{STATE OF SOUTH CAROLINA
IN THE SUPREME COURT}

{APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS}

{THE HONORABLE G. EDWARD WELMAKER CIRCUIT Judge}

THE STATE,

RESPONDENT,

, APPELLATE CASE NO.

V. , 2015-000595

ERICK E. HEWINS,

PETITIONER

RESPECTFULLY SUBMITTED

DATED Nov 17, 2015

s/ Erick Hewins

ERICK E. HEWINS #

PRO SE

McCORMICK C/I F-2-B-244

386 REDEMPTION WAY

McCORMICK, SOUTH CAROLINA

29899

{THE SUPREME COURT OF SOUTH CAROLINA}

THE STATE

RESPONDENT

V.

ERICK E. HEWLINS

PETITIONER

{APPELLATE CASE NO. 2015-000595}

{PETITIONER PRO'SE BRIEF}

RESPECTFULLY SUBMITTED

DATED NOV, 17 2015 2015 S Erick Hewlins

ERICK E. HEWLINS
MCCORMICK C/I F-2-B-244
386 REDEMPTION WAY
MCCORMICK, SOUTH CAROLINA
29859

{TABLE OF AUTHORITIES}

OTHER AUTHORITY

{STATEMENT OF ISSUE ON APPEAL}

1.) THE TRIAL COURT ERRED BY FAILING TO SUPPRESS EVIDENCE SEIZED BY OFFICER GARDNER FOLLOWING HIS UNLAWFUL FOURTH AMENDMENT SEIZURE OF DEFENDANT BECAUSE OFFICER GARDNER FAILED TO ARTICULATE ANY REASON THAT HE REASONably SUSPECTED DEFENDANT WAS ENGAGED IN CRIMINAL ACTIVITY AT THE TIME THE OFFICERS SAW DEFENDANT SITTING IN HIS VEHICLE.....9

2.) THE TRIAL COURT ERRED WHEN IT FOUND OFFICER GARDNER HAD REASONABLE SUSPICION SUFFICIENT TO CONDUCT A TERRY FRISK WHERE OFFICER GARDNER FAILED TO OFFER SUPPORT FOR HIS BELIEF THAT DEFENDANT WAS ARMED AND DANGEROUS AND WHERE OFFICER GARDNER ALLOWED TO MUCH TIME TO ELASPE BETWEEN ASKING DEFENDANT TO EXIT HIS VEHICLE AND ACTUALLY CONDUCTING THE SEARCH/FRISK.....

3.) THE TRIAL COURT ERRED IN FAILING TO SUPPRESS EVIDENCE SEIZED BY OFFICER GARDNER DURING A SECOND UNLAWFUL SEARCH OF DEFENDANT.....

4.) THE TRIAL COURT ERRED IN ADMITTING EVIDENCE WHERE STATE FAILED TO PROPERLY IDENTIFY TESTIMONY OR SWORN STATEMENT THE EVIDENCE CUSTODIAN INITIALLY RESPONSIBLE FOR RETRIEVING OR THE CONDITION OF THE EVIDENCE WHEN IT WAS logged INTO PROPERT AND EVIDENCE.....

{STATEMENT OF THE CASE}

THE STATE INDICTED ERICK E. HEWINS FOR TRAFFICKING TEN GRAMS OR MORE OF CRACK COCAINE AND POSSESSION OF A CONTROLLED SUBSTANCE SCHEDULE IV.

BEFORE TRIAL, HEWINS MOVE TO SUPPRESS EVIDENCE ARGUING THE DETENTION AND SUBSEQUENT PAT-DOWN WAS UNLAWFUL UNDER THE FOURTH AMENDMENT.

THE TRIAL COURT DENIED THE MOTION AFTER A HEARING.

DURING TRIAL, HEWINS OBJECTED TO THE ADMISSION OF THE DRUG EVIDENCE PURSUANT TO RULE (C) OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURES, ARGUING THAT THE CHAIN OF CUSTODY WAS INCOMPLETE.

THE TRIAL COURT DENIED THE MOTION AND THE JURY FOUND HEWINS GUILTY AS INDICTED.

HEWINS RAISED FOUR ISSUES TO THE COURT OF APPEALS:

1.) THE POLICE LACKED REASONABLE SUSPICION TO DETAIN HIM
2.) THE POLICE DID NOT HAVE REASONABLE BELIEF THAT HE WAS ARMED AND DANGEROUS TO JUSTIFY THE PAT DOWN
3.) A SECOND REACH INTO HIS POCKET
4.) THE STATE DID NOT PROPERLY IDENTIFY BY TESTIMONY OR SWORN STATEMENT, EITHER THE INITIAL CUSTODIAN RESPONSIBLE FOR RETRIEVING THE DRUG EVIDENCE OR THE CONDITION OF THE EVIDENCE

ON THE NIGHT OF HEWINS ARREST OFFICER SCOTT GARDNER AND RACHEL HALL OF THE GREENVILLE POLICE DEPARTMENT'S AGGRESSIVE PATROL UNIT DROVE INTO THE PARKING LOT OF THE

CLARION INN.

AT THE SUPPRESSION HEARING, GARDNER TESTIFIED THE LOCATION WAS "A VERY HIGH CRIME AREA, WITH DRUGS AND PROSTITUTION AND BREAK INS, WHERE GARDNER HAD PERSONALLY DEALT WITH MULTIPLE DRUG TRAFFICKING CASES AND NUMEROUS PROSTITUTION CASES." THE OFFICERS OBSERVED HEWINS IN A BLACK LEXUS BACKED INTO A PARKING SPOT NEXT TO A CAMRY "WITH TWO YOUNG FEMALES INSIDE IT "WHITE FEMALES" HEWINS AND THE TWO FEMALES WERE PARKED DRIVER SIDE TO DRIVER SIDE WINDOW AND APPEARED TO HAVE A MEETING FOR SOME REASON."

NO OTHER CARS WERE NEAR THE LEXUS AND CAMRY.

GARDNER PULLED THE UNMARKED PATROL VEHICLE DIRECTLY BEHIND THE LEXUS AND HORIZONTAL TO THE CAMRY " FOR OFFICER SAFETY PURPOSES " THE PARKING LOT WAS NOT WELL LIT AT THE TIME THE ONLY LIGHTS IN THE PARKING LOT CAME FROM THE CLARION INN BUILDING.

GARDNER AND HALL EXITED THEIR VEHICLE AND IDENTIFIED THEMSELVES AS POLICE OFFICERS AS THEY APPROACHED HEWINS AND THE WOMENS, GARDNER POSITIONED HIMSELF BETWEEN THE LEXUS AND CAMRY SO HE COULD SEE HEWINS FROM BEHIND --ON ONE SIDE AND THE TWO WOMEN ON THE OTHER. ALL THREE INDIVIDUALS APPEARED TO BE VERY NERVOUS ALMOST INSTANTANEOUSLY AND STOPPED TALKING TO EACH OTHER. GARDNER ASKED WHAT THEY WERE DOING IN THE PARKING LOT AND FOR THEIR IDENTIFICATION - THE YOUNG FEMALES HAD THEIRS ID. MR. HEWINS DID NOT. WHEN GARDNER ASKED HEWINS WHAT HE WAS DOING AT THE CLARION INN

HEWINS RESPONDED HE WAS THERE TO SEE HIS BABY MOMMA IN ROOM (237) WHEN GARDNER ASKED FOR THAT PERSON NAME, HEWINS TOLD GARDNER "HE DIDN'T KNOW HER NAME". HEWINS WAS STUTTERING WHEN HE WAS SPEAKING, BEGIN TO GET INCREASINGLY NERVOUS AND BEGAN SWEATING PROFUSELY. HAIL RAN DATA BASE CHECK ON THE THREE OF THEM HAIL RECEIVED RESPONSES FOR THE WOMEN BUT HAD TROUBLE GETTING HEWINS INFORMATION BACK.

GARDNER THEN CALLED FOR BACKUP.

GARDNER TESTIFIED HEWINS CONTINUALLY TOUCHED HIS LEFT POCKET, AND HE CONTINUED TO TOUCH THE POCKET AND, ... HE TRIED TO PLACE HIS HAND IN HIS LEFT POCKET . . . . GARDNER STATED FOR HIS OWN SAFETY, HE ASKED HEWINS TO STOP MOVING HIS HANDS AND TO LEAVE HIS LEFT POCKET ALONE. GARDNER TESTIFIED HEWINS HAND MOTION COULD BE AN INDICATION THAT THE INDIVIDUALS EITHER HAS A WEAPONS OR THAT THEY HAVE CONTRABAND OR DRUGS INSIDE THEIR POCKET. IT IS SOMETHING THAT A LOT OF INDIVIDUALS THAT WE LEARN THROUGH OUR TRAINING DO UNCONSCIOUSLY HEWINS CONTINUED TO TOUCH HIS POCKET AFTER BEING ASKED NOT TO DO SO.

WHEN BACK UP ARRIVED GARDNER ASKED HEWINS TO STEP OUT OF THE VEHICLE.

GARDNER INFORMED HEWINS HE WAS GOING TO CONDUCT A TERRY FRISK ON HIS PERSON FOR WEAPONS ON THE OUTSIDE OF HIS CLOTHING." GARDNER CONDUCT A PAT DOWN, FELT A HARD LUMP INSIDE THE POCKET, LEFT POCKET AND ASKED HEWINS WHAT THE LUMP WAS? HEWINS DID NOT RESPONDED AND

GARDNER THEN ASKED HEWINS IF HE COULD HAVE CONSENT TO PLACE HIS HANDS INSIDE THE POCKET, HEWINS DID NOT CONSENTED.

GARDNER STATED HE RECEIVED CONSENT AND GARDNER FOUND A LARGE WAD OF CASH, ROLLED UP IN RUBBER BANDS, HEWINS DID NOT KNOW WHY HE HAD SUCH A LARGE SUM OF MONEY ON HIS PERSON AND TOLD GARDNER HE DID THIS AND THAT FOR A LIVING.

{ APPARENTLY WITHOUT ANY FURTHER NOTICE, INQUIRY OR NOTICE GARDNER THEN REACHED INTO HEWINS POCKET A SECOND TIME. GARDNER STATED:

> DUE TO THE FACT I COULDN'T FULL CLEAR HIS POCKET DUE TO THIS LARGE LUMP, AND THEN ALSO STILL HAVING CONSENT, I REACHED BACK INTO THE POCKET TO CLEAR THE REST OF THE ITEMS OUT, BECAUSE THERE COULD POSSIBLY STILL HAVE BEEN A WEAPON UNDERNEATH THAT LARGE LUMP AND IT WAS FOUR GREEN PILLS WHICH WERE CONFIRMED TO BE CLONAZEPAN WHICH IS A SCHEDULE IV DRUG.

AFTER FINDING THE PILLS, GARDNER ARRESTED HEWINS AND CALLED A TOW TRUCK FOR HEWINS VEHICLE, PURSUANT TO POLICY OFFICERS CONDUCTED AN INVENTORY SEARCH OF THE VEHICLE FOR VALUABLES, OR WEAPONS OR OTHER CONTRABAND. DURING THE SEARCH OF HEWINS VEHICLE GARDNER FOUND A LARGE PIECE OF CRACK IN THE -- ON THE BACK FLOORBOARD APPROXIMATELY EIGHTEEN TO TWENTY GRAMS AND AN ADVIL BOTTLE IN THE CENTER CONSOLE WITH MULTIPLE SMALL CRACK

ROCK INSIDE " ANOTHER OFFICER ASSITING IN THE SEARCH FOUND A SILVER SCALE IN A DUFFEL BAG IN THE TRUNK OF THE CAR

{ARGUMENT}

ATTACHED pg. 9-27
APPELLATE COUNSELS ARGUMENT IN HER BRIEF ON RECORD WITH THE COURT

{PRESENTATION OF THE ISSUES}

{GROUND ONE- FOUR}

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION And Should NOT HAVE MADE A DISPOSITIVE FACTUAL DETERMINATION WHICH WAS UNSUPPORTED BY THE RECORD ON APPEAL WHICH THE STATE FAILED TO RAISE AT TRIAL LEVEL.

THE TRIAL COURT NEVER MADE A DETERMINATION ON Voluntary CONSENT NOR DID THE STATE PRESENT ANY CASE IN SUPPORT OF Voluntary CONSENT.

TR. TR. pg. 75-76 LN 25

WHEN ASKED IF HE IN ANYWAY GAVE CONSENT PETITIONER STATED: NO SIR, And FOR THE RECORD IN 2010 I KNEW I HAD THE RIGHT TO CONSENT TO A SEARCH OR NOT TO CONSENT TO A SEARCH. So I did NOT CONSENTED.

TR. TR. pg: 353- 354

THE STATE HAS THE BURDEN TO DEMONSTRATE THE VoluntARINESS OF CONSENT WHEN DISPUTED BY THE DEFENDANT.

{STATE V. PROVET} 403 S.C. 201, 143 949 S.E. 2d 453, 460 (2013)

THE PROSECUTION WITHDRAW HER CONSENT CHARGE.

TR. TR. pg. 372 L-1-9

WHEN THE TRIAL COURT MAKES NO RULING TO DETERMINE WHETHER ALLEGED CONSENT WAS Voluntarily GIVEN BEFORE PERMITTING JURY TO HEAR ALLEGED CONSENT DENIED

PETITIONER A FAIR TRIAL.

TR. TR. pg. 370 L-20-25

UNDER THE FOURTEENTH AMENDMENT IS A RULE THAT A JURY IS NOT TO HEAR UNLESS AND UNTIL THE TRIAL COURT HAS DETERMINED THAT IT WAS FREELY AND VOLUNTARILY GIVEN.

THE TRIAL COURT SHIFTED THE BURDEN FROM THE STATE TO PETITIONER.

THE COURT OF APPEALS STATED IN ITS OPINION AT BAR THAT .... WE ARE TROUBLED BY GARDNER BARE ASSERTION THAT HE RECEIVED CONSENT FOR THE SECOND REACH TO JUSTIFY HIS ACTIONS.

THE COURT OF APPEALS RELIED UPON NO MORE THAN MERE ASSERTION BY OFFICER GARDNER, THAT CONSENT WAS GIVEN THERE WAS NO EVIDENCE TO CORROBORATE CONSENT, ... EVEN THOUGH AT THE TIME OF THE ALLEGED TERRY FRISK OCCURED THERE WAS A TOTAL OF FIVE OFFICERS ON THE SCENE. SEE (CAd REPORT)

TR. TR. pg. 114 L-6

CORROBORATION BY WITTNESS MEGAN NEWMAN

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION AS TO WHETER ARRESTING OFFICER REASONABLY BELIEVED THAT PETITIONER HAD CONTRABAND UPON HIM BASED UPON THE APPELLATE COURT ERRONEOUS FINDINGS OF CONSENT.

SEE pg. (5) OF THE COURT OPINION:

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION BY REFUSING TO DETERMINE WHETER ARRESTING OFFICER

HAD REASONABLE SUSPICION THAT PETITIONER HAD CONTRABAND IN HIS POCKET BECAUSE GARDNER TESTIFIED HE RECEIVED HEWINS CONSENT TO REACH INTO THE POCKET. THE EXISTENCE OF VOLUNTARY CONSENT IS DETERMINED FROM THE totality OF THE CIRCUMSTANCES. {MENDENHALL SUPRA}

COURTS HAVE REJECTED FINDINGS OF CONSENT SOLELY ON THE ACQUIENCE TO THE OFFICER WISH TO ESTABLISH THE REQUISTE CONSENT.

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION THAT THE COURT DID NOT ERRED BY FAILING TO SUPPRESS EVIDENCE SEIZED BY OFFICER GARDNER FOLLOWING THE UNLAWFUL DETENTION OF PETITIONER BECAUSE OFFICER GARDNER FAILED TO ARTICULATE ANY REASON THAT HE REASONably BELEIVED PETITIONER WAS ENGAGED IN CRIMINAL ACTIVITY AT THE TIME OFFICERS SAW PETITIONER SITTING IN HIS VEHICLE.

AT THAT POINT IN TIME, THE PETITIONER WAS DETAINED.... AND WAS NOT FREE TO LEAVE, BECAUSE OFFICER GARDNER pulled HIS VEHICLE TO BLOCK PETITIONER FROM leaving.

TR. TR. pg. 66 L-19-24

EVEN ASSUMING THIS WAS A TRAFFIC STOP, IT WAS IMPROPER AND EVERY QUESTION THEREAFTER EXCEEDED THE LIMITED SCOPE AND DURATION OF THE QUESTIONS ALLOWED UNDER (TERRY) AND IT PROGENY AND PETITIONER WAS UNLAWFULLY DETAINED AND THE TRIAL COURT MADE NO DEFINITIVE RULING AS TO THE TIME THE DETENTION BEGAN, BUT STATED IN THE COURTS OPINION THAT IT likely occurred WHEN GARDNER ASKED HEWINS TO STEP OUT OF HIS VEHICLE.

THE DETENTION BEGAN THE MOMENT OFFICER GARDNER BLOCKED PETITIONER IN WITH HIS PATROL VEHICLE."

A REASONABLE PERSON WOULD HAVE BELIEVED HE WAS NOT FREE TO LEAVE.

{STATE V. RODRIGUEZ} 323 S.C 484, 491-92 476 S.E.2d 161, 165

{U.S. V. MENDENHALL} 466 U.S AT 584 100 S.CT. 1877 (1979)

THE UNDERLYING PURPOSE FOR A TRAFFIC STOP MUST BE LAWFUL

{STATE V. BULLER} 353 S.C 387, 391, 577 S.E. 2d 498, 503 (2003)

IT IS ILLEGAL IF THE STOP GOES BEYOND A LEGITIMATE SCOPE.

{STATE V. TINDALL} 388 S.C. 518, 521 698 S.E. 2d 263 (2012)

{U.S. V. SULLIVAN} 138 F. 3d 126, 131 (1998

REASONABLE SUSPICION REQUIRES A PARTICULARIZED AND OBJECTIVE BASIS THAT WOULD LEAD ONE TO SUSPECT ANOTHER OF CRIMINAL ACTIVITY

{STATE V. BLASSINGAME} 338 S.C. 240, 248, 525 S.E. 2d 536, 539 (KKK)

SUSPECTING AN AREA OF BEING A HIGH CRIME AREA DOES NOT PROVIDE AN OBJECTIVE BASIS TO SUSPECT CRIMINAL ACTIVITY IT REQUIRES MORE WHICH AT THE MOMENT OFFICER GARDNER AND HALL DETAINED THE PETITIONER WAS NOT THERE. FROM THE OUTSET, THERE WAS THE DETENTION..... WHICH WAS THE TYPE OF FISHING EXPEDITION DENOUNCED BY OUR SUPREME COURT IN:

{SYKES} 418 S.E 2d AT 563

{STATE V. RODRIGUEZ} 476 S.E. 2d 161, 166 (1996)

{STATE V. WOODRUFF} 544 S.E. 2d 285 (2001)

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION WHEN IT FOUND OFFICER GARDNER HAD REASONABLE SUSPICION SUFFICIENT TO CONDUCT A TERRY FRISK WHERE OFFICER GARDNER FAILED TO OFFER ANY SUPPORT FOR HIS BELIEF THAT THE DEFENDANT WAS ARMED AND DANGEROUS, WHERE OFFICER GARDNER ALLOWED TO MUCH TIME TO ELAPSE BETWEEN THE UNCONSTITUTIONAL DETENTION AND ASKING THE DEFENDANT TO EXIT HIS VEHICLE, AND ACTUALLY CONDUCTING THE FRISK.

{STATE V BUTLER} 252 S.C 355, 393 587 S.E.2d 495, 503

OFFICER GARDNER STATED HE BELIEVED SOMETHING TO BE CAUTIOUS OF EXISTED IN PETITIONERS POCKET, ... BUT WAITED UNTIL DEFENDANT WAS OUT OF THE CAR.
THREE BACK UP OFFICERS HAD ARRIVED.
THERE WAS NO REASONABLE SUSPICION TO JUSTIFY A TERRY FRISK

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION IN FAILING TO SUPPRESS EVIDENCE SEIZED BY OFFICER GARDNER DURING A SECOND UNLAWFUL REACH.
THE COURT OF APPEALS STATED:

> "WE BELIEVE THE FACT RAISES QUESTIONS OF WHETER GARDNER SECOND REACH INTO HENTINS POCKET WAS JUSTIFIED BY CONSENT .... WE FIND THE ISSUE IS NOT PRESERVED."

HOWEVER THE ISSUE WAS PRESERVED AS WILL BE SHOWN:
.... DEFENSE COUNSEL ARGUED AGAINST THE LEGALITY OF THE SECOND REACH INTO HENTINS POCKET AS EXCEEDING THE SCOPE OF THE ALLEGED CONSENT.

AT THE CONCLUSION OF THE ARGUMENT THE TRIAL COURT STATED:
..... "CERTIANLY YOUR ARGUMENT IS WELL STATED AND NOTED FOR THE RECORD." TR.TR. pg. 160 L-15-16

IT IS NOT NECESSARY FOR MORE WORDS TO UNDERSTAND THAT THE COURT TOOK JUDICIAL NOTICE OF THE ISSUES AND RULED AGAINST PETITIONER, THAT PRESERVES THE ISSUE FOR APPELLATE REVIEW AND THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION.

{SEE EXHIBIT (2)}

OFFICER GARDNER PARKED THE PATROL CAR DIRECTLY BEHIND HEMMINS AND HORIZONTAL TO THE CAMRY. TR.TR.pg. 109 L-3-17 TR.TR. pg. 119-120 L-15-25- L-1-25

THE EXACT ORDER AND TIME FRAME OF WHAT HAPPENED IS SUBJECT TO DEBATE.

THE OFFICER AND THE DEFENDANT PRESENTED SLIGHT VARATIONS OF WHAT HAPPENED AND THERE WAS NO RECORDINGS OR ANY OTHER AFFIRMATION AS TO WHAT ACTUALLY HAPPENED OR HOW LONG IT TOOK; EXCEPT FOR THE (CAD REPORT) DEMONSTRATING THAT OFFICER GARDNER AND HALL ARRIVED ON THE SCENE AT 12:48 A.M. AT WHICH TIME DEFENDANT WAS OUTSIDE HIS VEHICLE BUT OFFICER GARDNER HAD NOT YET PERFORMED THE PAT-DOWN.

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION IN THE ADMISSION OF EVIDENCE WHERE THE STATE FAILED TO PROPERLY IDENTIFY BY TESTIMONY OR SWORN STATEMENT THE EVIDENCE CUSTODIAN INITIALLY RESPONSIBLE FOR

RETRIEVING THE EVIDENCE OR THE CONDITION OF THE EVIDENCE WHEN IT WAS logged IN.
THE COURT INDICATED IT RULED UPON BOTH ISSUES WHEN IT STATED COUNSEL WAS NOTED FOR THE RECORD.
TR. TR pg. 160 L-15-25
FOLLOWING THE COURT RULING THE JURY WAS RELEASED FOR PETITIONERS MOTION TO EXCLUDE EVIDENCE BASED UPON THE STATES FAILURE TO PROPERLY PRESENT A CHAIN OF CUSTODY PRIOR TO TRIAL.
PETITIONER MADE A RULE (6) SCRIMP DEMANED FOR THE APPEARANCES OF ALL WITNESSES IN THE CHAIN OF CUSTODY THE STATE FAILED TO PRESENT THE INITIAL EVIDENCE CUSTODIAN OR HIS OR HER SWORN STATEMENTS, CONCERNING WHO RETRIEVED THE EVIDENCE THAT WAS dropped OFF BY OFFICER GARDNER FOLLOWING PETITIONER ARREST.
THE STATE FAILED TO IDENTIFY THE CONDITION OF THE EVIDENCE AT THE TIME IT WAS RETRIEVED RATHER THAN FOLLOWING THE MANDATORY NATURE OF RULE (6) SCRIMP
THE COURT IMPROVISED A NEW BURDEN OF PROOF IMPOSING PETITIONER TO show, ... ILL MOTIVE, ... BAD FAITH, ... OR TAMPERING.
TR. TR. pg. 181 L-6-24
UPON PETITIONER FAILURE TO MEET THIS NEWLY DEVISED STANDARD THE COURT DENIED THE MOTION TO Exclude.
IN ITS ORDER THE COURT OF APPEALS AFFIRMED THE TRIAL COURT ADMITTING EVIDENCE.
{STATE V. HATCHER} 392 S.C. 86, 91 708 S.E.2d 750, 753 STATING:

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

.... AN ABUSE OF DISCRETION OCCURS WHEN THE CONCLUSION OF THE TRIAL COURT EITHER LACKS EVIDENTIARY SUPPORT OR ARE CONTROLLED BY AN ERROR OF LAW.

FIRST THE CASE AT BAR PRESENTS BOTH A LACK OF EVIDENTIARY SUPPORT AND BEING CONTROLLED BY AN ERROR OF LAW. FIRST THE ERROR AT LAW IS THAT THE TRIAL COURT BELIEF THAT THE RULE OF EVIDENCE REGARDING [redacted] CHAIN OF CUSTODY DO NOT ARISE FROM RULE (E) OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE. SCRCRIMP (E) REQUIRES A SWORN STATEMENT FROM EACH PERSON HAVING CUSTODY OF THE EVIDENCE OR THE PERSON MUST BE IN COURT TO TESTIFY.

RULE (E) ALSO SPECIFY THE STATEMENT MUST CONTAIN A SUFFICIENT DESCRIPTION OF THE SUBSTANCE OR ITS CONTAINER TO DISTINGUISH IT AND THAT THE SUBSTANCE WAS DELIVERED IN SUBSTANTIALLY THE SAME CONDITION AS WHEN RECEIVED THIS IS THE STANDARD, INTRODUCING EVIDENCE WITHOUT SUFFICIENT AFFIDAVIT OR THE PERSON WHO VIOLATES THE RULE OF CRIMINAL PROCEDURE.

TR. TR. pg. 277 - 289 - pg 292 - 296

TR. TR. pg. 285 L-1-22

{STATE V. CHISOLM} 355 S.C. 175 584 S.E.2d 401 (2003)

{STATE V. TAYLOR} 368 S.C. 18, 598 S.E.2d 723 (2004

THE COURT OF APPEALS ERRED IN ITS FACTUAL DETERMINATION REGARDING THE EXCLUSION OF EVIDENCE.

DATED Nov 17, 2015

s Erick Dewin

PRO'SE PETITIONER

{CONCLUSION}

BASED UPON THE ENCLOSED FACTS THE COURT OF APPEALS ERRED BY MAKING SUA SPONTE FACTUAL DETERMINATIONS BY AFFIRMING THE TRIAL COURT RULING TO SUPPRESS EVIDENCE SEIZED IN VIOLATION OF THE FOURTH AMENDMENT RIGHT AGAINST UNLAWFUL SEARCHES AND SEIZURES. IN LIGHT OF THE TOTALITY OF CIRCUMSTANCES TEST FOLLOWED BY THIS COURT IN: {STATE V. WALLACE} 209 S.C. 547 238 S.E. 2d 675 (1996) THERE WAS EVIDENCE THAT OFFICER GARDNER DID NOT FEAR FOR HIS LIFE/SAFETY NOR HAD CONSENT TO SEARCH THE BURDEN OF PROOF IS ON THE PROSECUTOR AT TRIAL TO JUSTIFY WARRANTLESS SEARCH, IN FOR TRIAL JUDGE WHEN CONTESTED WITH CONTRADICTION TESTIMONY UNDER OUR STATE CONSTITUTION SUSPECT ARE FREE TO LIMIT THE SCOPE OF THE SEARCHES TO WHICH THEY CONSENTS {STATE V. FORRESTER} 343 S.C. 637, 638 541 S.E. 2d 837, 843 (2001) WHEN RELYING ON THE CONSENT OF A SUSPECT A POLICE OFFICER SEARCH MUST NOT EXCEED THE SCOPE OF THE CONSENT GRANTED OR THE SEARCH BECOMES UNREASONABLE. THE COURT OF APPEALS DECISION SHOULD BE RESPECTFULLY REVERSED AND REMANDED FOR THE RELIEF THIS COURT DEEMS JUST AND PROPER. THIS MATTER HAS RESULTED IN A COMPLETE MISCARRIAGE OF JUSTICE.

DATED Nov 17, 2015

RESPECTFULLY SUBMITTED

s/ Rick Dennis

MCCORMICK CI F-2-B-244
286 REDEMPTION WAY
MCCORMICK, S.C. 29835

{THE SUPREME COURT OF SOUTH CAROLINA}

THE STATE RESPONDENT

V.

ERICK E. HEWINS PETITIONER.

{APPELLATE CASE NO. 2015-000595}

{PROOF OF SERVICE}
AFFidavits

THE PETITIONER DOES HEREBY CERTIFY THAT HE HAS ON THIS 17 DAY OF NOV 2015 SERVED A COPY OF THE PETITIONER'S PRO'SE BRIEF UPON OPPOSSING COUNSEL BY DEPOSITING A COPY OF THE SAME IN THE UNITED STATES MAIL POSTAGE PREPAIDED AND ADDRESSED TO:

ALAN McCORY WILSON
ATTORNEY GENERAL FOR S.C.
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA
29899

RESPECTFULLY SUBMITTED
S Erick Hewins

SWORN OR AFFIRMED BEFORE ME
THIS 17th DAY OF November 2015
Michael Carnine
NOTARY PUBLIC FOR S.C.
MY COMMISSION EXPIRES July 9, 2025

ERICK HEWINS #00244
388 REDEMPTION WAY
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29899