STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Donald B. Hocker, Circuit Court Judge

APPELLATE CASE NO. 2013-002134

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SC Court of Appeals

JOHN W. DOBBINS — APPELLANT

V.

STATE OF SOUTH CAROLINA — RESPONDENT

APPELLANT'S PRO SE BRIEF

John W. Dobbins, 338485
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010
Pro Se Appellant

Salley W. Elliot, Esquire
1000 Assembly Street, Rm.519
Columbia, SC 29201
Respondent's Counsel

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in failing to Rule SC Code Ann §14-7-1110 as applied is unconstitutional, and creates an disparate in treatment that deny fundamental fairness, and deprives Equal Protection of the law guaranteed by Art 1, §3 of South Carolina Constitution; and the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.
2. Did the Trial Court err in failing to quash indictment(s) where substantive crime and conspiracy exist in one count indictment(s) constitutes duplicity; and furthered violated double jeopardy clause, denying guaranteed rights by Art 1, §3, §11, and §12 of South Carolina Constitution; and Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.
3. Did the Trial Court err in failing to suppress evidence seized from warrantless search; and when consent was signed under duress, unintelligently, and after search was conducted; and no genuine exigent circumstances existed, depriving Appellant's guaranteed rights by Art I, §3 and §10 of South Carolina Constitution; and Fourth and Fourteenth Amendments of the United States Constitution.
4. Did the Trial Court err in denying directed verdict motion, and charging jurors they could infer possession with intent to distribute meth from possession of more than a gram, amounts to a charge on the facts, in violation of Art 5, §21 of South Carolina Constitution; Fifth and Fourteenth Amendments of the United States Constitution.
5. Did the Trial Court err in denying Directed Verdict motion, when the State's primary evidence relied on conjecture, and not facts, denied due process and equal protection of the law guaranteed by Art 1, §3 of South Carolina Constitution; and Fifth and Fourteenth Amendments of the United States Constitution.
6. Did the Trial Court err in failing to act sua sponte for return of Appellant's [$2,280] property not declared drug proceeds, nor judicially forfeitured to the State, or law enforcement, deprive guaranteed rights by Art 1, §3, and §10 of South

Carolina Constitution; and Fourth, Fifth, and Fourteenth Amendments of the United States Constitution.

STATEMENT OF THE CASE

On November 24, 2011, in Waterloo, South Carolina at approximately 3:00am, officers from the Laurens County Sheriff's Department pounded on Appellant's camper door and asked, "Does Ms. Shayla Gaines live here?" Appellant replied that she lived down the street near the lake, and attempted to shut the door as deputies perfected a forced entry into (camper) resident of John W. Dobbins at 122 Childs Circle, Waterloo, South Carolina, without warrant (Tr. Pg. 37, L. 1-4), weapons displayed . . . and shoved the Appellant to the floor, and immediately handcuffed him (Tr. Pg. 52, L. 9-12), body search and placed in rear of police car . . . and Ms. Wyatt was also handcuffed and placed in rear of another police car. Camper was searched (Tr. Pg. 37, L. 5-14), prior to signing consent to search form . . . no miranda warning executed . . . Appellant was asked location of Shayla Gaines . . . and who occupy the camper, Appellant replied to Deputy that he did not know her whereabouts . . . and that himself and Ms. Wyatt share the camper. A total amount of 2.5 grams of meth was found in various locations throughout the camper.

The Appellant was indicted for: (1) Possession with Intent to Distribute Methamphetamine, willfully, unlawfully and knowingly possess with Intent to distribute, dispense, deliver, and/or otherwise aid, attempt, or conspire to possess with intent to distribute, dispense, or deliver methamphetamine . . . 44-53-375; (2) Manufacturing methamphetamine, willfully, unlawfully and knowingly manufacture or otherwise aid . . . or conspire to manufacture methamphetamine . . . 44-53-375; (3) Unlawful disposal of methamphetamine waste, willfully, unlawfully and knowingly dispose of . . . any waste from production

of methamphetamine . . . or conspire with another . . . 44-53-376; (4) Possession of controlled substance, willfully, unlawfully and knowingly possess a quantity of Oxycodone . . . 44-53-0370; and (5) Possession of controlled substance, willfully, unlawfully and knowingly possess a quantity of Diazepan . . . 44-53-0370.

On September 11, 2013, the Jury found Appellant guilty on all counts. Appeal was timely filed.

ARGUMENT

ISSUE ONE:

> Did the Trial Court err in failing to Rule SC Ann §14-7-1110 as applied is unconstitutional, and creates an disparate in treatment that deny fundamental fairness, and deprives equal protection of the law guaranteed by Art 1, §3 of South Carolina Constitution: and the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

The Appellant contends that where SC Code Ann §14-7-1110, allows 10 jury strikes (Tr. Pg. 22, L. 20--Pg. 23, L. 6) for people who are convicted of perjury, breach of trust, grand larceny, etc., which carries substantially less time than Appellant facing manufacturing charge, and no reasonable explanation for it, (Tr. Pg. 64, L. 6-17). Section 14-7-1110 violates the due process and equal protection of the law to its citizens in jury trial, where individuals charged with potentially less serious offenses are given more strikes that defendant in instant case, violates Art 1, §3 of South Carolina Constitution; and Sixth, Eighth, and Fourteenth Amendment of the United States Constitution, thereby offending both state and federal Constitution. See Art 1, §15 of South Carolina Constitution.

ISSUE TWO:

Did the Trial Court err in failing to quash indictment(s) where substantive crime and conspiracy exist in one count indictment(s) constitutes duplicity; and furthered violation of double jeopardy clause, denying guaranteed rights by Art 1, §3, §11, and §12 of South Carolina Constitution; and Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The Appellant contends that Trial Court lacks jurisdiction to convict a defendant of offense(s) that the Grand Jury does not sufficiently state the offense(s), and furthered erred in allowing additional aggravating factors of substantive crimes and conspiracy in three separate one-count indictments [Possession with Intent to Distribute Methamphetamine; Manufacturing Methamphetamine; and Disposal or assistiong disposal of Methamphetamine waste]. Notice instrument fail to contain the necessary elements for conspiracy charge and fail to sufficiently apprise (Tr. Pg. 56-63, L. 13), State v. Guthrie, 352 SC 103, 572 SE 2d 309.

In State v. Gentry, 363 SC 93, 610 SE 2d 494, the Court must look at the indictment with a practical eye considering all surrounding facts and circumstances, including facts that are outside the indictment. It is the common practice in the state of South Carolina to allege the statutory language of the statute in the indictment, however the defense was not sufficiently put on notice with clarity to enable his counsel to prepare a defense adequately. The Notice documents fail to state the facts that he violated with specific drug law either by way of conspiracy, or by way of substantive offense. With regards to SC Code Ann §44-53-110, (Tr. Pg. 62, L. 15--Pg. 63, L. 13), it has two separate entities that ". . . controlled substance by a practitioner"

. . . or "individual or personal use" which is the defended category that appellant falls. To be accurate definition of manufacturing in the indictment it should that . . . "it was other than for personal use," and they haven't done it.

Duplicity in practice [pursuant to Black's Law] is the technical invalidity resulting from uniting two or more crimes in one count of an indictment. ____v.____ 173 NE 2d 474, 475. Whereby conspiracy require a combination of two or more persons to commit a criminal, or unlawful act, etc. It is essential that there be two or more conspirators; one cannot conspire with himself, ____v.____, 314 P 2d 625, 631. The Grand Jury notice instrument, or the State fail to properly notify the Appellant with specificity and clarity as to whom he conspired, in violation of Art 1, §3 and §11 of South Carolina Constitution; and Fifth and Fourteenth Amendments of the United States Constitution.

Double Jeopardy provision, and Art 1, §12 of South Carolina Constitution; and Fifth and Fourteenth Amendments of the United States Constitution, provide that "no person . . . shall be subject for the same offense to be trwice put to jeopardy . . .", bar double punishment, or double prosecution for single, or related acts, SEE, Blackburger v. United States, 284 US 299 (1932), the Blackburger Test states that where the same act, or transaction constitutes a violation of two distinct statutory provisions. The test to be applied to determine whether there are two offenses, or only one is whether each provision requires proof of an additional fact which the other does not, Blackburger, 284 US at 299, establishing "same elements" test to distinguish whether multiple offenses are really singular . . . analysis

as to double jeopardy, Ib at 304. The Appellatnt contends that in instant case, Manufacturing Methamphetamine; Possession with intent to Distribute Methamphetamine; and Unlawful disposal of Methamphetamine waste, includes the same elements/facts. Punishing appellant for multiple offenses for a substantive crime is prohibited in the meaning of double jeopardy.

ISSUE THREE:

> Did the Trial Court err in failing to suppress evidence seized from warrantless search; and when consent was signed under dures, unintelligently, and after search was conducted; and no genuine exigent circumstance existed, depriving Appellant's guaranteed rights by Art 1, §3, and §10 of South Carolina Constitution; and Fourth, and Fourteenth Amendments of the United States Constitution.

On November 24, 2011, at approximately 3:00am, four officers in separate patrol cars from the Laurens County Sheriff's Department arrived at 67 Mercy Lane, Waterloo, South Carolina, to investigate a domestic dispute between Mr. Bill Ardis and Ms. Shayla Gaines (live-in girlfriend), residence of Mr. Ardis (jilted lover) whom informed Deputy Hodges he was assaulted by Ms. Gaines, and said she could be found in a camper at 102 Childs Circle [Tr. Pg. 32, L. 2-25]. Subsequently, an hour later after Deputy Hodges cleared from Mercy Lane, a group of deputies proceed to 102 Childs Circle, Waterloo, South Carolina, with intention to arrest Ms. Gaines on a magistrate (blue ticket) offense [Tr. Pg. 39, L. 8-9; Pg. 46, L. 23-24; and Pg. 102, L. 13-20], void address or identification check on Ms. Gaines [Tr. Pg. 39, L. 9-13]. Moreover, no arrest warrant obtain [Tr. Pg. 46, L. 25-- Pg. 46, L. 1-12] . . . Nor was a search warrant obtain for 102 Childs Circle [Tr. Pg. 27, L. 18-22; Pg. 37, L. 2-4]. Arriving at scene Deputy Nick Mye

secured the rear of camper [Tr. Pg. 34, L. 2-5], and alleges to have smelled an odor associated with methamphetamine labs [Tr. Pg. 34, L. 5-6]. After deputy knocked on door and announced Sheriff's Office . . . Mr. John William Dobbins opened his door . . . and responded to the deputy's question . . . that Ms. Gaines is not here . . . no one lives here by that name, and shut the door . . . Deputies made a forcible entry with weapon displayed, as Appellant was shoved to floor and immediately handcuffed [Tr. Pg. 52, L. 9-12], body searched and placed in rear of patrol car, Ms. Sandy Ann Wyatt was handcuffed and put in rear of another vehicle as deputies continued to search the camper, SEE, Arizona v. Gant, 129 SCt 1710. The Appellant contends that multiple Fourth Amendment violations occurred in distinct aspect of both State and Federal Constitutions [Art 1, §10; and Fourth and Fourteenth] perspectively, intended to counter the abuse from warrantless entry to search dwelling for suspect, weapons, or contraband on private property. The Appellant has a right to be secured in his house camper, and free from unreasonable government intrusion, Silverman v. United States, 365 US 505, 511, apply equally to seizure of property and persons, absent exigent circumstances. That threshold may not reasonably be crossed without a warrant by an impartial magistrate determine from an affidavit showing probable cause, whether information possessed by law enforcement officers justifies the issuance of a search warrant. SEE, Payton v. New York, 445 US 573 (1980) citing, "entry of private residence without a warrant and with force, warrant required, and magistrate's determination of probable cause between the zealous officers and the citizen that arrest is justified."

ILLEGAL ENTRY/WARRANTLESS SEARCH AND SEIZURE

Where Officers was initially looking to arrest Ms. Gaines, at a residence other than her own for a distinct crime unrelated to Appellant, and without warrant did perfect a forcible illegal entry . . . and conducted a warrantless search and seized contraband once inside, is not a sufficient intervening event to provide independant grounds to search dwelling . . . or arrest without warrant, United States v. Sprinkle, 106 F 3d 613, 619 (4th Cir 1997). Generally, evidence derived from an illegal search is deemed "fruit of the poisonous tree," and is inadmissable, United States v. Najjar, 300 F 3d 466, 477 (4th Cir 2002) (citing Wong Sun v. United States, 371 US 471, 484-85 (1963). Evidence should have been suppressed at trial, on grounds that seizure resuklting from warrantless search was not based on probable cause, or reasonable suspicion, SEE, State v. Mitchell, 323 P 3d 69,78 (Ariz Ct App 2014) (Rejecting application of the goodfaith exception rule, because no Supreme Court authority explicitly authorized law enforcement to "trespass" onto private property to obtain information . . . or physical occupation of private property for the purpose of obtaining incriminating evidence. Search warrant was necessary to insulate the officers from trespassing and illegal search of dwelling. Evidence obtained through exploitation cannot be admitted into evidence once illegality has been shown. Appellant's camper was thoroughly searched prior to Deputy Moye interrogation regards to location of Ms. Gaines . . . and coerced . . . and threatened with impending unrelated charge while impained on narcotics and under compulsion to sign consent form to search dwelling at 120 Childs Circle and sometimes afterward added 102 Childs Circle [Tr. Pg. 100, L. 12--Pg. 101, L. 1-10]. Moreover,

in addition to what were done deputies fail to administer "Miranda warning" before subjecting him to custodial interrogation (emphasis added). Just for argument sake, even if it be justified to enter a residence without warrant once inside . . . suspect handcuffed, no danger to safety of public, officers, or evidence warrant should be obtained, Arizona v. Gant, 129 SCt 1700. The Fourth Amendment does not vanish on entry . . . nor does it depend upon a reviewing court assessment of the likelihood in each particular case that the [camper] would have been driven away, or that its contents would have been tampered with during the period required for the police to obtain a warrant, Michigan v. Thomas, 102 SCt 3079. Such an affront to the Fourth Amendment would render it meaningless an would not serve the exclusionary rule's stated purpose of deterring unlawful police conduct, State v. Brown, 401 SC 82,92; 736 SE 2d 268 (2012), the exclusionary rule's sole purpose is to deter Fourth Amendment violation, SEE, United States v. Lenco, 182 F 3d 517, 526 (7th Cir 1999). If this honorable Court were to confirm officer's conduct under circumstance Law Enforcement would be free to search the residence of any citizen without warrant.

NON-EXIGENT CIRCUMSTANCE:

Deputies testified that on November 24, 2011 that their sole purpose and primary concern were to proceed to 102 Childs Circle and arrest Ms. Gaines [Tr. Pg. 35, L. 19-25; Pg. 87, L. 19-21]. . . despite no warrant in hand authorizing her arrest [Tr. Pg. 37, L. 2-4]. The Appellant contends no exigent circumstance existed . . . and that deputies created the situation as a guise to cloak unlawful warrantless search on private property. Six deputies in six patrol cars arrived

at scene . . . ample time to stake out exits and seek a warrant . . . or have search warrant conveyed through telephonic patrol car computer system. This were not a "hot pursuit case" that fall within the exigent circumstance exception to the warrant requirement, SEE, Warden v. Hayden, 387 US 294. Deputies admitted there is a policy for obtaining warrant late night but choose not to, [Tr. Pg. 42, L. 4-15]. Appellant contend that deputies consciously knew that issuance of search warrant would not be an absolute certainty by a neutral magistrate at 3:00am upon trivial detail . . . void proper investigation, or probable cause . . . and alleged victim's problematic history with Ms. Gaines . . . and housing her at his residence while she were under house arrest [Tr. Pg. 53, L. 4-Pg. 54, L. 3]. Had deputies done a routine identification, and address check but consciously fail to do [Tr. Pg. 39, L. 9-13], they would have discovered Mr. Ardis information were exaggerated. Instead they operated on flawed generalized hunch and nothing more, lacking credibility of probable cause for which a magistrate could infer probable cause . . . or that suspect would be there, SEE, United States v. Gaultney, 606 F 2d at 548. Furthermore, Deputies Hodges and Veal knew Appellant from previous drug arrest, [Tr. Pg. 324, L. 15-17; Pg. 325, L. 4-7], thereby used occasion as pretext to intervene on his privacy when no probable cause existed at time. SEE, United States v. Dawkins, 17 F 3d 399, 406 (DC Cir). (held, entry not justified based on broad theory of exigent circumstances akin to totality of circumstances). SEE ALSO, ____ v. ____, 412 US 218; ____ v. ____ 462 US 213. No exigent circumstance existed to justify forcible entry . . .or warrantless search for Ms. Gaines that were not found inside. [Tr. Pg. 36, L. 14-15; Pg. 89, L. 16-19] . . . and camper residence

had a shed and front porch affixed to it [Tr. Pg. 314, L. 11-21]. Motions were made on Appellant's behalf for new trial, and suppression of all evidence seized [Tr. Pg. 23, L. 15--Pg. 25, L. 1-5]. Trial court erred and abused its discretion in ruling probable cause . . . exigent circumstance existed, requires reversal where all Fourth Amendment violations are by constitutional definition unreasonable.

UNCONSTITUTIONAL/UNLAWFUL CONSENT:

The Appellant contends that consent form to search dwelling were constitutionally invalid; void on its face; lacks credibility; involuntarily and unintelligently entered, in violation of the Fourth, Fifth, Sixth, and Fourteenth Amendsments of the United States Constitution, for the followign reasons:

FIRST:

The Appellant contends his Fourth Amendment rights against warrantless search were initially violated when deputies made forcible entry of his residence without authorization issued by magistrate based on probable cause, and in violation of Art 1, §10 of South Carolina Constitution.

SECOND:

Consent to search document subscribed after illegal entry and search, refusal of consent document were futile and sham by Deputy Moye at that point, Furrow, 229 F 3d at 814; Brown, 95 SCt 2254; and tainted, invalid under the Fourth Amendment, SEE, United States v. Hotal, 143 F 3d 1223, 1228 (9th Cir). Furthermore, the consent document is clearly unrelated to to deputies initial unlawful conduct. SEE, Georgia, 883 F 2d at 1416. Nor does questionable consent document purge the taint of officers initial violation . . .or taint on evidence seized subsequent to illegal search. In addition, the consent document must be specific as to premise and place to be searched . . . and may not refer to two different addresses for one location conveying no intelligible meaning .

. . or specificity, where address in body of consent document 120 Childs Circle that Appellant signed were not his address [Tr. Pg. 100, L. 12--Pg. 101, L. 7]. Document were fatally flawed, and resulted in undue prejudice to Appellant, and should be suppressed.

THIRD:

Deputy Moye, officer administrating consent document fail to apprise him pursuant to Miranda v. Arizona, 384 US 436, 492, Fifth Amendment priviledge against self-incrimination, nor did form contain a Miranda waiver . . . or advise him that he could refuse consent, when under arrest . . .and subjected to custodial interrogation. SEE, Anobile v. Pelligrino, 284 F 3d 104 (2d Cir); United States v. Jones, 846 F 2d 358 (6th Cir).

FOURTH:

Consent involuntary, United States v. Jones, Id, at 360-361. Before the prosecution may introduce a defendant's incriminating [consent form] statement [Tr. pg. 101, ln 9-12], it must prove that the accused voluntarily, knowingly, intelligently waived his Miranda rights, and Miranda warning must be given when subject is both in custody and about to be subject to government interrogation . . . and must show that evidence were obtained in compliance with Miranda, id. Absent proof that proper warning given and valid waiver of rights, evidence obtained [consent to search document and all else] through custodial interrogation is inadmissible at trial, Miranda, id.

WARRANTLESS THIRD PARTY RESIDENCE ILLEGAL SEARCH:

The transcript of record clearly indicates [Tr. Pg. 23, L. 15--Pg. 106, L. 9] that officers were allegedly seeking to arrest Gaines on unrelated matter, although deputies had not obtained arrest or search warrant(s) in instant case. SEE, Johnson v. United States, 333 US 10: Payton v. New York, 445 US 573. Absent a legitimate exigent circumstance . . . lawful consent . . . hot pursuit . . . or authorization by magistrate on probable cause, law enforcement could

not legally search for subject of arrest warrant in home of Third Party without first obtaining search warrant, SEE ALSO, Perez v. Simmons, 884 F 2d 1136, 1141 (9th Cir), held, search warrant required to arrest in home of third party dwelling. Deputies decision to forcible enter Appellant's dwelling were based ion a hunch that Gaines were inside and nothing more, but was not there [Tr. Pg. 36, L. 14-15; Pg. 89, L. 16-19]. Such deprivation of privacy must be based on independant showing that a legitimate object of a search location in the third party's dwelling, such determination is the province of the magistrate, and not that of police officers. Conduct was not consistent with the Fourth Amendment . . .plus Gaines alleged simple assault charge provided an insufficient attentuation to lessen the magnitude from taint of the illegal search . . . attenuation factors weighs against admission of the seized evidence. The violation were not intervening criminal act sufficient to dissipate the taint from the underlying Fourth Amendment violation. Evidence obtained by illegal actions of the police is fruit of the poisonous tree, and must be suppressed for unreasonable search and seizure, United States v. Crawford, 372 F 3d 1048, 1054; Wong Sun v. United States, 83 SCt 407. The trial Court erred and abused its discretion in denying directed verdict.

ISSUE FOUR:

> Did the Trial Court err in denying directed verdict motion, and charging jurors they could infer possession with intent to distribute meth from possession of more than a gram, amounts to a charge on the facts, in violation of Art 5, §21 of South Carolina Constitution; Fifth and Fourteenth Amendments of the United States Constitution.

The trial Court erred and abused its discretion in denying directed verdict motion, when charging jurors they could infer possession with intent to distribute meth from possession of more than a gram . . . to the contrary the state never proved its burden that Appellant were in sole possession, because the total amount of meth residue (2.5 grams) was collected from various locations throughout the camper [Tr. Pg. 90, L. 24-25] . . . and where co-defendant Ms. Sandy Wyatt, livein girlfriend were also using meth [Tr. Pg. 40, L. 18-21; Pg. 89, L. 20-22] . . . items collected (two meth pipes, meth on mirror, etc.) not tested for fingerprints [Tr. Pg. 153, L. 18--Pg. 154, L. 3], and nothing fixed in distribution form, or in dispersive package[Tr. Pg. 97, L. 18-24], meth were not in bag, but laying out for personal use [Tr. Pg. 111, L. 3-6]. No paraphernalia collected, or presented for review to support State's theory a plan or scheme of premeditated conspiracy of intent to distribute meth. Inference or speculation from other unproven facts fail to prove State's contention, possession of one gram or more of meth alone does not prove he intended to distribute meth, fail to establish a logical consequence from facts unproven, or alleged sole constructive possession requires reversal of conviction for possession of methamphetamine with intent to distribute, United States v. Scofield, 433 F 3d 580, 586-87 (8th Cir 2006), and where jurors determine evidence by preponderance of evidence not reasonable doubt requires vacation of sentence . . . because speculation is not reasonable doubt. Trial Court further erred and abused its discretion where due process prohibits instruction requiring jurors to presume existence of ultimate facts which is an element of offense(s) charged from proof of predicate, non-element fact, SEE. United States v. Waldemer, 50 F 3d 1379, 1386

(7th Cir). Due process further prohibits using evidentiary presumptions in Jury Charge that would have effect of relieving state of burden of proof beyond reasonable doubt of essential element of crime, SEE, Liggins v. Burger, 422 F 3d 642, 650 (8th Cir 2005); SEE ALSO, Patterson v. Gomez, 223 F 3d 959, 962-63 (9th Cir 2000) held, Due Process prohibits Jury instruction creating presumption that relieves the State of burden of proving essential element of intent, SEE, Myrick v. Maschner, 799 F 2d 642, 645-46 (10th Cir 1986). Trial court erred where jurors were instructed on pages 10, 12, 15, and 17 of charge sheets that they could use inference and presumption as evidentiary fact of intent . . . possession . . . knowledge, shifted the burden of proof in instant case in violation of Art 5, §21 of South Carolina Constitution, and Fifth and Fourteenth Amendment of the United States Constitution. Elements constituting a crime are necessary for criminal conviction that must be proven beyond a reasonable doubt, United States v. Galloway, 976 F 2d 414, 423 (8th Cir). In addition, due to prosecutorial misconduct, during his summation [Tr. Pg. 287, L. 14- Pg. 288, L. 7] remark regarding one bag of meth allegedly found by deputy Veal in rear of patrol car that Appellant were placed [Tr. Pg. 139, L. 21-24] . . . but fail to establish by burden of proof that item found in patrol car belong to him, nor were the content in bag charged to him . . . prosecution knew it would be unethical/misconduct to indicate . . . or imply to information . . . or material, in closing argument not associated in his case, SEE, United States v. Samad, 754 F 2d 1090 (4th Cir). Where violation of fundamental rules of evidence and basis rights resulted in undue prejudice to the Appellant that were not cured by appropriate instruction to the jury, inclusion of highly improper remark in

prosecution's summation should have been declared mistrial prior to return of verdict, SEE, ____ v. ____, 595 F 2d 751; ____ v. ____, 664 F 2d 971.

ISSUE FIVE:

Did Trial Court err in denying directed verdict motion, when the State's primary evidence relied on conjecture, and not facts denied due process, and Equal Protection of the Law guaranteed by Art 1, §3 of South Carolina Constitution, and Fifth and Fourteenth Amendment of the United States Constitution.

The Appellant contend that the Trial Court erred in denying the defense motion for directed verdict [Tr. Pg. 242, L. 9-23, Pg. 143, L. 1-17; Pg. 246, L. 4-5], depriving him of a fair trial . . . departing from the truth and accuracy of the facts attested to in the Transcript, allowing jury to improperly form their decision from unproven facts, conjecture . . . or I guess you're right attitude to arrive to verdict. Directed verdict should have been entered in trial by the court without consideration by the jury, because the facts elicited during the trial, together with the applicable law made it clear that the directed verdict was the only one which could have been reasonably returned, and now should be reversed by this Honorable Court on the grounds that the verdict was against the weight of the evidence, where Appellant was convicted of "Disposal of Meth Waste", more specific "Plastic Bottle", merely because a bottle was found in residence trash can and because a small amount of meth (2.5 grams) were collected from various locations throughout dwelling, it were concluded he disposed of meth waste [Tr. Pg. 173, L. 19-24] . . . despite the fact that bottle taken from indoor

trash can . . . not in the enviroment which he is charged . . . were not analyzed by SLED [Tr. Pg. 175, L. 5-18]. Testimony by State's witnesses was given at trial . . . sergeant Veal of Narcotics Division testified that no pseudoephedrine were found [Tr. Pg. 149, L. 22-24] . . . and the State's exhibit 9 (bottle with liquid) was not analyzed by SLED for pseudoephedrine [Tr. Pg. 150, L. 15-20] . . . sergeant Veal also testified that exhibit 7 (bottle in trash can) was not tested. Lieutenant Higginbotham of Laurens County Sheriff's Department testified that he ". . . don't know what was in those bottles" . . . and ". . . don't know if there was any residue of meth lab in those bottle . . ." [Tr. Pg. 114, L. 1-- Pg. 115, L. 7] SLED Forensic Scientist Zuikovich testified that he ". . . were given no plastic bottles to analyze with white powder in it", [Tr. Pg. 218, L. 6-- Pg. 219, L. 22] . . . nor were the coffee grinder and scales analyzed before they were destroyed on location . . . items had no inculpatory value to the state, but held exculpatory value to the defense relevant to his innocence of charge(s). A witness may only testify as to facts within his knowledge, and may not present conjecture to the jury, SEE, McCormick, Evidence §10 (4th Ed 1992). A jury cannot render a verdict on the basis of conjecture,but must find its verdict based upon the evidence admitted to in court of substantial facts which charge(s) are based . . . competent evidence substantiated by existance of evidence. The State fail to meet its burden on the elements of the charge(s) to put facts in issue. Where the State fail to present competent evidence to the jury/court that prove Appellant attempted, or did unlawfully disposed chemical waste period (emphasis added). The trial court further erred in denying directed verdict where the prosecution fail

to present competent evidence . . . or sufficient basis to put an issue of manufacturing methamphetamine before the court, because inculpatory evidence were nonexistant. In addition the state failed to prove that any one of the item(s) (bottles, scale, or coffee grinder) contained meth residue. Furthermore, the state cannot comment on material not analyzed . . . or matter . . . or indicate . . . or imply to information as material facts not properly before the court to support state's witness testimony, United States v. Samad, 754 F 2d 1090 (4th Cir). The destruction of crime evidence (bottles, scale, coffee grinder, etc.) and the trial court's denial of Appellant's motion to suppress said items, and objects to overrule and make void prejudicial information testified to by state's witnesses sustain by the trial court, resulted in undue prejudice to the Appellant. Transcript of record thoroughly contradict the prosecution contention that manufacturing methamphetamine were in process, when essential material ingredient [pseudoephedrine] the nucleus core component was inexistant . . . and state's witnesses admitted not knowing if there was any residue of meth . . . or pseudoephedrine in those bottles. The Appellant was entitled to a directed verdict when the state fails to produce evidence of the offenses charged, State v. Cherry, 361 SC 588, 606 SE 2d 475, 478 (2004), and must acquit Appellant when state fail to meet its burden.

ISSUE SIX:

> Did the trial Court err in failing to act sua sponte for return of Appellant's [$2,280] property not declared drug proceeds, nor judicially forfeitured to the state, or law enforcement, deprived guaranteed rights by Art 1, §3, and §10 of South Carolina Constitution; and Fourth, Fifth, and Fourteenth Amendments of the

United States Constitution.

The Appellant contends that the trial Court erred and abused its discretion in denying directed verdict, and further erred by neglecting to perform what the law requires was left undone, whether inadvertant . . . or error when allowing the Laurens County Sheriff's Office to seize and wrongful conversion of personal property [$2,280], void substantive and/or procedural due process . . . and where the state fail to meet its burden of proof, by proving that funds were drug proceeds. The State's witnesses gave testimony . . . Deputy Higginbotham [Tr. Pg. 108, L. 20-25] testified a little over $2,000 was confiscated . . . Deputy Veal [Tr. Pg. 140, L. 6-15] testified that money was found on Appellant, and seized by the Sheriff's Office, in the neighborhood of $2,200. Testimony was also given by defense witness Joseph Dobbins [Tr. Pg. 235, L. 9-- Pg. 237, L. 18], that they were working general construction during the time of the incident November 2011, completed a job and was paid $15,500 by employer Ms. Anita Ginsler. Thereby denying him procedural fairness guaranteed by Art 1, §3 of South Carolina Constitution; and Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, where the state's deprived him of property that requires notice . . . and right to a fair hearing be accorded prior to a deprivation, _____ v. _____, 237 US 309. In addition, the State/Laurens Sheriff's Office waived all rights to challenge why funds should be forfeited. In the interest of justice Appellant's funds [$2,280] should be returned without further delay.

CONCLUSION

For the foregoing reasons the Appellant respectfully request that the Honorable Court reverse the Trial Judge's abuse of discretion in denial of his motions for directed verdict; motions to suppress all evidence seized; motion to quash indictments; and overrule jury instruction as to inference that the Appellant's knowledge and possession may be inferred violates Article 5, Section 21 of the South Carolina Constitution in that it is a charge on the facts, on pages 10, 12, 15, and 17 of requested charge instruction; and that taking of funds [$2,280] without due process and equal protection of the law violates both State and Federal Constitution and is fundamentally unfair.

Respectfully Submitted,

Date: December, 18, 2014

s/ John W Dobbins Jr.
John W. Dobbins, Jr.,338485
Pro Se Litigant

NOTE: Appellant Defender Counsel Benjamin J. Tripp's deficient performance in failing to raise preserved viable Fourth Amendment issues for appeal, constitutes denial of Sixth Amendment Right to Counsel.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

State of South Carolina — Respondent.

v.

John William Dobbins, — Appellant.

APPELLATE CASE NO. 2013-002134

CERTICATE OF SERVICE

I, John W. Dobbins, hereby certify that I served copy of Appellant's Pro Se Brief, by United States Postal Service, Postage prepaid at: Salley W. Elliott, Esquire, Rembert Dennis Building, 1000 Assembly Street Room 519, Columbia, S.C. 29201.

Date: December 18, 2014

s/John W. Dobbins Jr.
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Can a Pro Se Brief have exibits attached

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South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
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