2d at 699."

As stated in **Supreme Court Opinion** *State v. Winborne*, 273 S.C. 62, 254 S.E.2d 297 (1979). "In order for affidavit in support of search warrant to show probable cause, **it must state facts so closely related to time of issuance** of warrant as to justify finding of probable cause at such time; **affidavit which fails altogether to state time of occurrence of facts alleged therein is insufficient.** "

With the Warrant stating (and written in same hand writing as the Affidavit);

(A) "1827 Tabernackle Church Rd. McBee" as description of place to be searched,

Ipsa Facto. Fails to Meet the Constitution particularly Requirements and invalidates Warrant. Description is Void for vagueness.

- (B) “abandoned or neglected animals” as items to be seized, Ipsa Facto. Fails to Meet the Constitution particularly Requirements and invalidates Warrant and also produces contradicting Duplicity and Void for vagueness. “Animals” includes all wildlife, domesticated and feral.

Both the affidavit and the search warrant must particularly describe the place to be searched and the objects to be seized. It is inadequate if the descriptions are so general that the executing officer has discretion to search more than one place or seize more than that specifically intended. For example, if the place to be searched is an apartment, the apartment number as well as the address should be specified. Or for example, if the item to be seized is a gun, it must be described so as to distinguish it from other firearms that may be found.

The purpose of the particularity requirement is to prevent the issuance of general warrants which could be used for general exploratory searches. A search warrant cannot be issued for "the search and seizure of evidence of a crime." A search warrant cannot authorize a fishing expedition. The search itself must be limited in its scope and intensity. That is, the search must be limited to those items specified in the warrant. If the warrant is for the search and seizure of "one Brand Y 25 inch color TV, serial #2541," the police must search only in those places of the specified location where such an item could be hidden, i.e., they could not search in desk drawers for a 25 inch TV set.

With both the Affidavit and Warrant being in direct violation of Constitutional

Laws and Appellant Prosecuted by a Dog Catcher, Judge Davis was acting without jurisdiction and the Continuation of this criminal activity by the Attorneys, Solicitors, and Judges involved is a violation of State Code §16-17-10 (**Barratry**). Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce". The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). The Supreme Court has also held that **if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution, Ipso Facto**, renders Both Lower Court Judgment Void. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce. Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts. Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Of which include both Magistrate and Circuit Court Judges and that of the Appeals Court.

With the above said and the Refusal to disclose evidence by the State, (in said case, the Dog Catcher), the actions of the State is willful, conspiratorial, and criminal

actions. As in **Court Order - 2004-05-25-01**, "A willful act is defined as one 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done: that is to say, with bad purpose either to disobey or disregard the law.'" *Id.* at 82-3, 370 S.E.2d at 874. *See also* S.C. Code Ann. §16-17-410 (2003 & Supp. 2014) (defining a criminal conspiracy as "a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means"); *State v. Gunn*, 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993) (stating that the "gravamen of the offense of conspiracy is the agreement or combination," not merely a common crime of conspiracy is the agreement itself, the State need not show any overt acts in furtherance of the common scheme or plan. Nonetheless, substantive crimes committed in furtherance of the conspiracy may constitute circumstantial evidence from which a jury could infer the existence of the conspiracy, its object, and scope. *Id.* Moreover, "[t]o establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties." *State v. Kelsey*, 331 S.C. 50, 63, 502 S.E.2d 63, 70 (1998). Withholding of evidence violates *due process* "where the evidence is material either to *guilt* or to punishment. " *Brady v. Maryland*, 373 U.S. 83 (1963) "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). (*State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008) "Unfair prejudice means an undue tendency to suggest a decision on an

improper basis.", Lisenba v. California., 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941) that fundamental fairness essential to the very concept of justice, *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011) trial court failed to make specific findings of fact to support its ruling, Ipso Facto, the Dog Catcher acting as Prosecutor has also violated **18 U.S. Code § 2071** “ (a)Whoever willfully and unlawfully conceals, ...in any public office,... shall be fined under this title or imprisoned not more than three years, or both”. “(b)Whoever, having the custody of any such record... willfully and unlawfully conceals... shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States...”.

This Court has Failed to be Faithful to the Law that Requires a Defendant to be Prosecuted by a Licensed member of the State Bar Association §40-5-310. “**No person may either practice law or solicit** the legal cause of another person or entity in this State **unless he is enrolled as a member of the South Carolina Bar** pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been **defined as the unauthorized practice of law by the Supreme Court of South Carolina** prior to any charge being filed. **A person who violates this section is guilty of a felony ....**”, §23-15-110 “**No sheriff, deputy sheriff or sheriff's clerk, while in office, shall act as an attorney at law or solicitor in equity in his own name or in the name of any other person or be allowed to plead or practice in any of the courts in this State, ...**”, Ipso Facto, is Fraud upon the Court and a Sham Legal Process

With Paul E. Short subverting Court Rules that Allowed Respondent (no longer a party to the case) to Re-enter the Case (4/18/14) without petitioning the Court and file out of time (not extension of time as permitted by Rule 263(b), SCACR) without Cause and Five Months after Respondent had Withdrawn from Case (11/18/13), Ipso Facto has placed Fraud upon the Court and Violated Appellant's Rights to Due Process for Causing an unreasonable Delay that does not include the unreasonable Delay of Eleven Months between being Ready for Consideration (12/18/14) and being placed upon the Roster (11/02/2015). This Court Has Also Committed Barratry for the Action for the Order that ordered the Appellant to Amend the Appellants Initial Brief After the filing of the Appellants Final Brief as well as having to Amend the Record on Appeal and permitting the Respondents to File a Supplemental Record in Direct Violations of Court Rules. This Action as well as enforcing Court Rules (other then Clerical errors) upon the Appellant while subverting Court Rules on behalf of the State has show Extreme Bias against the Appellant and Abuse of Discretion by this Court. "An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 977 (9th Cir. 2003) (citation and internal quotation marks omitted).

With Fraud placed upon the Court and Numerous Constitutional Violations and Perjury by the State that produced a Sham Legal Process (§16-17-735), Therefore, *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.") has NO MERIT. With both the Affidavit and Warrant as well as the actions of

the State is in Direct Violations of Constitutional Laws and State Laws, Therefore, this Court must Review the Whole Record of Both the Circuit and Magistrate Courts With the Magistrate Court having both a preliminary Hearing and a Case hearing, ipso facto, being part of the Whole Record, This Court must also consider the issues raised to and ruled upon the Magistrate Courts without regards to the lack of Record due to being a summary court or lacking of due to criminal intent by the magistrate or criminal intent by a Circuit Court judge as this case has proven by substantial evidence. This Case along with the Pam Conley Case provides the unlawful Practices and Habits between Chesterfield Animal service personnel and Magistrate John Davis.

With All Judges, lawyers and the Dog Catcher bound by Rule 1101, SCRE, Rule 37, SCRCrimP, Rule 81, SCRCP as well as Rule 407, SCACR and Rule 501, SCACR , The refusal to take disciplinary Action for the Action of the Counsels and Judges in said Case is in fact a Direct violations of the said Rules and violation of §8-1-60 (Neglect of duty), Ipso Facto, causes Barratry (§16-17-10) and Conspiracy (§16-5-10)

With the above said, The Order of this Court that Violates The Appellants Constitutional Rights is produced without Jurisdiction, under Abuse of discretion, and in violation of TITLE 18, U.S.C., SECTION 242 and is treason against the Constitution of the United States along with Conspiracy after the facts with the Lower Court and State officials involved and of which waivers any and all Immunity from criminal prosecution and civil actions and as well as not upholding the disciplinary duties of which they are bound by, they not fit for their Official Duties. Therefore, the Appellant request this case to be reheard.

January 27, 2016

A handwritten signature in black ink, appearing to read "Fritz Timmons". The signature is written in a cursive style with a large initial "F" and a long, sweeping underline.

Fritz A. Timmons (Pro Se)  
P. O. Box 367  
Hartsville, SC 29551

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

\_\_\_\_\_  
J. Michael Baxley, Circuit Court Judge

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JAN 29 2016

**SC Court of Appeals**

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The State

Respondent,

v.

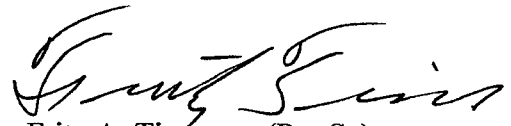
Fritz Allen Timmons

Appellant.

\_\_\_\_\_  
PROOF OF SERVICE

I certify that I have served the MOTION TO REHEAR by depositing a copy of it in the United States Mail, postage prepaid, on January 27, 2016, addressed to the attorneys of record, Vann Henry Gunter, Jr., P. O. Box 11549, Columbia, SC 29211 and William Benjamin Rogers, Jr., P.O. Box 616, Bennettsville, SC, 29512

January 27, 2016

  
Fritz A. Timmons (Pro Se)  
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January 27, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

RE: State v. Fritz A. Timmons, Appellate Case No. 2013-001415, Opinion No. 2016-UP-039

JAN 29 2016

**SC Court of Appeals**

Dear Jenny Abbott Kitchings

Enclosed is the original and six copies of the MOTION TO REHEAR along with proof of service of the Motion.

Sincerely,



Fritz A. Timmons, (Pro Se)  
P. O. Box 367  
Hartsville, SC 29551

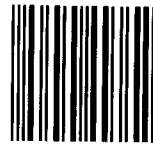
Fritz A. Timmons  
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29211

10/10/13  
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SC Columbia

Jenny Abbott Kitchings  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

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