

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2013-001415

Opinion No. 2016-UP-039

**RECEIVED**

APR 27 2016

**SC SUPREME COURT**

The State

Respondent,

v.

Fritz Allen Timmons

*Petitioner,*  
~~Appellant.~~

PETITION FOR A WRIT OF CERTIORARI

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## STANDARD OF REVIEW

In reviewing a challenge under the Fourth Amendment, the Court must affirm if there is any evidence to support the ruling. *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011). Accordingly, this Court reviews the trial court for clear error and will affirm if there is any evidence to support the ruling. *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). "any evidence to support " does not bar other violations of the Fourth Amendment requirements nor of Federal or State Codes that would cause the Court to Reverse. Therefore, "any evidence" must be subjected to all evidence.

Evidence obtained in violation of the Fourth Amendment must be excluded from trial. *Mapp v. Ohio*, 367 U.S. 643, 648 (1961). The Fourth Amendment applies to all seizures of a person. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). "The Fourth Amendment provides in relevant part that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'" *United States v. Jones*, 132 S. Ct. 945, 949 (2012). S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents."). Simply because a party does not expressly articulate the relevance of a particular case does not excuse the court of appeals from failing to apply controlling precedent. "On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error." *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014)

This would include the warrant and supporting affidavit as a whole and upon all requirements of the Fourth Amendment

"it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." "[C]ourts must give due weight to common sense judgments reached by officers in light of their experience and training." *State v. Taylor*, 401 S.C. 104, 113, 736 S.E.2d 663, 667 (2013).

"'Suspicion' implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *Id.* "However, a trial judge is not required to find that the evidence infers guilt to the exclusion of *any other reasonable hypothesis.*" *State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996) (emphasis added).

On appeals from Fraud upon the Court in a criminal case the Court must also apply the actions of the Court and Prosecution within the set standards of Constitutional, Federal, and State Codes, Regulations, and Rules of which includes Court Rules in which they are bound and are not Barred.

### **STATEMENT OF THE CASE**

On March 4, 2013 Chesterfield County Constitutionally intruded and conducted a search and seizure upon the Appellant's property, curtilage and Broke into the Appellant's Residency without a Warrant

On March 5, 2013 appellant was interrogated by Chesterfield sheriff deputies, given an Affidavit and warrant without a Seized item list. A preliminary hearing was held directly after with a motion to dismiss for Unconstitutional Warrant refused and court

ordered custody of dogs given to Animal Control Perjured Testimony given by Danielle  
Bowe

On March 6, 2013 Appellant given summon tickets numbered 1884-1892 seizer  
was broadcast on WCCB tv with photos from Animal Control of which was not presented  
to Appellant nor at hearing of March 18, 2013.

On March 11, 2013 Appellant given summon tickets numbered 1898-1909

On March 18, 2013 Hearing was held for the County Summon Tickets for  
violating State Laws and Prosecuted by a Dog Catcher without any witnesses and failed to  
disclose evidence including the E-mail that the Dog Catcher stated he used to obtain the  
Search Warrant. Said to have over 150 photos and had only 5 veterinarian Reports from  
31 Seized K-9s. A motion to dismiss for Unconstitutional Warrant refused 2<sup>nd</sup> time. After  
which Animal Control relinquished K-9s prior to Appeal time limitation period.

On May 8, Appeal hearing in front of Judge J. Michael Baxley. Asked for copy of  
anonymous E-mail and was denied due to no prima facie evidence Appeal was denied.

On June 14, 2013, Notice of intent to appeal served

On Oct 15, 2013 Initial Brief of Appellant and Designation of Matter filed

On Oct 28, 2013 A. G. office to Solicitors office Affirming Knowledge of Case  
letter filed

On Nov 12, 2013 State's Abandonment Letter filed

On Dec 10, 2013 Appellant's Continuation Letter filed

On Feb 19, 2013 Respondent's Motion-to relax the rules for filing Respondent's  
initial brief, designation of matter and supplemental record filed (granted)

On April 25, 2013 Appellant's En Banc Letter filed (no response)

On Feb 18, 2014 Final Brief of Appellant and Record on Appeal Filed

On Feb 19, 2014 Respondent's (no longer a Counsel in the Case due to abandonment) Motion-to relax the rules for filing Respondent's initial brief, designation of matter and supplemental record Filed (Granted)

On April 25, 2014 Appellant's **En Banc Letter filed (no response from)**

On May 20, 2014 Appellant's Motion-to review order to relax rules and request extension Respondent's Motion-to Strike and Amend Appellant's Initial Brief (Denied)

On May 20, 2014 Respondent's Motion-to Strike require filing of amended initial brief of Appellant or to have the court disregard (Granted)

On May 27, 2014 Appellant's Motion-to Strike and disregard the Respondent's supplemental record and require filing of amended initial brief of respondent and (Denied)

On July 22, 2014 Appellant's Amended Initial Brief Filed

On Aug 8, 2014 Appellant's Amended Record on Appeal filed

### **STATEMENT OF FACTS**

- (1) Chesterfield County Failed to provide any Probable Cause to Constitutionally Intrude upon Appellant's Property
- (2) Supporting Affidavit Fails to meet requirements of the Fourth Amendments
- (3) Warrant Fails to meet requirements of the Fourth Amendments. Magistrate issues unconstitutional Warrant (Perjury) and after search and seizer was conducted (Maintenance and Barratry, Violating Oath of Office and Color of Law, SCACR 501, Cannon 3

- (4) Warrant itemized list was failed to be given to Appellant's
- (5) Warrant Return was based upon perjury
- (6) Magistrate Judge Tampered with Evidence and produced Fraud upon the Court
- (7) The Magistrate Judge violated the Appellant's Fourth Amendments Rights
- (8) A County Dog Catcher unlawfully issued State Code violations on County Summons Tickets (Maintenance, Barratry and Neglect of Duty, Malicious Prosecution, Violating Oath of Office and Color of Law)
- (9) Both Animal Control and Animal Shelter has Danielle Bowe as Director (Dual Offices) and under the Control of the Sheriff Office. Danielle Bowe also gave perjured testimony during Custody Hearing,
- (10) Sheriff Office (of which the Sheriff was indicted, tried and convicted during the time span of this case) Deputy James Lewis (Formally over Animal Shelter During the "CHESTERFIELD 22" shooting case) produces unconstitutional Affidavit (Perjury) and after search and seizer was conducted (Maintenance)
- (11) Case Prosecuted by Dog Catcher Jim McGonigal.(Practicing law without a license Rule 407, SCACR, Rule 5.5) upon Fraudulent Charges (and not within the Dog Catchers Authority) of which **He** Claimed to be "Criminal" (Malicious Prosecution, vexatious litigation, Violating Oath of Office and Color of Law) During Hearing
- (12) Prosecution Refused to Disclose Evidence
- (13) Charges and conviction was based upon Champerty and Conspiracy. County building a new Multi Million Dollar Shelter during this Period of time. Animal Shelter receives seized animals and percentages of fines collected (Maintenance and Champerty)
- (14) The State Continued to Prosecute during Appeals process by Adam M. Foard,

William Benjamin Rogers, Jr., Salley W. Elliott, Vann Henry Gunter, Jr. and Alan Wilson  
(Maintenance, Barratry, Violating Oath of Office and Color of Law, Rule 407, SCACR,  
Rule 5.1, 5.5 )

(15) Circuit Court Judge J. Michael Baxley Affirmed these Unconstitutional Actions  
(Maintenance, Barratry, Violating Oath of Office and Color of Law, Rule 501, SCACR  
Canon 3,) and continued to violated Appellant's Fourth Amendments

(16) Appeals Court Judge Paul E. Short Permitted Counsel to **Re-enter** (after  
withdrawing without petitioning Court to re-enter Case), Five Months After Respondents  
Due date for Respondents Initial Brief and Violate **EVERY** Rule for Appeals  
(Maintenance, Barratry, Violating Oath of Office and Color of Law, Rule 501, SCACR  
Canon 3)

(17) Appeal Judges continued to violated Appellant's Fourth Amendments and all  
Appellant Rules on behalf of the state while enforcing same Rules upon the Appellant  
(Violating Oath of Office and Color of Law, Rule 501, SCACR Canon 3, Extreme Bias)

## **ARGUMENTS**

(I)

CAN THIS COURT JUSTIFY HOW THE INCIDENT REPORT APPEARED IN  
THE RECORD OF RETURN FOR THE CUSTODY HEARING (LABELED AS  
RETURN OF THE CRIMINAL APPEAL) WHEN THE INCIDENT REPORT WAS  
CREATED AFTER THE HEARING , IPSO FACTO, A SHAME LEGAL PROCESS?

With the Incident Report (Ap. Pp. 211 - 212) stating "An emergency custody  
hearing was held to decide custody of animals and judge John Davis awarded County  
custody until court date of 3/18", also that the Summons Tickets that was produced **After**

the Custody Hearing also Appears in Record (Ap. Pp. 175 - 182) , Ipso Facto, This Court can not deny the fact that the Incident Report and Tickets Appeared was placed into the Record After the Hearing and contains perjured testimony of Danielle Bowe (Ap. Pp. 179 vs. 207) and not an Expert Witness. The Veterinarian Exams (Ap. Pp. 151 - 156) dated 3/5/13 and 3/11/13 was also produced After the Custody Hearing of 3/5/13. The Veterinarian Exam (Ap. Pp. 151) of the corpses that states “severely decayed” and without timing or cause of death along with the photo of the open grave in which they was buried (Ap. Pp. 164), during winter months, the open 50 lb bag of Puppy Food (Ap. Pp. 116) and receipt for 100 lbs of Dog food and Canned food (Ap. Pp. 168), . Proves they was not Food for the K-9 that was seized. The Incident Report was also never given to the Appellant nor was produced as evidence during the said to be “Criminal” and after the start of the Hearing of March 18, 2013 in which was Prosecuted by the Dog Catcher. The Incident Report was only obtained through the Court Records upon Starting the Appeals. The summons Tickets was not produced until several days later with Tickets 1998 through 1909 (Ap. Pp. 134 - 145) was issue dated as 3/7/13 nor was any examination reports or itemized warrant list produced at the custody Hearing. With this said, This Court can not deny that Judge John Davis Tampered with Evidence and conspiracy had occurred. Neither Return was dated to indicate the hearing dates also the Custody hearing was labeled as “Criminal” (Ap. Pp. 175 - 182). Ipso fact, this entire Case is a Shame Legal Process based upon Fraud, Perjury, Champerty, Maintenance, Barratry, Conspiracy, In Violation of Constitutional and State Laws as well as Court Rules and Tampering with Evidence and is Maintained by the General Attorney and his office with Subordinates there of as well as the Judges of the Circuit Court and Appeals Court. With the Custody hearing

Labeled a "Criminal" Directly Violate the opinions of this Court and of the United States Supreme Court for Violations of Due Process as stated in the Following. Therefore does this Court consider a Custody Hearing to be a Criminal Hearing and/or Part of a following Hearing due to two separate "Return to a Criminal Appeal" and Appellant not charged nor Prosecuted? Richland County Magistrate's Court, 389 S.C. 408, 414, 699 S.E.2d 161, 165 (2010), S.C. Const. art. I, SECTION 14, United States v. Anderson, 68 M.J. 378, United States v. Tunstall, 72 M.J. 191, United States v. Fosler, 70 M.J. 225, United States v. Girouard, 70 M.J. 5, United States v. Girouard, 70 M.J. 5, United States v. LaPage, 231 F.3d 488, 491, Henning, *supra* note 15, at 762, Morris v. Ylst, 447 F.3d 735, 744 (9th Cir. 2006),

(II)

CAN THIS COURT JUSTIFY HOW A CUSTODY HEARING BE CONSIDERED AS A CRIMINAL PROCEEDING WITH (1) NO CHARGES FILED, (2) NO PROSECUTORS, (3) WITHOUT INFORMING APPELLANT OF CHARGES (4) PERJURED TESTIMONY FROM ANIMAL CONTROL, (5) WITHIN 24 HOURS OF SEARCH AND SEIZURE, (6) NO EVIDENCE TO SUPPORT CASE, (7) BASED SOLELY ON ASSUMPTION AND WITHOUT FACT?

Same as Previous and next Question

(III)

CAN THIS COURT JUSTIFY THE CONSTITUTIONAL INTRUSION CONDUCTED BY CHESTERFIELD COUNTY ANIMAL CONTROL AND SHERIFF DEPARTMENT PRIOR TO AFFIDAVIT OR WARRANT

With No evidence of the So Called "Anonymous" E-Mail (Ap. Pp. 211 - 212) nor Phone Call (Ap. p. 98) was Produced nor Referred to in the Affidavit nor Warrant. Other than the Incident Report, the only other Reference to the "Anonymous" is when During

the Hearing of March 18, 2014 is when the Dog Catcher (Prosecutor) stated (not under Oath) “I used the Anonymous E-Mail to get the Search Warrant”, Ipso Facto, the Dog Catcher Obtained the Warrant and **not the Deputy**, Therefore if the Deputy was on premises as claimed, then why would the Dog Catcher need to obtain the Search Warrant, Ipso Facto, explains the difference in the handwriting and pens used in the Affidavit and Warrant vs. the signatures of both. Also, Why would the Judge need to be informed as to the Reasoning behind the Warrant that he himself had issued, Also the Same Judge stated the Warrant was Based upon an “Anonymous Tip” (Ap. p. 116) and not from the Dog Catcher or Deputy. Therefore, This Court can not deny the Constitutional Intrusion and Intrusion of Privacy (Ap. p. 162) nor Conspiracy of this Case. Can this Court also justify how Animal Control knew how many K-9s the Appellant had with only the Appellant being the only one inside the Residency in 5 years and only approximately half of the k-9s outside of which could only been counted by Constitutional Intrusion of which is not reference to in the Affidavit nor Warrant?

(IV)

CAN THIS COURT JUSTIFY THE APPELLANT BEING CHARGED AND CONVICTED (MULTIPLE DOUBLE JEOPARDY OF) WITH STATE CODE VIOLATIONS BY A DOG CATCHER (CODE ENFORCEMENT OFFICER)

Attorney General opinion November 8, 2000 Code Enforcement Officers are not "law enforcement officers" Accordingly, code enforcement officers would not be allowed to enforce any of the state laws, Ipso Facto, a County Dog Catcher can not enforce any **State Laws** as Charged upon the **County** Summons Tickets (Ap. Pp. 125 - 145) nor can the Dog Catcher Lawfully Represent the State as a Prosecutor (Ap. p. 116). Can this

Court differentiate between the charges of the Summons Tickets?

(5)

CAN THIS COURT JUSTIFY A UNCONSTITUTIONAL SEARCH AND SEIZER CONDUCTED ON MARCH 4, 2013 AND WARRANT SERVED ON MARCH 5, 2013 WITHOUT RECEIPT WHILE THE RETURN WAS FILED ON MARCH 5, WITHOUT THE ITEMIZED LIST (UNDER OATH) OF WHICH LACKED ITEMS SEIZED AND WITHOUT BEING WITNESSED (IPSO FACTO, PERJURY) WHILE LIST WAS ADDED TWO DAYS AFTER RETURN.

Allegation of facts constituting a deprivation under color of state authority of the guaranty against unreasonable searches and seizures, contained in the Fourth Amendment and made applicable to the States by the Due Process Clause of the Fourteenth Amendment, satisfies to that extent the requirement of 1979. The statutory words "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" do not exclude acts of an official or policeman who can show no authority under state law, custom or usage to do what he did, or even who violated the state constitution and laws. Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken "under color of" state law within the meaning of 1979. *United States v. Classic*, 313 U.S. 299 ; *Screws v. United States*, 325 U.S. 91.

This case presents important questions concerning the construction of R. S. 1979, 42 U.S.C. 1983, which reads as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any. citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." This includes Judges within the meaning.

South Carolina Constitution states the following: **ARTICLE I, SECTION 10.** Searches and seizures; invasions of privacy (Ap. p. 162) . The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon **probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized,** and the information to be obtained.

(VI)  
CAN THIS COURT JUSTIFY THE REASONING BEHIND THE APPEALS COURT  
DECISION TO CONTINUE TO VIOLATE THE APPELLANTS  
CONSTITUTIONAL RIGHTS

With the Appeal Court only using Case Laws as the Order of the Court without any Facts nor Details to support their finding, and the facts and evidence of the case contradicts the Decision of the Supreme Court in accordance to these Case Laws. This Order is Void for Vagueness in all applications, with facts and substantial evidence, Conspires with the Lower Courts (as well as the involved Lawyers) Unconstitutional and Unlawful Action, ipso facto, violations of Color of Law. Therefore, this Order is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." see *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990), *State v. Viard*, 276 S.C. 147, 149, 276 S.E.2d 531, 532 (1981), *State v. Owen*, 275 S.C. 586, 588, 274 S.E.2d 510, 511 (1981)

Therefore, This court must provide Details and Facts to support this decision. An Order from a Judge that is no more than "I said so" is Absolutely Void of any merit or jurisdiction and is Constitutionally unlawful under the Right to Due Process.

(VII)  
CAN THIS COURT JUSTIFY A DOG CATCHER PROSECUTING A SUPPOSEDLY  
CRIMINAL CASE ON BEHALF OF THE STATE AND WILFUL FAILING TO  
DISCLOSE EVIDENCE

With a dog Catcher acting as State Prosecutor has produced Fraud upon the Court with a Shame legal Process based upon conspiracy between the Animal Control, Sheriff's Office and the Magistrate Judge of which had already violated the Appellant's Constitutional Rights (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, )

The spoliation of evidence is the intentional or negligent withholding, hiding, altering, or destroying of evidence relevant to a legal proceeding

With the attorney general's Duties including responsibility for employing and supervising those attorneys who represent the State, as well as, overseeing the State's litigation and effectuating South Carolina's legal policy; ipso facto, violated for employing a Non-Attorney licensed Dog Catcher to Prosecute a Criminal Case. Therefore, it is a Conflict of interest to prosecute those of public Corruption in which he himself is employing. Due to the Process that a judge has to Approve a Grand Jury, Ipso Facto, removes the Constitutional Requirements of Checks and Balances of Governments when Corruption is Ramped within this Judicial System and Prevents any Grand Jury from

investigating Corrupt Judges, This System Also Prevents the Head of Sled and the Attorney General himself from being Investigated.

State law vests our Supreme Court with the sole authority to regulate the practice of law. See S.C. Const. art. V, § 4 ; S.C. Code § 40-5-10 ; In re Unauthorized Practice of Law, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992) . With South Carolina's Supreme Court Chief Justice Jean H. Toal Refusal to take disciplinary Actions (Ap. Pp. 391 - ) in this case, she has permitted the continuation of a Shame legal Process based upon Constitutional and State Code Violations as well as Perjury, Ipso Facto, has she has committed Conspiracy, Neglect and violated her Oath of Office.

As established in the following Authorities; S.C. Const. art. V, § 4 ; S.C. Code § 40-5-10, Unauthorized Practice of Law, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992), Richland County Magistrate's Court, 389 S.C. 408, 414, 699 S.E.2d 161, 165 (2010), Op. S.C. Att'y Gen., 2013 WL 1695517 (March 26, 2013), Op. S.C. Att'y Gen., 2005 WL 3352851 (Nov. 28, 2005), Rainey v. Haley, 2012-211048, 2013 WL 261144, \*6 (2013) (Beatty, J., concurring)

A non-lawyer's representation of a business entity in criminal magistrate's court constitutes the unauthorized practice of law, Thus only solicitors, South Carolina Highway Patrol and licensed security officers may prosecute in magistrate's court. A **private citizen, affiant on a courtesy summons or a non-lawyer law enforcement officer lacked authority to prosecute a criminal action and** constitute the unauthorized practice of law and are not permitted under the law. Ipso Facto, a non-lawyer./non-law enforcement Dog Catcher is Therefore Unlawful and constitute the unauthorized practice of law., The Attorney General and his Office is maintaining and Continuing this Unlawful

Acts in spite of the fact that it contradicts his own Opinion.

As established in the following Authorities; S.C. Const. art. I, SECTION 14, Brady v. Maryland, #490, 373 U.S. 83 (1963), United States v. Prather, 69 M.J. 338 , United States v. Anderson, 68 M.J. 378, United States v. Neal, 68 M.J. 289, United States v. Webb, 66 M.J. 89 , United States v. Tunstall, 72 M.J. 191, United States v. Fosler, 70 M.J. 225. United States v. Barberi, 71 M.J. 127 , United States v. Coleman, 72 M.J. 184, United States v. Girouard, 70 M.J. 5 . United States v. LaPage, 231 F.3d 488, 491 (9th Cir. 2000), Henning, *supra* note 15, at 762 , Morris v. Ylst, 447 F.3d 735, 744 (9th Cir. 2006), Mooney v. Holohan, 294 U.S. 103, 112 (1935) United States v. Blanco, #03-10390, 2004 U.S App. Lexis 26815, 392 F.3d 382 (9th Cir. 2004), Tennison v. City and County of San Francisco, #06-15426, 2009 U.S. App. Lexis 13885 (9th Cir.).

**Exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigating agency does, That would undermine Brady** “[S]upervisors may be liable for their subordinates’ violation of others’ constitutional rights when they ‘know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see.’” Ipso Facto, the Attorney General is Accountable for all Lawyers and the Dog Catcher in this Case as well as Supreme Court Chief Justice is for all the Judges involved from the Magistrate up to and including Supreme Court Judge Few for the Violations of Constitutional and State Laws as well as Violations of Court Rules

**Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime and all of the elements included in the definition of the offense with which he is charged**

**and** does not permit convicting an accused of an offense with which he has not been charged, **A fair notice to know what offense and under what legal theory he will be convicted.**

The Fifth Amendment guarantees a person charged to **present a complete defense** and requires the **prosecution to disclose** to the defense **evidence favorable to an accused.**

Suppression **evidence or knowledge false testimony of by the prosecution** raises a particularly egregious level of prosecutorial misconduct and should therefore trigger an automatic reversal of a conviction upon a finding of actual prosecutorial knowledge

**Verdict of guilt is based in part on conduct that is constitutionally protected,** then **the accused's due process rights have in fact been compromised** and requires that the conviction be set aside A trial is fundamentally unfair where the government's conduct is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.

**No one can avoid responsibility for a crime by deliberately ignoring what is obvious” and defining willful blindness as “awareness of a high probability” of the fact or circumstance, or “consciously and deliberately avoiding learning” about it. This includes Judges as well as lawyers.**

The Custody hearing of March 5, 2013 does not qualify as a “Criminal Hearing” although is in the Magistrates “Return of the Criminal Appeal”.(Ap. Pp. 175 - 182) and thereby, produces Fraud upon the Court.

(VIII)  
CAN THIS COURT JUSTIFY THE APPEALS COURT COMPLETE SUBVERSION  
AND IGNORING OF COURT RULES AND PROCESS TOWARDS THE STATE  
WHILE STRICKLY ENFORCING SAME RULES AGAINST A PRO SE

With the Counsel for the State withdrawing (Ipso Facto, Abandoned) from the Case (Ap. Pp. 264 - 268), Ipso Facto, not a Party to the Case and motioning for extension of time (Ap. P. 264) without Petitioning to re-enter the Case, Judge Paul E. Short has Violated the Appellant's Sixth Amendments Rights for **Unreasonable Delay**. Instead of Approximately Three Months of Process from Appellants Initial Brief to Final Decision, It took Approximately **Twenty Seven Months**, With the Court permitting the filing of the Appellant's Final Brief and given notice of Continuance (Ap. P. 270) Three Months After the deadline for filing due to the Respondents Failure to file their Initial Brief, Ipso Facto, Unreasonable Delay, Also the Respondent was permitted by the Court to file their Initial Brief Six Months after the due date of Respondents Initial Brief and no longer being a Party to the Case. An Motion (Frivolous) to Amend the Appellant's Initial Brief and Record (Ap. Pp. 318-325) on Appeal was granted by the Court After the filing of the Appellant's Final Brief and Record on Appeal While a Motion to Amend Respondents Initial Brief (Ap. Pp. 339-343) and to have the Respondents "Supplementary Record" to abide by Court Rules was Denied. The Court Also had another Unreasonable Delay with eleven Month between the "Ready for Consideration" and being placed upon the Roster with numerous other cases being deemed Ready for Consideration, placed on roster and Decided while this case stayed, Ipso Facto. Extreme Bias of The Court of Appeals as well as the Violation of "Color of Law" by the Judges.

The argument from Mills was unreasonable delay, relying on section 22(1)(c) of

the *Human Rights Act 2004* (ACT) (Act) which states, “Anyone charged with a criminal offence is entitled to the following minimum guarantees, **equally with everyone else**: (c) to be **tried without unreasonable delay**“. The decision in *Mills* appears to be consistent with the trend in international and comparative jurisprudence to closely monitor delays in bringing matters to trial in criminal proceedings, particularly in circumstances where the **prosecution is unable to sufficiently explain those delays**. The **appellate delay can constitute a violation of constitutional rights and the speedy-trial right as designed to protect the defendant against the abuses of government**.

**Appellate processes that undermine constitutional safeguards**, such as the right to a speedy trial and the right to counsel, may **not be valid at all**. Therefore, the modern rule of law as to speedy-trial rights under the Sixth Amendment is as follows: “If there is undue delay, and if the right is asserted in the proper manner, and if good cause for the delay is not given, then the case will be dismissed and the dismissal will (or will not) bar future prosecutions for the same offense.”. The second situation is post-judgment, where the defendant has appealed in the usual course following a conviction. In this scenario, there is a final judgment of the trial court, jurisdiction is vested in the appellate court, and the process is now an appellate matter. The egregiously deny the rights.

“If a State has created appellate courts as an integral part of the system for finally adjudicating the guilt or innocence of a defendant, **the procedures in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.**” Furthermore, “**an inordinate delay in the adjudication of that appeal is a paradigmatic example of a due process violation.**”

Courts have held that, “the balancing tests for ascertaining violations of the

constitutional right to a speedy trial, as established in *Barker v. Wingo*, provides an appropriate framework for evaluating whether a defendant's due process right to a timely direct criminal appeal has been violated." The *Barker* factors require consideration of (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his or her right to a timely appeal, and (4) prejudice to the defendant. **It is clear that appellate delay can be a constitutional violation of due process, and therefore, it can be reversible error when inordinate delay is present.**

See S.C. Const. art. I, SECTION 3. Privileges and immunities; due process; equal protection of laws. "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." SECTION 9. Courts; speedy remedy. "**All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.**"

*United States v. Harvey*, 64 M.J. 13 (four factors determine whether post-trial delay violates due process rights: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of his right to a timely review; and (4) prejudice to the appellant; once this due process analysis is triggered by a facially unreasonable delay, the four factors are balanced, with no single factor being required to find that post-trial delay constitutes a due process violation).

*United States v. Arriaga*, 70 M.J. 51 (whether an appellant has been **deprived of his due process right to a speedy appellate review is a question of law** that an appellate court reviews de novo; to determine this, the court balances the four

Barker/Moreno factors: (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice; no single factor is required, but a facially unreasonable length of delay triggers the full analysis). (an accused has a constitutional due process right to a timely full and fair review of his findings and sentence).

United States v. Toohey, 60 MJ 100 (the Due Process Clause guarantees a constitutional right to a timely review). Diaz v. The Judge Advocate General of the Navy, 59 MJ 34 (petitioner has a constitutional right to a timely appellate review guaranteed him under the Due Process Clause).

United States v. McDonald, 55 MJ 173 (a fundamental requirement of due process is that **individuals** subjected to proceedings by the Government **are entitled to the safeguards established in the governing statutes and regulations**, and that the **Government must follow the prescribed procedures**, regardless whether they are constitutionally required), (the Constitution requires that evidence admitted during sentencing must comport with the utilitarian purpose of the Due Process Clause, i.e. reliability, and procedural-due-process requirements), (the **Due Process Clause requires that the evidence introduced in sentencing meet minimum standards of reliability**).

**Bias or prejudice either inherent in the structure of the trial system** or as imposed by external events **will deny one's right to a fair trial**. Thus, in Tumey v. Ohio

Dugan v. Ohio, 277 U.S. 61 (1928). **Bias or prejudice of an appellate judge can also deprive a litigant of due process**. Aetna Life Ins. Co. v. LaVoie, 475 U.S. 813 (1986)

CAN THIS COURT JUSTIFY THE UNCONSTITUTIONAL SEARCH AND SEIZER AS STATED IN APPELLANTS BREIF QUESTIONS 2, 4, 5, 6, 7, 8, 9 AND 10 THAT OPPOSED U. S. SUPREME COURT AND S. C. SUPREME COURT CASES

With this case mirroring GROH v. RAMIREZ et al., (2004), that states

- (A) "The warrant was plainly invalid. It did not meet the Fourth Amendment's unambiguous requirement that a warrant "particularly describ[e] " (Ap. P. 147)
- (B) "the warrant did not describe the items *at all*, it was so obviously deficient that the search must be regarded as warrantless" (Ap. P. 147)
- (C) "Unless items in the affidavit are set forth in the warrant, there is no written assurance that the Magistrate actually found probable cause" (Ap. P. 146)
- (D) "because petitioner prepared the warrant, he may not argue that he reasonably relied on the Magistrate's assurance that it contained an adequate description and was valid. Nor could a reasonable officer claim to be unaware of the basic rule that, absent consent or exigency, a warrantless search of a home is presumptively unconstitutional. "[A] warrant may be so facially deficient ... that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U. S., at 923. This is such a case. " (Ap. P. 147)
- (E) "the warrant itself was less specific; it failed to identify any of the items that petitioner intended to seize. In the portion of the form that called for a description of the "person or property" to be seized, petitioner typed a description of respondents' two-story blue house rather than..." (Ap. P. 147)
- (F) "the court held that the warrant was invalid because it did not "describe with particularity the place to be searched and the items to be seized," and that oral statements by petitioner during or after the search could not cure the omission" (Ap. P. 147)

(G) ("[A] warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional"); see also *United States v. Stefonek*, 179 F. 3d 1030, 1033 (CA7 1999) ("The Fourth Amendment requires that the *warrant* particularly describe the things to be seized, not the papers presented to the judicial officer ... asked to issue the warrant"). (Ap. P. 147)

(H) "No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional. See *Payton*, 445 U. S., at 586-588. Indeed, as we noted nearly 20 years ago in *Sheppard*: "The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional." 468 U. S., at 988, " (Ap. P. 147)

As stated in this South Carolina's Supreme Court's following Opinions;

Opinion **25188**- "the veracity of the informant was not established under the "totality of the circumstances...including the status, the basis of knowledge, and the veracity of the informant, when determining whether or not probable cause existed" (Ap. P. 146)

Opinion **24724**- "the affidavit was defective because it "set forth no facts as to why police believed..." (Ap. P. 146) , "an affidavit was defective because "it [did] not set forth any information as to the reliabilityof the informant nor was the information corroborated."", "we find the affidavit could not have provided ... a substantial basis for finding probable cause ", " the good-faith exception would not apply", "This affidavit fails to set forth any facts as to why police believed . The language in the affidavit lacks specificity ", "The right of the people to be secure in their persons, houses, papers, and

effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated . . . .”

Opinion **24957** states “*See Owen*, 275 S.C. 586, 274 S.E.2d 510 (Where the affidavit is based on an informant's statement, it must set forth facts which show the reliability of the informant and the underlying factual circumstances that support the accuracy of the informant's information.)”, “The State bore the burden of proving the validity of the warrant... State failed to present any evidence to show the warrant was valid and therefore did not carry its burden. “ (Ap. P. 146)

Opinion **25627** - “Here, . . . we find a deliberately planned and carefully executed scheme to defraud . . . the Circuit Court of Appeals. . “

The common law of torts long recognized that a **malicious prosecution**, like a defamatory statement, can cause unjustified torment and anguish - both by tarnishing one's name and by costing the accused money in legal fees and the like. See generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts* 119, pp. 870-889 (5th ed. 1984);

(X)  
CAN THIS COURT JUSTIFY THE GUILTY VERDICT AGAINST THE APPELLANT  
WITHOUT ANY WITNESS TESTOMONY UNDER OATH AND DENIED THE  
APPELLANT’S RIGHT TO CONFRONT A WITNESS AGAINST HIM

With the Dog Catcher acting as State Prosecutor (practicing law without a license) and not under Oath also without presence of the Deputy that swore out the Warrant nor Daniel Bowe (Animal Control and Animal Services Director of which committed perjury during the custody hearing (Ap. Pp. 175 - 182), the Appellant was denied Sixth

Amendment's guarantee that, "in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.". This was also Denied in the Appeals to Circuit Court (subpoenaed the Dog Catcher and Judge) from a Magistrate Court

As stated in *MELLENDEZ-DIAZ v. MASSACHUSETTS*, 557 U.S. 305 (2009), "Under *Crawford*, a **witness's testimony against a defendant is inadmissible unless the witness appears at trial** .... 541 U. S., at 54. *Pointer v. Texas*, 380 U. S. 400, 403 (1965), provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." In *Crawford*, after reviewing the Clause's historical underpinnings, we held that it guarantees a defendant's right to confront those "who 'bear testimony' " against him. 541 U. S., at 51. **A witness's testimony against a defendant is thus inadmissible unless the witness appears at trial** or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. *Id.*, at 54."

See S.C. Const. art. I, , SECTION 12. . **"No person shall be subject for the same offense to be twice put in jeopardy ... in any criminal case ..."**

## CONCLUSION

S.C. Const. art. I. SECTION 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms.

S.C. Const. art. V. SECTION 5. ".... The Court shall have appellate jurisdiction

only in cases of equity, and in such appeals they shall review the findings of fact as well as the law,.... The Supreme Court shall constitute a court for the correction of errors at law ....” SECTION 9. “The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”

S.C. Const. art. VI. SECTION 5. Form of oath. “..., and **all members of the bar...** shall take and subscribe the following oath: "I do solemnly swear ... to exercise the duties of the office to which I have been elected... **preserve, protect, and defend the Constitution of this State and of the United States.** So help me God."“

Ingraham v. Wright, 430 U.S. 651, 674-682 (1977); id., at 701 (STEVENS, J., dissenting) ("adequate state remedy for defamation may satisfy the due process requirement when a State has impaired an individual's interest in his reputation").

That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. Hebert v. Louisiana, 272 U.S. 312, 316, 317 S., 47 S.Ct. 103, 48 A.L.R. 1102. **It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured.** Such a contrivance by a state to procure the conviction and imprisonment of a defendant is an inconsistent with the rudimentary demands of justice .... And the action of prosecuting officers on behalf of the state, ... That amendment governs any action of a state, 'whether through its legislature, through its courts, or through its executive or administrative officers.' Carter v. Texas, 177 U.S. 442,

amendment governs any action of a state, 'whether through its legislature, through its courts, or through its executive or administrative officers.' *Carter v. Texas*, 177 U.S. 442, 447, 20 S.Ct. 687, 689; *Rogers v. Alabama*, 192 U.S. 226, 231, 24 S.Ct. 257; *Chicago, Burlington & Quincy R. Co. v. Chicago*, 166 U.S. 226, 233, 234 S., 17 S.Ct. 581.

With this Court recognizing the common law doctrine of champerty. *Osprey*, 333 S.C. at 329-30, 509 S.E.2d at 277 (citing S.C.Code Ann. § 14-1-50 (1977)), This must recognize the following Facts surrounding this case which include the Animal Shelter receives seized animals and percentages of fines collected with Danielle Bowe as Director for both Animal Control and Animal Shelter as well as her perjured Testomony during the Custody Hearing of March 5, 2013 (Maintenance and Champerty)

With the numerous violations of the Respondents and all three lower Courts, it is impossible to properly condense to the limitations of requirements of Rule 242 SCACR.

The United States Supreme Court has said, "put simply, maintenance is helping another prosecute a suit; champerty is maintaining a suit in return for a financial interest in the outcome; and barratry is a continuing practice of maintenance or champerty." *In re Primus*, 436 U.S. 412, 424 n. 15, 98 S.Ct. 1893, 1900 n. 15, 56 L.Ed.2d 417, 429 n. 15 (1978).

With this being said this Court Should grand Certiorari.



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April 22, 2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

---

J. Michael Baxley, Circuit Court Judge

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Case No.2013-001415

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The State

Respondent,

v.

Fritz Allen Timmons

Appellant.


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CERTIFICATE OF COUNSEL

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The Appellant certifies that the petition for Rehearing was made and finally denied by the Court of Appeals on March 24, 2016.

April 23, 2016

  
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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No.2013-001415

Opinion No. 2016-UP-039

**RECEIVED**

APR 27 2016

**SC SUPREME COURT**

The State

Respondent,

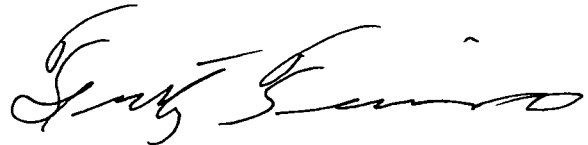
v.

Fritz Allen Timmons

Appellant.

PROOF OF SERVICE

I, hereby certify that I have served the Petition for A Writ of Certiorari and a copy of Appendix on Vann Henry Gunter, Jr., P. O. Box 11549, ,Columbia, SC 29211 for Respondents, by mailing postage prepaid and return address clearly indicated on said envelope on April 25, 2016.



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