

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEAL

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
HONORABLE J. CORDELL, MADDOX

CASE NO. 2016-001124

DAN TEMPLE.....APPELLANT

V.

OCONEE COUNTY SHERIFF DEPARTMENT.....RESPONDENT

INITIAL BRIEF

*Dan Temple Jr*  
PRO. SE, DAN TEMPLE, JR  
P.O. BOX 901  
FULTONDALE, AL35068

RECEIVED  
OCT 11 2016  
SC Court of Appeals

CC: ATTORNEY RECORD  
JAMES VICTOR McDADE, ESQ  
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CC: THE SOUTH CAROLINA COURT OF APPEALS  
ATTORNEY: JENNY ABBOTT KITCHING, CLERK  
P.O. BOX 11629  
COLUMBIA, SC 29211

Statement of Issues On the Appeal

1. Did the trial court err, in the time frame of the filing of a claim of a Tort Claim act 11/06/14 whether it is inside of the two year statute of limitation. TT pg. 3 Line 1-11
2. Did the trial court err, in having a responsibility to carry out an order? TT pg. 4 Line 1-8 10/31/05
3. Did the trial court err, by not following up on the order to turn over the tapes to attorney Scott E. Robinson by the Oconee County Sheriff Department, whether it is not a part of due process? TT pg.4 Line 9-25
4. Did the trial court err; to the defendant's to a summary judgment is it appropriate without sufficient opportunity for discovery. Rule 6. TT pg.5 Line 17-25
5. Did the trial court err, in his action as judge by leaving the bench without making a legal adjournment of the PCR hearing and allowing the Officer Ken Washington to take control of the court and to leave without giving up the audio/video tape. TT pg. 6 Line 2-25 10/11/05
6. Did the trial court err, concerning the complaint of the devices, Confidential Informer, he had on him at the time of the alleged control buy, C.I. had three devices on him, one of them were unlawful by the protocol from SLED. TT pg.9-10 Line 10-25, Line 18 Judge, you ordered that I get the stuff, i did not get it but that apparently was not done.
7. Did the Trial Court Judge err, by failing to recuse himself from this case; the court records will show his personal involvement in a number of cases involving Mr. Temple. R.I. Gen Laws 36-14-6 (1)

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### Statement of the Case

On the date of 4/12/16 a hearing was held in Oconee County, the Appellant complaint before the courts under the statutory provision of SC-15-78-10 South Carolina Tort claim act of negligence suit in equity in that the defendant of Oconee County Sheriff Department have by way of govern abuse conspiracy been upon mischief, in gathering and fabricating, tainted evidence, which was illegally used in the gain of an unlawful conviction of the Appellant.

The Appellant asserts that the defendant Oconee County Sheriff Department utilized a C.I. to conduct and/or execute a controlled buy of the persons of the appellant, and to use a surveillance device/equipment to record such buy based on reason, and personal belief, Appellant had reason to believe such, based on, One, the fact of the matter Appellant never sold the C.I. Anything based on suspicion of the C.I. erratic, shifty behavior, and the fact of the matter, that it was later discovered, that there was additional surveillance device, or an audio/visual, that to knowledge, was never approve for use; nor authorized to be used by the defendant Oconee County Sheriff Department; as the defendants could not; or would not produce the make, model, and serial numbers; of all audio/visual surveillance equipment used by the C.I. in the allegedly controlled buy, off the persons of the Appellant.

Further, in addition Appellant has attempted recently and has made several, honest and diligent attempts to obtain, not only the tapes, but the information, as well as, with no response from the defendants, which gave rise to Appellant to be able to infer such, as the defendants only have circumvented, and failed to refute or rebut such.

Thusly, showing by their behavior of the omissions that such as to the Appellant allegations must be true, further such is a statutory violation that is not moot, and further it cannot be said with a surety, that such violation will not reoccur, or has not reoccurred. See: Davis v. New York, 316 F. 3d 93 (Fed. CRT Key 12.1) further, among other things also since statutory provision of South Carolina as well as policies and

protocol creates or define such right or duty, and imposes such on the defendants in which the defendants negated; See: 16-78-10.

Summers v. Harrison Construction 381 SE 2d. 493 and Tanners v. Florence City County Building Commission 511 SE 2d. 369; it was well settled; and stated as to the elements of requirement; as to establish negligence.

First, there must be a duty of care owed to the Appellant, Second; a breach of duty or care by negligent act, or omission, and Last; that damage to the Appellant, proximately resulting from breach.

Appellant, in the herein action, states that the defendants, had a duty, to protect, and serve the public in their capacities and officers, that was owed to the Appellant, within the scope of their duties, and that they breached such, because they had the authority to do such.

Therefore, the defendants are all being sued under the South Carolina Tort Claims Act, for monetary, nominal, punitive, compensatory damages claims in their official capacity of (\$650,000.00) Six Hundred Fifty Thousand Dollars each as incorporated, reasons enumerated below:

- A. The Appellant being illegally incarcerated.
- B. The Irreparable damages of the Appellant's life.
- C. The duress of the Appellant.
- D. The irreparable damage of Appellant's Family life.

The Appellant is in requisition for a Jury Trial; on all issues tribunal by a Jury, and that the defendants pay all court cost and attorney fees, and in Conclusion, the Appellant earnestly Prays that the disposition herein be sustained in his Favor.

Statement of the Case

Ryan V. Martinez 132 S. CT 1309 U.S. 2012 Rule 243 © South Carolina Appellant Court Rules

© Explanation Required. If the lower court has determined that the post-conviction relieve action is barred as successive as being untimely under the statute of limitation the Appellant must at any time give a notice of appeal must be filed, provided an explanation as to why this determination was improper. This explanation must contain sufficient facts, arguments, and citations to the legal authority to show that there is an arguable basis assessing that the determination by the lower court was improper. If the appellant fail to make a sufficient showing the notice of appeal may be dismissed.

See TT pg. 11 Line 10-25

The Appellant admitted this action as in 2014. The Defendant also stated Judge you ordered, Get this Stuff. The judge failed to enforce his own order in 2005. He knew he wanted to use the statutory limitation to block Mr. Temple's action. The judge had the power to enforce his own order. The Appellant does not have the power to enforce, the appellant made a motion to the lower court as well as the higher court of South Carolina concerning this Issue.

The judge had a responsibility to carry out his own orders in 2005. The court failed to make sure the appellant received the Audio/Video tapes from the Sheriff Department. The judge entered into an improper relationship with the Oconee County Sheriff Department by allowing them to take over the PCR hearing, remember the judge stated he had an appointment and had to leave. That was a setup, whoever heard of a judge leaving the court without adjuring the case?

See Canon 3. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of staff, court officials and others subject to the judge's direction and control.

The defendants would not, could not produce the make and model and the serial numbers of all Audio/Video Surveillance equipment used by the C.I. in allegations of a controlled buy.

On the date of 6/2/2004, a letter was sent to the honorable Judge Maddox, we have previously subpoenaed the Audio/Video tape from the Oconee Sheriff Department. See date 6/7/2004 Judge Maddox had knowledge of this case on 10/31/2005 the courts record will show a hearing on this date. The Honorable Judge Maddox gave an order to release the tapes to Attorney Scott D. Robinson. The judge on the date of 10/31/2005 sat and watched the tapes, and seen the appellant point out the unlawful device, that the C.I. had on him at the time of the illegal buy. Remember the officers stated at trial he did not have anything on him. See TT pg.4 Line 1-25

### Facts

See Case No. CA 01.CP 37-290, Case No. 2010-CP-37 005, Case No. 2014 CP-37-07675, Case No. 2016-CP 001124

The Facts are that Judge Maddox has had a long history of involvement in these cases, and should have recused himself of any involvement in these cases. See letter dated 4/5/2004 Case No. CP-37-290 Mr. Robinson asking Judge Maddox, we have previously subpoenaed the Audio/Video tape judge Maddox had a potential conflict of interest in because he was the set judge of Oconee County. When he ordered the sheriff to turn over the Audio/Video tape to Mr. Robinson on 10/31/2005 See pg.4 Line 1-8

The Oconee Sheriff Department wanted to use it as a sole basis for summary judgment and the statutory limitations, when they failed to follow the judge's orders on 10/31/2005. The record will show that Mr. Robinson stated in the letter, if you are looking for the tapes it is in the hands of the sheriff's office. I never received a copy. The courts failed to consider the required factor of actual prejudice amount, to interference with the judicial process. See Murray V. Archamba 132 F. 3d 609 10 Cir. (1988)

The judge Maddox jurisdictional office in a unified jurisdictional system of South Carolina accordingly to jurisdictional immunity is not overcome by allegations of bad faith or malice. The extent of which ordinance cannot be resolved without engaging in a discovery, eventually a trial. See Pierson V. Ray 386 U.S. at 554, 87 S. CT 2815 86 L. ED. 2d 411 (1985)

A judge is not immune from liability or none of jurisdictional action (i)€ actions not taken in the judges jurisdictional capacity. See Forrester V. White 484 U.S. at 227, 229, 1088, CT 544, 545. See Stump V. Sparkman 435 U.S. at 360, 988 CT at 1106.

Case No. 2014 CP-00124 each one of these cases the attorneys asked for the discovery, and each time they were denied by the lower court of Oconee County Jurisdictional System. Based on the rules of 243 © explanation was required. The judge knew the Audio/Video tape had very damaging evidence

against the Oconee County Sheriff Department and shows to deny the Appellant the rights to the discovery.

Summary judgments are not appropriate until after the movant had sufficient opportunity for discovery. See 56-28 ets, Gibert V. Penn Whelling Closure Corp. 917 F. Supp. 1119 (1996). The standards under which we grant or deny summary judgment don't change, cross examination, mention of the file. See US V. Hall, 730 F. Supp. 646 (1990) under 16-17-40 Conspiracy of the common law is defined as a combination between two, more people for the purpose of accomplishing an unlawful act, The Appellant under 42 USCA 1995, 1986 civil right conspiracy claims (1985)(3). Provides for damages, actions against a person of equal Protection of the law. 1986 provides for damage liability for anyone. "Who has knowledge that a conspiracy is about to be committed and does nothing about it. These statues apply to 1983.

### Arguments

The Oconee County Sheriff Department failed to obey or carry out the orders of the judge. To release the Audio/Video tapes the Appellants Attorney Scott D. Robinson. The Sheriff Department actually prejudiced the amount of time of interference of the jurisdictional process.

From the beginning of this case the defendants have violated the state federal laws and the appellant's constitutional rights and have withheld evidence used against him, the action of these defendants has denied basic due process and equal protection of rights. The case raises a question of interpretation of due process clause of the 14<sup>th</sup> Amendment of United States Constitution. The district court has jurisdiction under general federal questions jurisdiction conferred by 28 Usc 1331 but the lower court has failed to allow the appellant the rights to interrogatories and a request for a production and documents in this case.

The appellant complaints start with the surveillance devices/equipment Audio/Video. Oconee Sheriff Department as the defendants could not and would not produce the make and model, serial numbers of all the Audio/Video Surveillance equipment used by the C.I. it also shows deliberate indifference can be proved by the South Carolina records. By delivered indifference is also a standard for measure, the inadequate by the judge to allow the Sherriff Department to take control of the PCR Hearing 10/31/2005 See Estelle V. Gamble 429 U.S, 97, 104, 97, S. CT 285 (1976)

Arguments

Rule 60. (a) (b) (5) This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court

The Trial judge erred by failing to enforce his own orders and that prejudice the appellants civil rights to a Brady Motion to not disclose/exculpatory suppress/Oconee County Sheriff Department was in violation of the Brady Motion for failure to disclose factual material evidence which would have been  
1) Favorable to the Appellant 2) In possession or knowing to the state 3) Suppressing by the State and  
4)Material to the guilt and punishment.

State V. Frazier 394, SC 213. 715, SE. 2d 650, (SC app 2011.) Rule 5 (SC Rules, Crime Procedures)

State V. Moses 390. SC 502, 702, SE 2d, 395, (SC Appellant 2010) 4<sup>th</sup> Amendment to the United States Constitution The rights of the people to be secure in their personal houses, papers in effect against unreasonable searches and seizures shall not be violated and no warrant shall be issued, but upon probable cause supported by oath or affirmation and particularly described the place to be searched and the person or thing to be sieged.

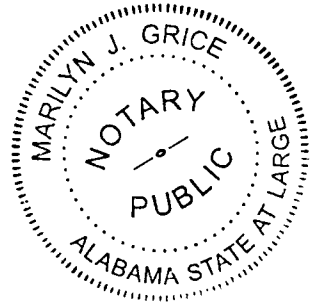
The 5<sup>th</sup> Amendment was also violated no person should be held to answer for a capital or otherwise infamous crime unless upon presentment or indictment of a grand jury. The 6<sup>th</sup> and as well as the 14<sup>th</sup> Amendment to the United States Constitution.

Conclusion

For the foregoing reason the court should grant summary judgment on liability to the Appellant based upon due process and the amount of damage due to the defendants failing to produce the Brady Motion and/or be determined by Trial. Patterson V. Collins 901, F. 2d 564, 570, 2d Cir, (1990)

Dan Temple Jr  
Pro, Se. Dan Temple Jr

Marilyn J. Grice  
MEE: 8-4-2018



THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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COURT OF COMMON PLEAS

HONORABLE J. CORDELL, MADDOX

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CASE NO: 2016-001124

DAN TEMPLE, JR

APPELLANT

V.

OCONEE COUNTY SHERIFF DEPARTMENT

RESPONDENT

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PROOF OF SERVICE

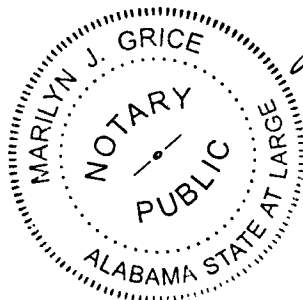
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I, CERTIFY THAT I HAVE SERVED THE APPELLANTS INTIAL BRIEFS AND DESIGNATION OF MATTER: BY DEPOSITING A COPY OF IT IN THE UNITED STATE MAIL POSTAGE PAID ON OCTOBER 6, 2016. ADDRESS TO HIS ATTORNEY JAMES VICTOR McDADE, ESQ. P.O. BOX 2125, ANDERSON, SC 29622.

OCTOBER 6, 2016

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*Pro Se, Dan Temple*

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*Marilyn J. Grice*  
*MCE: 8-4-2015*