THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

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JUN - 6 2016
SC SUPREME COURT

J. Michael Baxley, Circuit Court Judge

Case No.2013-001415

Opinion No. 2016-UP-039

The State — Respondent,

v.

Fritz Allen Timmons — Petitioner.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

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With the constitution and its Amendments as Law of the Land that makes statements of "**SHALL NOT BE VIOLATED**" and is the Controlling statue in any case, any issues of Constitutional Violations are subject to appeal and without time limitation. As well as any issues that are under the control of the violations.

The Constitution and the Rights guarantied by it shall not be subordinate to any state code, Regulation, Rule, Process, Procedure nor Case Law. The use of any of the above actions said is in its self is a deprivation of the Rights and a Constitutional Violations Action upon itself.

In reference to Respondent's Argument I., the Respondent claims that the remedies sought are inappropriate. The Respondent is confused as to the South Carolina Tort Claims Act (monetary only) for the Actions committed and to that of actual damaged to house and effects there in of which there were "insufficient exigent circumstances" to justify the officers' destruction of property in their execution of the warrant (*Pennsylvania* v. *Mimms,* 434 U. S. 106, 108–109 (1977)) and the spade/neutering of seized dogs and relinquishing of said dogs prior to the time of appeal expiration. As to not being brought up at the Circuit Court, the Appellant was Denied the Right to fully Argue his case Due to the Criminal Actions of the Judge of which is a Constitutional Violation. As to the State's Surprisingly Correct statement in regards to the Fourth Amendment in that it does not provide a Remedy to a Fourth Amendment Violation, However, the Fourth Amendment does not Prevent nor Bar a Remedy to a Fourth Amendment Violation by a Court on behalf of a party nor on its own Accord to remove incentive from the Police, Prosecutors and Judges to violate the Fourth Amendment and for the Protection and Safety of the Public for the undue Burdens.

(1) The Return of all dogs unconstitutional seized an unlawfully relinquished SC Code 22-3-310 .

(2) Two Million Dollars per dog for which is for the Damage caused by the County by spade and neutering of said dogs in which would include the loss of years of selective breeding as well as any the destruction of any possible offspring and breeding of said offspring. A man of any common reasoning would conclude that the testicles of said dogs could not just be simply glued back on and be as good as new nor could run to the nearest store and pick up another one with the same specific DNA. Therefore the remedy is for damages caused and not a constitutional remedy.

(3) The Appellant is not asking for Apologies from various animal shelters but to order the Posting of Correct and True Statements to Remedy the Fraudulent statements previously posted by said sites.

(4) Cost Replacement of property Damage incurred by Warrant execution and Replacement of items seized but not listed as Required on seized items list. see *Pennsylvania* v. *Mimms,* 434 U. S. 106, 108–109 (1977) *(per curiam),* governs the method of execution of the warrant. Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search are not subject to suppression.

(5) As to the violations of Counsel and Judges, it's the Duty of this Court to enforce its own Rules of Conduct in order to comply with "Oath of Office" and prevent "Neglect of Duty". As so far as these violations are concerned and "preserved for Review", in layman's terms, "put the cart before the horse". Actions of a judge or counsel of a hearing, Trial or Appeal, becomes part of the case at time of action and therefore becomes

subject to Appeal to the next Appeals Court of which would have the jurisdiction of said actions. If it were not for These Constitutional and Code Violations, this Case would have never have been started. Therefore, brings up the question in that does the maintenance and Barratry in said case is for employment reasons of the Attorneys involved or the covering up of Violations of the State?

(6) With the above said, the State wishes this Court to believe that the Appellant is seeking an injunctive or monetary relief as to a 42 U.S. Code §1983 Claim when the Appellant is asking this Court to take appropriate actions upon its Duty to discipline those who is under its Authority and Jurisdiction and to File Charges against the Actual Criminals of this Case. Therefore, Does this Court totally ignore the Criminal Action and intentions of the State and Those of whom it Administrates to? In this Case, the Dog Catcher acted as a Prosecutor of which is a Criminal Offence, as well as the County Solicitor, Attorney General and His office is Maintaining . Without the Dog Catcher or Solicitor Removing themselves nor has been Substituted for, Both are Continuing to Represent the State, Ipso Facto, Practicing Law Without a License and assisted by licensed Attorneys. The only Actions of this Case is the Abandonment of Case by Salley W. Elliott and with unreasonable Delay (Sixth Amendment Violation) continued with Case without re-entering said Case by actions of Paul E. Short, Then Salley W. Elliott was Substituted by Vann Henry Gunter, Jr of whom is Now, with the action of submitting the Response to the petition, Committing Maintenance, Barratry and Conspiracy.

In Reference to Issues Raise, *State v. Benner*, 40 Ohio St.3d 301, 317 (1988). "While it is error for the trial court to fail in providing requested findings of fact, it is not prejudicial where the record provides an appellate court with a sufficient basis to review

the assignments of error." *Id.* Even when findings of fact are not requested, failure to provide them may still be considered reversible error when the record is not sufficient to facilitate appellate review.

Even if the Charges was Lawfully issued, with the Appellant being convicted of neglect/abandonment, this court must prove how the appellant supposed to have neglected said dogs in accordance to code 47-1-70 ("abandonment" is defined as deserting, forsaking, or intending to give up **absolutely**) . Also with the Appellant feeding (with puppy food as evidence of) and watering of said dogs prior to leaving for work, with medicine on premises (receipts as evidence of), the 100 Lbs of dry adult food and can food for recovering dogs (receipts as evidence of), Therefore, this Court must prove as to how the Appellant has abandoned in accordance to 47-1-70.

In Reference to motions to dismiss, that is from the magistrates constructed point of view, this said motion was for unconstitutional affidavit and warrant for lack of probable cause and failure to particulate to describe in accordance to the Forth Amendment of which the Same Judge had Signed. As with a man of any Common Reasoning would believe, any Judge that would Willfully Violate the Fourth Amendment would Also willfully Violate other Amendment Rights, Federal and State Regulations and Statues, and therefore deny the person of a Fair and non-bias hearing and any argument would then be futile as this Case has Proven. If a Judge knows that a Judge for an Appeal would Protect that Judge then said Judge would be most likely be unconcerned as to his violations committed especially upon a Pro Se. Therefore, brings up the Question, is this Court Part of the Problem as Chief Justice Jean Toal (former) and Judge John C Few (former Appeal Court in Case number 2013-002389) has shown to continue Criminal

Actions or becomes part of the Solution and takes appropriate actions to Stop these Criminal Actions of the Lower Courts.

As to the Respondents 2nd Argument, the Statement "law enforcement used its first hand observations...as basis of search warrant. ... did not use the e-mail as a basis" is totally fraudulent and misleading (18 U.S. Code §1515). The Court order of March 5, 2013 (Custody Hear) (App. p.116) clearly states "A search warrant was executed on... based on an anonymous tip" of which was created **prior** to the incident report (App. p.211) of which references said hearing, Ipso Facto, the incident report nor any statements of happens to be impossible to support the Affidavit, in which the said officer was in attendance of (for half of) and did not oppose to nor made any statements contrary to statements of said E-mail and did not testify of which violates SC Code 17-23-162. and subject to SC Code 22-3-790 In this case, The Affiant was in attendance of the Custody Hearing for half of it and did not testify under oath, the Dog Catcher was in attendance but did not testify under oath, the Director of Animal Control/Shelter testified under oath and committed Perjury. At the "Criminal" hearing March 18, 2013, the Dog Catcher Acted as prosecutor and did not testified under oath while the Affiant and Director was Absent.

With no evidence nor proof of as to the supposedly E-mail , the incident report was made up to "Cover their Asses" (Perjury, 18 U.S. Code §1515) when knowledge of the Appellant Challenging the Affidavit and Warrant and would not be an easy target and would not bow to their whims nor submit to their threats of being charged if Appellant did not surrender his dogs (evidence of which is the Appellant's DL number (given the day after the search) upon each summons ticket Due to the Appellant at work during the

Execution of Search and Seizer as well as to the missing numbered tickets that was written in the Pam Conley case), Ipso Facto, Perjury. The same incident report also shows up in the Return of the Criminal Appeal (Custody Hearing) (App. p.177, #8) in which it references to, Ipso Facto, submitted as evidence **prior** to being made, Testimony of Daniel Bowe (Perjury, 18 U.S. Code §1515) of same Custody hearing of March 5, 2013 and was not present at the supposedly "Criminal" Hearing of March 18, 2013 also is included in same Return. Thus, Tampering with evidence (18 U.S. Code §1515, 18 U.S. Code §1506. Due process requires that disclosure of exculpatory and impeachment evidence material to guilt or innocence be made in sufficient time to permit the defendant to make effective use of that information at trial. *See, e.g. Weatherford v. Bursey*, 429 U.S. 545, 559 (1997); *United States v. Farley*, 2 F.3d 645, 654 (6th Cir. 1993). In this case, the Custody Hearing testimony of the Director appears in the Criminal Return. The Record of a magistrate Court is a summery report created by said judged and in the way that said judge intentioned it to be viewed. Therefore, as in this case, if that judge or associate of that judge was in violation of code, regulations or laws, then that judge (as he himself as well as all the officers involved was) can manipulate the record to cover up the violations. With said done, Violations of Due Process has occurred and an appeals Court cannot be confined by that Record. 18-7-130, 18-7-140, 18-7-180, 18-7-190. and the order is void *See, e.g., State v. Brown*, 2d Dist. Montgomery No. 24297, 2012- Ohio-195, ¶10, citing *State v. Benner*, 40 Ohio St.3d 301, 317 (1988). "While it is error for the trial court to fail in providing requested findings of fact, it is not prejudicial where the record provides an appellate court with a sufficient basis to review the assignments of error." *Id.* Even when findings of fact are not requested, failure to provide them may still be

considered reversible err

In regards to the Respondents claims as to the Affidavit and Warrant of which is misapplying , as again "ON ITS FACE" makes no claims as to the following (A) what crime has been committed, (B) where any crime has been committed, (C) any belief as to a crime has been committed, (D) any knowledge as to any crime , (E) timings as to any crime, (F) Facts as to the searching of Barn nor RV (another Residency although considered temporary) that was also on "Property" and searched, (G) any belief for breaking into residency, (H) any reason to intrude upon the Appellants privacy, (I) references to any documents that may support it (J) any references to any inspection nor "ANONYMOUS" tip to, (K) any reference to any "viewing" as Respondent claims, (L) the reliability of the unknown informant, (M) any Facts as to any Crime,

The Fourth Amendment's probable cause requirement implies that probable cause be demonstrated by truthful statements in an affidavit. Franks v. Delaware, 438 U.S. 154, 165-66 (1978). Thus, where probable cause is grounded in an affiant's "deliberate falsehood[s]" or statements made with "reckless disregard for the truth" the resulting warrant is invalid and the Fourth Amendment rights of individuals subject to its execution are violated. The affidavit is too vague and the source of the information is unstated and does not establish probable cause. The circumstances set forth in an affidavit, viewed as a whole, should demonstrate the reliability of the information (*Illinois v. Gates,* U.S. Sup. Ct. 1983 "[t]he immediately apparent requirement means that officers must have probable cause to associate the property with criminal activity." United States v. Weinbender, 109 F.3d 1327, 1330 (8th Cir. 1997) (internal quotations omitted);

The State claims as to the deputies "viewing" of disturbing "treatment of

animals", Therefore, was the officers viewing the starving wildlife that dug up and partially ate the k9 carcasses?

Unlike Jardicės, the officer did not leave after a knock-n-talk, in fact conducted a warrantless search for the appellant of which includes the curtilage. The Supreme Court has extended the protections guaranteed by the Fourth Amendment to the curtilage of a house. Oliver v. United States, 466 U.S. 170, 180 (1984). When "the Government obtains information by physically intruding" on persons, houses, papers, or effects, "a 'search' within the original meaning of the Fourth Amendment" has "un-doubtedly occurred." *United States* v. *Jones*, 565 U. S.___, ___, n. 3 (2012)

But when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental in-trusion." *Silverman* v. *United States*,365 U. S. 505,.511 (1961) . This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window.

That principle renders this case a straightforward one. The officers were gathering information in an area belonging to Appellant and immediately surrounding his house— in the curtilage of the house, which United States Supreme Court has held enjoys protection as part of the home itself. And they gathered that information by physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner. The United States Supreme Court therefore regard the area "immediately surrounding and associated with the home"—what their cases call the

curtilage—as "part of the home itself for Fourth Amendment purposes." *Oliver*, *supra,* at 180. This area around the home is "intimately linked to the home, both physically and psychologically," and is where "privacy expectations are most heightened." *California* v. *Ciraolo*,476 U. S. 207, 213 (1986) . While the boundaries of the curtilage are generally "clearly marked," the "conception defining the curtilage" is at any rate familiar enough that it is "easily understood from our daily experience." *Oliver*, 466 U. S., at 182, n. 12. Here there is no doubt that the officers entered it: The front porch is the classic exemplar of an area adjacent to the home and "to which the activity of home life extends."*Ibid.*

Since the officers' investigation took place in a constitutionally protected area, we turn to the question of whether it was accomplished through an unlicensed physical in-trusion. an officer's leave to gather information is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment's protected areas. a case "undoubtedly familiar" to "every American statesman" at the time of the Founding, *Boyd* v. *United States*, 116 U. S. 616(1886), states the general rule clearly: "[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave." 2 Wils. K. B., at 291, 95 Eng. Rep., at 817. As it is undisputed that the detectives had all of their feet and all feet of their companion's firmly planted on the constitutionally protected extension of Appellant's home, the only question is whether the Appellant had given his leave (even implicitly) for them to do so. He had not.

To find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police. The scope of a license—express or implied—is

limited not only to a particular area but also to a specific purpose. Here, the background social norms that invite a visitor to the front door do not invite him there to conduct a search

That the officers learned what they learned only by physically intruding on Appellant's property to search for the Appellant or to gather evidence is enough to establish that a search occurred. Therefore, the officer's actions in proceeding to the rear after receiving no answer at the front door was so incompatible with the scope of their original purpose that any evidence inadvertently seen by them must be excluded as the fruit of an illegal search

It is the intensions of the State to have this Court to make a decision in order to Deny its citizens of their Constitutional Rights by providing a new Case Law in which they can base a "Back Door Policy" upon in which they can (left to the discretion and imagination to each their own) the citizens out of the Constitutional Rights that would then permit the intrussion not only beyond the limitations of a "Knock-n-Talk" but to conduct warrantless searches anywhere they want as long as they call it a "Knock-n-Talk" an without limitations including beyond the neighboring residency

Also as to Claims to the reference to and without evidence of an "Anonymous" E-mail brings up the question of the supposedly "mistreatment" of the Appellants dogs. Does this "mistreatment" refer to the Appellant not serving Prime Rib or T-Bone stakes on gold plates for every meal while at the dinner table and having them to wear imported China silk bibs or to not having Gold chain collars with diamond incrusted nameplates for each dog. With the Above said, This Court must also Prove the conviction of "Ill-treatment" in Accordance to 47-1-20 and that it is within the Magistrates Jurisdiction.

With the Fourth Amendment Violations Clearly "On its Face" of both the Affidavit and Warrant, It would be unnecessary to bring up any more arguments for appeal and that an appellant Judge would be faithful to the Law as well as to the Constitution, although in this case, the Circuit Court Judge conspired with the County and magistrate and violated Codes of Conduct as well as the Fourth Amendment (continuing the Violation of), Sixth Amendment (the **right to confront** a **witness** against him) for denying to have both the Dog Catcher and Magistrate to testify Under Oath of which was subpoenaed as well as All Dogs (examinations of) of which the State Refused to disclose. The State also Refused to disclose the supposedly "anonymous E-mail" of which there is no evidence of. Without ANY evidence of any "ANONYMOUS" tips or other information, There is no "Official" reason for the acclaimed Inspection. As far as any man can Reason, the "ANONYMOUS" tip is no more then an Imaginary E-mail that the Dog Catcher has mailed to himself that states "Exotic Purebred Dachshunds ripe for the Pickens to make a lot of money for the Multi-Million Dollar Shelter your trying to get built and don't worry about breaking any Laws 'cause the deputies and Magistrate got your Ass Covered just like they did in the Pamela Crowley case."

With the Burden upon the State to prove the Affidavit and Warrant is Constitutional, The State has failed to Prove (A) the above said in regards to Probable Cause, (B) how the magistrate conceived the Appellants Address from "Property and Dwelling" (C) how the magistrate conceived "Abandoned or Neglected Animals" from Appellants Address (D) the true intentions of the Warrant, was it for Abandoned Animals or for Neglected Animal of which includes Wildlife owned by the State.

The State wishes this Court to Confine Constitutional Violations to a Summery

Court of which has Violated the Constitutional Right itself of which the State has not Proven what was or was not said prior nor during either the Custody hearing of March 5, 2013 nor the supposedly "Criminal" hearing of March 18. 2013. The State also wishes this Court to (A) Base its decision upon a Shame Legal Process. 18 U.S. Code §1515; (B) Hold a Pro Se to a Higher Standard than that of highly trained and experienced Attorneys; (C) Refuse to File Charges on those who Actually Violated State and/or Federal Code; (D) Refuse to take Appropriate Disciplinary Actions Against those who Violated the Rules of Conduct and other Court Rules including the "Oaths of Office"; (E) Demeanor the Constitution and the Rights Guarantied by it; (F) Read into the Affidavit that which is not in the Affidavit. Especially the viewing by the officer (18 U.S. Code §1515); (G) Read into the Warrant that which is not in the Warrant; (H) Base the Authority of County to Intrude upon Appellants Privacy/Property for a "Inspection" on a non-Existent "Anonymous" E-mail (Court claim) or Phone Call (News claim); (I) Limit its View to the confines of the Magistrates, of which has already signed an unconstitutional Warrant, manipulation of Court Record that does not Preserve that which the Magistrate does not want to preserve while altering that which he wants to alter.; (J) Ignore the original Evidence (Order of March 5, 2013 and use the After-Confrontational Evidence (Incident Report); (K) Totally ignore Violations committed by counsels and judges (8-1-60) in the Appeals process of which has a dramatic impact on said case especially violations of Due Process; (L) Violate its Oath of Office (Defend the Constitution) as the Respondents has done and disregard the Rights guarantied by the Constitutional ("Law of the Land") in favor of subordinate Case Laws of which is most likely to have been within the Constitutional Rights of the parties involved; (M) Confine

issues to a Shame legal Process of a summery Court in order to maintain Constitutional Violations by the State. 18 U.S.C. 1503; (N) Believe that violations of codes and regulations must be preserved for review prior to their actions taken place. In said case, the actions of Judge Paul E. Short of total subverting of Court Rules that caused an unreasonable delay (Sixth Amendment, Right to Due Process) by permitting the state to re-enter the case without Cause after abandonment and failing to petitioning the Court for Re-entry, must have been preserved from the Circuit Court and prior to the actions taking place. The omnibus clause, or "catch-all provision" of 18 U.S. Code §1503 When a court acts with proper subject matter jurisdiction, but takes action outside of its authority, the party against whom the act is done must object and directly appeal. Coon v. Coon, 356 S.C. 342, 347-48, 588 S.E.2d 624, 627 (Ct.App.2003), aff'd as modified, 364 S.C. 563, 614 S.E.2d 616 (2005).

Honorable Courts hold a Pro Se to a lower standard then that at of a licensed Attorney. This Court system has held this Pro se to an Extremely Higher Standard to that of a Team of license, trained and experienced Attorneys of which includes the Attorney General and his office as well as County solicitors and a Dog Catcher. In Fact this Court System has Subverted All Court Rules on behalf of the State while enforcing the same Rules upon a Pro Se, Ipso Facto, Extreme Bias and Violations of the Sixth Amendment.

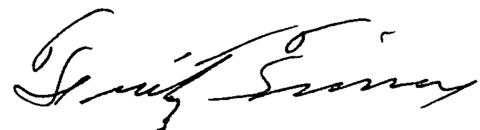
With the State bearing the Burden of Proof, the State has Failed to Prove the Following or Evidence of the Following: (A) Anonymous Tip as to E-mail or Phone; (B) Official Reasoning to conduct a "investigation"; (C) Probable Cause or exigent circumstances existed for a Warrantless Search for Appellant after a Knock-n-talk or to Break into Residency and Cause damage of Damage; (D) Warrant Return is not Perjury

and Tampering with Evidence with seized item list not including items seized, has no witnesses, and produced after the filing of Return; (E) Had a Search Warrant at Time of Seizer; (F) Affidavit contains Probable Cause, Particularly Describes Items to be Seized and place to be Searched in Accordance to the Fourth Amendments Requirements and any reference to "Viewing" is on the Affidavit; (G) Warrant Particularly Describes Items to be Seized and place to be Searched in; (H) Accordance to the Fourth Amendments Requirements and True Intentions of; (I) Both Affidavit and Warrant are not Perjured Documents; (J) A County Dog Catcher (non-lawyer/non/non-law enforcement officer) to act as a (K) Prosecutor and producing a Shame Legal Process and Disclosed Evidence (*Kyles v. Whitley*, 514 U.S. 419, 432-33 (1995)); (L) Director of Animal Control/Animal Shelter gave Perjury Testimony under Oath at Custody Hearing; (M) Weather nor not Appellant brought up Arguments in Magistrate's Court Due to Lack of Full and Complete Record ; (N) Custody Hearing Considered as a "Criminal" Hearing Violating according to record; (O) Conspiracy among the Magistrate, Animal Control/Shelter and Sheriff Deputies and Tampering with Evidence; (P) Maintenance and/or Barratry of County Solicitors, Attorney General and office Sheriff Deputies Violated Oath of Office ; (Q) Magistrate Circuit and Appeal Court Judges Violated Court Rules and Oath of Office; (R) County Uniform Tickets Legally used for State Code Enforcement, are Perjured Documents and Written at Time of Search (with Appellant DL number given day after Search and refusal to surrender Dogs); (S) True Intentions of Charges and Convictions of Abandoned/Neglected Animals in Accordance to State Code 47-1-170; (T) Charges of Ill Treatment and conviction are in Accordance to State Code 47-1-140 is within the Magistrates Jurisdiction ; (U) Charges and conviction of Abandoned or Neglected

Animals is in Accordance to State Code 47-1-170 and refers to which; (V) Charges of Rabies (Code 415.60) is a Violation of County or State Code and not a "Fruit of the Poisonous Tree" Doctrine; (W) Multiple Convictions of Charges of Rabies, Abandoned/Neglected Animals and Ill Treatment is not Double Jeopardy for each.

This Case is a Prime Example as to the Gross Amount of Corruption that is imbedded into this Court System and of which shows the Unnecessary and Extreme Burden that the State as well as This Court System has placed upon the Appellant Due to the Corruption and Conspiracy of.

Therefore with the Above said, Not only Should this Court should Grant the petition for Certiorari but also Provide a Case Law to provide Process, Limitations and Remedies to be Used by This Court System as to Constitutional Intrusions, Search and Seizers as well as Knock-n-Talks with/without Warrants and timing of, Prosecutions of unlawful State Actions, the use or inappropriate use of Case Laws (to prevent perversion of), Violations of Judges and Attorneys on Appeals, Violations of Law-enforcement, Perjury of Testimony and Documents, Standards used for Pro Se(s) as well as many others provided by this Case for the purpose to Safeguard and Protect the Public from Unlawful and/or Unconstitutional Violations of which Caused unnecessary Burdens and Cost upon the Public and Court and in this case Extreme



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THE STATE OF SOUTH CAROLINA
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Fritz Allen Timmons		Petitioner.

PROOF OF SERVICE

I, hereby certify that I have served the REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI 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 June 3, 2016.

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