

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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Appeal From Charleston County  
Court Of General Sessions  
R.Markley Dennis, Jr., Judge  
Indictment No. : 2011-GS-10-3387 , et al

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**RECEIVED**  
JUL 08 2016  
S.C. SUPREME COURT

APPELLATE CASE NO. : 2012 - 212760

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The State

Respondent ,

vs.

Alan L. Burns

Appellant .

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PETITION FOR A WRIT OF CERTIORARI

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Alan L. Burns , # 143218  
Lee Corr. Inst. , F-5 , D-139  
990 Wisacky Highway  
Bishopville , SC 29010 - 1775  
Appellant  
Appearing Pro se

Other Counsel of Record:

SC Attorney General  
Office Of The Attorney General  
For The State Of South Carolina  
Post Office Box 11549  
Columbia , SC 29211 - 1549

## QUESTIONS PRESENTED

- (1) Did the Court of Appeals err in holding that the issue before the court was not preserved for appellate review ?
- (2) Did the Court of Appeals err in holding that the issue before it was not sufficiently clear enough to allow a reasonable understanding of the error ?

## STATEMENT OF THE CASE

In 2010 , the Mt. Pleasant Police Department launched a specific criminal investigation against the herein Appellant for alleged criminal acts committed between 1981 and 1985 , and between 1997 and 1998 , at 1719 Ranns Hill Road Mt. Pleasant, S.C. , formally 1246-A Venning Road Mt. Pleasant, S.C. , formally Rural Route 2 Box 76 Mt. Pleasant, S.C. At all times past and present this address location was and still is in rural Charleston County (the listing number was changed for mailing purposes by the local U.S. Post Office ) .

The Appellant was charge and allegedly indicted on twelve (12) felony charges .

The Appellant represented himself throughout all pre-trial and trial proceedings . They were a total of nine (9) pre-trial hearings .

Form the onset of being arrested and charged Appellant made discovery requests seeking the grand jury impanelment documents and other information relating to the grand jury,

The Appellant made a specific motion titled " MOTION FOR GRAND JURY IMPANELMENT DOCUMENTS AND SUPPORTING MATERIALS" . In said motion Appellant listed specific documents . He further based his motion on the holding in Evans vs. State , 363 S.C. 495 , 611 S.E.2d 510 (2005) .

On AUGUST 01 , 2012 , a pre-trial hearing was held before The Hon. Stephanie P. McDonald , whereas she denied Appellant's motion . Appellant was explicit in making his request and the intent thereof .

On AUGUST 06 , 2012 , the Appellant went to trial before Judge R. Markley Dennis, Jr.

Assistant Solicitor Deborah Herring-Lash prosecuted the case for the State .

Ms. Lori Proctor , Esq. and Mr. Ted Smith , Esq. , both of the Charleston County Public Defenders Officers , were appointed to sit as back up representation for the Appellant.

On AUGUST 10 , 2012 the Appellant was found guilty by a jury for thirteen (13) charges and was sentenced (Appellant was only on trial for twelve (12) charges) .

A timely notice of appeal was filed . Throughout the process Appellant and his appointed appellate defense attorney were at odds because Appellant repeatedly insisted that she include one additional issue in the appeal , an issue involving the territorial jurisdiction of the investigating and arresting municipal police department operating outside the territorial

boundaries of their vested jurisdiction .

The order from the court of appeals was handed down on JUNE 15 , 2016 .

Appellate Defender Ms. Hackett DID NOT inform the Appellant of his right to appeal the ruling of the Court of Appeals , and instead informed Appellant that he had one year to file an application for post-conviction relief (PCR) and Federal Habeas Corpus . Further , she provided Appellant with said application in hopes that he would consume himself with the preparation of same and disregard his right to appeal the decision of the court of appeals .

THEREFORE , Appellant has now been abandoned by his court appointed appellate defense attorney in violation of Rule 407, SCACR .

THIS PETITION FOR A WRIT OF CERTIORARI FOLLOWS :

## ARGUMENT

- (1) THE COURT OF APPEALS ERRORED IN HOLDING THAT THE ISSUE BEFORE THE COURT WAS NOT PRESERVED FOR APPELLATE REVIEW .

The Appellant made numerous discovery request to receive grand jury impanelment documentations and supporting materials . To ensure that there was NO misunderstanding of the request that was being made Appellant , prior to the day of trial , made a specific discovery request titled " MOTION FOR GRAND JURY IMPANELMENT DOCUMENTS AND SUPPORTING MATERIALS " .

On August 01 , 2012 , a pre-trial hearing was held before Judge Stephanie P. McDonald . Please see 'EMERGENCY HEARING TRANSCRIPT' dated August 01 2012 , page 12 line 14 through page 15 line 12 . Here submitted as APPELLANT EXHIBIT NO.: 0001 .

More importantly , having somewhat familiarize himself with various aspect of the procedure that he would be required to adhere too in representing himself , the Appellant knew that any and all pre-trial motions would have to be renewed before the trial judge in order to be preserved for appeal . To this end Appellant did appropriately and correctly renewed his motion before the trial judge and thereby perfectly preserved the issue for appellate review .

Infact , the Appellant and the Judge locked into a heated argument in regard to him renewing his motion before him (The Trial Judge) .

Judge Dennis argued to Appellant that he (Appellant) did not have to raise the issue before him if , it had been raised in pre-trial before another judge .

The Appellant knew that the argument being made by Judge Dennis was contrary to Case Law ; Rules of Criminal Procedure and South Carolina Rules of Appellate Procedure . At thah time Appellant's main source of information was obtained from The South Carolina Rules Of Procedure Annotated 2010 .

At the start of trial the following colloquy occurred :

MR. ALAN BURNS : In accordance

with this case, this South Carolina Supreme Court case, it gives the defendant the right to timely challenge the legality of the grand jury that indicted him .

THE COURT : I understand .

MR. ALAN BURNS : Upon that timely request, it's incumbent upon the court to verify that the grand jury was legally

constituted .

THE COURT : How have you  
challenged it ?

MR. ALAN BURNS : Yes, sir .

THE COURT : How have you timely  
challenged the ---

MR. ALAN BURNS : That's what I  
said. I made my request in my discovery and  
I also made my request by submitting -- if I  
may present you with a copy, (tendering) .

THE COURT : Thank you. (Upon  
review), this Motion that has been handed to  
me, this matter has been raised, ----

MR. ALAN BURNS : Right, this has  
been raised several times. This isn't the  
first time .

THE COURT : This is what you  
argued before Judge McDonald ?

MR. ALAN BURNS : Yes, sir .

THE COURT : She denied the Motion .

MR. ALAN BURNS : yes, sir, for the  
impanelment documents .

THE COURT : **Your Motion is then  
denied . It's a part of the record of this  
case. You don't raise that again. That's  
already been raised .**

MR. ALAN BURNS : So I can't ask  
for the indictments to be ---

THE COURT : You can't ask me to do  
that. You've already asked Judge McDonald to  
do that, and she denied your Motion .

MR. ALAN BURNS : I understand .  
What I am asking Your Honor is I'm raising a  
matter of subject matter jurisdiction .

THE COURT : Well, I -- based on  
what ?

MR. ALAN BURNS : That if the grand  
jury that impaneled -- if the grand jury was  
illegally impaneled, then that would relieve  
this court of subject matter jurisdiction .

THE COURT : Might. But that issue  
has been raised and denied. So your Motion  
now is denied further, denied based on the  
fact that it has already been decided .

MR. ALAN BURNS : I JUST WANT TO  
MAKE SURE THAT IT'S ON THE RECORD FOR APPEAL..

THE COURT : Every Motion that has  
been -- for which you've been to court and  
Motions have been filed, all of those are  
part of the record of your case. It doesn't  
have to be heard by me. In fact, I can't  
hear it because I can't change the decision  
another judge has made. That's part of the  
record. The reviewing court will consider  
that and decide whether that judge made the  
correct determination .

MR. ALAN BURNS : THAT WAS SIMPLY  
THE HEARING JUDGE. YOU'RE THE TRIAL JUDGE  
AND ---

Please see Trial Transcript Page 125 Line 21 through Page 128  
Line 13 , here submitted as APPELLANT EXHIBIT NO.: 0002 .

As a threshold matter , a criminal defendant is required  
to renew his Motion before the trial Judge to preserve the  
issue for appeal . They is a requirement attached , which states  
in essence that , the defendant must obtain a ruling from the  
trial Judge .

As can readily be seen , the Appellant met both requirements  
to the fullest . The Appellant was powerless in getting the  
judge to give a ruling beyond that which he gave . The Appellant  
went so far as to state boldly that he just wanted to make sure  
that the issue was on record for appeal . This upset the Judge  
to the point where his face was contorted and his voice was  
raised in anger .

Further , the Appellant attempted to argue the difference  
between a pre-trial hearing judge and a trial judge . This pushed  
Judge Dennis to flat out state that " in the circuit court ,  
we're all circuit court judges " and that he as trial judge  
could not change the ruling of a pre-trial hearing judge . Please  
see APPELLANT EXHIBIT NO.: 0002

In reply to Appellant moving the trial judge at the trial of the case , Trial Judge Dennis stated ,

" THE COURT : Your Motion is then denied .  
It's a part of the record of this case .  
You don't raise that again . That's  
already been raised . "

" Might . But that issue has been raised  
and denied . So your Motion now is  
denied further , denied based on the  
fact that it has already been decided .

APPELLANT EXHIBIT NO.: 0002 . According to Judge Dennis , issues that has already been ruled on in a pre-trial are not suppose to be riased again . According to him , the trial judge lacks the authority and/or power to change or alter the other judge's decision and/or order because , according to him they're both circuit court judges . Trial Transcript Page 128 Line 11 through Page 129 line 23 . Judge Dennis ended his colloquy by stating

" THE COURT : So it is not revisited  
by me . Okay ? "

Additional , when reviewing the record of this case , the issue is the LEGALITY OF THE GRAND JURY , which can not be ascertained without the impanelment documentations .

The Appellant made it clear to both pre-trial hearing judge and the trial judge that he was challenging the legality of the grand jury and as such he requested the documents . Appellant first requested the documents in his Rule 5 Discovery Request.

He followed up his requests with Motions to Compel .

At each turn his requests and/or motions were denied . Trial Judge Dennis presented himself as if this was the most absurd thing he had ever heard , grand jury impanelment documents being requested through Rule 5 or Brady . Please see APPELLANT EXHIBIT NO.: 0002 , Trial Transcript Page 122 Line 03 through Page 124 Line 17 . On page 122 the Appellant presented the issue as follows :

- 3) MR. ALAN BURNS : Your honor , on
- 4) August 1st, I appeared before the Court for a

5) Motions hearing . At that Motions Hearing , I  
6) specifically asked for the impanelment of a  
7) grand jury , I asked for the impaneling  
8) judge's order . I asked that the State  
9) produce the petition and any other materials .  
10) I also have copies of the -- in my original  
11) specific Brady request , Rule 5 , I ask for  
12) these documents as well .  
13) At the time that I made the Request  
14) for these documents , the State responded that  
15) these documents do not exist . I would like  
16) to challenge the legality of the County grand  
17) jury and due to the fact that the State  
18) states that these documents do not exist , I  
19) would ask that the indictments be quashed on  
20) the grounds that there is no proof that the  
21) grand jury was legally impaneled .

Please see APPELLANT EXHIBIT NO.: 0002 , TT Page 122 Lines 3  
through 21 .

Here in this instant case , the Court of Appeals cite two  
(2) cases , State vs Dunbar , 356 S.C. 138, 142, 587 S.E.2d  
691,693-94 (2003) ; and Malloy vs Thompson , 409 S.C. 557, 561,  
762 S.E.2d 690, 692 (2014) .

The citing of Dunbar suggest that the issue was not raised  
to and ruled upon by the trial judge . APPELLANT EXHIBIT NO.: 0002 , TT Page 121 line 23 through Page 129 Line 23 , clearly  
establishes that the Appellant did in fact raise the issue to  
the trial judge . Further , this exhibit clearly establishes  
the fact that Trial Judge Dennis ruled on the issue . He denied  
the Motions based on the fact that it had been raised and ruled  
on in pre-trial by another judge . Please see (esp) TT Page  
127 Lines 20 through 25 .

Judge Dennis stated that because the pre-trial hearing  
judge was a circuit judge just as he was , he (Dennis) is not  
allowed to revisit the issue . That was his ruling on the issue  
and that ruling was a reversible error .

It has been held that ,

" A ruling on the pretrial motion is  
preliminary , and is subject to change  
based on developments at trial . Because

the evidence developed during trial may warrant a change in the ruling , the losing party must renew his objection at trial when the evidence is presented in order to preserve the issue for appeal . "

State vs Mueller , 319 S.C. 266, 460 S.E.2d 409, 410 (Ct.App. 1995) .

According to Judge Dennis , issues that are raised in pretrial before a hearing judge , does not have to be and should not be raised again before the trial judge because , 1) it would already be a part of the record , and 2) hearing judge's like trial judges are all circuit court judges and for this reason the trial judge can not change or alter the hearing judge's order .

It would therefore be the responsibility of the reviewing court to review the record , including the hearing judge's ruling and make a determination as to whether the hearing judge ruled correctly or not . According to Judge Dennis , once any matter is raised in pretrial , that within itself preserves the issue for appeal .

Even as a lay person , the Appellant knew that that was not true , and it was for that reason the Appellant expressed a difference between the hearing judge and the trial judge . Please see APPELLANT EXHIBIT NO.: 0002 , TT Page 127 Lines 24 and 25 , and Page 128 Lines 11 through 13 .

There is absolutely no doubt about it , the Appellant brought forth this issue before the trial judge in accords with the requirements necessary to preserve an issue for appellate review . Further , the trial judge made a ruling on the issuse . The ruling was based on an erroneous and reversible interpretation of the elements and procedure necessary to preserve an issue for appellate review .

Above all else , the Court of Appeals has disregarded the fact that the Appellant is a lay person , who while representing himself at trial was entitled to have his motions , arguments, and pleadings held to a less stringent standard than that of a lawyer . The Court of Appeals has also disregarded the fact that , as a lay person , the Appellant was entitled to have his motions and arguments construed liberally and interpreted

to raise the strongest arguments that they suggested . Please see , Hughes vs Rowe , 449 U.S. 5 , 9 (1980) ; see also , McPherson vs Coombe , 174 F.3d 276 , 280 (1999) .

Even so , Appellant left little to NO room for anyone to misconstrue his intent or the nature of what he was seeking .

He sought the impanelment documents of the grand jury that had allegedly indicted him , so that he could make an intelligent and conscientious decision as to whether or not he should challenge the legality of said grand jury .

After hearing the prosecuting solicitor repeatedly state that her<sup>h</sup> office knew nothing of or about the county grand jury or the documents in question , in open court , the Appellant ~~moved~~ to have all indictments quashed on the grounds that there is no proof that the grand jury was legally impaneled .

## ARGUMENT 02

- (2) THE COURT OF APPEALS ERRORED IN HOLDING THAT THE ISSUE WAS NOT SUFFICIENTLY CLEAR ENOUGH TO ALLOW A REASONABLE UNDERSTANDING OF THE ERROR .

The Appellant sought all material related to the impaneling of the grand jury that had allegedly indicted him . He initially requested the documents as a part of his Rule 5 , SCRCP , discovery .

The State did not respond to his discovery request so , he filed motions to compel the documents .

At pretrial discovery hearings , the Judge's all appeared to be perplexed . Prepared for the worst , Appellant had several copies of S.C. Supreme Court Case , Evans vs State , 363 S.C. 495 , 611 S.E.2d 510 (2005) , which he submitted to the court as DEFENDANT'S COURT EXHIBIT .

At all hearings Appellant's request for the grand jury impaneling documents were denied .

When making the request and argument for same , Appellant always made certain to inform the court of his desire to challenge the legality of the grand jury and that the documents were for that purpose .

At No time did any of the hearing judges give pause to consider whether or not Appellant had a right to review and receive copies of the documents or if they was an irregularity

of some sort with the qualifying of any of the grand juries .

At the commencement of the trial , the Appellant raised the issue to the trial judge . First informing him that he had requested the impaneling documents of the grand jury in pretrial . He informed the trial judge that he wanted to challenge the legality of the grand jury and that the documents were necessary for him to make intelligent decisions in this regard . He further informed the court that as per the decision in Evans vs State he had a right to receive the documents .

Again prepared for the worst , Appellant had several copies of the case . He presented the court with a copy . The court accepted it and ask the Appellant if he wanted it to be marked as a court's exhibit .

The Appellant responded " Yes , sir , I do ."

The court then marked the case " COURT'S EXHIBIT 2 . "

The Appellant then , on the record while in open court moved to have all indictments quashed on the grounds that there was NO proof that the grand jury was legally impaneled .

ERR NUMBER ONE (1) occurred when Appellant was denied the ~~Appellant was denied the~~ impanelment documents of the grand jury that had allegedly indicted him .

In Evans , the court declared that ,

" A defendant has the [ right ] to review the documents to determine whether to timely challenge the legality of the state grand jury which indicted him .--- A defendant is allowed to obtain and use the impanelment documents in preparing a defense and ensuring ensuring protection of his due process rights. "

Evans , supra at 516 - 17 .

So that there would be NO misunderstanding by judges and solicitors in regards to whether the ruling of this case applied to county grand juries the Court stated ,

" Although this case involves the State grand jury , we similarly conclude that challenges to the legality and sufficiency of the process of a [ County ] grand jury must be made before the jury renders a verdict in order to preserve the error for direct appellate review . "

Evans at 518 (emphasis added) .

The Court then went on and assigned strict responsibility and justification for such assignment . The Court stated ,

" The burden of proof is on the State to demonstrate why the documents should not be released because only the State possesses the necessary information to analyze the issue and explain to the court why releasing the documents should be prohibited or delayed . "

Evans at 520 .

The fact that this trial judge or solicitor did not know any thing about impanelment documents of the [ County ] grand jury that had allegedly indicted Appellant , does not excuse or diminish his [ RIGHT ] to review and receive copies thereof . By this denial Appellant was denied [ DUE PROCESS ] .

**ERR NUMBER TWO (2)** occurred as a result of Appellant being denied the right to challenge the legality of the County grand jury that had allegedly indicted him .

When in question , the legality and constitutionality of a grand jury , be it State or County , it can only be substantiated by and through the impanelment documents ( i.e., the impaneling judge's order , writ of venire facias , return of subpoenas , lists of disqualified juries , lists of exempt juries , etc., etc. ) . Please see S.C. Code Ann. §§ 14 - 7 - 1510 through §§ 14 - 7 - 1570 . See also §§ 14 - 7 - 130 .

In response to the Appellant's direct challenge to the grand jury and that the trial court lacked subject matter jurisdiction if the grand jury was illegally impaneled , Judge Dennis stated ,

" Might . But that issue has been raised and denied . So your Motion now is denied further ,  
**denied based on the fact that it has already  
been decided . "**

See APPELLANT EXHIBIT NO.: 0002 , TT Page 127 Line 11 through Page 128 Line 13 .

However , at NO time before did the Appellant have opportunity to actually challenge the legality of the grand jury . What the Appellant had done was repeatedly request the impanelment documentations . It was that request that was denied by the pretrial hearing judges .

ERR NUMBER THREE (3) occurred when Judge Dennis refused to conduct a hearing to determine the legality of the grand jury that had indicted the Appellant .

The State of South Carolina's Supreme Court has held in accords with the State's Constitution , that ,

" A defendant has a constitutional right to demand that a grand jury **which is properly established and constituted under the law** consider the criminal allegations against him . See S.C.Const.art.I,§11 and art.V,§22. One who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury , in instances where such indictment is required , may thereafter justly take the position that he has been deprived of life , liberty or property without due process of law' in violation of the State Constitution . "

Please see Evans , 611 S.E.2d at 518 ( emphasis added ) .

At NO time has any judge verified the legality of the grand jury that indicted Appellant . At the very least , Trial Judge Dennis should have conducted a hearing in camera . As it now stands however , based upon the argument of the solicitor when ask by the court , 'What say the State to this issue ?' . The response was always the same , " - - - I don't know what he's talking about . I am not exactly sure what he is referring to . "

There is a doctrine in our jurisprudence that is stated as follows :

" Ignorance of the law is NO excuse ! "

If that doctrine readily applies to lay persons , individuals who we know would be ignorant to some of the various aspects of our laws , surely this very same doctrine applies to solicitors as well .

Therefore , Solicitor Herring-Lash's response does not justify the lack of action taken by Judge Dennis . T h e Appellant had and absolute right to challenge the legality and sufficiency of the grand jury that indicted him . He was denied

that right by the court .

The South Carolina Supreme Court held in , The State vs Gentry , 363 S.C. 93 , 610 S.E.2d 494 , 499 - 500 (2005) ,

" The indictment is the charge of the State against the defendant , the pleading by which he is informed of the fact , and the nature and scope of the accusation . When that indictment is presented , that accusation made , that pleading filed , t h e accused has two courses of procedure open to h i m . He may question the propriety of the accusation , the manner in which it has been presented , t h e source from which it proceeds , and have these matters promptly and properly determined ; or , waiving them , he may put in issue the truth of the accusation , and demand the judgment of his peers on the merits of the charge . If he omits the former , and chooses the latter , he ought not , when defeated on the latter , - - when found guilty of the crime charged , - - to be permitted to go back to the former , and inquire as to the manner and means by which the charge was presented . "

Gentry , 610 S.E.2d at 499-500 ; see also Evans , 611 S.E.2d at 517-18 .

In this instant case the Appellant choose the former , and this for some reason confused the court . Judge dennis questioned the fact that Appellant requested the grand jury impanelment documents pursuant to Rule 5 , SCRCrimP . He ask what does grand jury impanelment documents have to do with Rule 5 or Brady Motion .

In Evans , the court stated ,

" Accordingly , impanelment documents ordinarily may be released to a defendant after the state [ grand jury ] has issued a true bill of indictment against that defendant . A defendant's request should be made prior to trial pursuant to Rule 5, SCRCrimP .

If the State should object to releasing all or part of the impanelment documents , a defendant may move to compel discovery of the documents . - - - "

Evans , supra at 520 .

The Appellant had concerns regarding the grand jury prior to the day the trial began . He did not wait until after the fact to complain . In his gut he knew that things were not right with the grand jury system in Charleston County , so he made request and inquiries .

In Charleston County , it has been long time rumored that the solicitor's office has a 'True Bill' stamper , that they readily use to stamp fake indictments to trick individuals into pleading to charges . Worst yet , is that the rumor is that they take individuals to trial on these very same fake indictments .

There is never any concern because no-one every questions the legality of the grand jury . If any thing , they question the wording in the indictment . Judges only concern themselves with the elements of the indictment . Never the grand jury itself . The solicitor's office knows this , and takes full advantage of the situation .

I've heard judges state that 'oh , this attorney or that attorney won't do this or that because they know they can get into serious trouble' , this type comment comes following a defendant's complaint . Here's the thing , the judges that make such comments NEVER INQUIRE INTO DEFENDANT'S COMPLAINTS .

#### ABANDONMENT BY APPELLATE DEFENSE COUNSEL

Since the commencement of the direct appeal of this case the Appellant and his court appointed counsel has been at odds because , counsel refused to allow Appellant to have any say in the appeal , i.e., what's filed , how it is argued , etc., etc.

As the record will clearly reflect , the Appellant proceeded pro se , in all pretrial and trial proceeding of this case . In so doing , he intentionally raised two (2) issue and preserved each for appeal . Prior to Susan B. Hackett being assigned as counsel by the Office of Appellate Defense , he notified that office of the two (2) issues . He provided to them APPELLANT EXHIBIT NO.: 0003 , Letter Summarizing Issues . Also the Appellant provided them with Copies of the APPELLANT EXHIBIT NO.: 0004 , Expired Contracts Between Charleston County and Town of Mount Pleasant .

In addition to the above , immediately upon receipt of the hearing transcripts Appellant notified Ms. Hackett that several of the transcripts were recored inaccurately . Appellant informed Ms. Hackett to challenge the accuracy of those transcripts .

Ms. Hackett refused to follow the instructions of the Appellant .

In addition to filing complaints against Ms. Hackett , he attempted to file challenges to the transcripts himself . As a result , one (1) Court Reporter followed up on the challenge and reviewed the record and discovered that the Appellant was indeed correct . The transcript had not been recorded accurately . She made changes and served the new transcript .

Immediately following the Appellant filed motion to have Ms. Hackett releived as counsel . She had clearly demonstrated ineffective assistance of counsel . Through out the entire time that this case was pending before the court of appeals there has been problems between the Appelant and Ms. Hackett . All problems arose as a result of Ms. Hackett violating Rule 407 SCACR .

**NOW THEREFORE** , MS. Hackett has abandoned Appellant in this appeal . The Court of Appeals issued an order affirming the Appellant's conviction . The Appellant has a [ RIGHT ] to appeal that decision .

It is the duty of the appointed counsel to inform the client of all rights and options opened to him .

**HOWEVER** , as a means of retaliation , she has refused to fulfill her obligation of not only informing the Appellant of his [ RIGHT ] to appeal the decision of the Court of Appeals but , perfecting the appeal .

Attached hereto is , APPELLANT EXHIBIT NO.: 0005 , Cover Letter From Ms. Hackett .

As can be seen , there is no mentioned of Appellant's [ RIGHTS ] to appeal , only information regarding Post - Conviction Relief ( PCR ) and Federal Habeas Corpus , and the statute of limitation for filing each .

AS can be readily seen , she failed to mention that the statute of limitation does not begin to run until after the Direct Appeal is finalized . Meaning after the appeal of the Court of Appeals decision has went through the complete appeals

process .

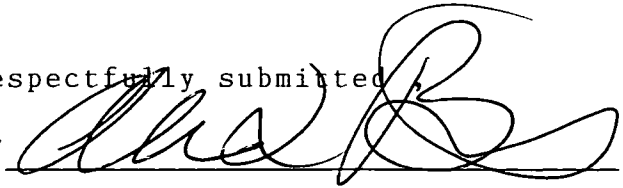
### C O N C L U S I O N

**WHEREFORE** , having addressed the issues of this appel and supported same with factual evidence , Appellant ask that this Most Honorable Court , reverse the ruling of the lower courts reverse and vacate the convictions and sentences imposed upon this Appellant , or in the alternative , reverse and remand this case to the Court of General Sessions .

Date: June 29, 2016

Respectfully submitted,

S/

A large, stylized handwritten signature in black ink, appearing to read 'Alan L. Burns', written over a horizontal line.

Alan L. Burns , # 143218  
Lee Corr.Inst. , F-5 , D-139  
990 Wisacky Highway  
Bishopville , SC 29010 - 1775

Appellant , pro se

State Of South Carolina  
County Of Charleston

In The Court Of General Sessions  
Ninth Judicial Circuit

Check &  
Return  
Copy

The State of S.C.,

Indictment : 2011-GS-ID-03387 thru 03392

vs.

2011-GS-ID-03394; 2012-GS-ID-03173

2012-GS-ID-03172; 2011-GS-ID-04477

RECEIVED

JUL - 8 2016

Burns, Alan L.,

Defendant.

Motion For Grand Jury Impanelment Documents

Supporting Materials

COMES NOW the Defendant above named who hereby moves this Most Honorable Court to order the State of South Carolina produce and provide to Defendant; the state's grand jury impanelment documents, including the State of South Carolina's petition, supporting materials, the impaneling judge's order, and list of witnesses that testified at the state grand jury which indicted the Defendant.

PLEASE TAKE NOTICE THAT this motion is based upon the fact that Defendant has the right to review the documents to determine whether to timely challenge the legality of the state grand jury which indicted him. *Evans vs. State of S.C.*, 363 S.C. 495, 611 S.E.2d 510 (2005).

PLEASE TAKE FURTHER NOTICE that the Defendant moves this court to schedule and convene a hearing on this issue prior to the trial.

I so move :

Dated: July 26, 2012

BY [Signature]

Alan L. Burns

3841 Leeds Avenue

N. Chas., S.C. 29405-7469

A P P E L L A N T

E X H I B I T

NO.: 0001-A

1 He has made these allegations before.

2 THE COURT: Uh-huh.

3 MS. HERRING-LASH: And the last time there was -- it  
4 was actually on video. And Judge Dennis watched the  
5 video and explained what you're telling me is on the  
6 video.

7 THE COURT: Okay. Thank you.

8 Yes, ma'am. Anything further?

9 MS. PROCTOR: I think --

10 [Whereupon, Ms. Proctor and Mr. Burns confer]

11 MR. BURNS: Are you finished with that?

12 THE COURT: Well, I haven't ruled, but I'm happy to  
13 hear anything else you want to tell me.

14 MR. BURNS: I've got another motion I want to make.

15 I want a motion for the grand-jury panel documents  
16 and any other supporting materials that was submitted  
17 to the grand jury.

18 Under the State Supreme Court ruling of --

19 THE COURT: Okay. I don't understand. I have no  
20 idea what you're talking about. Start back and tell me  
21 what you want.

22 [Whereupon, Mr. Burns and Ms. Proctor confer]

23 MR. BURNS: I should go ahead --

24 THE COURT: Yes. That would be very helpful. Yes,  
25 sir.

A P P E L L A N T

E X H I B I T

NO.: 0001

State v. Alan Burns  
Emergency Hearing  
August 1, 2012

Page 2 of 4

1 [Whereupon, Mr. Smith proffers documents to the  
2 Court]

3 THE COURT: Thank you, sir.

4 MR. SMITH: This has not been filed yet. Just  
5 received it the other day.

6 THE COURT: All right. Mr. Burns, if y'all will  
7 give me a minute to read this, I appreciate it.

8 [Whereupon, the Court reviews documents]

9 THE COURT: Okay. I'm still not sure that I  
10 understand the motions, but I'm happy to hear from you.

11 MR. BURNS: I would like to request any grand-jury  
12 documents and any -- the application that was sent to  
13 the grand jury -- petition that was sent to the grand  
14 jury, proposed indictments, I would like to listen to  
15 any witnesses that testified at the grand jury, and I  
16 would like to listen to the evidence that was presented  
17 to the grand jury.

18 The secrecy of grand jury, according to the Supreme  
19 Court in Evans v. State of South Carolina, 611 S.E.2d  
20 510, states that the secrecy of the grand jury is  
21 removed once the grand jury renders its decision and  
22 indict.

23 THE COURT: Okay.

24 MR. BURNS: Therefore, the Supreme Court further  
25 states that a defendant have a right to review the

1 documents to determine whether Laconde [phonetic]  
2 challenged the legality of the state grand jury which  
3 indicted him.

4 So I would like to request all those documents.

5 THE COURT: All right. Sir, you're up for trial  
6 next week, aren't you?

7 MR. BURNS: Yes, ma'am, I am.

8 THE COURT: Okay.

9 Yes, ma'am. Happy to hear from you.

10 MS. HERRING-LASH: Your Honor, I don't know what  
11 he's talking about. We don't present anything to the  
12 grand jury. An officer goes in and gives testimony.  
13 They send a representative for each department.

14 It sounds like -- and I -- I am not aware of the  
15 case he's talking about -- but he's talking about  
16 the state grand jury. I think the state grand jury has  
17 a -- more of an investigative --

18 THE COURT: Uh-huh.

19 MS. HERRING-LASH: -- part of it than our just  
20 regular grand jury.

21 THE COURT: Okay. Have y'all given him everything  
22 that he's entitled to have in your Rule 5 response and  
23 pursuant to Brady v. Maryland?

24 MS. HERRING-LASH: Yes, Your Honor.

25 THE COURT: Okay. Anything he's missing that he

A P P E L L A N T

E X H I B I T

NO.: 0001

State v. Alan Burns  
Emergency Hearing  
August 1, 2012

Page 4 of 4

1 needs to have?

2 MS. HERRING-LASH: No, Your Honor.

3 THE COURT: Okay. Could Ms. Proctor or Ms. Smith  
4 -- or Mr. Smith enlighten me on something that I might  
5 be missing here?

6 MS. PROCTOR: [Indicates negatively]

7 THE COURT: No? Okay.

8 I'm going to look at your case real quick.

9 [Whereupon, the Court reviews documents]

10 THE COURT: Okay. That motion is denied. Thank  
11 you, sir. I've read the Evans case and I've read your  
12 motion.

13 I've held your emergency hearing. I don't find that  
14 anything legally pertinent was taken from your cell.

15 You might want to listen.

16 [Whereupon, Mr. Burns and Ms. Proctor confer]

17 MR. BURNS: She -- that lady don't never rule in  
18 favor of no defendant. Anytime you're going to go up  
19 against her, she always rules in favor of the State,  
20 everything that she rules.

21 THE COURT: You're treading very close to getting in  
22 big trouble, sir.

23 MR. BURNS: What you going to do?

24 THE COURT: You're in contempt of Court, sir.

25 MR. BURNS: Okay. Fine --

A P P E L L A N T

E X H I B I T

NO.: 0002

Page 1 of 9

State of South Carolina v Alan Burns  
Case No. 11-GS-10-3387 *et al*  
Jury Trial of August 6-10, 2012  
Before The Honorable R. Markley Dennis, Jr.

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SC SUPREME COURT

1 lacks probable cause because the warrant  
2 doesn't take into ---

3 THE COURT: This is not a probable  
4 cause Motion. The Motion to modify the  
5 indictment to conform to the statute is  
6 granted.

7 All right, what is the next one?

8 SOLICITOR HERRING-LASH: The  
9 other statute directly following that is the  
10 4779, it also says sixteen and that should be  
11 fourteen?

12 THE COURT: Objection? Same  
13 objection?

14 MR. ALAN BURNS: Yes, sir, Your  
15 Honor.

16 THE COURT: Very well. Subject to  
17 the objection, I grant you your Motion to  
18 conform the indictment to the terminology in  
19 the statute, since the statute is likewise  
20 cited in the indictment.

21 SOLICITOR HERRING-LASH: That is  
22 all, Your Honor.

23 THE COURT: Very well. Any  
24 Motions now from the defendant, Mr. Burns?

25 MR. ALAN BURNS: Yes, sir.

THE COURT: I will happy to hear

from you.

MR. ALAN BURNS: Your Honor, on August 1<sup>st</sup>, I appeared before the Court for a Motions hearing. At that Motions hearing, I specifically asked for the impanelment of a grand jury, I asked for the impaneling judge's Order. I also asked that the State produce the petition and any other materials. I also have copies of the -- in my original specific Brady request, Rule 5, I asked for these documents as well.

At the time that I made the request for these documents, the State responded that these documents do not exist. I would like to challenge the legality of the County grand jury and due to the fact that the State states that these documents do not exist, I would ask that the indictments be quashed on the grounds that there is no proof that the grand jury was legally impaneled.

And I would like to present, if I may, copies of the -- that is the original Rule 5 Brady request.

THE COURT: What does this have to

1 do with -- the grand jury impaneling, with  
2 the *Brady* request information?

3 MR. ALAN BURNS: I had requested  
4 the grand jury documents in my Rule 5.

5 THE COURT: What grand jury  
6 documents are you referencing?

7 MR. ALAN BURNS: The impaneling  
8 documents.

9 THE COURT: What has that got to  
10 do with *Brady* issues.

11 MR. ALAN BURNS: Well, I requested  
12 it through *Brady*.

13 THE COURT: I understand. There  
14 is no -- there's nothing about the grand jury  
15 that would have anything to do with a *Brady*  
16 motion. Why is that pertinent to a *Brady*  
17 motion? Maybe I don't -- I don't understand.  
18 Maybe you can clarify it for me. What the  
19 grand jury constitution has to do with *Brady*.

20 MR. ALAN BURNS: The case law that  
21 I have, it specifically states that if you  
22 request it through *Brady* ---

23 THE COURT: What? Grand jury  
24 material?

25 MR. ALAN BURNS: Yes, sir, can be

A P P E L L A N T

E X H I B I T

NO.: 0002

Page 4 of 9

1 requested through your Rule 5.

2 THE COURT: What case are you  
3 relying on?

4 MR. ALAN BURNS: *Evans v. State.*

5 THE COURT: Do you have a copy of  
6 it?

7 MR. ALAN BURNS: Yes, sir, I do.

8 THE COURT: May I see it?

9 MR. ALAN BURNS: (Tendered to  
10 bench by Lori Proctor).

11 THE COURT: You want that to be  
12 marked as a court's exhibit?

13 MR. ALAN BURNS: Yes, sir, I do.

14 THE COURT: Court's Exhibit 2 is  
15 material provided which is in response to the  
16 Brady motion, provided by the defendant.

17 (SO ENTERED AS COURT'S EXHIBIT 2)

18 MR. ALAN BURNS: I have some areas  
19 in that already highlighted.

20 THE COURT: Well, sir -- some  
21 areas in what?

22 MR. ALAN BURNS: In that case.

23 THE COURT: I am going to hand you  
24 the case back, (tendering).

25 What is your response, Ms. Herring-

A P P E L L A N T

E X H I B I T

NO.: 0002

Page 5 of 9

1 Lash?

2 SOLICITOR HERRING-LASH: Your  
3 Honor, I am not exactly sure what he is  
4 referring to. I think that he went over this  
5 issue with Judge McDonald last week and the  
6 case that he handed up at that time regarded  
7 the statewide grand jury, which is a  
8 different -- which is an investigatory grand  
9 jury.

10 THE COURT: (Affirmative nod).

11 SOLICITOR HERRING-LASH: I don't  
12 know exactly what he -- at that time he was  
13 asking for witnesses and tapes that had to do  
14 with the grand jury. I don't know what he is  
15 talking about exactly. I didn't see the  
16 case. I don't know if it is the same case or  
17 not.

18 MR. ALAN BURNS: If I may, Your  
19 Honor?

20 THE COURT: Sure.

21 MR. ALAN BURNS: In accordance  
22 with this case, this South Carolina Supreme  
23 Court case, it gives the defendant the right  
24 to timely challenge the legality of the grand  
25 jury that indicted him.

A P P E L L A N T

E X H I B I T

NO.: 0002

Page 6 of 9

1 THE COURT: I understand.

2 MR. ALAN BURNS: Upon that timely  
3 request; it's incumbent upon the court to  
4 verify that the grand jury was legally  
5 constituted.

6 THE COURT: How have you  
7 challenged it?

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: How have you timely  
10 challenged the ---

11 MR. ALAN BURNS: That's what I  
12 said. I made my request in my discovery and  
13 I also made my request by submitting -- if I  
14 may present you with a copy, (tendering).

15 THE COURT: Thank you. (Upon  
16 review), this Motion that has been handed to  
17 me, this matter has been raised, ----

18 MR. ALAN BURNS: Right, this has  
19 been raised several times. This isn't the  
20 first time.

21 THE COURT: This is what you  
22 argued before Judge McDonald?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: She denied the Motion.

25 MR. ALAN BURNS: Yes, sir, for the

State of South Carolina v Alan Burns  
Case No. 11-GS-10-3387 *et al*  
Jury Trial of August 6-10, 2012  
Before The Honorable R. Markley Dennis, Jr.

127

1 impanelment documents.

2 THE COURT: Your Motion is then  
3 denied. It's a part of the record of this  
4 case. You don't raise that again. That's  
5 already been raised.

6 MR. ALAN BURNS: So I can't ask  
7 for the indictments to be ---

8 THE COURT: You can't ask me to do  
9 that. You've already asked Judge McDonald to  
10 do that, and she denied your Motion.

11 MR. ALAN BURNS: I understand.  
12 What I am asking Your Honor is I'm raising a  
13 matter of subject matter jurisdiction.

14 THE COURT: Well, I -- based on  
15 what?

16 MR. ALAN BURNS: That if the grand  
17 jury that impaneled -- if the grand jury was  
18 illegally impaneled, then that would relieve  
19 this court of subject matter jurisdiction.

20 THE COURT: Might. But that issue  
21 has been raised and denied. So your Motion  
22 now is denied further, denied based on the  
23 fact that it has already been decided.

24 MR. ALAN BURNS: I just want to  
25 make sure that it's on the record for appeal.

1 THE COURT: Every Motion that has  
2 been -- for which you've been to court and  
3 Motions have been filed, all of those are  
4 part of the record of your case. It doesn't  
5 have to be heard by me. In fact, I can't  
6 hear it because I can't change the decision  
7 another judge has made. That's part of the  
8 record. The reviewing court will consider  
9 that and decide whether that judge made the  
10 correct determination.

11 MR. ALAN BURNS: That was simply  
12 the hearing judge. You're the trial judge  
13 and ---

14 THE COURT: Sir, I -- you know  
15 what? I appreciate your request. It doesn't  
16 matter. I just simply stated and -- I know  
17 that you're not a lawyer, but one of the  
18 things you know is that -- in the Circuit  
19 Court, we're all Circuit Court judges.

20 I will give you an example. Years  
21 ago it was the first time that I ever  
22 realized or it occurred to me that you might  
23 as well do that, have those hearings, because  
24 why do we wait for calling the case for trial  
25 to hear the statement of the defendant,

A P P E L L A N T

E X H I B I T

NO.: 0002

Page 9 of 9

State of South Carolina v Alan Burns

Case No. 11-GS-10-3387 *et al*

Jury Trial of August 6-10, 2012

Before The Honorable R. Markley Dennis, Jr.

129

1 called a *Jackson v. Denno* hearing.

2 I was trying a case, there had been  
3 a mistrial in the case. We were scheduling  
4 the *Jackson v Denno* hearing. When I was  
5 looking through the file, there was an Order  
6 of a colleague of mine, who was then living,  
7 in fact a classmate, Judge Westbrook, who had  
8 ruled on the *Jackson v. Denno* hearing. There  
9 was no reason for me to hear it. He had  
10 already ruled on it.

11 That happens in civil cases quite  
12 frequently. There will be a Motion heard by  
13 a judge, then the trial judge hears the case.  
14 When the case is appealed, if it is appealed,  
15 that ruling of that prior trial judge will be  
16 required. What happens when they report it,  
17 then involved in that, you see two judges  
18 because there were two judges that were  
19 involved in the trial/disposition of that  
20 case.

21 MR. ALAN BURNS: Correct.

22 THE COURT: So it is not revisited  
23 by me. Okay?

24 MR. ALAN BURNS: Okay.

25 THE COURT: All right. Any

1 additional Motions?

2 MR. ALAN BURNS: Yes, sir. I have  
3 another Motion.

4 THE COURT: All right.

5 MR. ALAN BURNS: If you will give  
6 me one second.

7 THE COURT: Sure.

8 MR. ALAN BURNS: Your Honor, at  
9 this time I would like to move the court to  
10 suppress all the State's evidence, mainly all  
11 the victim witness statements and all oral  
12 testimony. Your Honor, I would like to at  
13 this time call witnesses to give testimony in  
14 regard to-- this motion is being made in  
15 regard to the jurisdiction of the Mount  
16 Pleasant Police Department. The Mount  
17 Pleasant police officers that investigated  
18 this case investigated the entire case in  
19 violation of Section 23-1-215 of the South  
20 Carolina Code of Laws and did not have  
21 jurisdiction to investigate the case. If I  
22 may, ---

23 THE COURT: No, sir, I am not  
24 going to have you call witnesses. That  
25 Motion -- is there a formal Motion that

August 24, 2012

RECEIVED  
Alan L. Burns, #143218  
KCI C2 A12 JUL - 8 2016  
4344 Broad River Rd SUPREME COURT  
Col., S.C. 29210

South Carolina Appellate Defense Commission  
Attn: Ms. Sharon Graham  
P.O. Box 11589  
Col., S.C. 29211

A P P E L L A N T

E X H I B I T

NO.: 0003

Page 1 of 5

Dear Ms. Graham:

Enclosed herein is a duplicate set of the Appeal papers which I sent to the Clerk of the South Carolina Court of Appeals concerning the below listed indictment number convictions and sentences:

| <u>Indictment Numbers</u> | <u>Sentence</u>         |
|---------------------------|-------------------------|
| 2011-GS-10-3387           | 20 Years Concurrent     |
| 2011-GS-10-3388           | 20 Years Concurrent     |
| 2011-GS-10-3389           | 15 Years Concurrent     |
| 2011-GS-10-3390           | 30 Years Concurrent     |
| 2011-GS-10-3391           | 30 Years Concurrent     |
| 2011-GS-10-3392           | 15 Years Concurrent     |
| 2011-GS-10-4776           | 30 Years Consecutive *  |
| 2011-GS-10-4777           | 30 Years Concurrent     |
| 2011-GS-10-4778           | 15 Years Concurrent     |
| 2011-GS-10-4779           | 15 Years Concurrent     |
| 2012-GS-10-3172           | 30 Years Concurrent     |
| 2012-GS-10-3173           | 15 Years Concurrent     |
| 2011-GS-10-3394           | 15 Years Concurrent *** |

I was convicted of the above charges on Aug. 10, 2012, 9th Cir., Chas. County, R. Markley Dennis, Judge.

I had a jury trial and I represented myself.

During the course of the criminal process Ms. Lorrie Proctor and Mr. Ted Smith, both of the Chas. Co. Public Defenders' Office were appointed by Judge Dennis to act as legal advisers to me.

Mr. Smith, informed me that he was going to file notice of appeal

Pg. 1 of 5

on Aug. 13, 2012.

Page 2 of 5

Because I hadn't received confirmation of his filing, I, on Aug. 16, 2012, took the liberty and filed notice of appeal on my own behalf to ensure that notice was timely filed.

At the time I filed my notice I also requested that your office represent me in this appeal. Should you accept representation I ask that you please first and foremost, raise these issues along with any other you may find appropriate for appeal:

# I

- 1) **Specific Brady Request** - At the very onset of these charges being filed I made it a point to request any and all Grand Jury documents, recordings, notes and orders. At motion to compel discoveries hearings, The solicitor, Deborah Herring-Lash at each hearing stated that they were no documents, recordings, orders or notes for a grand jury that indicted me (Enclosed you will find a copy of both Specific Brady Request and a list of all hearings and the judges that presided).
- 2) **Request For Grand Jury Impanelment Documents and Supporting Materials** - On July 26, 2012, I mailed to the court for filing (file date 7/31/12) a request specifically asking for the grand jury impanelment documents, including the state's petition, supporting materials, ~~impanelment~~ judge's order and list of witnesses. I specifically stated that my request was being made pursuant to Evans vs. State, 363 S.C. 495, 611 S.E.2d 510 (2005).
- 3) On Aug. 1, 2012 a motions hearing was held. I verbally requested each specific document requested in my 7/26/2012, motion. The court (Judge Stephanie P. McDonald) ask the state (Ms. Herring-Lash) how do they respond to my request. Ms. Herring-Lash stated on record that the items and materials requested does not exist as they were never created and are not used. She further stated that this request had been previously made, responded too and ruled on, in motion hearings by Judge Deadra Jefferson.
- 4) The judge (McDonald) accepted the state's reason and argument and denied my request for the documents. She also denied my request for a hearing challenging the legality of the grand jury which indicted me.
- 5) Prior to the trial beginning on Aug. 6, 2012, I again made my request challenging the legality of the grand jury which indicted me. Judge Dennis denied my request. I argued that, because he was the trial judge it was incumbent upon him rather than a motion hearing judge to review and verify the legality of

the grand jury because if the grand jury was illegal the indictments would therefore be illegal as well and this would therefore create a subject matter jurisdiction issue.

- 6) My request was renewed at the close of the states case as one of the grounds of my request for a directed verdict. It was again renewed at the close of the defense's case when I made my second (2<sup>nd</sup>) request for direct verdict. Both request were denied.
- 7) I believe that I made the proper motions in a timely fashion that properly preserved this issue for review on appeal.

The relevant statutes and case law which I based my requests and motions are as follows :

- 1) S.C. Code of Laws § 14-7-1140 (2011)
- 2) S.C. Code of Laws § 14-7-1510 (2011)
- 3) S.C. Code of Laws § 14-7-1520 (2011)
- 4) S.C. Code of Laws § 14-7-1530 (2011)
- 5) S.C. Code of Laws § 14-7-1540 (2011)
- 6) S.C. Code of Laws § 14-7-1550 (2011)
- 7) Evans vs. State, 611 S.E. 2d 510 (2005)

A P P E L L A N T

E X H I B I T

NO. : 0003

Page 3 of 5

(esp. Page 518 Foot Note 7) "Although this case involves the state grand jury, we similarly conclude that challenges to the legality and sufficiency of the process of a county grand jury also must be made before the jury renders a verdict in order to preserve the error for direct appellate review."

## II

- 1) Territorial Jurisdiction — Prior to trial, I moved for all state evidence and victim/witnesses testimony to be suppressed as fruit of the poisonous tree.
- 2) There is no question that the address where the alleged violations occurred is in rural Charleston County, outside the boundaries of the Town of Mount Pleasant's municipal jurisdiction. (See Jurisdictional Map submitted as 'Defense Exhibits 21 and 22').
- 3) The pertinent question for appeal is ~~whether~~ <sup>Did</sup> the Mt. Pleasant Police had a valid agreement with the Charleston County Sheriff's Dept. that allowed them to exercise authority outside their jurisdiction inside the jurisdiction of the Sheriff's Dept.
- 4) The state submitted two (2) contracts to support the investigation and arrest;
  - a) The first contract dated and signed Oct. 13 and 14, 1993, respectively, stated "ARTICLE V, Term and Consideration, 1. The term of the contract shall be from December 1, 1993, to November 30, 1994." ☒ No provisions for renewal were included or stated. (Please see Attached copy of contract).
  - b) The second contract dated and signed Sept. 10, 1998 and Nov. 10, 1998, respectively

Stated

"The term of the contract shall be from January 1, 1998 to December 31, 1998. Thereafter, this contract will automatically renew for successive one-year terms unless affirmatively terminated by a vote of either party's governing body."

5) S.C. Code of Law § 23-20-50 (A) (2007) - specifically states:

"For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction."

6) State vs. Boswell, 707 S.E.2d 265, at 270. The S.C. Supreme Court mandated that,

"In contrast to the state's interpretation, we construe subsection A as requiring governing bodies to formally approve a pre-existing agreement if it is to retain its validity.<sup>8</sup> Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority. . . .

Foot Note 8 - See Black's Law Dictionary 1268-69 (7th ed. 1999) (defining "ratification" as "[c]onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done"); cf. id. at 98 (defining "approve" as "[t]o give formal sanction to; confirm authoritatively")."

7) The contract submitted by the state was made in 1998, therefore for it to be valid it had to be ratified sometime after June 1, 2000. In this instant case that ratification was not done.

8) The contract is also invalid because it clearly violates § 23-20-30, which states in part,

"the General Assembly authorizes a law enforcement agency of this State to enter into contractual agreements with other law enforcement providers as may be necessary for the proper and prudent exercise of public safety functions. Public safety functions include traditional public safety activities which are performed over a specified time period for patrol service, crowd control and traffic control, and other emergency service situations. All contractual agreements shall adhere to the requirements contained in Section 23-20-40. Emphasis Added.

A P P E L L A N T

E X H I B I T

NO.: 0003

Page 4 of 5

- 9) The contract submitted by the state violates S.C. Code of Law § 23-20-30, because that statute places limitation on the type and level of services that can be included and afforded under this type contract.
- 10) The General Assembly promulgated other statutes to cover specific instant situations and circumstances to be the authoritative statute to govern matters such as specific criminal investigation within other counties, municipalities, or jurisdictions, specifically in this case S.C. Code of Law § 23-1-215.
- 11) One contract is expired by its own terms, the other is illegal and invalid because it violates statutory laws and because it was not properly ~~and~~ ratified by the governing bodies of each jurisdiction.

### III

- 1) Additionally, the court erred at the start of the trial when I first moved to have all state evidence and oral testimony suppressed based upon the territorial jurisdiction violation. The court ruled that because prior notice had not been given and therefore the issue could not be heard.
- 2) *State vs. Dudley*, 614 S.E.2d 623, 625-26 (2005) — The S.C. Supreme Court stated "Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding. Compare, e.g., *Bordon v. Commonwealth*, 38 Va. App. 818, 568 S.E.2d 452 (Ct. App. 2002) (claim that crime did not occur in state not waived by failure to timely raise it). The exercise of extraterritorial jurisdiction implicates the state's sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent."

If I should think of anything else that maybe of value in this appeal I will promptly notify you.

In the mean time would you please have your name and number placed on my official phone list. And also please notify me in advance of any action that you take in this appeal.

ALB/alb

Enclosures as above stated

A P P E L L A N T

E X H I B I T

NO.: 0003

Page 5 of 5

5 of 5

*Patricia Buchanan* 4-3-13  
 PATRICIA A. BUCHANAN  
 Notary Public, State of South Carolina  
 My Commission Expires April 26, 2020

JUL - 8 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) A CONTRACT FOR POLICE SERVICES  
) BETWEEN THE COUNTY OF CHARLESTON  
) AND THE TOWN OF MOUNT PLEASANT

**80 SUPREME COURT**

WHEREAS, many of the unincorporated areas of Charleston County have, in recent years, been annexed by the Town of Mount Pleasant, and

WHEREAS, the remaining unincorporated areas of the County are, in many instances, totally surrounded by the Town of Mount Pleasant, and

WHEREAS, Charleston County and the Town of Mount Pleasant believe that these small unincorporated areas, commonly referred to as "donut holes," could receive more efficient and more cost-effective police protection services from the nearby municipality and wish to begin a pilot project to offer municipal police services to these areas and the Isle of Palms Connector area, and

WHEREAS, Article 8, Section 13, of the S.C. Constitution authorizes any county to agree with any other political subdivision for the joint administration of any function, and exercise the power and the sharing of costs thereof, and Section 5-7-30 of the Code of Laws of S.C., 1976 as amended, specifically authorizes municipalities to provide police protection in contiguous unincorporated areas located not more than three (3)

~~miles from the municipal limits upon the request of the governing~~  
body of the said municipality or the county, and

WHEREAS, Charleston County and the Town of Mount Pleasant do also intend to expand the provision of police services over a three (3) year period, until all of the unincorporated portions

A P P E L L A N TE X H I B I TNO.: 0004

of Charleston County between the Cooper River and Charleston National Golf Course are included in the Contract. The plan is as evidenced in the map which is attached hereto and incorporated herein by reference, entitled "Exhibit B, Police Jurisdiction Map."

NOW, THEREFORE, be it agreed by and between the parties as follows:

#### ARTICLE I

##### Level of Service

1. The Town of Mount Pleasant agrees to provide total law enforcement services to the unincorporated portions of Charleston County described in Article II below and as evidenced in Exhibit A attached hereto, including but not limited to 911 service, patrol service, investigations and arrests (adults, juveniles, drugs, and crime scene work), animal control, traffic enforcement, and community services (such as the neighborhood watch).
2. The Town of Mount Pleasant agrees to provide these total law enforcement services in the same manner as if these areas were within the municipal boundaries of the Town of Mount Pleasant.
3. Charleston County will code all 911 numbers to ring at the Mount Pleasant Police Station.
4. The Town of Mount Pleasant agrees to provide good quality communication coverage.

#### ARTICLE II

##### Description of the "Donut Holes"

1. All those parcels, pieces, lots, and tracts of land not incorporated into the Town of Mount Pleasant located within the area described below:

Beginning at a point in Charleston Harbor at the mouth of the Wando River, proceeding in a generally north-northeasterly direction up the Wando River to Horlbeck Creek; thence proceeding in an easterly direction up Horlbeck Creek to Boone Hall Creek, and southward along Boone Hall Creek to the point where it is crossed by Long Point Rd. From that intersection, proceed along Long Point

A P P E L L A N T

E X H I B I T

NO.: 0004

Page 2 of 5

Rd. eastward to its intersection with Highway 17; thence, proceed southwest along Highway 17 to its intersection with Venning Rd., and then proceed along Venning Rd. southeast past its intersection with Rifle Range Rd., to a point where Venning Rd., if extended, would intersect with Inlet Creek. From this point, proceed along Inlet Creek in a generally southerly direction to the Intracoastal Waterway, thence along the Intracoastal Waterway in a southwesterly direction into Charleston Harbor. Once past the Old Pitt Street Bridge, proceed along the shoreline in a westerly then northerly direction to the starting point at the mouth of the Wando River.

The stated being the same areas as set forth and identified in the map attached hereto and incorporated herein by reference, entitled "Exhibit A, Police Jurisdiction Map."

#### Description of Isle of Palms Connector

All of the area located in Charleston County described as the right of way of the Isle of Palms Connector from the intersection of Rifle Range Road to the lowwater mark of Hamlin Creek, also known as the corporate limits of the City of Isle of Palms.

### ARTICLE III

#### Written Report/Committee Attendance

1. The Town of Mount Pleasant agrees to prepare a written report of the police services offered, as well as problems encountered, with statistical information concerning the success of this pilot program, on a quarterly basis. This written report shall be presented to the Public Safety Committee of Charleston County Council, as well as to the Police, Judicial and Legal Committee of the Town of Mount Pleasant.
2. In addition to a written report, County Council can request the periodic attendance of the Mount Pleasant Chief of Police at Charleston County's Public Safety Committee to discuss any problems or issues.

### ARTICLE IV

#### Enforcement

1. The parties agree that in the event drugs are seized in any ~~of the areas which are subject to this Contract~~, if the drug seizure is primary-agency-initiated, that agency will retain the money and property seized, and if the drug seizure is multi-jurisdictional, the DEA task force formula will be applied to the assets seized.

A P P E L L A N T

E X I B I T

NO.: 0004

2. All tickets written by the Mount Pleasant Police, pursuant to this Contract, and all violations of the law occurring within the unincorporated areas, will be tried in the Charleston County Magistrate Court located at the East Cooper Satellite Center, rather than the Municipal Court of the Town of Mount Pleasant, or the Court of General Sessions for the Ninth Judicial Circuit, if applicable. If applicable, all fines and assessments shall be processed through the County Magistrate system.

#### ARTICLE V

##### Term and Consideration

1. The term of the contract shall be from December 1, 1993, to November 30, 1994.
2. Charleston County agrees to pay to the Town of Mount Pleasant, in four (4) payments, an amount totalling \$94,166. Payments shall be made as follows:
  - a. December 10, 1993 - \$31,388.67
  - b. March 10, 1994 - 23,541.51
  - c. July 10, 1994 - 23,541.51
  - d. October 10, 1994 - 23,541.51This sum is payment in full for the provision of police services by the Town of Mount Pleasant, between December 1, 1993 and November 30, 1994 to the areas described in Article II above.
3. It is understood that either party may terminate this Contract, with 60 days written notice to the other party, after a determination has been made by the party that the contracted police services are not adequate to meet the needs of the citizens.
4. In the event this Contract is terminated, any money paid by Charleston County for capital expenditures (including uniforms, equipment and vehicles) will be returned on a pro rata basis, with the agreed-upon depreciation of the two police vehicles established at 2% per month. Any money earmarked for personnel salaries that has not yet been paid at the time of termination shall be returned in full to the County.

#### ARTICLE VI

##### Annexation

1. The undersigned parties agree that in the event any of the "donut holes" described herein or the Isle of Palms Connector area are annexed by the Town of Mount Pleasant during the term of this Contract, the parties will have the option of either increasing police service in the remaining areas, or expanding service to a similarly-sized area in Phase 2 or Phase 3 of the project.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Randy Woodard  
Randy B. Techler

COUNTY OF CHARLESTON

By: R. Keith Sammey  
R. Keith Sammey, Chairman  
Charleston County Council  
Dated: October 14, 1993

Carol J. Hunter  
R. Allen Loring

TOWN OF MOUNT PLEASANT

By: Cheryl N. Woods-Flowers  
Cheryl N. Woods-Flowers  
Mayor  
Dated: October 13, 1993

A P P E L L A N T

E X H I B I T

NO.: 0004

Page 5 of 5

**RECEIVED**

STATE OF SOUTH CAROLINA ) A CONTRACT FOR POLICE SERVICES JUL - 8 2010  
 ) BETWEEN THE COUNTY OF CHARLESTON  
 COUNTY OF CHARLESTON ) AND THE TOWN OF MOUNT PLEASANT  
 )

**WHEREAS**, many of the unincorporated areas of Charleston have in recent years been annexed by the Town of Mount Pleasant, and

**WHEREAS**, the remaining unincorporated areas of the County are, in many instances, totally surrounded by the Town of Mount Pleasant, and

**WHEREAS**, Charleston County and the Town of Mount Pleasant believe that these small unincorporated areas, commonly referred to as "donut holes," could receive more efficient and more cost-effective police protection services from the nearby municipality and wish to continue a pilot project to offer municipal police services to these areas and the Isle of Palms Connector area, and

**WHEREAS**, Article 8, Section 13 of the South Carolina Constitution authorizes any county to agree with any other political subdivision for the joint administration of any function, and exercise the power and the sharing of costs thereof, and §5-7-30 of the South Carolina Code specifically authorizes municipalities to provide police protection in contiguous unincorporated areas located not more than three miles from the municipal limits upon the request of the governing body of the said municipality or the county, and

**WHEREAS**, Charleston County and the Town of Mount Pleasant have expanded the provision of police protection services to all of the unincorporated portions of Charleston County between the Cooper River and Charleston National Golf Course, and all such areas are now included in the Contract. The service area is as evidenced in the map which is attached hereto and incorporated herein by reference, entitled "Exhibit B, Police Jurisdiction Map."

**NOW, THEREFORE**, be it agreed by and between the Parties as follows:

### **ARTICLE I** **Level of Service**

1. The Town of Mount Pleasant agrees to provide total law enforcement services to the unincorporated portions of Charleston County described in Article II below, and as evidenced in Exhibit "B" attached hereto, including, but not limited to, 9-1-1 service, patrol service, investigations and arrests (adults, juveniles, drugs and crime scene work), animal control, traffic enforcement, and community services (such as the neighborhood watch).

A P P E L L A N T

E X H I B I T

NO.: 0004-A

Page 1 of 4

2. The Town of Mount Pleasant agrees to provide these total law enforcement services in the same manner as if these areas were within the municipal boundaries of the Town of Mount Pleasant.
3. Charleston County will code all 9-1-1 numbers to ring at the Mount Pleasant Police Station.
4. The Town of Mount Pleasant agrees to provide good quality communication coverage.
5. The Town of Mount Pleasant recognizes that the City of Isle of Palms will patrol the right-of-way of State Highway No. 517, commonly known as the Isle of Palms Connector, between the corporate limit of the City and the terminus of the concrete-paved road-bed of the Connector which adjoins the asphalt road-bed at the mainland, but that all 9-1-1 emergency calls will to continue to ring at the Mount Pleasant Police Station, and be responded to by Mount Pleasant Police, as per the attached Contract.

## ARTICLE II

### Description of the "Donut Holes" and the Isle of Palms Connector and the Areas adjacent thereto

ALL those parcels, pieces, lots and tracts of land not incorporated into the Town of Mount Pleasant located within the area described below:

The stated being the same areas as set forth and identified in the map attached hereto and incorporated herein by reference, entitled "Exhibit B, Police Jurisdiction Map."

## ARTICLE III

### Written Report/Committee Attendance

1. The Town of Mount Pleasant agrees to prepare a written report of the police services offered, as well as problems encountered, with statistical information concerning the success of this pilot program, on a quarterly basis. This written report shall be presented to the Public Safety Committee of Charleston County Council, as well as to the Police, Judicial and Legal Committee of the Town of Mount Pleasant.

A P P E L L A N T

E X H I B I T

NO. : 0004-A

Page 2 of 4

2. In addition to a written report, County Council can request the periodic attendance of the Mount Pleasant Chief of Police at Charleston County's Public Safety Committee to discuss any problems or issues.

#### **ARTICLE IV** **Enforcement**

1. The Parties agree that in the event drugs are seized in any of the areas which are subject to this Contract, if the drug seizure is primary-agency-initiated, that agency will retain the money and property seized, and if the drug seizure is multi-jurisdictional, the DEA task force formula will be applied to the assets seized.
2. All tickets written by the Mount Pleasant Police, pursuant to this Contract, and all violations of the law occurring within the unincorporated areas, will be tried in the Charleston County Magistrate Court located at the East Cooper Satellite Center, rather than the Municipal Court of the Town of Mount Pleasant, or the Court of General Sessions for the Ninth Judicial Circuit, if applicable. If applicable, all fines and assessments shall be processed through the County Magistrate System.

#### **ARTICLE V** **Term and Consideration**

1. The term of the Contract shall be from January 1, 1998 to December 31, 1998. Thereafter, this Contract will automatically renew for successive one-year terms unless affirmatively terminated by a vote of either Party's governing body.
2. Charleston County agrees to pay to the Town of Mount Pleasant, in four payments, an amount totaling \$76,365.04. Payments shall be made as follows:

|    |                 |             |
|----|-----------------|-------------|
| a. | January 1, 1998 | \$19,091.26 |
| b. | April 1, 1998   | 19,091.26   |
| c. | July 1, 1998    | 19,091.26   |
| d. | October 1, 1998 | 19,091.26   |

This sum is payment in full for the provision of police protection services by the Town of Mount Pleasant between January 1, 1998 to December 31, 1998 to the areas described in Article II above.

3. It is understood that either Party may terminate this Contract with 60 days' written notice to the other Party, after a determination has been made by the Party that the contracted police protection services are not adequate to meet the needs of the citizens.

A P P E L L A N T

E X H I B I T

NO.: 0004-A

Page 3 of 4

4. In the event this Contract is terminated, any money paid by Charleston County for capital expenditures (including uniforms, equipment and vehicles) will be returned on a pro rata basis, with the agreed-upon depreciation of the two police vehicles established at 2 percent per month. Any money earmarked for personnel salaries that has not yet been paid at the time of termination shall be returned in full to the County.

**ARTICLE VI**  
**Annexation**

1. The undersigned Parties agree that in the event any of the "donut holes" described herein or the Isle of Palms Connector are annexed by the Town of Mount Pleasant during the term of this Contract, the Parties will have the option of either increasing police service in the remaining areas, or expanding service to a similarly-sized area in Phase 2 or Phase 3 of the project.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

[Signature]

By:

[Signature]

**COUNTY OF CHARLESTON**

[Signature]  
Michael M. Smith, Vice Chairman  
Charleston County Council  
Dated: 9/10/98

**TOWN OF MOUNT PLEASANT**

[Signature]

By:

[Signature]

[Signature]  
Cheryll N. Woods-Flowers, Mayor  
Dated: Nov. 10, 1998

**A P P E L L A N T**

**E X H I B I T**

**NO.: 0004-A**

**Page 4 of 4**

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

Appeal From Charleston County  
Court Of General Sessions  
R.Markley Dennis, Jr., Judge  
~~Indictment No.: 2012-GS-10-3387~~ , et al

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JUL - 8 2016

SC SUPREME COURT

APPELLATE CASE NO. : 2012 - 212760

The State

Respondent ,

vs .

Alan L. Burns

Appellant .

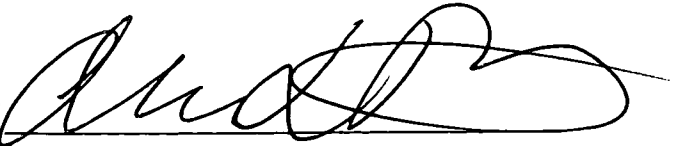
CERTIFICATE OF SERVICE

Appellant above named hereby certifies that a true copy  
of the 'Petition For A Writ Of Certiorari' has been served on  
the Respondent by depositing same in the United States Mail ,  
addressed as follows :

Office Of The Attorney General  
For The State Of South Carolina  
Post Office Box 11549  
Columbia , SC 29211 - 1549

This 5th day of July 2016 .

I SO CERTIFY :

S/ 

Alan L. Burns , # 143218  
Lee Corr.Inst. , F-5 , D- 139  
990 Wisacky Highway  
Bishopville , SC 29016-1775

Mr. Alan L. Burns , # 143218  
Lee Corr. Inst. , F-5 , D-139  
990 Wisacky Highway  
Bishopville , South Carolilna 29010 - 1775

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JUL - 8 2016

SC SUPREME COURT

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**LEE CI MAIL ROOM**

INTER-DEPARTMENTAL  
MAIL

The Honorable Daniel E. Shearouse , Clerk  
South Carolina Supreme Court  
Post Office Box 1 1 3 3 0  
Columbia , South Carolina 2 9 2 1 1

INTER-DEPARTMENTAL  
MAIL

**LEGAL MAIL ONLY**