

THE STATE OF SOUTH CAROLINA
IN THE GENERAL SESSION COURT
Colleton County 14th Circuit

DAVID JAKES

Applicant,

Vs.

STATE OF SOUTH CAROLINA

Respondent.

Case No. 2010-GS-15-703, 704, 705, 706, 707, 708, 709

MOTION TO DISMISS CONVICTION

This is a Pro Se Motion to Dismiss Conviction due to lack of subject matter jurisdiction and after discovered evidence on behalf of the State of South Carolina, City of Walterboro, Colleton County. Reference: State v Gentry, Opinion No. 25949 (2005)(This Court has held that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong and that issues related to subject matter jurisdiction may be raised at any time. The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.)

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I, david-jayquon jakes, on Asiatic Indigenous American Man, (AMER"ICAN,
n. A native of America; originally applied to the aboriginals, or
copper-colored races, found here by the Europeans; but now "Fraudulently"
applied to the descendants of Europeans born in America, and especially to
those claiming to be citizens of the Unites States. (Noah Webster American
Collegiate Dictionary of the English Language 1828.) and appeals the
unconstitutional, unlawful indictment, conviction, the ineffective assistance
of counsel, and LACK OF SUBJECT MATTER JURISDICTION of the court, with a
Motion to Dismiss Conviction, and the following;

1. It is the policy and practice of the officers (mayor,
councilmen/woman) of the federal municipal corporation CITY OF WALTERBORO,
SOUTH CAROLINA et seq., and the (commanders and the chief) of the federal
municipal corporation CITY OF WALTERBORO, Colleton County Sheriff Department,
et seq., to allow anyone of their employees (state certified peace officers)
to request a warrant against any party within the alleged jurisdiction of the
federal municipal corporation CITY OF WALTERBORO, COUTH CAROLINA, et seq.,
without an injured party/plaintiff being identified through a lawful
complaint, or testimony in "OPEN COURT", in violation of the South Carolina
State Consllitution (Article 1, Section 10 - and no warrants shall issue but
upon probable cause, supported by oath or affirmation, and particularly
describing the place to be searched, the person or things to be seized, and
the information to be obtained), and the Constitution for the United States of
America (Fourth Amendment - no warrants shall issue but upon probable cause,
supported by oath or affirmation, and particularly describing the place to
search, and the persons or things to be seized). South Carolina State
Certified Peace Officers are not taught that probable cause - is a claim of a
right violated, an injury and/or damage caused by a man/woman, the conduct

that caused the injury/damage, and a petition for restitution of the right violated, or injury/damage caused, of which, there is none on file with this case, STATE OF SOUTH CAROLINA Vs. david jakes and antwan mcmillian.

Probable cause is not the feeling of the police officer about his/her thought of the case/situation before him/her. Plaintiff in the party who initiates a lawsuit by filing a complaint with the Clerk of Court against the defendant(s) "suing" for rights violated, demanding restitution (for an injury to person, or for damages to property) performances (the agreement of a contract or agreement), and/or court determination of rights (when one in the performance of his office/duty violates a right guaranteed by a state or federal constitution). There is no lawful plaintiff in this case. There is no one making a claim in this case with first hand information of a lawful violation of rights, injury to the body, damage to property, and no lawful claim for restitution, of which a court of competent jurisdiction "MUST" make a claim of determination. Every statement by employees (Lt. Allen Inabinett), who shortly after defendants trial was fired from Calleton County sheriff and convicted of a federal offense following facts of being an unlawful officer, and also (Investigator Jeffery Scott), both of federal municipal corporation CITY OF WALTERBORO SOUTH CAROLINA POLICE DEPARTMENT, et seq., is "hearsay." Someone told them, and they are telling the court. This policy and custom of circumventing the demands and requirement of South Carolina State Constitution, using only the hearsay testimony of fellow

employees in initiate a case is a blatant violation of the constitution, and the rights of the accused to confront his/her accuser and/or witnesses against him/her. In this policy/custom of the federal municipal corporation CITY OF WALTERBORO SOUTH CAROLINA, CALLETON COUNTY SHERIFF DEPARTMENT, et seq., there is no accuser (injured party) in this case, and there is no witness with first hand knowledge of the events of this case. Infact, the defendant, I, david jakes was the only injured party in this case, by more than an incident report, where during "alleged" crime, Jesse King fired shots and damaged my body that hospitalized me for 27 days.

2. At no time during the alleged arrest, detention, and trial of: david: jakes: and antwan mcmillian was there ever a lawful complaint of injury to the body or damage to property (other than a police report) filed with the Clerk of Court for the federal municipal corporation General Sessions Court of Colleton County, Walterboro, South Carolina or a name plaintiff in the record of the federal municipal corporation General Session Court of Walterboro, South Carolina, Colleton County, or available to testify at trial, which seems to be the norm within the corporate court system of the federal municipal corporation STATE OF SOUTH CAROLINA, et seq.

It is very difficult to believe that officers of the corporate court system of the federal municipal corporation STATE OF SOUTH CAROLINA, (allegedly men/woman learned in law) could conduct their business absent a complaint in law and a lawful plaintiff (injured party) to testify at trial, the witnesses of the injured to the body or damage to property, to testify as to the conduct of the accused during the act being complained of.

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3. The arrest of: david : jakes by the federal municipal corporation CITY OF WALTERBORO, SOUTH CAROLINA, COLLETON COUNT SHERIFF DEPARTMENT, et seq., violates the requirements set forth in the commission for South Carolina (Article 1, Section 10 - no warrants shall issue but upon probable cause, (a complaint (not a police report) of right violation, an injury to person, damage to property) supported by oath or affirmation (submitted to the Clerk of Court), and particularly describing the place to be searched, the persons or things to be seized,) none of which was/is presented in this case, which violates (Article 1, Section 3 - nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law.) This case shows that a man of color is denied the protection of the South Carolina State Constitution. The police who to knowledge decided who to charge for attempted armed robbery and attempted murder in this case rather than allowing a jury to decide (with both men, david jakes and antwon mcmillian, as well as to testifying co-defendant James Davis Jr. on trial) to decide the facts of the case. Be mindful that James Davis Jr. was a co-defendant who the State solely used at trial as their "Key Witness", who also testified to the jury that he was going to be tried and was indicted on all charges as well. After discovered evidence now shows that employees of Colleton County Sheriffs Office allowed James Davis Jr. to avoid a maximum, minimum sentence, which is critical information that a defendant must be allowed to present to the jury of this case. It was material to the jury deciding guilt or innocence. James Levert Davis Jr. is now enrolled in the United States Army and Colleton County allowed him to be left to answer none of the charges dealing with this case whatsoever. Furthermore, there wasn't even any property belonging to allege victims stated in my, defendant arrest warrants, indictments, or at the proceeding of my trial, in

violation of proving elements of charges beyond a reasonable doubt. Be mindful that THE POINTING AND PRESENTING A FIREARM IS NOT AN ELEMENT OF ATTEMPTED ARMED ROBBERY. Furthermore, both co-defendant: david : jakes and James Davis gave voluntary statements to employees of the federal municipal corporations CITY OF WALTERBORO, SOUTH CAROLINA, COLLETON COUNTY, et seq., dealing with the facts of what actually happened on the night of June 3, 2010. Jakes admitted to being on the scene but never attempted to rob anyone. jakes said they stopped on the exit ramp of I-95 to check a doughnut tire they were using on the cadillac, being a sedan, silver in color. Facts at trial showed there was in fact a silver colored sedan with a doughnut tire on the right back end where jakes was sitting inside the vehicle. jakes said when he exited the car there was a pretty lady and he was drunk, intoxicated, and screamed to her "Hey pretty lady." jakes then saw a man, victim Jesse King, approach from behind a vehicle brandishing a firearm. He and jakes started arguing and jakes turned to his vehicle to retrieve his handgun, a .50 caliber desert eagle. As he turned towards the victim with his firearm displayed, victim Jesse King fired at him striking jakes multiple times. jakes gun was never fired. jakes told employees of the City of Walterboro, Colleton County Sheriffs Office that his co-defendant, James Davis, was the one who fired at Jesse King from the passenger side of the cadillac for which I have forensic reports to show that multiple shell casings from a .9mm handgun was indeed found on the ground at the crime scene, which by incident report would have been the passenger side where State's witness James Davis was positioned. Moreover, the 911 call from victim Jesse King, which I, david jakes, myself have on records clearly showed that the victim, Jesse King, called 911 and said that "He was involved in a self-defense shooting." Never mentioning anything about any attempt robberies. Nothing was ever asked for, or even attempted to be taken in this

case. It wasn't until days latter where employees of the federal municipal corporation CITY OF WALTERBORO, SOUTH CAROLINA, COLLETON COUNTY, et seq., located the suspect, James Davis, who testified at trial that he first told officers he wasn't even in the car that night and had no involvement or knowledge. Then somehow (which anyone could see that officers bribed him) he later said that david jakes was going to rob him and antwon mcmillian was shooting across the inside of the car over his, state's witness, head and towards the victim. Which was clearly a lie and if I, david jakes, have to bring any of this up in Post-Conviction Relief court, I will hire a crime scene expert, which my family in New York is trying to obtain at this moment to show y'all in PCR court that even the forensic officer should have easily determined those facts. And I'm also trying to locate the high point .9mm handgun, black in color, that James Davis was firing at Jesse King, which should not be hard at all because people in Smoaks, South Carolina now honestly know about James Davis' false statement and feel bad about what their family member had done to me and antwon mcmillian. Because everyone knows James Davis lied and he was the one doing the shooting. It wasn't until James Davis gave his false statement to officers when anything about attempted armed robbery came into view, with the witness, co-defendant lying that he wasn't shooting from that car, indicating the blame to antwon mcmillian. Then at trial, the 911 dispatcher told the jury at the beginning of trial that the call came in as a self defense shooting and she was the one who determined that it was an attempted robbery. How could South

Carolina allow a dispatcher to determine the facts of law and elements of the crime set forth for defendant to answer to. All this shows that the City of Walterboro orchestrated a trial against me and antwon mcmillian.

The victim, Jeanine Metzfield never said anything on her written statement with police on the night of the incident that she heard me, david jakes, say anything about "Give it up." Her statement said she heard me scream "Hey pretty lady." Which is the God honest truth, I never had no gun in my hand at that time. Then here it is, later at trial, after the State told her what their lying witness said, the States going to tell her to say at trial that I said "Give it up." Thereby, trying to plant false elements of the crime. James Davis' credibility is no good. The State of South Carolina dismissed his charges for his testimony and he, James Davis, told my jury that he was still going to be tried on all accounts. He even told the jury that employees of the federal municipal corporation, CITY OF WALTERBORO, SOUTH CAROLINA, et seq., offered him a deal to testify at first which would have been at the time of his statement. How I know, because if officers had clear facts before Davis' false statement then why offer him a deal. The only thing they had to do was submit his giving statement and trial all three suspects together. The here it is at trial, you have Judge Buckner allowing a police officer's wife to stay on my jury. (See my Appeal). Then another member of the jury, April Gadson, even asked the court, before jury deliberation, how was she going to decide this case under the hands of one, hands of all if James Davis wasn't being tried as well. "Good Question!" In addition, another member of the

jury, a male, was on probation and my public "pretender", Harris S. Beach, was his attorney in that matter. "[T]hat's clearly a conflict of interest." More proof that the federal municipal corporation was corrupted is the fact that Lt. Allen was actually fired from Colleton County Sheriff's Department for being a dirty officer. He was found guilty a year after my trial in a federal court. This officer holds no credibility and his (Allen Inabennett) signature is on a tremendous amount of documents related to my case, including "arrest warrants" that should now be void.

According to the laws of the Federal Legislative Democracy for the District of Columbia, a federal municipal corporation d/b/a the United States of America, the elements of my case should have been presented to a jury for final determination. My attorney as well as attorney for co-defendant antwon mcmillian moved for a Post Verdict Motion and Motion For Retrial which the judge denied it with stating the State has a testimony from co-defendant James Davis, who the State orchestrated as their witness. During motions, defense attorney argued clearly on the lack of elements or property name in this case. But then again, the use of the STATE OF SOUTH CAROLINA as a plaintiff in this case is unjust and shows evidence of despotism and tyranny. Despotism - is a form of government in which a single entity (court) rules with absolute power. That entity may be an individual, (judge) as in an autocracy, or it may be a group (bar members), as in an oligarchy. The dispotism means to "rule in the fashion of a despot" and does not necessarily require a singular "despot," an individual. Tyranny - a nation under cruel oppressive government, cruel, unreasonable, or arbitrary use of (police) power or control. To say that the STATE OF SOUTH CAROLINA is the complaining party in this action, denies me the right to confront my accuser and witness against me. That in itself violates the confrontation clause. The STATE OF SOUTH CAROLINA did not testify in court

of any injury to person or damage to property committed by me, that would have established probable cause in the case.

Probable Cause - is a claim of a right violated, an injury and/or damage caused by a man/woman, the conduct that caused the injury/damage, and a petition for restitution of right violated, or injury/damage caused, of which, there is none on file with this case. Furthermore, no alleged victim of this case whatsoever even made an attempt to be present at the preliminary hearing of State v david jakes or antwon mcmillian.

There is no amendment to the South Carolina Constitution that allows for any employee (police) of the federal municipal corporation CITY OF WALTERBORO, SOUTH CAROLINA, COLLETON COUNTY SHERIFF OFFICE, et seq., or employee (solicitor) of the federal municipal corporation CITY OF WALTERBORO, SOUTH CAROLINA, COLLETON COUNTY, et seq., to use the State of South Carolina as the complaining party in a criminal proceeding in court. If there is, it must be in the initial documents submitted to the Clerk of Court to initiate this claim, unless the federal municipal corporation, CITY OF WALTERBORO, SOUTH CAROLINA, COLLETON COUNTY, et seq., is part of a communist country. Without such authorization in the South Carolina Constitution, the STATE OF SOUTH CAROLINA as a plaintiff in this case, lacks 'standing to sue' (SCRC 17(b)) and therein, the federal municipal corporation GENERAL SESSION COURT OF THE CITY WALTERBORO, SOUTH CAROLINA, COLLETON COUNTY, et seq., to hear or adjudicate this case, LACKS SUBJECT MATTER JURISDICTION.

Due to the set forth allegations of this Motion to Dismiss Conviction, I, david jakes ask the court to allow me "at this given time" to accept a plea for time served which I have already completed 6½ years on this sentence, and know that I am only guilty of the unlawful carrying of a firearm, but NEVER during the commission of a violent crime.

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CONCLUSION

S.C. SUPREME COURT

Colleton County General Session Court found me guilty of attempted armed Robbery for "allege" victims Jeanine Metzfiel, Amanda Metzfield and Jesse King. However, as defense attorney argued during post-verdict and direct verdict motions, that there are no elements or evidence to show where neither victim was a object of attempted robbery. Pretrial records and also the records at trial shows nowhere where Amanda Metzfield or Jesse King was even a part of whatever act may or may not have took place. Each indictment for each allege victim has to name at least one different element fact to warrant separate indictments for crime set forth. In this case, even in the light most favorable to the State, defendant jakes made no attempted actions towards Amanda Metzfield whatsoever. Also, Jesse King testified himself that he was not in view of what the State is alleging a crime. It wasn't until he came out from behind his truck and pointed a gun at me is when he place "himself" in the incident, as I, david jakes never had a gun in my hand at the moment. But even in the light most favorable to the State, Jesse King even testified that I only pointed a gun at him (with no allege words) and he clearly shot me. Not one time did Jesse King say I attempted to ask for or take any property belonging to him... there is no allege property whatsoever in this case, so what did I attempted to rob?? Jeanine Metzfield said on her written statement that I brandish a firearm and said "Hey pretty lady." in a unclear voice. In the light most favorable to the State, how is saying "Hey pretty lady." a element of taking something that I never asked for. It wasn't until lying co-defendant James Davis gave his false statement, is when Jeanine Metzfield later changed her words at trial from her written statement that night before State's witness James Davis was apprehended, and told the court that she heard me say something about "Give it up." (See trial transcript where on cross

examination Jeanine wasn't even sure of what she heard. She stated to the jury that she was sure of the "pretty lady" part. Even then it doesn't make any sense because the lying co-defendant James Davis who is now free and never left to answer charges never even mentions me saying anything about me saying "Hey pretty lady," but rather lie and said I said "Give it up." to clear his name. So who's lying here? This was a orchestrated trial for 7 indictments and no evidence.

(See:) *John Biglio vs. United States,*
405 U.S. 150, 92 S.Ct. 763

Submitted this 27 day of October, 2016.

Respectfully submitted,

David Jakes, SCDC #347615
Pro se
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990 Wisacky Hwy.
Bishopville, SC 29010-1775

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S.C. SUPREME COURT

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CERTIFICATE OF SERVICE

S.C. SUPREME COURT

I, david jakes, herein swear that a true copy of the enclosed MOTION TO DISMISS CONVICTION was served on the following party this 27 day of October, 2016 by placing same in the United States Postal System, postage prepaid, by way of the postal service at Lee Correctional Institution in Bishopville, South Carolina addressed as follows:

PATRICIA C. GRANT
Clerk of Court
O. P. Box 620
Walterboro, PZ 29488
South Carolina, USA

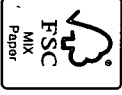
Office of Attorney General
Alan McCrory Wilson
Columbia, PZ 29201
South Carolina, USA

Sincerely,

David Jakes, SCDC #347615
Pro se
Lee C.I. - F5 A170
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