

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
KRISTI LEA HARRINGTON, CIRCUIT COURT JUDGE

RECEIVED

JUN 26 2017

SC Court of Appeals
RESPONDENT

THE STATE,

Vs.

JASON MORRIS GOURDINE,

APPELLANT

APPELLATE CASE No. 2016-000640

APPELLANT BRIEF

JASON MORRIS GOURDINE
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Jason Morris Gourdine

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STATEMENT OF ISSUES ON APPEAL

(1) Did the trial court err, and was the appellant's 5th., 6th., 14th., 15th. amendment rights of the U.S. Constitution, as well as Article IV § 2, and his Due Process rights violated, regarding the indictment(s) as constructed, by the language and or charge contained therein, which did create and or form conclusive presumption(s), that took away the appellant's presumption of innocence, and automatically shift the burden of persuasion to the defendant, in regard to the crucial elements of dispute, predetermining in advance the outcome of the proceedings?

(2) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of The U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, by the court's failure to grant the motion for severance, causing substantial prejudice to the appellant's trial proceedings?

(3) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated by the indictment(s) for attempted murder's failure to allege what weapon was allegedly used and who it was the appellant supposedly acted in concert with, in the same vein, the indictment for conspiracy's failure to allege who it was the appellant conspired with, in the body of the charging instrument?

(4) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment right of The U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, due to the court's failure to issue a final written order in the appellant's stand your ground hearing?

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(5) Did the trial court err, and was the appellant's 6th. and 14th. amendment rights of The U.S. Constitution violated, as well as Article IV § 2 and his Due Process rights violated, where jurisdiction is made void for Due Process violation, due to the appellant's counsel not being present at a critical stage of the proceedings?

(6) Did the trial court err, and was the appellant's 6th., 14th. amendment rights of The U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated by the trial court giving an improper jury instruction, producing extreme prejudice, informing the jury that a specific intent to kill is not an element of attempted murder?

(7) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of The U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, as well as Rules Of Court, Rules Of Criminal Procedure, as well as the court's jurisdiction being made void for Due Process violation, and or they were prohibited from enacting and or invoking and or continuing their Subject Matter Jurisdictionary "[p]owers" due to the "[p]rocedural [d]efect" in that there was no "[w]ritten"(emphasis added) order of continuance obtained pursuant to Article V § 4 of The South Carolina Constitution?

(8) Did the trial court err, and was the appellant's 5th., 6th., 14th. Amendment rights of The U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, by the trial court and or plea court allowing constructive amendment of the indictment(s) at the appellant's trial

STATEMENT OF ISSUES ON APPEAL CON'T

and or plea hearing?

(9) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of The U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, by the indictment(s) for attempted murder's failure to properly and or sufficiently apprise the appellant of the "[t]ime" of assault(s) , in the body of the charging instrument, as "[t]ime" is recognized by law?

(10) Did the S.C. Supreme Court in State v. Gentry supra err, engaging knowingly, intentionally in acts of fraud upon the court, in their efforts to essentially establish modern day slavery in violation of the Anti-Peonage Act, and abused their discretionary powers, which they even conspired to take away our right to vote, and or done so surreptitiously, in violation of the Voting Rights Act. And in such, the court's jurisdiction was made void for Due Process violation, and the court was prohibited from enacting and or invoking and or continuing its Subject Matter Jurisdictionary powers, even though they do indeed possess such power via state legislative statutes and or Congressional intent, due to the indictment defects and or errors contained and argued within this document, in violation of the appellant's 4th. 5th., 6th., 13th., 14th., 15th. Amendment rights of The U.S. Constitution, as well as Article IV § 2, also 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986; 18 U.S.C. §§ 241, 242, 1001, and the laws of Due Process?

STATEMENT OF THE CASE

On November 4, 2014, a Berkeley County Grand Jury indicted the appellant for three counts of attempted murder (2014-GS-08-1719, 1720,-1721) and criminal conspiracy (2014-GS-08-1722). On January 26, 2016, the Honorable Perry M. Buckner III, entertained the appellant's motion for prosecutorial immunity pursuant to the Protection Of Persons And Property Act. At this hearing the state was represented by Bryan A. Alfaro and Wilton H. McNeely. Attorney Kevin Kearse represented the appellant's codefendant, Steven Moses. Attorney Steven Davis represented the appellant. The Judge and parties, conspiring under color of state law, conducted a mock hearing for the purpose of defrauding the appellant of his immunity defense where they even solicited perjured testimony to do so. Thereafter this mock hearing was concluded, to deny the appellant the right to challenge its conclusion in the court of appeals, in acts of fraud upon the court. The conspiring Judge to aid the state actors failed to issue a final written order to prevent review in violation of the appellant's Due Process rights.

After this fiasco and mock stand your ground hearing. The state represented by Alfaro and McNeely, called the case to trial on March 14, 2016, before the honorable Kristi Lea Harrington and jury. The appellant was tried jointly with Moses to conceal further acts of prosecutorial misconduct. Ultimately the jury found the appellant guilty via the fraud and other injustices that occurred in this case, and the appellant was sentenced to life without parole. Appeal was made where Susan Hackett of appellate defense office represented the appellant. Anders Brief was filed. This appellant Brief now follows.

(1) Did the trial court err, and was the appellant's 5th., 6th., 13th., 14th. 15th. amendment rights of the U.S. Constitution, as well as Article IV § 2, and his Due Process rights violated, regarding the indictment(s) as constructed, by the language or charge contained therein, which did create and or form conclusive presumption(s), that took away the appellant's presumption of innocence, and automatically shift the burden of persuasion to the defendant, in regard to the crucial elements of dispute?

The appellant humbly contends, it is well established by the U.S. Constitution, the 5th., 6th., 14th. amendment(s), and The Bill Of Rights, that when an individual is brought before a court of jurisprudence upon accusation, that the individual alleged thereupon, is innocent, until proven by a jury of his peers, guilty of aforesaid accusation being brought before the court. This is the defendant's most basic, and most fundamental right by Federal and State laws pertaining to Due Process. Because the indictment(s) possess a structural constitutional error and or defect, in that the language and or charge contained therein, in constructed to produce conclusive presumption(s), that immediately shift the burden of persuasion to the defendant in regards to the crucial elements of the offense(s), the indictment(s) and or complaint documents violate Due Process as well as the 13th. and 15th. amendments.

The appellant did not object to this defect and or error at the time he gave his guilty plea, and or before he went to trial, but the defect and or error serve to render the indictment wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d. Indictments And Information § 299(1986); State v. Munn, 357 S.E.2d. 461(S.C.1987).

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss

V. Aetna Life Ins. Co., 228 S.E.2d. 108; State v. Broad River Power Co., 177 S.C. 240, 180 S.E. 41; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th. Edition).

By what is cited in Sandstrom v. Montana, 442 U.S. 510 at 520, 99 S.Ct. (2450) at 2457 (61 L.Ed.2d. 39)(1979), under (4) criminal law [west key] 324. The Supreme Court was unequivocal and unambiguous when it stated [v]erbatim:

"Conclusive presumptions conflict with the overriding presumption of innocence which the law endows the accused and which extends to every element of the crime charged, and they invade the fact-finding function which in a criminal case the law assigns the jury, Morisette supra, at 275, 72 S.Ct. at 255 and United States Gypsum Co. supra, at 446, 98 S.Ct. at 2878. The indictment and complaint documents around the nation, with the exception of the few states that corrected this problem, require the jury, if satisfied as to the facts that trigger the presumption to find intent unless the defendant offers evidence to the contrary. The indictments and complaints around the nation, by their structural constitutional error and or defect, language and or charge, mislead the jury, and we can add the defendant, to believe the presumption was not limited to requiring the defendant to satisfy the burden of production, when the burden of production is to be consistently bored by the state. A presumption although not conclusive, that has the effect of shifting the burden of persuasion would suffer the same similar infirmities", Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d. 508(1975), even if its embodied within the charge of an indictment or criminal complaint.

To state by use of an indictment or criminal complaint within the (50) states that an individual "did" with intent, knowingly, malice, aforethought, and other such elements imply conclusive firsthand knowledge of the events pertaining to the accusation being brought before the court. To such knowledge the Grand Jury who swore to such indictments, "[c]annot" by all scientific reason and jurisprudence ascertain as being true under such circumstances, especially without a trial. It is universally recognized that every oath [o]ught and [m]ust be founded upon "[c]ertain [k]nowledge", meaning knowledge that is certain beyond a reasonable doubt as being true (OMNE SACREMENTUM DEBET ESSE DE CERTA SCIENTIA). Inasmuch, the reality of this matter is that the issues in question, embodied in said indictments are allegations, they are accusations, not proven facts. So how could they be sworn by indictment as being true? Several other states have corrected this injustice. The State of South Carolina is one of the remaining states who have not. It is the command of the U.S. Constitution that anything, to include any and all legislation, whether it be by statute, indictment or otherwise, that is contrary to its inherent, intrinsic and explicit presuppositions "[s]hall [n]ot [s]tand", and therefore should be abolished and or rendered [v]oid (Article IV § 2 U.S. Const.).

"THE STATE MUST PROVE", I repeat, "THE STATE MUST PROVE", not the defendant, every single element that is charged, and that is crucial to the offense. It is not to be given to them in any way. They "[m]ust" first prove it before it can ever be declared. Every single time an indictment is sworn where it states clearly without ambiguity a defendant "did", etc., it immediately with destructive results tear down the commonwealth's constitutional Due Process right of being innocent until proven guilty, and automatically shift the burden of persuasion to the individual or commonwealth charged. It gives the false unconstitutional premise and or presumption that such has already been proven by a jury of one's peers, or even more specific, without a trial by a jury of one's peers in violation of Due Process Law. To have such unconstitutional presumption(s)

embodied within indictments and or criminal complaints that rely on such language is constitutionally infirm.

The appellant avers, in Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d. 508, the court found as a violation of Due Process and Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d. 323(1970), an indictment that [p]resumed that a defendant acted with "[m]alice and [a]forethought", if it were found that the homicide was intentional and unlawful, the defendant then bore the burden of disproving the elements. Similar in Sandstrom, the jury was instructed in determining whether or not the defendant had the [p]rerequisite intent to commit murder [t]he law presumes that the person intended the ordinary consequences of his voluntary actions, thereby relieving the state of its burden on that element. The language and or charge in the indictment(s) do the same thing, taking away the presumption of innocence, and by what is written predetermine in advance the outcome of the proceedings and presumes that a person intends the ordinary consequences of his voluntary actions, thereby relieving the state of its burden on the elements crucial to the offense. What if the person was forced to commit the crime at gunpoint? Or was the victim of brainwashing by the induction of some chemically based mind controlling drug, and under such control he committed the crime? Or it simply was an accident depending upon the crime charged? These are just a few reasons why such wording is impermissible, Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923).

Once the courts of South Carolina, New Jersey and the remaining (48) states constructed an indictment or criminal complaint contrary to the laws of Due Process, the Attorney for the appellant telling the appellant that he is innocent until proven guilty, or the Judge giving a curative instruction to the appellant and or jury of the defendant being innocent until proven guilty, or stating that the state or federal government has the ultimate burden and must prove every element, being given to the appellant and or jury, or stating the indictment or criminal complaint is not evidence to the appellant or jury,

does "[n]ot" cure the Due Process problem created and presented by the structural constitutional error, defect and or charge in the indictment(s) and Complaint(s).

Constitutional Law [west key] 266(7), in situation where elements of offense and "so-called" "affirmative defense", pose same ultimate issue of shifting the burden of persuasion, the Due Process problem is "[n]ot" eliminated by including an instruction in a charge that the state has the ultimate burden of proving every element beyond a reasonable doubt, and we can add to this, stating the indictments or criminal complaints are not evidence by the courts. The teaching of these cases is that "[a]ny" presumption, even if its not conclusive, even if its embodied within the charge of an indictment or criminal complaint, that has the effect of shifting the burden of persuasion to the defendant on any element of the crime charged violates Due Process, (U.S.C.A. Const. Amend. 14) Humanik v. Beyers, 811 F2d. 432(3rd.Cir.1989).

Such is a substantive disadvantage and not merely procedural disadvantage to the defendant related to his rights of Due Process. If the indictments and or criminal complaints around the nation, by their defect contained therein, require that the defendant prove he did not possess the "MENS REA" on any element pertaining to the alleged crime at trial and or before a guilty plea, 421 U.S. at 684, 95 S.Ct. at 1888, it becomes obvious that the burden of proof is shifted.

The Court recognized by requiring the defendant to prove the critical elements of said dispute, ID at 710, 95 S.Ct. at 1890, the Maine Rule, as do the nation's indictments and criminal complaints, affirmatively shift the burden of proof to the defendant(s), thus creating a further likelihood of an erroneous conviction and or guilty plea, due to the shifting of the burden of persuasion to prove one's innocence, as implied by the language and or charge in the indictment(s) and criminal complaint(s), ID at 421 U.S. at 701, 95 S.Ct. at 1890. Such serve

to negate certain facts of the crime which the government is to prove to the jury in order to convict the defendant of a crime charged, 432 U.S. at 207, 97 S.Ct. at 2325. The Winship Rule is clear in which the defendant creates a reasonable doubt on any element of the offense(s) charged is entitled to an acquittal.

In such a situation the relevance of the subsidiary facts in this case are the same and the sole significance of the defendant's evidence and or testimony concerning the "so-called" "affirmative defense", is to create a reasonable doubt on the existence of an element of the offense, by the preponderance of evidence to counteract an unconstitutional presumption.

As stated in United States v. Clemens, 843 F2d. 741, 752(3rd.Cir.1988):

"Justly put, merely labeling something as "affirmative defense", "a statutory procedure", and we can add to this, "an indictment or criminal complaint", does not mean that such constructed contrary to the laws of Due Process are constitutional. It must appear that the aforementioned, as related thereto, do [n]ot [n]egate any element of the crime, and we can add to this, shift the burden of persuasion, as the indictments and or criminal complaints of this nation do", ID W. Lafave & Scott Substantive Criminal Law § 1.8 at 75(1986). see generally Sandstrom v. Montana supra.. A defendant may be required to bear the burden of persuasion with respect to defenses such as showing justification or excuse, but not with respect to those that negate guilt by canceling out the existence of some required element of the crime, nor should his presumption of innocence be deprived, W. Lafave & Scott supra. at 71, 75. Accordingly, accessing the constitutionality of an "affirmative defense", "a statutory procedure", and we can add to this, "an indictment or criminal complaint", etc., of any kind related thereto, **even by terms of that which the statute requires, is defined in terms of fact so central to the nature of the offense that in effect, the prosecution has been freed of the burden of establishing**

each constituent element of the crime charged. If the indictments and criminal complaints around the nation already predetermine in advance of any proceeding that you "did" with malice, aforethought, intentionally, willfully, etc., the state has been relieved of proving it, see ID at 2.13 at 233. Also see Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923). By the structural constitutional error and or defect, its already given and no longer by the charge and or defect, have to be established. In order to contribute some significant burden, a rational trial juror's only option, and we can add, the defendant's only option, is to conclude that the indictments or criminal complaints are true, or are to be considered as true, because the language and or charge reflects such in depriving one of the presumption of innocence. It is clear from Martin v. Ohio, 480 U.S. 228, 107 S.Ct. 1098, 94 L.Ed.2d. 267(1987) and Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923), that this is constitutionally impermissible.

Perhaps the 50 states of this nation would contend, that such is merely the conveying of information from witnesses 1, 2, 3 or more possibly, and upon this testimony such an oath is based. Even if one would adopt this premise still the indictments and criminal complaints of this nation "[c]annot" be deemed as that which is founded upon "[c]ertain [k]nowledge" (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENTIA), but it is founded upon the basis of hearsay and or secondhand knowledge. Notwithstanding, it has been recorded throughout history since the earliest stages of civilization that people do bear false witness in groups and in numbers depending upon their motivation. For example, you have an unjust King and Queen, Ahab and Jezebel, coercing several people to lie in a covert plot to steal the land of a righteous man in I Kings chapter 21. In the Book of Micah, a man's closest members of his household bear false witness against a Prophet Of God. In Christianity you have officials who were in power, Saducees, Scribes and Pharisees, incite and pay groups of people in the Gospel(s) Of Matthew, Mark, Luke and John to bear false witness against the Messiah. In Islamic Prophecy the Prophet Muhammad(PBUH), in Sahih Al Bakhari Vol.

9 Hadith No. 7086, prophesied how in these times there will hardly be a trustworthy person left in the world. The Spanish Inquisition of 1478 and The English Inquisition of 1518 found people unjustly burned at the stake and or hanged, due to unjust accusations by people in numbers for false claims of heresy. Adolph Hitler, and a group of people called "Nazis", brought numerous unjust claims against the Jews, falsely rooted in lies, in the holocaust of the 1930's. The Salem Witch Trials in the 17th. century, in Massachusett, found numerous men, women and children, burnt at the stake for false claims of practicing witchcraft, brought by groups of people in numbers ("The witch bitches as they were called). The Ku Klux Klan, throughout the South, brought unjust accusation against the innocent Post Civil War Era, and in the 1930's through 1960's. Judaism, Christianity, Islam, American History, European History, World History, "[a]ll" are filled with unspeakable atrocities originating in lies, perpetrated by people in numbers and in groups against the innocent. Our constitutional forefathers in their wisdom and jurisprudence saw this repeated pattern that like a poisonous, venomous snake, rose its head from the soils of society to fatally bite the commonwealth. and in their wisdom they set up "[b]ulwarks", "[b]arriers" of protection for the American citizenry, all who are held by us, all who enter our borders or territories, that under no circumstance, outside of an individual committing an act of treason, were to be torn down, because people in groups and in numbers do bring false accusation against the innocent.

Referring back to the third situation here as illustrated by State v. Breakiron, 108 N.J. 591, 532 A.2d. 199(1987) and State v. Zola, 112 N.J. 384, 548 A.2d. 1022(1988), in inferring the state of mind element, whether the prerequisite intent and or purpose was present at the time of the crime. The Grand Jury, in the form of the indictments and or criminal complaints around the nation, "[c]annot" say what was in a person's mind, nor do they have first hand knowledge of the facts related to the incident charged. They do not have "[c]ertain [k]nowledge" (OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENCTIA). Thus, again the

very language and or structural constitutional error and or defect, and or charge of the indictment(s) and criminal complaints around the nation predetermine in advance before trial or plea an individual is guilty of the state of mind element(s) and forces a defendant, due to the shifting of the burden of persuasion, to prove his innocence by the preponderance of evidence and or testimony in violation of Due Process Law. This creates an instant double jeopardy issue showing that this is not a harmless error, Moore v. Dempsey supra.; State v. Gordon, 588 S.E.2d. 105, 356 S.C. 143(S.C.2003); State v. Perry, 595 S.E.2d. 883, 358 S.C. 633(S.C.2004).

In regard to a charge, and we can add to this, a charge in an indictment or criminal complaint, that constitutes a constitutionally impermissible charge/instruction, or contradicts the presumption of being innocent until proven guilty, even with a later instruction "BOILERPLATE" of being innocent until proven guilty by the courts or stating that the indictments or criminal complaints are not evidence by the courts, the [p]roblem is [n]ot [c]ured where there exist a reasonable likelihood that the jurors, and we can add in this case, that the defendant, may have considered the charge, and we can add to this, the charge in the indictments or criminal complaints around the nation as conveying an unconstitutional message in both state and federal prosecutions, Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d. 344(1983).

Such presumptions intrinsically and explicitly established snatch the blind fold off of "LADY JUSTICE" herself, and now, not only is she no longer impartial, unbiased or fair; but now she says because its you, because its this particular crime or alleged action as opposed to another, because you are charged in this particular state as opposed to another, because you fall under this particular statute as opposed to another, you are no longer innocent until proven guilty and your constitutional rights are hereby revoked. Such presumptions destroy

the very metal of the shield of protection placed around the American citizenry, those who are held by us, and those who enter our borders or territories, and abolishes the very core integrity of the Due Process Clause our constitutional forefathers have died and shed their best blood to establish and preserve. The greater aspect of evil related to such action by the criminal complaints and or indictments around the entire nation, far and extremely outweigh the greater aspect of good that it sought to establish related thereto. If we as responsible citizens of the commonwealth allow individuals who are placed in positions of legislative authority, whether it be at town, city, state or federal level, whether it be intentional or unintentional, to initiate or place into effect legislation by statute or any other means, that deteriorate the very pillars of that which our Constitution was founded upon, then we no longer establish ourselves as a true democracy, where the good of the many outweigh the good of the few. We step more into the realm of monarchy, and set ourselves on a path of Constitutional destruction detrimental to the commonwealth that can only lead to anarchy creating the similarities that manifested themselves in the aforementioned Nazi Occupation, Salem Witch Trials, The Spanish Inquisition and the like. Where trials and criminal proceedings became an arbitrary action, an abusive and recreant process, fraudulently designed to rob the commonwealth of their God given liberty. This we cannot do!!! It is our courts, our Supreme Courts, and our Federal District Courts' inherent responsibility as guardians of the faith and integrity of our system of jurisprudence to protect the commonwealth from such a dark demise. The Presuppositions set forth by our constitutional forefathers "E PLURIBUS UNUM", were one nation, under God, indivisible, with liberty and justice "FOR ALL", "FOR ALL", and was not to be taken away simply because an individual fell victim to accusation, or fell under a particular statute of law as compared to another, or was charged in one particular state as opposed to another. The only exception to this sacred standard and trust was to be if an individual committed acts of High Treason against our government itself, which in some particularity is what the indictments and criminal complaint documents

around the entire nation reflect, because they innately swear allegiance to that which sets itself at war, enmity and variance to the constitutional rights of all citizens of the commonwealth and all others who are subject to them. Therefore, they are a form of treason. The indictments and criminal complaints around the entire nation betray our Constitution. Hencetofore they "[m]ust" be abolished and or reformed. They are intense espionage and diabolical sabotage and stands at war with the rights of this nation's commonwealth in violation of Due Process. They covertly with corrosive results steal away stealthly the fundamental truths by which the Constitution was founded upon and throw a monkey wrench into the mechanical works of justice and fairness by detonating explosive results that detrimentally tear down the bulwarks that were forthrightly established to protect the commonwealth against unjust prosecution. By the defect, language and or charge contained within the indictments and criminal complaint documents around the entire nation you have already surmised and ascertained without the total weight of evidence set forth before a jury an individual's guilt in violation of state and federal laws also pertaining to the U.S. Constitution, inferring the state of mind element(s), negating the burden of proof that by law was to be consistently bore by the prosecution, Francis v. Franklin supra.; Moore v. Dempsey supra.

THE COURT HOLDS that a charge, and we can add to this, a charge in an indictment or criminal complaint, which impart to the jury, and we can add in this case, the defendant, an unconstitutional understanding of the allegations, even more specific, the burden of persuasion, and the presumption of innocence, creates a reasonable likelihood that the jurors understood the charge, and we can add, that the defendant understood the charge, in the criminal complaints and indictments, in an unconstitutional manner unless other language in the complaints or indictments explain the infirm language sufficiently to eliminate this possibility. If such a reasonable possibility, "we have no way of knowing that [t]he defendant was [n]ot [c]onvicted,

and we can add, gave his guilty plea, on the basis of the unconstitutional charge, specifically the charge embodied within the indictments and complaints", Sandstrom, 442 U.S. at 526(99 S.Ct. at 2460). For this reason it has been well settled since Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 117(1931) that where there exist a reasonable likelihood and or possibility that the jury, and we can add, the defendant, relied upon an unconstitutional understanding of the law in reaching a verdict, and we can add, in giving his guilty plea, that verdict and or guilty plea must be set aside, Id. at 323n. 7, 105 S.Ct. at 1976 n. 7. We conclude that there is more than a reasonable likelihood that the jurors, and we can add, defendant(s), received an unconstitutional understanding of the situation pertaining to their tasks.

This is no way a mischaracterization of the law pertaining to the cases cited here. Even though some of the cases cited dealt with conclusive presumption(s) given by Judges in charges that have the effect of shifting the burden of persuasion to the defendant regarding the crucial elements, in this case we are dealing with a similar charge except this time its given by the Grand Jury in the form of an indictment or criminal complaint, that has the effect of shifting the burden of persuasion to the defendant regarding the crucial elements. The subsidiary facts related to the shifting of the burden of persuasion to the defendant regarding the crucial elements and the inferring the state of mind element(s) to the offenses are the same in these matters. Due to the defect in the construction of the indictments and criminal complaints nationally, the defendants' presumption of innocence is clearly taken away, also guilt of the offense(s) is illegally predetermined in advance by the Grand Jury who do not have the power by state or federal law or state or federal constitution to convict, due to the language and or charge contained therein, and the indictments and or criminal complaints nationally serve to negate the burden of proof.

This creates a structural constitutional error and or defect. Structural Constitutional errors and or defects compro-

mise the entire trial and or plea hearing proceedings. It requires reversal and or vacating as it involves deprivation of constitutional protection so basic, and so fundamental, that in its absence criminal trial and or plea proceedings "[c]annot" reliably serve its function as a vehicle for determination of guilt or innocence, and "[n]o" criminal punishment may be deemed or regarded as fundamentally fair, Robinson v. Arvonio, 27 F3d. 877 rehearing denied, cert. granted vacated 115 S.Ct. 1247, 513 U.S. 1186, 131 L.Ed.2d. 129. Such a structural constitutional error and or defect of this magnitude is "[n]ot" subject to the harmless error analysis. Structural constitutional errors and or defects not subject to the harmless error analysis are defects and or errors affecting framework, in which trial and or plea proceedings "[c]annot" reliably serve its function as a vehicle for determining guilt or innocence, involving deprivation of constitutional protection so basic, and so fundamental, that in its absence no trial or plea can be deemed reliable, nor any punishment fundamentally fair, Vines v. United States, 28 F3d. 1123 crim. law 1163(1), 1165(1). It is perspicuous that such a defect and or error does affect the framework of the proceedings, because the court(s) must constructively amend the indictments and criminal complaints around the nation on the "MENS REA" crucial elements of the offense(s) to correct, rather, in an attempt to correct the structural constitutional error and or defect by giving a Judge's charge. The boundaries cited by law are clear and certain even as cited by Winship Rule and Humanik v. Beyers supra.. Any conclusive presumption, of any kind, that's placed before a jury to obtain a conviction, or we can add, placed before a defendant to manipulate, mentally and or psychologically coerce, and or force the defendant into an unfreely, unknowingly, involuntarily or unintelligently given guilty plea, that determines in advance a person's guilt, that has the effect of shifting the burden of persuasion to the defendant, violates Due Process and is grounds for an acquittal, even if its embodied within an indictment or criminal complaint, Moore v. Dempsey supra.. Clearly there is nothing cited by law that would mandate that these strict rules of court, and requirements of Due Process law, be solely limited to a Judge's charge.

They apply to any charge that's placed before a jury to obtain a conviction, or a defendant in order to manipulate, mentally and or psychologically coerce, and or force him into a guilty plea. Such a heavy weight of shifting the burden of persuasion, and the taking away of one's presumption of innocence, by the indictments and criminal complaints of this entire nation, have been unjustly and unconstitutionally used against defendants in this nation, in this new Jim Crow and racial caste system, to mentally and or psychologically coerce, and or force them into plea bargains, and at their trials for far too long.

To elaborate on or bolster this proposition, if the honorable court would please take notice of the warrant(s) pertaining to the offense(s), as it is for every warrant in the nation. In the body of the warrant for most and or all states it reads:

"I further state that there is probable cause to believe that the defendant named above did etc.*****".

This is the language that explains the constitutionally infirm language and or charge. This is the language that aids in the maintaining of the presumption of innocence, and also which confirms the specific job of the Grand Jury. The job of the Grand Jury is two prong. One--is to determine and ensure that some state and or federal official is not acting arbitrarily in bringing accusation against a citizen of this country. The second---is to determine whether or not there is sufficient probable cause to bring a defendant to trial, Stirone v. United States, 361 U.S. 212(1960); Ex Parte Bain, 121 U.S. 1 (1887); Gaither v. United States, 413 F2d. 1061(D.C.Cir.1969); The (50) States Constitutions; United States v. Abrams, 539 F.Supp. 378, 384(S.D.N.Y.1982); United States v. Calandra, 414 U.S. 338, 342-343, 98 S.Ct. 613, 617, 38 L.Ed.2d. 561, 568(1974); Branzburg v. Hayes, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d. 626(1972). To determine guilt of the offense(s), to include the "MENS REA" on the crucial elements of dispute, is a violation of the Grand Jury's shielding function. A Grand Jury merely investigates and reports. They are not authorized by Federal or State Consti-

tution, nor Federal and or State laws, to convict, Jenkins v. McKeithen, 395 U.S. at 430, 89 S.Ct. at 1853, 32 L.Ed.2d. at 422(1969). The powers of the Grand Jury are not unlimited, and are subject to the supervisory of a judge. Grand juries may individually or collectively enjoy protections assertable in suits for defamation, but the privilege is not applicable to bar the petition of an appellant to remove language from the indictments and criminal complaints around the entire nation, Compare Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d. 288, 294-95(1967). When the Grand Jury goes beyond the scope of the power and authority given to them, it is indeed a violation of Due Process, United States v. Chadwick, CA9 (Nev.) 1977, 556 F2d. 450; United States v. Briggs, 514 F2d 794(5th.Cir.1975). Yet, by the Structural Constitutional error, defect, language and or charge of the indictments and criminal complaints, both State and Federal around the nation, the Grand Jury adjudicated not only guilt of the offense(s) charged, but also the "MENS REA" related thereto. If such or similar language as aforementioned, is not embodied within the body of the charging instrument(s), then the indictments and or criminal complaints are not constitutionally sound and they violate Due Process. The evil that has developed from this, far and extremely out weigh the original good it intended.

Any indictment or criminal complaint, whether it be in the smallest of detail, whether it be in the smallest of towns, or the largest of cities, whether it be within the boundaries of any county or state, whether it be intentional or unintentional, that's constructed in a fashion where it automatically shift the burden of persuasion from the State or Federal government to the defendant, takes away one's presumption of innocence, and by the language predetermines in advance the outcome of the proceedings, giving off an unconstitutional impression and understanding of his or her rights by the laws of Due Process, contrary to the U.S. Constitution "[s]hall [n]ot [s]tand". They violate the appellant's rights under the 4th., 5th., 6th., 13th., 14th., 15th. amendments and seek to unjustly deprive one of life, liberty and property. It is for this reason that the New Jersey and Maine Supreme Courts overthrew such similar actions

in those States, and on this same premise the same should be done for every state within this nation now. And yes, under these circumstances, it may be far more difficult for the prosecution to obtain said conviction or guilty plea. But it is far better that they endure the difficulty than the greater degree and or likelihood, for innocent men and women to be subject to an erroneous conviction and or guilty plea, that is not freely, knowingly, voluntarily or intelligently given, because it prejudice the individuals subjected to these criminal indictments and or complaints within this nation. Prosecutors must be made to know and understand, that such is "THE NATURE OF THE BEAST". The burden is theirs and we are to be presumed innocent in every detail until fairly and justly convicted. This goes with the professional territory at hand.

The following statement in relevant part was made by the court in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194(1963). It pertained to the suppression of evidence favorable to the defense, but the subsidiary facts related to Due Process violation have a bearing on these matters here. It has been slightly modified to paint a more true picture of this issue:

"WE HOLD, that such presumptions violate Due Process irrespective of the good faith or bad faith of the prosecution. The principle here is not to punish society for such Due Process violations, or the misdeeds of the prosecuting body, but the avoidance of an unfair trial and or plea hearing to the accused. Society not only wins when the guilty are convicted, but when criminal trials and or plea hearings are fair; Our system of administration of justice suffers when its citizens are treated unfairly in the courts. An inscription on the wall of The Department Of Justice states the proposition candidly for the federal Domain: The United States wins its point whenever justice is done its citizens in the courts", Brady v. Maryland supra.; citing Mooney v. Holohan, 294 U.S. 103.

The appellant humbly quotes that which is stated in United

States v. Walsh, 194 F3d. 37(2nd.Cir.1999) and United States v. Pirro, 212 F3d. 89(2nd.Cir.2000):

"The indictments do more than simply track the language of 18 U.S.C. § 242, which provides penalties for any person, who under color of any state or federal law, statute, ordinance, regulation, custom, and we can add to this, "an indictment or criminal complaint", willfully subjects any person,...to the deprivation of "[a]ny", "[a]ny", right, privileges, or immunities secured and protected by the U.S. Constitution and Laws of the United States***", and this was done in violation of the appellant's rights to Equal Protection of the laws, Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031(1945); State v. Middleton, 207 S.C. 473, 36 S.E.2d. 742(1946); Eslinger v. Thompson, 340 F.Supp. 886(DSC.1972) Aff'd 476 F2d. 225(4th.Cir.1973); Mc Laughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d. 222(1964); Dubinka v. Judges Of Superior Court Of The State Of Los Angeles, 23 F3d. 218; Jones v. Arkansas, 929 F2d. 275; Hicks v. Oklahoma, 447 U.S. 343, 346, 100 S.Ct. 2227, 2229, 65 L.Ed.2d. 175(1980); Dozier v. Loop College, City Of Chicago, 776 F2d 752; Lugar v. Edmondson Oil Co., 457 U.S. 922, 928-30, 102 S.Ct. 2744, 2749-50, 73 L.Ed.2d. 482(1982).

By the structural constitutional error, defect, language, and or charge contained within the indictments and criminal complaints around the entire nation, the defendant(s) most basic and most fundamental right to be viewed as innocent until proven guilty, and to have the state bear the burden of production on the critical elements of dispute has been clearly taken away. This is a serious price to pay for the sake of obtaining a conviction.

"The teaching of these cases is that "[a]ny", "[a]ny", presumption, even if its not conclusive, even if its embodied within the charge of an indictment or criminal complaint, that placed before a jury to obtain a conviction, and or defendant to coerce him or her into a guilty plea, that has the effect

of shifting the burden of persuasion to the defendant on any element of the crime charged, or deprives him of the presumption of innocence, predetermining in advance the outcome of the proceedings, violates Due Process and is grounds for an acquittal", IN Re Winship supra.; Humanik v. Beyers supra.; Moore v. Dempsey supra.; It involves deprivation of constitutional protection so basic and so fundamental that in its absence criminal trials and or plea proceedings "[c]annot" reliably serve its function as a vehicle for the determination of guilt or innocence and ~~no criminal punishment may be deemed or regarded as fundamentally fair because the structural constitutional error and or defect affect the framework of the proceedings and "[c]annot" be viewed as harmless,~~ Robinson v. Arvonio supra.; Vines v. United States supra..

The actions of the conspiring agents, both state and federal, produce fraud upon the court also in violation of 18 U.S.C. §§ 241 and 242. Fraud will vitiate any legal transaction which include criminal trials and or plea hearing where the indictments and proceedings are a form of contract. And any asserted title to property in the form of this modern day slavery by this broken judicial system, this so-called "debt to society" founded on it is void. The U.S. Constitution does not confer power or jurisdiction upon any state or federal government or court within this nation to establish or legalize modern day slavery which essentially is what the government has done here, both state and federal as is defined in the definition for slavery under the C.A.T. Treaty ratified by Congress. Although public documents such as, and or even indictments or criminal complaints, which themselves are a form of contract, which embellish this modern day slavery and property of the states or federal government by criminal conviction are deemed prima facie evidence of facts which they purport to state, they are open to be impunged for fraud and a clear challenge to the courts nationally "[p]ower" to establish or legalize modern day slavery, The Conception, Brunn, Coll. C. 497, 2 Wheeler CC 597, 6 F. Cas. 359 No. 3137(C.C.D. S.C. 1819); The La Conception, 19 U.S. 235, 1821 WL 2188, 5 L.Ed. 249, 6 Wheat, 235 U.S.S.C. (Mar. 8, 1821); The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024,

2006 A.M.C. 2955, 10 L.Ed. 826, U.S. Conn., January 1841; Chewing v. Ford Motor Company, 345 S.C. 72, 579 S.E.2d. 605(S.C.2003); Appling v. State Farm Mut. Auto Ins. Co., 340 F3d. 769, 780 (9th.Cir.2003); King v. First American Investigation Inc., 287 F3d. 91, 95(2nd.Cir.2002) cert. denied 537 U.S. 960, 123 S.Ct. 393, 154 L.Ed.2d. 314(2002); Brailsford, 669 S.E.2d. 342, 380 S.C. 433; Callon Petroleum Co. v. Frontier Ins. Co., 351 F3d. 204, 208(5th.Cir.2003). This fraud upon the court is endemic and compromises the system itself and institution set up to protect the commonwealth from unjust prosecution corrupting, irreparably, the entire judicial system as a whole warranting it be abolished and or reformed. The Grand Jury does not have the power to predetermine in advance the outcome of the proceedings and must refrain itself from making any opinion as to guilt or innocence. How much more egregious is it if they swear upon their oath a person's guilt or innocence before they have a trial or give a guilty plea? This "[c]annot" be deemed as a harmless error, United States v. Direct Sales Co., 40 F.Supp.917 D.C.S.C.(1941); United States v. Atlantic Commission Co., 45 F.Supp. 187 D.C.N.C.(1942); State v. Boyd, 2 Hill (S.C.) 288, 1834 WL 1573 S.C. App. L. & Esq. 1834; State v. Bramlett, 166 S.C. 323, 164 S.E. 873(S.C.1932); Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 U.S. Wash.(1962); State v. Tollin, 352 S.C. 235, 573 S.E.2d. 812(S.C.App.2002); Byers v. Reynolds, 2011 WL 7063638, * 8 (DSC.2011); United States v. Jefferson, 546 F3d. 300 CA4 (Va.2008); In Re: Grand Jury Subpoena John Doe, No. 05GJ1318, 584 F3d. 175 CA4 (Va.2009); In Re: Grand Jury Subpoena (T-112), 597 F3d. 189 CA4 (Va.2010).

We are arguing violations of the Anti-Peonage Act of The 13th. Amendment. Under this provision of law no time bar, or statute of limitations, or (3) strike provision, or successive bar, which all are statute of limitations can hold a man in Peonage.

The 13th. Amendment Provides---"Neither slavery nor involuntary servitude, except as punishment for crimes where of the party is "duly" (emphasis added) convicted, shall exist

within the United States, or any place subject to their jurisdiction".

The courts have repeatedly held that by the language of the 13th. Amendment, the 13th. Amendment does not apply to a person serving a sentence for a criminal conviction, Newell, 563 F2d. 123; WL 1415149(2012); Cox v. U.S. Attorney General, F.Supp.2d, 2012 WL 1570110 DSC April 10, 2012; Gaddy v. South Carolina Supreme Court's District Of Columbia, S.C., 2013 WL 6150715 DSC November 21, 2013; Flood v. News & Courier Co., 71 S.C. 112, 50 S.E. 637(1905).

The courts in these previous cited cases abused their discretion in their determination because they are controlled by an error of law in their interpretation and or they failed to address a critical part of the language written in the 13th. Amendment.

An abuse of discretion occurs when the court(s) are controlled by an error of law, or when the order bases upon findings of fact is without evidentiary support or fact, Sharpes v. Sharpes, 535 S.E.2d. 913, 342 S.C. 71(2000).

None of the aforementioned legal authorities ever addressed whether or not the issue of slavery and violations of the 13th. Amendment have standing if the convicted person is not "duly" (emphasis added) convicted. Since none of the afore citings, or any similar, addressed the issue of whether the 13th. Amendment applies in cases where the party is [n]ot "duly" (emphasis added) convicted. Which is indisputably in the language of the 13th. Amendment. Using or applying any of those citings, or any similar, would be misplaced if the citing does not address the issue of whether slavery applies or have standing when a person is [n]ot "duly" (emphasis added) convicted. See S.C. Code Ann § 17-25-10.

"Duly---is defined, as is 'right' and 'fitting'; 'properly'; in 'accordance with legal requirements'".

By the legal issues presented in this document and argued in this and its connecting cases. The convictions are not right. They are not fitting. They are not proper, nor are they in accordance to the legal requirements of law as is required by proper Due Process. Thus, we are not "duly" (emphasis added) convicted, and via the fraud, the 13th. Amendment does have standing. See S.C. Code Ann § 17-25-10. The sentences and convictions around the nation, to include the appellant's, must be vacated. I seek class action certification under Article III section 2 of The U.S. Constitution and Federal Rule 23 arguing preemption.

(2) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, by the court's failure to grant the motion for severance, causing substantial prejudice to the appellant's trial proceedings?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra. 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

The appellant places forth this issue in a straightforward fashion. It is conspicuous that the motions for severance were properly and timely placed before the General Sessions Court.

See TT.PP. 142 lns. 18-25 through TT.PP. 146 lns. 1-7.

The state gave its explanation as to why the motion(s) should not be granted and a summary of the events they intend to prove at trial. See TT.PP.146 lns. 8-25 through TT.PP. 149 lns. 1-8.

The debate continued over this matter until TT.PP. 153 lns. 1-8 where the motion was denied.

The focus on this issues manifest itself in several ways.

(1) On TT.PP. 148 lns. 6-13. The state gives their reason as being judicial economy; that the same evidence will be used and it would be less burden upon the witnesses. This is a lie, to include being an act of fraud upon the court which cannot be waived, also being jurisdictional in nature, and can even be addressed under the independent action rule which will be elaborated on, Blue Sky Travel and Tours, LLC. v. Al Tayyar, ---Fed.Appx'---, 2015 WL 1451636 CA4 ((Va.2015); Silvestri v. General Motors Corp., 271 F3d. 583, 590(4th.Cir.2001); Nucar Corp. v. Bell, 251 F.R.D. 191, 194(DSC.2008); U.S. v. Sterling, 724 F3d. 482 CA4 (Va.2013).

Please take notice of the argument presented by counsel on the court record pursuant to TT.PP. 142 lns. 24-25 through TT.PP. 145 lns. 1-25; TT.PP. 150 lns. 12-25; TT.PP. 151 lns. 1-7 and 21-25; TT.PP. 152 lns. 1-8. The issues brought forth by the Attorneys for the defendants was the claim of "conspiracy", that there was no tacit agreement or joint enterprise pre-planned, but was rather "self defense" based upon a friend being at threat of great physical injury and or attack. There was also the concern raised over the inability for either of the defendants to call each other to the stand that would have permitted them to present various defenses. The appellant further asserts and present, that there is no overwhelming evidence of guilt because for one thing. There is no final written order

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entered into the court record in the appellant's stand your ground hearing that would legally invalidate the appellant's right and claim to immunity.

Yet, it is even far more worse than these crucial factors and or deficiencies, which produce overwhelming prejudice. The prosecutor, conspiring under color of state law, also in violation of 18 U.S.C. § 242, 1001 was engaging in acts of fraud, machination and misrepresentation, and the trial judges were conspiring with them in full knowledge of these facts, which void their jurisdiction for Due Process violation by was this arbitrary judicial action. In truth, it was not just the fact that the state could not prove the elements of conspiracy in general. It was more to the truth, that they could not prove the elements of conspiracy, because all of the indictments were fatally defective, being extremely vague, voiding their jurisdiction for Due Process violation; indictments which would have allowed the jury to speculate as to who was involved in this "so-called" conspiracy, if the appellant and his co-defendant were not tried together.

It is perspicuous, clear, and fundamental, that such action produces overwhelming prejudice by not granting the severance, which is why the trial judge did not grant the severance and the state protested when such a severance was sought. Primarily for reasons of economy of time in judicial administration, the general rule has evolved that persons jointly indicted should be tried together, Hall v. United States, 83 U.S. App. D.C. 166, 168 F2d. 161(1948); Dykes v. United States, 114 U.S. App. D.C. 189, 313 F2d. 580(1962).

This rule has particular strength where, as here, one crime may be proved against two or more defendants on a single set of facts or from the same evidence, United States v. Lebron, 222 F2d. 531(2nd.Cir.1955) cert. denied, 350 U.S. 876, 76 S.Ct. 121, 100 L.Ed. 774(1955). Notwithstanding the need for efficiency in judicial administration, a joint trial is inappropriate if

it sacrifices a defendant's right to a fundamentally fair trial, (5th., 14th. amendment Due Process; 6th., 14th. amendment fair impartial trial dynamics). Also see Baher v. United States, 329 F2d. 786(10th.Cir.1964) cert. dismissed, 379 U.S. 853, 85 S.Ct. 101, 13 L.Ed.2d. 56(1964); Barton v. United States, 263 F2d. 894(5th.Cir.1959).

For these reasons, although Rule 14 of Federal Rules Of Criminal Procedure, as well as South Carolina State law, places the granting or denial of a severance in the sound discretion of the trial judges as was stated on TT.PP. 152 lns. 9-22, The discretion of the judge in this case was not sound via the fraud, machination and conspiring under color of state law, Opper v. United States, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101(1954); United States v. Frazier, 394 F2d. 258(4th.Cir.1968), if a "substantial degree of prejudice" springs from a joint trial as it does in this case, where the joint trial compromises specific trial rights, or prevent the jury from making a reliable judgment about the defendant's guilt, a severance is mandatory, United States v. Burgo, 279 F.Supp. 843(S.D.N.Y.1968). Not surprising, the facts peculiar to each case will determine whether sufficient prejudice exist to make a denial of a severance reversible error.

In this case some of the specific trial rights are the constitutional Due Process right to have particular averments passed upon by the Grand Jury in the body of the indictments; the right to be fully and properly apprised of notice as well as the cause and nature of the offenses; and not to allow the severance so the state and court can criminally, constructively amend the indictments all over the place because said indictments were fatally defective. Reversible error producing overwhelming prejudice is clearly established, Schaffer v. United States, 221 F2d. 17, 19(5th.Cir.1955).

Severance in this case would have been obligatory where a major portion of the state's case was founded and or based

"[c]onspiracy", and none of the indictments say who it was that the appellant allegedly conspired with, which if the cases were tried separately, would have allowed the jury to only speculate as to the appellant's guilt, creating an inability for them to produce a reliable judgment about the appellant's guilt, proving overwhelming prejudice in the trial being tried jointly. Also, where the case rest upon exculpatory evidence, in that there was no final "[w]ritten" (emphasis added) order issued into the court record. Jurisdictional claim of immunity exist.

~~Alibi~~ potentially exist since an "[e]xact [t]ime", which is an essential element in attempted murder is not alleged within the indictment(s). Such presents itself with claims of actual innocence based upon immunity via stand your ground defense.

Where co-defendant refused to take the stand. Extreme prejudice is clearly demonstrated. The 5th. amendment in this instance gave the appellant's co-defendant the right to not even be called to the stand and that right extended so far as to forbid not only the government, but even the appellant from calling his co-defendant to take the stand which extremely prejudiced the appellant, United States v. Keenan, 267 F2d. 118, 126(7th.Cir.1959) cert. denied 361 U.S. 836, 80 S.Ct. 121, 4 L.Ed.2d. 104(1959); Poretto v. United States, 196 F2d. 392, 394(5th.Cir.1952); DeLuna v. United States, 308 F2d. 140 (5th. Cir.1952); United States v. Housing Foundation, 176 F2d. 665, 666(3rd.Cir.1949).

However, if the appellant's co-defendant's case was severed from the appellant's, where the codefendant would retain the privilege against self incrimination, as a witness, he would no longer have the right not to be called to the stand. Thus, absent the appellant's codefendant's willingness to waive his 5th. amendment rights while joined as a defendant with the appellant, severance was the only way of affording the appellant any possibility of persuading the codefendant to testify, Landy v. United States, 283 F2d. 303(5th.Cir.1960).

In a situation where the elusive quality of credibility is of such importance, the jury should have the benefit of all the relevant testimony likely to shed light on the situation, in this case, the appellant's codefendant's testimony. Where the opportunity to sever by the court, resulted in withholding this critical witness' testimony on such critical points, so tipped the scales against the appellant, that the appellant failed to receive a fair trial. A verdict based so heavily on less than the full available testimony, where the missing testimony of the codefendant could, with relative ease, have been procured by the court granting the motion to sever. The court's ruling should not stand, United States v. Turner, 274 F.Supp. 412(D.C.Tenn.1967); United States v. Crisona, 271 F.Supp. 150 (S.D.N.Y.1967); United States v. Kilmore, 403 F2d. 627, 628(4th. Cir.1968) cert. denied 394 U.S. 932, 89 S.Ct. 1204, 22 L.Ed.2d. 462(1969); 454 F2d. 772(1971).

The State and court, conspiring under color of state law, in egregious acts of fraud upon the court, machination and arbitrary judicial action, has failed to adhere to their own state laws, in violation of the appellant's substantial rights of Due Process, as well as 18 U.S.C. §§ 241, 242, 1001, which serve to deny the appellant the Equal Protection of The laws, which void their jurisdiction for Due Process violation, Grupo Dalaflex v. Atlas Global Group L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp. 3d. 582, 2014 WL 1266240; S.C. Code Ann § 17-25-10; Screws v. United States supra.; State v. Middleton supra.; McLaughlin v. Florida supra.; Eslinger v. Thompson supra.; Lugar v. Edmondson Oil Co. supra.; Aladeckcha, 2010 WL 4054267(2010); Paul Adams v. California Institution, 2016 WL 6464444; Holloway v. Perry, 2016 WL 4074149; Donatoni v. Department Of Homeland Security, ---F.Supp.3d.---, 2016 WL 1755871; U.S. v. Hare, 820 F3d. 93(4th.Cir.2016).

When an officer and or state actor shall use their power

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pursuant to the instrument of arrest or prosecution in egregious acts of prosecutorial misconduct and ulterior motives and incarcerate and or prosecute an accused for the purpose of engaging in malicious, fraudulent and criminal acts, willfully subjecting the appellant to deprivations of any rights, immunities or privileges secured by the constitution and laws of the United States within any state, District or territory. They shall be subject to state and or Federal penalty. By what has been done here which is indeed prejudicial. Such action is indisputably deprivation of the rights of the accused to liberty and a violation of 18 U.S.C. §§ 241, 242; Neither threat, nor violence is a necessary ingredient of the offense under these circumstances where the conspiring individuals were clearly acting arbitrarily under color of state law for ulterior purpose giving a mock stand your ground hearing with no written final order to deprive of an appealable issue, soliciting false testimony in that hearing where party stated she had "managerial powers" when she did not, going past the (365) days permitted by law where there is no overwhelming evidence of guilt due to right to stand ground. Jurisdiction must be deemed void for Due Process violation, Williams v. United States, CA5 (Fla.) 1950, 179 F2d. 656 cert. granted 71 S.Ct. 70, 340 U.S. 97, 95 L.Ed. 774; Brown v. United States, CA6 (Tenn.) 1953, 204 F2d. 247; United States v. Ramey, CA4 (W.Va.) 1964, 336 F2d. 512 cert. denied 85 S.Ct. 649, 379 U.S. 972, 13 L.Ed.2d. 564; United States v. Kozminski, (1988) 487 U.S. 931, 101 L.Ed.2d. 788, 108 S.Ct. 2751, 46 CCH E.P.D. ¶ 38067 on remand (1988 CA6 Mich.) 852 F2d. 1288; 18 U.S.C. §§ 241, 242; Greenwood v. Peacock, (1966) 384 U.S. 808, 16 L.Ed. 2d. 944, 86 S.Ct. 1800; United States v. Otherson, (1980 CA9 Cal.) 637 F2d. 1276 cert. denied (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct. 149; Brown v. United States, 2014 WL 2871398 (DSC.2014); Hunt v. United States, F.Supp.2d., 2007 WL 5131716 (DSC.2007); U.S. v. Bartko, 728 F3d. 327(4th.Cir.2013); U.S. v. Parker, 790 F3d. 550(4th.Cir.2015); Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340(U.S.1935); Napue v. People Of The State Of Illinois, 360 U.S. 264, 79 S.Ct. 1173.

Motion for severance is addressed to sound discretion of the trial court. Which in this case that discretion was not sound due to trial court engaging in acts of fraud upon the court, criminal conspiracy, machination under color of state law. The trial court's ruling will not be disturbed on appeal absent an abuse of discretion which conspicuously occurred here. Criminal cases may be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. All (4)(emphasis added) of these elements must exist before the appellant and his codefendant can be tried together, not (3) or (2). The Appellant's constitutional Due Process rights pursuant to notice, being properly apprised as to the cause and nature of the accusations or offenses, having crucial, essential elements and averments passed upon by the Grand Jury, to call the codefendant to testify, to establish potential alibi and not have the indictments constructively amended throughout the proceedings were violated producing extreme prejudice where the prosecution sought to conceal all of this by trying us both together. Thus, the conviction must be vacated and reversed, State v. Caldwell, 378 S.C. 268, 662 S.E.2d. 474(S.C.App.2008); State v. Tyre, S.E.2d., 2013 WL 8538730(2013); State v. Butts, S.E.2d., 2014 WL 2586521(2014); DeLuna v. United States, 308 F2d. 140(5th.Cir. 1962); United States v. Kahn, 366 F2d. 259, 263-264 (2nd.Cir.) cert. denied, 389 U.S. 1015, 88 S.Ct. 591, 19 L.Ed.2d. 661(1967); 454 F2d. 772(1971); State v. Rocheville, 425 S.E.2d. 32(S.C. 1993); State v. Kelsey, 502 S.E.2d. 63 (S.C.1998); State v. Beekman, 415 S.C. 632, 785 S.E.2d. 202(2016); State v. McDonald, 412 S.C. 133, 771 S.E.2d. 840 (S.C.App.2015).

(3) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated by the indictment(s) for attempted murder's failure to allege what weapon was allegedly used and who it was the

appellant supposedly acted in concert with, in the same vein, the indictment for conspiracy's failure to allege who it was that the appellant conspired with, in the body of the charging instrument?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

The appellant did not object to these defects and or errors at the time of his trial and or before he gave his guilty plea, but the defect(s) and or error(s) serve to render the indictment(s) wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d Indictments And Information § 299(1968); State v. Munn supra.

It is universally recognized that an indictment "[m]ust" contain certain [s]pecification of [a]cts and [c]ircumstances as well as on its [f]ace fix and determine the identity of the offense with such [p]articularity, that it will enable the defendant to know with sufficient [c]ertainty what he has to face at trial to give him or her a fair opportunity to prepare his defense to avail him or herself of conviction, or acquittal as a bar to further prosecution arising out of the same facts,

State v. Rallo, 403 S.E.2d. 653(1991); State v. Hardee, 279 S.C. 409, 308 S.E.2d. 521(1983); Locke v. State, 341 S.C. 54, 533 S.E.2d. 324(2000); IN RE: Jason T., 340 S.C. 455, 531 S.E.2d. 544(S.C.App.2000); State v. Parker, 344 S.C. 250, 543 S.E.2d. 255(S.C.App.2001).

S.C. Code Ann § 17-19-10 Provides:

"All offenses shall be prosecuted by Grand Jury indictment(s). Thus, no person shall be held to answer in any court for any alleged crime or offense unless upon indictment by a Grand Jury".

S.C. Code Ann § 17-19-20 Provides:

"Every indictment shall be deemed and judged as good and sufficient in law, which in addition as to allegations as to time and place as required by law, charges the crime substantially in the language of the common law of the statute, prohibiting the crime and so plainly that the nature of the offense charged may be easily understood***".

Insomuch, it is the body of the indictment which is the [v]ital part of the charging instrument, State v. Tate, 345 S.C. 577, 549 S.E.2d. 601(S.C.2001), and it "[c]annot" be so cryptic or the wording so loose, vague and ambiguous as to fail to comply with the basic right of the accused to be "[f]ully" informed as to the "[c]ause and [n]ature" of the accusation being levied against them, which is one of the most basic, fundamental and universally recognized rights of Due Process, Smith v. O'Grady, 312 U.S. 329, 61 S.Ct. 572(1941); State v. Tabor, 262 S.C. 136, 141, 202 S.E.2d. 852(1974)(Holding that the state may not support a conviction * 334 for an offense intended to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment).

Subject to certain minor exceptions not present, jurisdic-

tion is made void for Due Process violation, and the trial court is prohibited from enacting and or invoking and or continuing its Subject Matter Jurisdictionary "[p]owers" to convict a defendant for an offense, when there is no indictment charging him with that offense when the jury is sworn, and or before he gives his guilty plea even though the court does possess such "[p]ower" given to them by legislative statute, State v. Beachum, 288 S.C. 325, 342 S.E.2d. 597(1986); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 126640; White v. Manis, 2014 WL 1513280(DSC.2014).

Federal Rules of Procedure, Rule 7(c) requires that an indictment contain a "[p]lain", "[c]oncise" and "[d]efinite" written statement of essential elements and or allegations constituting the offense charged. The indictment Clause of the 5th. Amendment require that the indictments contain some amount of factual particularity to ensure that the prosecution will not fill in elements of his case with facts other than those considered by the Grand Jury, United States v. Abrams, 539 F.Supp. 378, 384(S.D.N.Y.1982).

If the court will please take notice of the indictment(s) for attempted murder. They read: "That in Berkeley County, South Carolina,****Morris Gourdine,****, while acting in concert with codefendant, discharged a firearm at the victim,****".

The indictment for conspiracy reads:

"That in Berkeley County,****the defendant Jason Morris Gourdine, did combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing a crime, to wit, attempted murder.*****".

These are the generic terms of the statute for conspiracy. Inasmuch, the indictment(s) are to vague and cryptic. The attempted murder indictment(s) do not say what weapon was supposedly used, and both the attempted murder and conspiracy in-

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dictment(s) do not allege who it was the appellant conspired with. The court and prosecution did add these elements and or aggravating factors that were not passed upon by the Grand Jury. Did the appellant possess a handgun, a slingshot, a dirk, a machete, an uzi, an AKA-47 or a rocket launcher? The indictments do not say. Did the appellant allegedly conspire with "Sponge Bob", "Barrack Obama", Donald Duck Trump and the alt right", Bugs Bunny" or "Michael Jackson" who came back from the dead? The indictment(s) do not say. This is why they conspired under ~~color of State law, in acts of prosecutorial misconduct as well~~ as in acts of fraud upon the court and denied the motion for severance, which extremely prejudiced the appellant, permitting them to constructively amend the indictments before the court. This extreme prejudice caused actual substantive disadvantage where these material averments were not passed upon by the Grand Jury in the body of the charging instrument. This act led to said constructive amendment and denial of the motion for severance by fraud, depriving the appellant of proper notice giving way to arbitrary judicial action in violation of Due Process law, voiding jurisdiction for Due Process violation. This issue is also preserved for appellate review where the attorney for the defense argued that the State did not prove the indictments or elements of the motions for dismissal, direct verdict and severance, Castillo v. Holder,---F3d.---,2015 WL 161952 CA4 (2015); State v. Brandt, 393 S.C. 526, 713 S.E.2d. 591(S.C.2011).

The language in the indictment(s) is so vague, so loose, so cryptic and ambiguous it is almost impossible for the appellant to know what he is called upon to meet and defend. What weapon was the appellant in possess of? As far as the appellant can tell, it must have been a ~~surface~~ air missile or rocket launcher. As far as the appellant can tell, in whom it was that he allegedly conspired with. It could have been Napoleon Bonapart after he battled at Waterlou or Genghis Khan after he left the Asian Continent, where these people were resurrected from the dead. No one can say what was in the mind of the Grand Jury. This "[c]annot" be deemed as reasonable notice, which is why

the court denied the motion for severance, to constructively amend the indictments where the jury would have been able to only speculate had this not been done. The indictments cannot be deemed as sufficient if the prosecution is permitted to prove all these materially different sets of facts, to include any other set of facts not passed upon by the Grand Jury, subjecting the appellant to "Indictment Ambush" at the onset of the proceedings, voiding their jurisdiction for Due Process violation, State v. Keith, 283 S.C. 597, 598, 325 S.E.2d. 325, 326(1985); State v. Bullock; United States v. Masotto, 73 F3d. 1233 cert. denied 117 S.Ct. 54, 136 L.Ed.2d. 18; Castillo v. Holder, --- F3d.---, 2015 WL 161952 CA4 (2015); State v. Brandt, 393 S.C. 526, 713 S.E.2d. 591(S.C.2011); S.C. Code Ann § 17-25-10.

The requirement of the indictment(s) limit and constrain the Subject Matter Jurisdictionary "[p]owers" of both the prosecution and the court by limiting what can be presented at trial, conviction and sentencing, United States v. Promise, 255 F3d. 150(4th.Cir.2001); State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309. It is the command of the U.S. Constitution, that anything to the contrary is notwithstanding, (Article IV § 2 U.S. Const.); S.C. Code Ann § 17-25-10.

The State and or prosecuting body, acting unjustly, arbitrarily, conspiring under color of law, has egregiously failed to adhere to their own state laws, serving to deny the appellant the Equal Protection of the Laws against unjust, arbitrary prosecution and judicial action in acts of fraud upon the court, Great Coastal Exp. Inc. supra., 675 F2d. 1349(4th.Cir.1982); Fox Ex. Rel. Fox v. Elk Run Coal Co. Inc., 739 F3d. 131(4th. Cir.2014); U.S. v. Beggerly, 524 U.S. 38, 118 S.Ct. 1862, 141 L.Ed.2d. 32(U.S.1998); Blue Sky Travel and Tours, LLC v. Al Tayyer, ---Fed. Appx'---, 2015 WL 1451636 CA4 (Va.2015); Barlow v. Colgate Palmolive Co., 772 F3d. 1001, 90 Fed. R. Serv.3d. 85 CA4 (Md.2014); U.S. v. Tejada, 445 Fed. Appx' 719, 2011 WL 3891825 CA4 (S.C.2011); Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin

v. Florida supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Hicks v. Oklahoma supra.; Jones v. Arkansas supra.; Lugar v. Edmondson Oil Co. supra.; Greenwood v. Peacock, (1966) 384 U.S. 808, 16 L.Ed.2d. 944, 86 S.Ct. 1800; United States v. Otherson, (1980 CA9 Cal.) 637 F2d. 1276 cert. denied (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct. 149; S.C. Code Ann § 17-25-10.

In United States v. Hooker, 841 F2d. 1225, 1227(4th.Cir. 1988)(EN BANC) and in Russell v. United States, 82 S.Ct. 1047 (1962), the court held:

"It is an elementary principle where the definition of the offense(s) charged, whether it be at common law or statute, include generic terms, it is "[n]ot" sufficient that the charging should be in the same generic terms of the statute, but it "[m]ust" descend to "[p]articulars".

WE HOLD, a mere citation of the statute of which the defendant is charged with violating is insufficient to cure the failure of the indictment(s) to charge each essential element and or allegation of the offense because a mere citation alone does not ensure that the Grand Jury considered and found the crucial elements and or facts of the offense". The appellant also cannot be subjected to language that violate his rights to double jeopardy protection.

Hence, by the Doctrine of "STARE DECISIS ET NON QUIENTA MOVERE", and indictment "[m]ust" properly set forth all essential elements of the offense. By Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887(1974), it is well established and recognized under American Jurisprudence: That if an indictment fails to charge all the necessary elements, it fails to charge the offense . If it fails to charge the offense or subject a person to double jeopardy, such violates the appellant's 5th., 6th. 14th. Amendment rights of the U.S. Constitution, as well as Article IV § 2, and his rights of Due Process, voiding the court's jurisdic-

tion for Due Process violation. Thus, the conviction "[m]ust be set aside, United States v. Cabrera-Teron, 168 F3d. 141(5th. Cir.1999); United States v. Pupo, 841 F2d at 1239(4th.Cir.1988) (EN BANC); United States v. Hooker, 841 F2d. 1225(4th.Cir.1988); United States v. Daniels, 973 F2d. 272(4th.Cir.1992); Elderberry Of Weber City, LLC v. Living Center--Southeast, Inc., ---F3d.--, 2015 WL 4430836 CA4 (Va.2015); Norbrega v. Hinkle, 576 Fed. Appx' 224 CA4 (Va.2014); Manis v. White, 2014 WL 1513280(DSC. 2014); Robinson v. Cohen, F.Supp.2d., 2009 WL 789882(DSC.2009); United States v. Gomez, 690 F3d. 194 CA4 (Md.2012); Carr v. United States, 560 U.S. 438, 130 S.Ct. 2229(U.S.2010); United States v. Robare, 2011 WL 10583565 (N.D.N.Y.2011) Castillo v. Holder supra.; State v. Brandt supra.

(4) Did the trial court err, and was the appellant's 5th., 6th., 14th. Amendment rights violated, as well as Article IV § 2 and his Due Process rights violated, voiding the court's jurisdiction for Due Process violation, due to the court's failure to issue a final written order in the appellant's stand your ground hearing?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings (Black Law Dictionary 8th. Edition).

So the legal maxim remains, *STARE DECISIS ET NON QUIENTA MOVERE*, to stand by those things decided in law, and not to move from them. Subject Matter Jurisdiction can be raised at any time, "[c]annot" be waived by the defendant, can be raised for the first time on appeal, and the appellate court "[s]hall [n]ot" fail to take notice, South Carolina Dept. Of Social Services v. Tran, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d. 916 (S.C.App. 2012); Sheila R. v. David R., 396 S.C. 41, 719 S.E.2d. 682 (S.C. App.2011); United States v. Beasley, 495 F3d. 142(4th.Cir.2007).

Attached the court will find, "Exhibit--Stand Your Ground". This is the Notice Of Affirmative Defense, Motion And Memorandum To Dismiss And State's Opposition To Dismiss.

This is the crux of the matter. It is the appellant's contention that the conviction must be vacated because it was obtained by egregious acts of fraud upon the court, conspiring under color of state law and violations of Due Process, which voids the court's jurisdiction for Due Process violation. By these acts the appellant was denied the Equal Protection Of The Laws, Paul Adams v. California Institution, 2016 WL 6464444; Holloway v. Perry, 2016 WL 4079149; Donatoni v. Department Of Homeland Security, ---F.Supp.3d.---, 2016 WL 1755871; U.S. v. Hare, 820 F3d. 93(4th.Cir.2016); Asterbadi v. Leites, 176 Fed. Appx' 426 CA4 (Va.2006); PCS Nitrogen Inc. v. Ford Motor Co., ---F.Supp.3d.---, 2015 WL 6758983(E.D.N.C.2015); Christianson v. M.B.N.A. American Bank, N.A., S.E.2d., WL 8507850(S.C.App. 2013); Caldwell v. Wiquist, 402 S.C. 595, 741 S.E.2d. 583 (S.C. App.2013); Anderson Bros., Bank v. E.B.T. Property Holdings Co. Inc., S.E.2d., 2013 WL 8507807(S.C.App.2013); Miller v. Columbia Forrest Inc., S.E.2d., 2014 WL 5390504(S.C.App.2014); Springob v. University Of South Carolina, 407 S.C. 490, 757 S.E.2d. 384(S.C.2014).

Pursuant to Section 16-11-440(A)(1)(2) Provides:

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"A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to another person: against whom the bodily force is used is in the process of unlawfully and forcefully entering or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes and or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful or forcible act is occurring or has occurred".

When the Court looks at the provisions of S.C. Code Ann § 16-11-420 of The Protection Of Persons And Property Act (A). This act extended the provision to cover an occupied vehicle as does exist within this case.

It is perspicuous that from all testimony, that the appellant's codefendant, for all practical purpose when approaching the alleged victim(s) vehicle "unarmed"(emphasis added) intended to identify the person who assaulted, or attempted to assault him in the bar, for the purpose of engaging in mere conversation to gain closure on the matter. There was no other evidence produced subjudice, in the court record, that would substantiate otherwise. A respectable distance was maintained at all times during the efforts to engage in that non-violent conversation when thereupon, the (3) men, "[n]ot [o]ne", but (3), including a very large potential perpetrator, then came at the appellant's codefendant in an overt act of attempted assault and by (3) men overwhelming force, literally chasing the codefendant back to the vehicle. At no time at this juncture the the codefendant show any sign of force or threat, by words or deed. Not any one of these alleged victims were compelled by any sign of force or threat, nor did the codefendant make any effort to extract any person from the vehicle. Thus, there existed no logical reason for any of these alleged victims to chase the codefendant back to the appellant's vehicle except for the purpose of causing potential death or great bodily injury. If their intent was

to de-escalate the situation, all any of the alleged victims had to do, since there at no time was any force or unlawful act manifesting itself. They could have simply ignored the non-violent approach, brushed the event off where there was no weapon presented, remained in the vehicle, turned the key, and then drove off. This was simple. Nothing done by the codefendant required the use of any force, which is obvious because he ran!, he was fleeing the attempted assault. Once these alleged victims by their own cognizance chose to attempt an unlawful assault, ~~which was totally unnecessary at the time, which is clearly~~ indicated by all testimony, in an overt show of overwhelming force, by (3), "[n]ot [o]ne" potential perpetrator who fraudulently called themselves victims. Thus, this unreasonable and excessive response to mere non-violent questioning, indisputably demonstrating that an unlawful and forcible act was occurring. They could have simply stayed in their vehicle, ignored the approach since there was no apparent threat or force at that moment, and drove off, problem solved. Yet it was the alcohol that they consumed that led them to do otherwise.

This is why the hearing Judge did not reduce his findings to a final written order. The Judge knew good and well that the state did not meet their burden in proving that the appellant was not entitled to an immunity defense. So to permit the State to proceed with this farce of a trial, in acts of fraud upon the court, conspiring under color of State law. The Judge gave this mock hearing to make it appear the matter was resolved as a pretext to violate the appellant's Due Process rights, because he knew he could not justify his oral determination by reducing such findings of fact to writing and sign off on a written final order. The conspiring Judge, gave the mock hearing, did not produce the final written order, also to deny the Appellate Court jurisdiction to review this particular issue on direct appeal. The failure to produce this final written order in the stand your ground hearing is a jurisdictional matter, so it can be raised on the first time in this appeal.

This is not the only injustice that presents itself in this travesty of an adjudication that occurred subjudice. The appellant brings the court's attention to S.C. Code Ann § 16-11-440(C), which reads:

"A person who is not engaged in an unlawful activity and who is attacked in another place where he has the right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as is identified in Section 16-1-60".

This is an additional outrageous act that has occurred within these proceedings. To negate the element that the appellant and or codefendant had a right to be where they were. For the purpose of criminally robbing the appellant of his immunity defense in egregious acts of prosecutorial misconduct, to which the court was privy to the fraud. The prosecutor solicits false, perjured testimony from the witness who was acting as a bartender and states solely for the stand your ground hearing. The witness asserts that she was the manager, and had the power and authority to expel the appellant and or his codefendant from the bar to negate the element that we had a right to be there.

Once they hatched their scheme to solicit this false, perjured testimony to deprive the appellate of his immunity defense conspiring under color of state law, in acts of fraud upon the court. Once the immunity hearing was concluded. The witness then changes her perjured testimony given in the stand your ground hearing, during the actual trial, which they all conspired in. After achieving their goal in the immunity hearing. The witness then testifies that she indeed was "[n]ot"(emphasis added) the manager openly on the trial record to correct the perjured testimony which extremely prejudiced the appellant at his immunity hearing. This substantially violates the appellant's Due Process rights and voids the court's jurisdiction

for these egregious acts of fraud and machination. The hearing Judge was privy to all of this and knew if a final written order was reduced to paper and entered into the court record, which is a jurisdictional matter for purposes of appeal. The case would have been reversed and vacated for this sham legal process that presents itself before the court(s) involved. See Vol. III TT.PP. 117 lns. 1; TT.PP. 114 lns. 18; TT.PP. 117 lns. 18-23; Vol. II TT.PP. 285 lns. 12-13 and 20-21; TT.PP. 293 lns. 17-23.

Another place, for the purposes of the statute, encompasses a residence, a bar or the parking lot within the provisions of The Protection Of Persons Act related to immunity for use of deadly force by a person who is not engaged in unlawful activity and who is attacked in "[a]nother [p]lace" where he has a right to be if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person to prevent the commission of a violent crime. The State actors by this conspiracy, their intent was to deny the appellant the right to address the issue before the Court Of Appeals because there was no final written order produced, where the appellant is forced, and must now argue the issue under Subject Matter Jurisdiction in order to properly have the injustice addressed, State v. Jones, 416 S.C. 283, 786 S.E.2d. 132(S.C.App.2016); Humbert v. State, 345 S.C. 332, 548 S.E.2d. 862(2001); State v. Dunbar, 356 S.C. 138, 587 S.E.2d. 691(S.C.App.2003); State v. Scott, S.E.2d., 2015 WL 7075444(S.C.App.2015).

A prime example that the appellant was entitled to the immunity defense is found in the case of State v. Pompey. Similar in my case, the codefendant approached the vehicle. It was not illegal for him to do so. The codefendant had no visible weapon, made no show of illegal force, but merely asked a question. The codefendant did not bait anyone, and there was no evidence adduced that would serve to prove otherwise. It was at the point of aggressive posture engaged in by the alleged victims and retreat, not bait, but retreat of the codefendant, where an

unlawful attack by unnecessary, brute, criminal force was in the process of being committed did the appellant act to meet force with force as the statute provided. The codefendant's retreat demonstrated the intent to avoid further escalation. There was no act or statement done at that moment that required (3), not one , but (3) potential perpetrators, under the influence of alcohol, to attempt a potentially deadly attack by illegal force. No weapon was brandished, no show of illegal force was made by the codefendant. The alleges victims, had not been for the large amounts of alcohol they consumed, could have simply ignored the codefendant's question, got in their car and left, or at least made an effort to do so since there was no threat or show of illegal force. It was only at the time of the attempted assault of the (3) attackers did the appellant act with deadly force out of fear of great bodily injury. Three people, including one huge fellow, assaulting one medium built person can potentially do a lot of damage, including kill a person, whether it be intentional or unintentional. Under these circumstances the statute triggers, State v. Pompey, S.E.2d., 2015 WL 3647091(S.C.App.2015).

The prejudice is inherently patent so the issue must be deemed preserved. There is no statute of limitations for fraud upon the court. The court has inherent equity power to vacate judgment obtained by fraud upon the court. Without a written final order entered into the court record, signed by a Judge. The appellant's immunity claim is still valid and it created a jurisdictional defect in bringing the actual trial because without that final order in this particular case. Res Judicata and or collateral estoppel does "[n]ot" attach establishing overwhelming prejudice. The written order was also needed to properly preserve the issue for appeal. No trial should have occurred until such a written final order was entered into the court record, Nelson v. Levy Center LLC., 2016 WL 1276414 (DSC.2016); Teal v. Hickman-Tedder, S.E.2d., 2015 WL 9393946 (S.C.App.2015); Ware v. Ware, 404 S.C. 1, 743 S.E.2d. 817(S.C. App.2013); S.C. Code Ann § 14-3-330; United States v. Sacara

Pacific Industries, 100 F.Supp.3d. 948, 91 Fed. R. Serv.3d. 1005(W.D.Cal.2015); Rogers v. Carr, S.E.2d., 2014 WL 2721025 (Ct.App.2014); Patton v. American Lifestyle Homes LLC., S.E.2d., 2016 WL 6471968(S.C.2016); Portee v. Always Precise Protection Agency & Investigation, Inc., S.E.2d., 2012 WL 10864536(S.C. App.2012); Appling v. State Farm Mut. Auto Ins. Co., 340 F3d. 769(9th.Cir.2003); City Of Fortmill v. Fitzgerald, S.E.2d., 2014 WL 7339453(S.C.App.2014).

~~The hearing Judge conspiring under color of state law~~
with the prosecution knew exactly what they were doing in engaging in this fraud and machination which is why the Judge never issued the final written order. The ill intent is demonstrated by the obtaining and or soliciting the use of perjured testimony from Julia Victoria Taylor, asserting that she was the manager to fraudulently make it appear she had legal authority to ask us to leave so it would be perceived that we were unlawfully there. Once this criminal act and aim was achieved in the immunity hearing she then changes her statement at trial, the damage was done. The outcome surely could have been different due to there being no overwhelming evidence of guilt. See Vol. III TT.PP. 117 ln. 1; TT.PP. 114 ln. 18; TT.PP. 117 lns. 18-23; Vol. II TT.PP. 285 lns. 12-13 and 20-21; TT.PP. 293 lns. 17-23.

Evidence offered by prosecution may be false because it is perjured, or, though not itself factually inaccurate, because it creates a false impression of facts which are known not to be true. A conviction obtained through the use of false testimony, which could have been objected to had the court permitted my counsel to be present, where this false testimony is known to be such by representatives of the state, is a denial of Due Process, when the state though not soliciting false testimony, allows it to go unchallenged when it appears. Principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely

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because the false testimony goes only to the credibility of the witness. The Judge did not issue a written order for the purpose of covering all of this up and conspired to deny the appellant the right to address these concerns on appeal because he figured the State v. Gentry case would bar review on appeal. Thank goodness the failure to issue the written order is jurisdictional in nature which must be adjudicated under the Due Process Prong to Subject Matter Jurisdiction, which voids the court's jurisdiction for Due Process violation, United States v. Bartko, 728 F3d. 327(4th.Cir.2013); Napue v. People Of State Of Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d. 1217 (U.S.1959); Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d. 70 (S.C.App.2006); Simmons v. State, 416 S.C. 584, 788 S.E.2d. 220(S.C.App.2016); U.S. v. \$41,329 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240; Loumiet v. United States, 65 F.Supp.3d. 19(2014).

There is no written order entered into the court record from the immunity hearing containing factual findings sufficient to allow the court of appeals, sitting in its appellate capacity, to ensure that the law was faithfully executed below. It would place the court in a position where it would be engaging in speculation in upholding a state court oral determination. Until order is entered by the Clerk Of Court, the hearing court for the immunity defense retains control over the case. No order is final until it is written and entered. Until written and entered the immunity hearing court and Judge retain the discetion to change its mind and amend the oral determination accordingly. The written order, not the oral determination, constitute a final judgment of the court. The trial court's jurisdiction was made void for Due Process violation without a written order for the immunity hearing entered into the court record, also for jurisdictional purposes of appeal, Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d. 274(S.C.App.2008); Brailsford v. Brailsford, 380 S.C. 443, 669 S.E.2d. 342(S.C.App.2008); Metts v. Mims, 370 S.C. 529, 635 S.E.2d. 640(S.C.App.2006); Simmons v. State, 416 S.C. 584, 788 S.E.2d. 220(S.C.App.2016); Raby Const. LLP.

v. Orr., 358 S.C. 10, 594 S.E.2d. 478(S.C.App.2004); 18 U.S.C. § 242, 1001; Bowman v. Richland Memorial Hosp., 335 S.C. 88, 91, 515 S.E.2d. 259, 260(Ct.App.1999); Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d. 643(S.C.App.2006); McComb v. Concord, 394 S.C. 416, 426, 715 S.E.2d. 662, 667(Ct.App.2011); State v. Robinson, 287 S.C. 173, 337 S.E.2d. 204(1985).

The court, conspiring under color of state law, in egregious acts of fraud upon the court, has failed to adhere to their own state laws in violation of the appellant's substantial rights of Due Process, serving to deny the appellant the Equal Protection Of The Laws, producing overwhelming prejudice, which voids their jurisdiction for Due Process violation, Grupo Dalaflux v. Atlas Global Group L.P. supra.; Loumiet v. United States supra.; U.S. v. \$41,320 U.S. Currency supra.; S.C. Code Ann § 17-25-10; Screws v. United States supra.; State v. Middleton supra.; McLaughlin v. Florida supra.; Eslinger v. Thompson supra.; Lugar v. Edmondson Oil Co. supra.; Aladekcha, 2010 WL 4054267 (2010); Paul Adams v. California Institution, 2016 WL 6464444; Holloway v. Perry supra.; U.S. v. Hare supra.; Donatoni v. Department Of Homeland Security supra..

When an officer of the State and or State actor, shall use their power pursuant to arrest and or prosecution in egregious acts of prosecutorial misconduct, fraud upon the court and machination, for ulterior motives and incarcerate and or prosecute an accused for the purpose of engaging in malicious, arbitrary, fraudulent and criminal acts, willfully subjecting the appellant to deprivations of any rights, immunities or privileges secured by the Constitution and laws of The United States within any State, District or territory. They shall be subject to state and federal penalties. By what has been done here producing overwhelming prejudice. Such action is indisputably deprivation of rights, immunities and privileges of the accused to liberty and a violation of 18 U.S.C. §§ 241, 242 and 1001; neither threat, nor violence is a necessary ingredient of the offense under these circumstances where the conspiring

individuals were clearly acting arbitrarily under color of state law for an ulterior purpose giving a mock stand your ground hearing without issuing a written final order to deprive the appellant of an appealable issue, soliciting and or allowing false, perjured testimony in that hearing where the trial court's jurisdiction is in question due to there being no written final order which is to be adjudicated under the Due Process Prong to Subject Matter Jurisdiction. Thus, the sentence and conviction must be vacated, Williams v. United States supra.; Brown v. United States supra.; United States v. Ramey supra.; United States v. Kozminski supra.; Greenwood v. Peacock supra.; United States v. Otherson supra.; Hunt v. United States, F.Supp.2d., 2007 WL 5131716(DSC.2007); U.S. v. Parker, 790 F3d. 327(4th.Cir. 2013); Mooney v. Holohan supra.; Napue v. People Of State Of Illinois supra..

(5) Did the trial court err, and was the appellant's 6th. and 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2 and his Due Process rights violated, where jurisdiction is made void for Due Process violation, due to the appellant's counsel not being present at a critical stage of the proceedings?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

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Subject Matter Jurisdiction can be raised at any time, "[c]annot" be waived by the defendant and can be raised for the first time on appeal and the court shall not fail to take notice. This particular issue is to be addressed under the Due Process Prong to Subject Matter Jurisdiction, South Carolina Dept. Of Social Services v. Tran supra.; McCain v. Brightharp supra.; Sheila R. v. David R. supra.; U.S. v. Beasley supra.; U.S. v. \$41,320 U.S. Currency supra.; Loumiet v. United States supra..

Insomuch, it is conspicuous by the litigation presented within this document that the stand your ground hearing concluded without there being a final written order filed for that hearing which is a jurisdictional prerequisite for appeal purposes. What's even worse than this, not only was there no written order produced and filed to finalize any oral determination. But also the appellant was denied the presence of counsel at a critical stage of the proceedings. Had this not been done, objections for the appellant, not just the codefendant, would have been preserved in the court record. Also, the appellant's Attorney at this critical stage of the proceedings could have ensured that a written order was filed to finalized the matters, where the Judge could have altered his determination at any time before such order was signed, creating overwhelming prejudice and manifest injustice and or a miscarriage of justice, which voids the court's jurisdiction for Due Process violation, Hidalgo v. Barker, 176 Wash. App. 527, 309 P.3d. 687(2013); State v. Thompson, ---S.E.2d.---, 2016 WL 7151279(2016); State v. Rearick, 407 S.C. 391, 790 S.E.2d. 192(2016); Levi v. Northern Anderson County E.M.S., 409 S.C. 374, 762 S.E.2d. 44(2014); Great American Ins. Co. v. Nextday Network Hardware Corp., 73 F.Supp.3d. 636 (2014); Marshall v. City Of Rock Hill, S.E.2d., 2015 WL 3884258 (S.C.App.2015); Bodman v. State, 403 S.C. 60, 742 S.E.2d. 363 (S.C.2013); Garcia Financial Group Inc. v. Virginia Accelerators Corp., 3 Fed. Appx' 86, 2001 WL 117497(4th.Cir.2001); Board Of Trustees Of Institutional Union Of Operating Engineers, 2016 WL 1253285; Wells Fargo Bank N.A. v. Farag, 2016 WL 2944561;

LaRock v. Kunchich, 187 Wash. App. 1002, 2015 WL 1751704; Calderon v. Thompson, 523 U.S. 538, 118 S.Ct. 1489(U.S.1998); Graham v. McFadden, 2015 WL 505536(DSC.2015); Addison v. C.M.H. Homes Inc. 47 F.Supp.3d. 404(DSC.2014); U.S. v. Baher, 598 Fed. Appx' 165(4th.Cir.2015).

Insomuch, the 6th. Amendment right to assistance of counsel in part provides; In all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense. The 6th. amendment right to defense counsel in a felony prosecution is a fundamental right, binding on the States through the 14th. amendment, Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d. 799(1963).

The stand your ground hearing from beginning to end was a critical stage of the proceedings where the failure to produce a written final order created a jurisdictional defect prohibiting the trial court from proceeding due to that court retaining jurisdiction until a final written order is entered into the court record. This is also a matter related to appeal since the order is a jurisdictional prerequisite for appeal purposes. If the U.S. Supreme Court determined that a plea hearing is a critical stage of the proceedings. How much more critical is it at every stage of the stand your ground hearing?, Hamilton v. Alabama, 368 U.S. 52, 54, 82 S.Ct. 157, 158-59(1961); White v. Maryland, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d. 199 (U.S.1963).

To permit a conviction to stand when it exist in blatant defiance to the holdings made in Gideon v. Wainwright would erode the principles established by the 6th. amendment. A defendant has the Constitutional right to the assistance of counsel at every "[c]ritical [s]tage" of the proceedings against him or when his substantial rights may be affected. In this instance the absence of counsel becomes jurisdictional in nature because the depriving of the appellant of this substantial right of counsel was used to deny the appellant the jurisdictional requisite written final order in the stand your ground immunity

hearing where the lack of counsel at this stage contaminated and affected the entire subsequent proceeding, Mempo v. Rhay, 389 U.S. 128, 134, 88 S.Ct. 254, 257, 19 L.Ed.2d. 336(1969); Lake v. State, ---S.W.3d.---, 2017 WL 514588(2017); United States v. Hollis, 506 F3d. 415(5th.Cir.2007).

A criminal defendant's initial appearance before a judicial officer where he learns of the charge against him and that his liberty is subject to restriction, marks the start of the adversary judicial proceedings that trigger attachment of the 6th. amendment right to counsel at every stage from beginning to end. It is worth emphasising first what is not in dispute or at stake here under our precedents. Once the adversary judicial process has been initiated the 6th. amendment guarantees a defendant the right to have counsel present at all stages of the criminal proceedings, Stahlnecker, 386 S.C. 609 at 620, 690 S.E.2d. 565(S.C.App.2010); State v. Bryant, 383 S.C. 410, 680 S.E.2d. 11(S.C.App.2009); United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d. 1149(U.S.1967).

The 6th. amendment to the U.S. Constitution guarantees a defendant the right to effective assistance of counsel. Criminal law establishes that the constitutional guarantee of effective assistance of counsel applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which a defendant cannot be presumed to make critical decisions without counsel's advice. Even in a plea hearing the right to counsel is guaranteed. In this situation there is no dispute that the lack of the presence of counsel at this critical stage of the stand your ground hearing where it cause the right to challenge the failure of the court to reduce its findings to a final written order to preserve the appellant's rights of immunity defense from being made a part of the court record. This egregious deprivation of fundamental constitutional protection contaminated the entire subsequent trial proceeding, voiding the court's jurisdiction for Due Pro-

cess violation, Lafler v. Cooper, 132 S.Ct. 1376; United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d. 1149(U.S.1967); Sellner v. State, 416 S.C. 606, 787 S.E.2d. 525(S.C.App.2016); Hamilton v. Alabama, 368 U.S. 52, 54, 82 S.Ct. 157, 158-59(1961); White v. Maryland, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d. 199 (U.S.1963); Lake v. State,---S.W.3d.---,2017 WL 514588(2017); Rice v. United States, F.Supp.3d., 2015 WL 9216877(W.Va.2015); Rowsey v. United States, 71 F.Supp.3d. 585(E.D.Va.2014); United States v. Wright, 59 F3d. 169 (Table), 1995 WL 378584(4th.Cir. 1995). See Vol. II, TT.PP. 11 through 440; TT.PP. 132-134.

The state and or court, again, conspiring under color of State law, in acts of fraud upon the court and machination, has failed to adhere to their own state laws in violation of the appellant's substantial constitutional rights of Due Process also serving to deny him the Equal Protection of the Laws producing arbitrary judicial action. The conspiring Judge and State actors knew fully well that the 6th. amendment guaranteed the appellant the right to effective assistance of counsel which applies to pretrial stages that are a part of the whole course of a criminal proceeding in which a defendant cannot be presumed to make critical decisions without counsel's advice. Due to lack of counsel's presence, this created an avenue for the conspiring parties to deny the appellant his right of immunity defense. It created a structural constitutional error that is not subject to the harmless error doctrine, voiding the court's jurisdiction for Due Process violation, Vines v. United States, 28 F3d. 1123 Crim. Law 1116(1), 1156(1); White v. Manis, 2014 WL 1513280(DSC.2014); Lafler v. Cooper, 132 S.Ct. 1376; Sellner v. State, 416 S.C. 606, 787 S.E.2d. 525(S.C.App.2016).

When it came to the final portion of the stand your ground hearing the appellant's counsel was prevented at this stage creating structural error. The trial court's error effects the appellant's substantial constitutional right to counsel of choice at a critical stage of the proceedings voiding the court's jurisdiction for Due Process violation. Thus, the sentence and convic-

tion must be set aside. The appellant motions for such, Screws v. United States supra.; Hicks v. Oklahoma supra.; Loumiet v. United States supra.; Hunt v. United States supra.; United States v. Otherson supra.; United States v. Ramey supra.; Rowsey v. United States, 71 F.Supp.3d. 585(E.D.Va.2014); Rice v. United States, F.Supp.3d., 2015 WL 9216877(W.Va.2015); Kaley v. United States, 134 S.Ct. 1090, 188 L.Ed.2d. 46(U.S.2014); United States v. Davila, 133 S.Ct. 2139, 186 L.Ed.2d. 139(U.S.2013); United States v. Marcus, 560 U.S. 258, 130 S.Ct. 2159, 176 L.Ed.2d. 1012(U.S.2010); Appellate Court Rule 203(b).

(6) Did the trial court err, and was the appellant's 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated by the trial court giving an improper jury instruction, producing extreme prejudice, informing the jury that a specific intent to kill is not an element of attempted murder?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

Insomuch, the injustices and violations of both State

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and Federal law that has occurred in this case are overwhelming and even seerve to "shock the conscience" by the egregious acts of conspiring under color of state law, fraud and machination. to add further insult to injury, pouring salt into already gaping wounds; an additional injustice has occurred in this case, in the form of an erroneous jury instruction given by the court. The trial court abused its discretion and did err, by charging that a specific intent to kill is not an element of attempted murder. See Vol. III, TT.PP. 719 lns. 23-24.

An abuse of discretion occurs when the court is controlled by an error of law, or when the ruling based upon findings of fact, is without evidentiary support or fact. It occurs when the court rests its decision or claim on clearly erroneous findings or material fact or by misapprehending the law with respect to underlying issues, Georgia Pacific Consumer Products L.P. v. Von Drehle Corp., 781 F3d. 710, 728+ 4th.Cir. (N.C.); Sharpes v. Sharpes, 535 S.E.2d. 913, 342 S.C. 71(2000).

The law is clear on this issue. S.C. Code Ann § 16-3-29 Provide:

"Attempted murder is defined as an act done by a person who with intent to kill, attempts to kill another person with malice and aforethought, either expressed or implied, commits the offense of attempted murder".

The statute conspicuously provide that the specific intent to kill is an essential element of attempted murder. To state otherwise is an egregious error of law. Then when you add the other injustices which have occurred in this case. It is obvious that the prejudice is overwhelming. The S.C. Supreme Court had decided in a similar instance, that indeed the specific intent to kill, is without a doubt, an essential element of attempted murder, See State v. King, 412 S.C. 403, 772 S.E.2d. 189 (S.C. App.2015).

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To warrant reversal, a jury charge must be erroneous and prejudicial. In light of the unjust denial of stand your ground rights by the fraud, conspiracy and machination, by failing to produce a final written order to establish Res Judicata and preclusive effect and other outrageous acts which occurred. Such is indeed prejudicial. Errors, including erroneous jury instructions are subject to the harmless error analysis. Since we have the State procuring the conviction by perjured testimony, blocking the required severance of the case, constructively amending the indictments all over the place, taking away the presumption of innocence, denying the right of immunity defense by failing to produce a final written order in support of the oral determination because the trial Judge knew fully well that the State did not meet its burden of proving the appellant was not entitled to the immunity defense. This is not a harmless error, State v. Belcher, 385 S.C. 597, 611, 685 S.E.2d. 802, 809(2009).

The South Carolina Legislature required the State to prove specific intent to commit murder as an essential element of attempted murder, and therefore the trial court erred by charging the jury that attempted murder is a general intent crime. Thus, the judgment must be vacated and reversed. I motion for such, State v. King, 412 S.C. 403, 772 S.E.2d. 189(S.C.App. 2015); State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d. 283, 285(2000); State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d. 702, 705(Ct.App.2007); United States v. Hernandez-Montes, 831 F3d. 284 (5th.Cir.2016).

(7) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process Rights violated, as well as Rules Of Court, Rules Of Criminal Procedure, as well as the court's jurisdiction being made void for Due

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Process violation, and or they were prohibited from enacting and or invoking and or continuing their Subject Matter Jurisdictionary "[p]owers" due to the "[p]rocedural [d]efect" in that there was no "[w]ritten"(emphasis added) order of continuance obtained pursuant to Article V § 4 of The South Carolina Constitution?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules of Evidence, Rule 201(a).

The appellant gives the court judicial notice. Not only by this document am I arguing against the precedent established by States v. Gentry, 363 S.C. 93, 610 S.E.2d. 494, 495(S.C.2005). The appellant is also arguing against the precedent established by State v. Langford, 400 S.C. 421, 735 S.E.2d. 471(S.C.2012), Joseph v. South Carolina Dept. Of Labor, Licensing And Regulation, 417 S.C. 436, 790 S.E.2d. 763(S.C.App.2016); Stokes--Carven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d. 485(S.C. App.2016); Johnson v. Johnson, S.E.2d., 2014 WL 2721680(S.C. App.2014).

The petitioner humbly contends, in pursuant to Article V § 4 of The South Carolina Constitution:

"IT IS ORDERED, THAT ALL CRIMINAL CASES IN THE STATE OF SOUTH CAROLINA "[s]hall" BE DISPOSED OF WITHIN (180) DAYS FROM THE DATE OF THE DEFENDANT'S ARREST. Provided, however, the Circuit Court may continue a criminal case beyond the (180) days by "[w]ritten" order (emphasis added), if the court determines that exceptional circumstances exist in the case. This order does not create or define a right to a speedy trial", (See S.C. Rules Of Court 2003 Edition on page 652 and S.C. Rules Of Court 2004 Edition on page 659).

Article V Privileges, Rule 501 General Rule Provides:

"Except as required by The South Carolina Constitution, by The Constitution Of The United States, or by South Carolina statute, the privileges of a witness, person, or the government (emphasis added) shall be governed by the principles of the common law as they may be interpreted by the courts in light of reason and experience. This Rule modifies the Federal Rule to refer to the South Carolina Constitution".

Article V provisions in this case makes it mandatory, draconian, requiring any interpretation of this provision to be referred to the South Carolina Constitution as a primary rule and or first choice, and not to the U.S. Constitution or common law or state law as it pertains to normal administrative matters, especially in light of the fact that we are dealing with a judicial order issued by the S.C. Supreme Court under Article V of the South Carolina Constitution, not the U.S. Constitution. Not only by judicial order, but also, the provisions of the South Carolina constitution are to be deemed and construed as mandatory unless there is some language contained therein that would dictate otherwise.

This order has never been rescinded until 2013. Nonetheless, I am challenging that rescinding which will be elaborated on further. This order was issued by the South Carolina Supreme Court in 1980, renewed in 1999 making it draconian, mandatory, being applicable to every criminal court within the state, and every PCR Court in the state regarding the (365) day provision. The (180) day provision was amended by the S.C. Supreme Court in 2013 to require that all criminal cases be concluded within (365) days. But the appellant falls under the (180) provision via collateral estoppel emerging from case 2013-CP-400-0084 where the issues are sought class action review and the S.C. Attorney General, The S.C. Court Of Appeals and The S.C. Supreme Court are parties to the default.

The S.C. Supreme Court's intent, judicial or otherwise should be ascertained from the plain language of this provision of law. The language must also read in a sense which harmonizes with its subject matter and accords with its general purpose. Once the S.C. Supreme Court has made a choice, there is no room for the court to impose a different judgment based upon their own notions. If the provision of law's language is unambiguous and clear, there is no need to employ the rules of statutory and or common law construction, even pursuant to the court's actions, ~~the court has no right to look for or impose another meaning. Where the language of this provision of law is clear and explicit, the court "[c]annot" rewrite the provision of law and interject matters in the S.C. Supreme Court's language.~~ Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous provision of law, Bass v. Isochem, 617 S.E.2d. 369(S.C.App.2005); State v. Brannon, 666 S.E.2d. 272(S.C.App.2008); State v. Pittman, 647 S.E.2d. 144(S.C.2007); Liberty Mut. Ins. v. Second Inquiry Fund, 611 S.E.2d. 297(S.C.App.2005).

The revision by the S.C. Supreme Court which occurred in 2013 must be deemed void because it was initiated behind a class based invidiously discriminatory animus in the form of racial hatred, surreptitiously done, to disproportionately effect African Americans and minority populations within this state. Thus, the 2013 amendment runs afoul of Ex Parte Virginia, 100 U.S. 339(1880). When they realized that the inmates of this state discovered how to properly argue this issue which is seen in cases 2006-CP-400-3567, 3578, 3569; 2013-CP-400-0084 in the Richland County Court Of Common Pleas, to which collateral estoppel attaches barring the S.C. Court Of Appeals from challenging this issue since they are, along with the S.C. Supreme Court, parties to the default. The S.C. Supreme Court in acts of racial hatred amended the provision conspiring under color of state law, a provision existing unchanged for over (35) years to "defang" this provision of law. The Article V powers given to the S.C. Supreme Court do not permit them to abrogate, dilute,

waterdown or negate the protections established by Ex Parte Virginia. Thus, the 2013 revision must be deemed void, also due to fraud and Due Process violation. See McCulloch, 17 U.S. at 423; 1997 WL 10291 U.S. (Appellate Brief) Brief Of U.S. Senators Orin G. Hatch et. al.,. The revision is restrictive and runs afoul of Ex Parte Virginia. The same restrictions that apply to the powers of Congress, applies to the powers of the S.C. Supreme Court, to include the powers given to the S.C. Court Of Appeals.

To further bolster the proposition that this Rule, order or provision is mandatory, draconian in nature, the defendant brings the court's attention to South Carolina Rules Of Court 2005 Edition, pages 296, 297, 303 and 304. They state:

Pursuant to Article V § 4 Of The South Carolina Constitution:

"IT IS ORDERED, that upon the filing of a post trial motion under Rules 50, 52, 59 or 60(a) S.C.R.C.P., by a party in any jury or non jury action, the party "[s]hall" within (10) days provide a copy of the motion to the Judge.

IT IS FURTHER ORDERED,****the Chief Judge for administrative purposes in each Circuit shall ensure compliance with this order, also see S.C. Rules Of Court 2013 Edition".

It is perspicuous that if the lower court is not in compliance to Rules 50, 52, 59 or 60(a) by these judicial orders issued from the South Carolina Supreme Court, the higher Court(s) cannot entertain jurisdiction, and must remand for further adjudication by the lower court(s) in question if the motions are not ruled on when timely submitted in accordance to these judicial orders, making this Article V § 4 provision and or order(s) draconian, mandatory in nature. On this premise, the criminal court under the (180) day provision, and or The Court Of Common Pleas under the (365) day provision, "[c]annot" continue to invoke and or enact their "[p]owers" of Subject Matter Jurisdic-

tion if they fail to be in compliance to this order and jurisdictional requisite, even though they do indeed possess such power by legislative statute. They stand in egregious violation of the Due Process Prong to Subject Matter Jurisdiction.

Additional proof that this provision of law is draconian, mandatory in nature, attached the court and parties will find a copy of a similar Article V § 4 order issued from the South Carolina Supreme Court related to placing cases within the Court Of Common Pleas on the complex case docket. Please note the words that are specifically circled by me related to this order. It is perspicuous that by the language of this particular order, the actions of the court are made discretionary by the language contained therein. Note that the language of the Article V § 4 order relied upon for this particular issue is significantly, materially, distinctly different demonstrating that this provision of law is draconian, mandatory in nature.

Pursuant to the government blatantly disobeying this order issued by the South Carolina Supreme Court, in the appropriate case, "the trial court and or other relevant court, shall not hesitate to grant relief, default or a mistrial where its rulings, and or in this case, the orders of The South Carolina Supreme Court, were violated to the prejudice of those they were designed and or intended to protect", Toyota Of Florence Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d. 611, 615(1994); S.C. Rules Of Court annotated, 2006 Edition, pg. 270; Panas v. Panas, S.E.2d., 2010 WL 10088164(S.C.App.2010); Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d. 814(S.C.App.2009); United States v. Peoples, 698 F3d. 185 CA4 (S.C.2012); Holmes v. Holmes, S.E.2d., 2014 WL3369006(S.C.App.2014); IN RE: Joshua R.L., S.E.2d., 2013 WL 8538696(S.C.App.2013); United States v. Boston, 539 Fed. Appx' 209 CA4 (N.C.2013); Sun v. Sun, S.E.2d., 2014 WL 7778971 (S.C.App.2014); IN RE: McDonald, 497 B.R. 489 Bkrtcy (DSC.2013); Ex Parte Lipscomb, 398 S.C. 463, 730 S.E.2d. 320(2012).

To make use of the holdings in State v. Gentry related

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to Subject Matter Jurisdiction would be misplaced. That case dealt with indictment defects and it was adjudicated under a cloud of fraud upon the court. The precedent set by State v. Gentry as well as State v. Langford are being challenged Pursuant to S.C.R.A.P., Rule 217. I am arguing against these precedent cases. There is also a default claim emerging from case 2013-CP-400-0084 to which the S.C. Court Of Appeals is party to that default which bars the court from challenging this issue by collateral estoppel. ~~Nonetheless, this issue has absolutely~~ nothing to do with indictment defects. To make use of the holdings made in State v. Culebreth regarding Rule 3(c) would be misplaced. Rule 3(c) is totally administrative. If the honorable court would take notice of the bottom of the page of 652 and 659 as it relates to this mandate. You will see that the administrative factors related to this provision of law have been rescinded. Further, there are two material and distinct differences between Rule 3(c) and this requirement of Due Process Law. Rule 3(c) is not tied to the provisions of The South Carolina Constitution. This requirement of criminal and or civil procedure is. Secondly, Rule 3(c) is not a judicial order issued by the South Carolina Supreme Court. This requirement of Criminal and or Civil Procedure for the General Sessions Court and or Court Of Common Pleas is. This has absolutely nothing to do with a speedy trial issue. I, we, would adamantly object to that notion. A speedy trial is not what the appellant is arguing. This is simply a matter of judicial order; "STARE DECISIS ET NON QUIENTA MOVERE"; South Carolina Rules Of Court; South Carolina Rules Of Criminal and or Civil Procedure (for PCR's) and Due Process Law. Once this provision of law was issued as a judicial order then tied to the provisions of the South Carolina Constitution pursuant to Article V § 4, its observance became mandatory by the provisions contained therein making it draconian in nature.

I, we, are not arguing that the prosecution does not have the right to control his case load. What I am arguing,

is that in order for him to control that case load. There are certain provisions of law and Rules Of Court set into place that would have allowed him to do so, and he and or the court must adhere to those Rules set into place by the South Carolina Supreme Court to control that case load. He was required to obtain a "[w]ritten" order of continuance. I, we, are not arguing that this is a Due Process right conferred upon us by the U.S. Constitution. This is a Due Process right conferred upon us by the S.C. Constutution. Thus, making use of the holdings made in State v. Langford, 400 S.C. 421, 735 S.E.2d. 471(S.C.2012) and United States v. McDonald, 456 U.S. 1, 102 S.Ct. 1497 U.S. (N.C.1982) would be misplaced, especially in light of the fact that we have a default and claims of collateral estoppel which binds the S.C. Court Of Appeals they being party to that action. This emerges from case 2013-CP-400-0084 out of the Richland County Court Of Common Pleas.

S.C. Code Ann §§ 1-7-730, 17-13-150 and 17-25-10 require that the prosecution and or prosecuting body "[s]hall" fulfill and see that all duties, requirements, and Rules Of Criminal Procedure related to Due Process and The S.C. Constitution are adhered to and completed within the court.

In order to understand the meaning of any statute or phrase of law, it is necessary to determine the meaning of the language as it is used in the particular context, Robinson v. Shell Oil Company, 117 S.Ct. 843(1997). Article 12 § 2 utilizes the words "[s]hall provide,...". In this context "[s]hall" is mandatory. See United States v. Meyers, 106 F3d. 936, 941 CA10 (1997). In order to understand the meaning of any word, sentence or phrase, "[t]he Cardinal Rule is that the words should be given their plan and ordinary meaning and or interpretation without the court interjecting into them matters or a construing that's not in the language", Seckinger v. The Vessal Excalibur, 483 S.R.2d. 775(S.C.App.1997); United States v. Ron Pair Enterprises Inc., 109 S.Ct. 1026, 1030(1989); Bass v. Isochem, 617

S.E.2d. 369(S.C.App.2005); State v. Brannon, 666 S.E.2d. 272(S.C. App.2008); State v. Pittman, 647 S.E.2d. 144(S.C.2007); Liberty Mut. Ins. v. S.C. Second Injury Fund, 611 S.E.2d. 297(S.C. App.2005).

Article 1 § 23 Of The South Carolina Constitution dictates:

"The provisions of The South Carolina Constitution shall be taken, deemed and construed to be mandatory and or prohibitory and not merely directory, except where made directory or permissory by its own terms".

Since the appellant is arguing the claim of default and collateral estoppel emerging from case 2013-CP-400-0084, which binds the S.C. Court of Appeals who are party to that default. The appellant would fall under the old Article V § 4 order before the 2013 revision where the original cases subjudice to 2013-CP-400-0084 are 2006-CP-400-3567, 3568 and 3569 demonstrating that the issue was before that court since 2006. This also applies since the 2013 revision was an act of machination on the part of the S.C. Supreme Court, conspiring with the S.C. Attorney General under color of state law, who had control over Judge Jean Toal due to her past DUI arrests and or troubles producing fraud upon that court via her influence. This was also done behind a class based invidiously discriminatory animus, in the form of race. Once the parties realized that the predominately minority inmates discovered how to properly argue the issue via case 2013-CP-400-0084. The S.C. Supreme Court conspiring with the S.C. Attorney General revised the Article V § 4 order to water down the S.C. Constitution Due Process requirement to dilute the protections set in place by Ex Parte Virginia, 100 U.S. 339(1880), to place into effect an Article V § 4 determination that they knew beforehand would disproportionately affect African Americans and other minorities within this state, in retaliation, because the minority inmates now figured out

how to properly argue this issue. Just like in cases such as, Edward Kennedy, 2000 WL 35763420(2000); City Of Rome v. United States, 446 U.S. 156(1980); South Carolina v. Katzenbach, 383 U.S. 301(1966); Plaut v. Spendthrifts Farms, Inc., 115 S.Ct. 1447(1995); The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024, 2006 A.M.C. 2955, 10 L.Ed. 826(1841). Their actions produce a result that is not given to them via their Article V powers and or privileges, nor by the S.C. Constitution and serve to aid in establishing a form of modern day slavery as is defined in the C.A.T. Treaty that Congress signed off on and ratified, which voids their jurisdiction for Due Process violation. Due to this, to include the claim of default and collateral estoppel emerging from case 2013-CP-400-0084. The appellant falls under the old provision of law before the fraudulent 2013 revision which runs afoul of the protections established by Ex Parte Virginia. Also see 1997 WL 10291 U.S. (Appellate Brief) Brief Of U.S. Senators Orin G. Hatch, Strom Thurmond et. al.; Oregon v. Mitchell, 400 U.S. 112(1971); Croson, 488 U.S. at 490; McCulloch, 17 U.S. at 423. Just like Congress would be prohibited from initiating such action, so would the S.C. Supreme Court, Mississippi Univ. For Women v. Hogan, 458 U.S. 718, 732(1982); Adarand Contractors Inc. v. Pena, 115 S.Ct. 2097(1995).

Therefore, it can be factually stated, that not only by the provisions of Article V § 4 of The South Carolina Constitution, also by judicial order issued by the South Carolina Supreme Court. It is mandatory that the appellant's Due Process matters be disposed of before the criminal court within (180) days of his arrest. If the court would take notice of the arrest warrants and or indictments as they pertain to these matters. The court will see that the appellant was arrested on July 31, 2013. If the court would take notice of the sentencing sheet and or trial transcript. The court would see that the appellant's Due Process matters were not disposed of until March 17, 2016. By the date of arrest this means that the appellant's Due Process matters should have been disposed of by January 31, 2014. Yet they were not disposed of until March 17, 2016 approximately

over (3) years past the (180) days prescribed by judicial order and the provisions of The South Carolina Constitution. Even if the court would assess the time via the fraudulent 2013 revision. The conspiring parties would still be (1½) years past the (365) day revision. This voids the trial court's jurisdiction for Due Process violation. There is no "[w]ritten" (emphasis added) order of continuance filed with the Clerk of Court before the (180) day period, or even the (365) day period expired, or that was served on the defendant. Such an order of continuance by the defendant's rights of Due Process and pursuant to judicial order issued by the S.C. Supreme Court "[c]annot" be obtained after the fact because without this essential jurisdictional requisite. Jurisdiction would be made void for Due Process violation on that date of failure to be in compliance, which include any act done beyond the prescribed time period. This includes the trial itself and the signing of the commitment order derived from it. The "[w]ritten" order of continuance "[m]ust" be obtained before the (180) and or (365) day time period expires. To go beyond the prescribed time period and or deadline without a "[w]ritten"(emphasis added) order of continuance creates a "[p]rocedural and [j]urisdictional [d]efect", which "[v]oids" the trial court's "[p]owers" of Subject Matter Jurisdiction and or their "[p]ower" and or "[a]bility" to enact and or invoke and or continue its "[p]owers" of Subject Matter Jurisdiction in compliance to judicial order issued from the South Carolina Supreme Court, Rules Of Court and Due Process Law to adjudicate the appellant's trial. This is to be adjudicated under the Due Process Prong To Subject Matter Jurisdiction as was defaulted on by this state to which the S.C. Court Of Appeals is party to the default.

The appellant places forth this issue in a straightforward fashion and want to make certain that there is no misunderstanding as to the specific claims and or question that is placed before the court. The defendant is not arguing whether or not the criminal court has Subject Matter Jurisdiction to hear and

determine cases of "[t]his" general class to which the proceedings in question belong. The appellant concedes this fact. The appellant in this context agrees with all (3) Gentry, Cotton and Parkhurst court(s) when they determined that the criminal courts do have Subject Matter Jurisdiction to hear cases of this nature and class. This is not the issue or is it what the appellant is arguing. What the appellant is indisputably arguing is a question which clearly was not answered by either the Gentry, Cotton or Parkhurst court(s) is this. Despite the fact that the criminal court does have Subject Matter Jurisdiction to hear cases of this general class to which the proceedings in question belong via State legislative statutes and or Congressional intent. Do their egregious, blatant failure to be in compliance to said certain, essential, crucial Due Process "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites", at various phases of, and or at the commencement of the Subject Matter Jurisdictionary action and or process; which is to be adjudicated under the Due Process prong to Subject Matter Jurisdiction. Do their their blatant, egregious failure to be in compliance to said certain, essential, crucial Due Process "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites" at various phases of, or at the commencement of the Subject Matter Jurisdictionary,....halt, check, constrain, restrain, limit, arrest, stop or void the continuance of the Subject Matter Jurisdiction "[p]ower" before the court, which is to be adjudicated under the Due Process prong to Subject Matter Jurisdiction, even though the court without a doubt do indeed possess such "[p]ower" by state legislative statute and or Congressional intent? This is a crucially, materially, distinctly different question related to Subject Matter Jurisdiction that was never answered by any of the (3) three courts involved pursuant to Gentry. This is a new question of law and fact, a challenge to the precedent set by the Gentry case. Thus, making use of the holdings made in the Gentry court would be misplaced. Such a new question of law and fact is not barred in seeking relief for, does relate to Subject Matter jurisdiction, "[c]annot" be waived by the appellant, can be raised at "[a]ny"

time, including for the first time on appeal, and the court "[s]hall [n]ot" fail to take notice. No timely objection is needed to preserve this issue. This is being argued under the Due Process prong to Subject Matter Jurisdiction, Grupo Dala-flux v. Atlas Global, L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.ED.2d. 866(2004); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240; White v. Manis, 2014 WL 1513280(DSC.2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); Hunt v. United States, F.Supp.2d., WL 5131716(DSC.2007); Brown v. United States, 2014 WL 2871398(DSC.2014).

The trial court, and or prosecuting body, acting arbitrarily, conspiring under color of state law, in blatant defiance to Rules of Court; S.C. Supreme Court judicial order, and the provisions of the South Carolina Constitution has failed to be in compliance to their own state laws in violation of the appellant's substantial Federal Constitutional rights of Due Process under the 6th. and 14th. amendment(s). Then to conceal this injustice. The S.C. Attorney General, due to Judge Toal's legal matters, compromises that court and get them to make effort to water down this provision in the 2013 revision behind a class based invidiously discriminatory animus in the form of race in violation of the holdings made in Ex Parte Virginia. Thus, the Article V § 4 order before the revision must stand, especially in light of the fact that the state defaulted on this issue in case 2013-CP-400-0084 to which the S.C. Court Of Appeals is also party to that default. This voids the trial court's jurisdiction for Due Process violation as well as for violations of 18 U.S.C. §§ 242 and 1001, United States v. Walsh, 194 F3d. 37(2nd.Cir.1999); United States v. Pirro, 212 F3d. 89(2nd.Cir. 2000); Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin v. Florida supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Jones v. State Of Arkansas supra.; Hicks v. Oklahoma Supra.; Dozier v. Loop College, City Of Chicago supra.; Lugar v. Edmondson Oil Co. supra.

Subject Matter Jurisdiction is the "[p]ower" to hear and determine cases of a general class to which the proceedings in question belong, Bell v. Monsanto Corp., 579 S.E.2d. 325 S.C. 553(S.C.2003). Inasmuch, Subject Matter Jurisdiction does not only cover and or involve whether or not the matter resides in a proper court of jurisdiction to hear and determine it. This is specifically, only, the first prong to Subject Matter Jurisdiction. The court's "[p]ower" to hear and determine a case, is also defined as the court's "[a]bility" to hear and determine a case. Thus, Subject Matter Jurisdiction also involves any issue or matter that may "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to act in accordance to Rules Of Court, Rules Of Criminal Procedure and Due Process Law. This is clearly established by the Due Process Prong to Subject Matter Jurisdiction, which is the second prong. Such matters can be raised at "[a]ny" time, "[c]annot" be waived by the appellant, and the court "[s]hall [n]ot" fail to take notice, Mathis v. State, 355 S.C. 87, 584 S.E.2d. 366(S.C.App.2003); State v. Browning, 320 S.C. at 368, 46 S.E.2d. at 359; State v. Munn, 357 S.E.2d. 461(S.C.1987); Brown v. United States, 2014 WL 2871398(DSC.2014); Hunt v. United States, F.Supp.2d., 2007 WL 5131716(DSC.2007).

Without a "[w]ritten"(emphasis added) order of continuance filed with the Clerk Of Court issued before the (180) and or (365) days expired within the trial court, jurisdiction is made void for Due Process violation, to include any act done thereafter which includes the signing of any commitment order and or sentencing sheet. The trial court and prosecutor were prohibited from continuing the cause. Thus, the sentence and conviction must be reversed and vacated. The Appellant motions for such.

(8) Did the trial court err, and was the appellant's 5th., 6th., 14th. Amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights

violated, by the trial court and or plea court allowing constructive amendment of the indictment(s) at the appellant's trial and or plea hearing?

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra.; 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitutional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

Subject Matter Jurisdiction can be raised at "[a]ny" time, "[c]annot" be waived by the appellant, can be raised for the first time on appeal and the court shall not fail to take notice, Grupo Dalaflex v. Atlas Global Group, L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240; South Carolina Department Of Social Services v. Tran, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); McCain v. Brightharp supra..

It is the body of the indictment which is the [v]ital part of the charging instrument, State v. Tate supra., and it "[c]annot" be so cryptic or the wording so loose and ambiguous as to fail to comply with the basic right of the accused to be fully informed as to the "[c]ause and [n]ature" of the accusation being levied against him, which is one of his most basic, fundamental, and universally recognized rights of Due Process, Smith v. O'Grady supra.; State v. Tabor supra.. Reliance upon

a caption to bolster a fatally defective indictment is therefore contrary to the constitutional mandate that for most offenses, a defendant may only be required to answer an indictment of a Grand Jury that is deemed good, S.C. Const. Article 1 § 11; cf. State v. Tabor supra. (holding that the state may not support a conviction for an offense intended to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment).

Insomuch, the indictment(s) for attempted do not properly and or sufficiently apprise the appellant of the "[c]ause and [n]ature" of the offense, or of what he is called upon to meet and defend because they do not allege an exact time of assault as time is recognized by law. The wording is too loose, and vague making use of the term "ON OR ABOUT". Such deprives the appellant of the right to call witnesses to defend the cause because he cannot establish an exact date. It deprives him of the right to establish alibi not being certain of said exact date. "ON OR ABOUT" July 28, 2013 can be any day within a (3) month radius before or after that date. The material fact in murder are the mortal blow and the subsequent death occurring from it being a composite crime and the death "[m]ust" appear upon the record or indictment as having occurred within a year and a day of each other, (ei. when the mortal blow was given). The averment then of each of these material facts [m]ust under well established Rules of Criminal pleading be accompanied by an allegation of a certain time and or place to include not alleging "ON OR ABOUT" as it pertains to time. Assault and Battery With Intent To Kill embraces the whole of attempted murder and visa versa. The elements to prove the crimes are the same as it is for murder with the exception of the death ensuing from it. The indictment(s) for attempted murder also do not allege who it was that the appellant conspired with as is the same as the conspiracy indictment(s). The Attempted murder indictment(s) do not allege what weapon it was that was allegedly used in the crime. No one can say what was in the mind of the Grand Jury as to what exact date of the assault was to be adjudi-

cated, being an essential element of the offense. The indictments don't say who it was that the appellant conspired with. As far as the appellant can tell, the indictment asserts that he went back in a time machine and brought back Napoleon Bonapart, Genghis Khan, John Wayne and Julius Ceasar and conspired with them. As far as the appellant can tell from the indictment(s) he was in possession of a M-60 machine gun or a surface to air rocket launcher. No one can say what was in the mind of the Grand Jury. The language is too vague, subjecting the appellant to arbitrary judicial action and process. The language is so cryptic, loose and vague it creates an enigma as to what the appellant is called upon to meet and defend setting the appellee up for "INDICTMENT AMBUSH" at the onset of his proceedings. The indictments cannot be deemed sufficient if the prosecution is permitted to prove all these different material sets of facts. The indictments in question do not descend to an exact time and or who it was the appellant conspired with or what weapon was used. These crucial elements and or averments must be passed upon by the Grand Jury in accordance to the constitutional rights of the accused. To not allege these crucial elements and or allegations in the body of the charging instrument returned against the accused, having them passed upon by the Grand Jury, then, thereafter the trial court and or plea court and or prosecuting body adds or modifies these material averments in one form or the other, to assert these crucial elements and or averments, not confirmed or passed upon by the Grand Jury within the proceedings, and allow a trial and or plea hearing to go forward, where such were not passed upon by the Grand Jury, is constructive amendment of the indictment(s). No one can say what was in the mind of the Grand Jury, See S.C. Code Ann. §§ 17-19-10, 17-19-20, 17-19-30, 17-25-10; State v. Hardee supra.; State v. Rallo supra.; State v. Parker supra.; Locke v. State supra.; State v. Tate supra.; State v. Tabor supra.; United States v. Abrams supra.; State v. Keith supra.; State v. Rector supra.; Smith v. O'Grady supra.; United States v. Masotto supra.; Castillo v. Holder supra.; State v. Brandt supra.; State v. Blakeney supra.; State v. Stewart supra.; Ball v. United States

supra.; State v. Platt supra.; State v. Kennedy supra.; State v. Ham supra.; State v. Pierce supra.; Hamling v. United States supra.; United States v. Hooker supra.; United States v. Pupo supra.; U.S. v. \$41,320 U.S. Currency supra.; State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d. 283, 285(2000).

In regard to the constitutional structural error and or defect in the indictment(s), as constructed in all (33) states that make use of an indictment, also the remaining (17) states that make use of a criminal complaint, and all (50) states that make use of an indictment under Federal captivity, taking away the presumption of innocence and automatically shifting the burden of persuasion, predetermining in advance the outcome of the proceedings by the language contained therein. According to the findings and or language of the indictment(s) produced by The Grand Jury, under the plain language Rule, the appellant is already found guilty and convicted. The Grand Jury does not have the power and authority by State and or Federal Law, or by State and or Federal Constitution to convict a defendant. The law is clear. The Grand Jury "[m]ust" refrain from even making an "[o]pinion" as to a person's guilt. How much more egregious and criminal where they swear upon their "[o]ath" (emphasis added) our guilt? This is an egregious violation of their shielding function. This serves to aid in establishing modern day slavery which too, they do not have the power or authority to do, where we can no longer be deemed "DULY"--meaning "PROPERLY" convicted in violation of S.C. Code Ann § 17-25-10, Due Process Law and the provisions of the 13th. amendment. For the Grand Jury to produce indictments that state, adjudicate and or charge that the defendant is not only guilty of the crimes charged, to include the "MENS REA" elements related to the offenses; then, thereafter, the court alters the charge(s) of the indictment(s), to include the "MENS REA" elements, and charge that the defendant is innocent until proven guilty, and the State court or Federal government or prosecuting agents aid them, conspiring under color of state law and or authority, turning the blind eye and deaf ear in doing so, is constructive

amendment of the indictment(s), and changes the very nature of the allegations returned by the Grand Jury. This too creates an instant double jeopardy issue. To accept a guilty plea, and or to take a defendant to trial on charges in an indictment for which he has already been found guilty of, violates Due Process and is double jeopardy. No one can say what was in the mind of the Grand Jury as to whether or not they intended to illegally take upon themselves the role of the trial jury and determine guilt of the offenses not allowing any subsequent adjudication to occur rendering any subsequent proceeding "[v]oid" for Due Process violation. This means that this is an error which can only be corrected by the Grand Jury and not the trial jury, prosecutor or court. Even the Gentry court could not adjudicate that case where it was prematurely determined by the Grand Jury. This produces a Subject Matter Jurisdiction issue under the Double Jeopardy Clause and law, which is to be adjudicated under the Due Process violation prong to Subject Matter Jurisdiction. This further serves to validate that the structural constitutional error and or defect affect the framework of the proceedings and cannot be viewed as harmless, because the court "must" constructively amend the indictment(s) on the "MENS REA" element(s) of the offense(s) to correct, or in an effort to correct the structural constitutional error in acts of fraud upon the court and modern day slavery, The Amistad supra.; State v. Easler, (S.C.1997) 327, 121, 489 S.E.2d. 617; State v. Lewis, (S.C.App.1996) 321 S.C. 146, 147 S.E.2d. 265; Sandstrom v. Montana supra.; Morisette supra.; United States Gypsum Co. supra.; Humanik v. Beyers supra.; United States v. Clemens supra.; Martin v. Ohio supra.; Robinson v. Arvonio supra.; United States v. Briggs supra.; United States v. Chadwick supra.; Compare Pierson v. Ray supra.; Jenkins v. McKeithen supra.; Branzburg v. Hayes supra.; Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 542(1923); United States v. Direct Sales Co., 40 F.Supp. 917 D.C.S.C.(1941); United States v. Atlantic Commission Co., 45 F.Supp. 187 D.C.N.C.(1942); State v. Boyd, 2 Hill (S.C.) 288, 1834 WL 1573 S.C. App. L. & Esq. 1834; State v.

Bramlett, 166 S.C. 323, 164 S.E. 873(S.C.1932); Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 U.S. Wash. (1962); State v. Tollin, 352 S.C. 235, 573 S.E.2d. 812(S.C.App.2002); Byers v. Reynolds, 2011 WL 7063638, * 8 (DSC.2011); United States v. Jefferson, 546 F3d. 300 CA4 (Va.2008); IN RE: Grand Jury Subpoena John Doe, No. 05GJ1318, 584 F3d. 175 CA4 (Va.2009); IN RE: Grand Jury Subpoena (T-112), 597 F3d. 189 CA4 (Va.2010); United States v. Umana, 750 F3d. 320 CA4 (N.C.2014); United States v. Dinkins, 691 F3d. 358 CA4 (Md.2012); Dickerson v. Warden Of Lieber C.I., 2013 WL 4500048(DSC.2013); James v. Reynolds, 2014 WL 2624431 (DSC.2014); Clark v. Arizona, 548 U.S. 735, 126 S.Ct. 2709, 165 L.Ed.2d. 842, 74 U.S.L.W. 4560(U.S.2006); 130 S.Ct. 2896; S.C. Code Ann § 17-25-10.

Constructive amendment of an indictment is a per se violation of the provisions of the 5th. amendment if it affects an essential element of the offense. Such a violation requires reversal of the conviction, even without a showing of prejudice, but once prejudice is clearly shown, the sentence and conviction must be vacated for Due Process violation which must be adjudicated under the Due Process Prong to Subject Matter Jurisdiction, State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309; Article IV § 2 U.S. Const.; United States v. Coyne, 4 F3d. 100 (2nd.Cir. 1993); United States v. Morgenstein, 933 F2d. 1108, 1115(2nd.Cir. 1991); Wilson v. Lindler, 995 F2d. 1256; Stirone v. United States, 361 U.S. 212(1960); Gaither v. United States, 413 F2d. 1061 (D.C.Cir.1969); Douglas v. State Of Alabama, 380 U.S. 407, 85 S.Ct. 1074(1965); Dech v. Missouri, 544 U.S. 622, 125 S.Ct. 2007, 161 L.Ed.2d. 953, 73 U.S.L.W. 4370(U.S.2005); United States v. Whitfield, 695 F3d. 288 CA4 (N.C.2012); United States v. Mills, 555 Fed. Appx' 241 CA4 (Va.2014); United States v. Naidu, 480 Fed. Appx' 180 CA4 (Md.2012).

Inasmuch, constructive amendment of the indictment(s) did occur and the unconstitutional amendment prejudiced the appellant at his proceedings leading to an unfair and partial trial and or guilty plea that was not knowingly, freely, volun-

tarily or intelligently given, depriving the appellant of reasonable notice and of his right to have material averments passed upon by the Grand Jury in egregious violation of the appellant's substantial rights of Due Process. This occurred when the charging terms of the indictment were altered literally and or constructively in the manner aforementioned. S.C. Code Ann § 17-19-100(1985) permit amendment of an indictment provided the nature of the offense charged is [n]ot changed. If (A) there is a defect in form in any indictment. or (B) on the trial of any case there shall appear to be any variance between the allegations of the indictment(s) and evidence offered in proof thereof, the court before which the trial may be had may amend the indictment(s) according to the proof, if the amendment be because of variance, if such amendment does "[n]ot" change the "[n]ature" of the offense charged. After such amendment the trial and or plea hearing should proceed in all respects and with the same consequences as if the indictments had originally been returned as so amended, unless such amendment shall operate as to surprise the defendant, in which case the defendant shall be entitled upon demand to a continuance of the cause.

A variance between pleadings and proof is [n]ot material where matter alleged is [n]ot an [e]lement of the offense, State v. Hiott, 276 S.E.2d. 163.

On the other side of the spectrum of this language, a variance between pleadings and proof "[i]s" material where matter alleged "[i]s" an element of the offense; and furthermore, such an amendment cannot be had if such amendment changes the "[n]ature" of the offense, Hope v. State, 328 S.C. 78, 492 S.E.2d. 76; State v. Grainger, 507 S.E.2d. 322(S.C.1998); United States v. Naidu, 480 Fed. Appx' 180 CA4 (Md.2012); United States v. Allmendinger, 706 F3d. 330 CA4 (Va.2013); State v. Green, 406 S.C. 589, 753 S.E.2d. 259(S.C.App.2014).

Once the nature of the elements became altered in the manner aforementioned, the indictment(s) were no longer to be considered the indictment(s) returned against the appellant.

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A defendant is entitled to be tried and or give his guilty plea on charges that are properly set forth in an indictment and such properly set forth charges must be passed upon by the Grand Jury, S.C. Code Ann § 17-19-10(1976). The true test of the sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he is called upon to meet and defend. The essential elements and or allegations in this instance are not alleged. The indictments for attempted murder do not allege an exact date to the extreme prejudice of the appellant. "ON OR ABOUT" can reasonably be considered to be any of the days asserted expanding at minimum (3) months in either direction of July 28, 2013. The indictments in question do not allege who it was the appellant supposedly consired with or what weapon was used in the alleged crime. The indictment(s) are too vague and do not descend to these particulars. Further, by the language and or charge of the indictment(s) as contructed, via the structural error, it informs the appellant that he is called upon to meet the burden of production on the critical elements of dispute related to the offenses. By the mandates of Due Process law, the appellant is not, by State or Federal Constitution, nor by State or Federal law, called upon to meet the burden of production on the critical elements of dispute related to the offense(s). The indictment(s) inform the appellant that his guilt is illegally predetermined in advance under "[o]ath"(emphasis added) and the appellant is being subjected to another proceeding on the same charges, which produce an instant Double Jeopardy claim, and fraud upon the court, misrepresentation and modern day slavery due to this fraud, Brown v. State supra.; Mathis v. State supra.; Francis v. Franklin supra.; United States v. Abrams supra.; Martin v. Ohio supra.; IN RE: Winship supra.; Mullaney v. Wilbur supra.; Humanik v. Beyers supra.; Moore v. Dempsey supra.; The Amistad supra.; Callon Petroleum Co. v. Frontier Ins. Co. supra.; Appling v. State Farm Mut. Auto Ins. Co. supra.; King v. First American Investigators Inc. supra.; S.C. Code Ann § 17-25-10.

What's worse than this, the indictment(s) not only by

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their very nature already prematurely in advance convict the appellant of all charges made and or laid before the court, denying the appellant the presumption of innocence, but it also creates this egregious, blatant, outrageous violation of Due Process where the indictment(s) by the structural constitutional error and or defect, has denied the appellant the right to a trial by a jury of one's peers; denied the appellant the right to confront his accusers or cross-examine witnesses; denied the appellant the right to call witnesses in his defense or to present expert testimony; denied the appellant the right to take the stand and testify at his proceedings; denied the appellant the right to place forth evidence that would vindicate him at trial; denied the appellant the right to counsel of choice, way before a trial jury was sworn, not this illegal trial jury in the form of the Grand Jury who swore upon their "[o]ath" the appellant's guilt, way before a trial commenced satisfying these essential constitutional requirements of Due Process law; or way before he voluntarily, freely, intelligently or knowingly gave them up if we are dealing with a guilty plea, also way before he hired counsel or way before the court appointed legal counsel to assist the appellant. With the existence of the structural error and or defect, the court has attempted to close the barn door far after the time the horses have already been released and or escaped. The Grand Jury being duly sworn, in clear violation of their shielding function has taken upon themselves the role of the trial jury, and has already convicted the appellant of the crimes charged under "[o]ath"(emphasis added). To permit the appellant to obtain counsel of choice after this egregious injustice, or to appoint counsel after the appellant has already been illegally convicted by the Grand Jury, and deny the appellant the previous mentioned constitutional rights involve deprivation of constitutional protection so basic and so fundamental that in their absence no criminal trial and or proceeding can be deemed reliable as a vehicle for the determination of guilt or innocence, and no criminal punishment can be regarded as fundamentally fair, because such action has prematurely, criminal, stripped the appellant of

his inalienable rights of Due Process, also in violation of The Taking Clause of the 5th. amendment. The State acting unjustly, arbitrarily under color of State law, causing extreme prejudice to the appellant's proceedings, in violation of 18 U.S.C. §§ 241, 242, 1001, have blatantly failed to adhere to their own State laws and has denied the appellant the Equal Protection Of the Laws. Since the appellant's guilt was already, unjustly, arbitrarily determined and or adjudicated by the structural constitutional error and or defect via the Grand Jury indictments and or criminal complaints nationally under "[o]ath" in acts of fraud upon the court; this serves to make any other subsequent proceeding initiated "[v]oid", "[n]ullified", "[a]rrested" and a violation of the 5th. and 6th. amendments also the appellant's rights of Due Process, to include his right to Double Jeopardy protection. How can the court be allowed and or permitted to have a trial and or accept a guilty plea for an offense the Grand Jury who swore upon their "[o]ath", have already found the appellant guilty of? This "[c]annot" be cured by an instruction that constructively amends the indictments on the "MENS REA" elements. By their actions and fraud upon the court they have essentially established modern day slavery, branding us as felons, taking away our right to vote in violation of the 15th. amendment and Voting Rights Act. Congress confers no power or authority upon any court, State or Federal the right to establish modern day slavery of any kind in violation of the not being "DULY" (emphasis added) convicted provisions of the 13th. amendment and Anti-Peonage Act, depriving them of jurisdiction, or voiding their jurisdiction, or prohibiting them from entertaining jurisdiction from the cases' onset, demonstrating that they inappropriately entertained jurisdiction rendering all action done void, stripping all judges and courts of immunity. The Structural constitutional error and or defect does affect the proceedings and "[c]annot" be deemed as harmless. The framework is essentially abolished. The extreme prejudice is obvious and need not be debated any further, The Amistad supra.; Chewing v. Ford Motor Company supra.; Appling v. State

Farm Mut. Auto Ins. Co. supra.; State v. Easler, (S.C.App.1997) 327 S.C. 121, 489 S.E.2d. 617; State v. Lewis, (S.C.App.1996), 321 S.C. 146, 147 S.E.2d. 265; State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309; Vines v. United States, 28 F3d. 1123 Crim. Law 1116(1), 1156(1); State v. Reddick, 348 S.C. 631, 635, 560 S.E.2d. 441, 443(Ct.App.2002); State v. Padgett, 354 S.C. 268, 271, 580 S.E.2d. 159, 161(Ct.App.2003); State v. Honey, 344 S.C. 85, 97, 544 S.E.2d. 30, 36(2001); Griswald v. State Of Connecticut, 381 U.S. 481, 85 S.Ct. 1678(1965); Carter v. State, 329 S.C. 355, 362, 495 S.E.2d. 773, 777(1998); 28 U.S.C.A. § 1654; Turner v. American Bar Ass'n, D.C. Tex. 1975, 407 F.Supp. 457 Aff'd 539 F2d. 715 Aff'd 542 F2d. 56; Faretta v. California, 422 U.S. at 835n. 46, 95 S.Ct. at 2541, 45 L.Ed.2d. 562, 592 (1975); Wiggins v. Estelle, 681 F2d. 266(1982); United States v. Gonzales-Lopez, 548---U.S.---2006; Chaplin & Drysdale Charter-ed v. United States, 491 U.S. 617, 624-625(1989); Rodriguez v. Chandler, 382 F3d. 675, 676 (CA 7 2004) cert. denied 543 U.S. 1156(2005); Stirone v. United States supra.; United States v. Silverman, 30 F2d. 106, 110 (2nd.Cir.) listing these functions modified 439 F2d. 198(2nd.Cir.1970), 91 S.Ct. 1619(1971); Martin v. Ohio supra.; Francis v. Franklin supra.; Mathis v. State supra.; United States v. Abrams supra.; Moore v. Dempsey supra.; Roberts v. State, 408 S.C. 123, 757 S.E.2d. 744(S.C.App.2014); Eppenger v. McFadden, 2014 WL 4198862(DSC.2014); Blanding v. Warden McCormick C.I., 2014 WL 3809656(DSC.2014).

The requirement of the indictment(s) limit and constrain the Subject Matter Jurisdictionary "[p]owers" of both the prosecution and the court, by limiting what can be presented at trial, conviction and sentencing, United States v. Promise, 255 F3d. 150(4th.Cir.2001); State v. Guthrie supra. It is the command of The United States Constitution, that anything to the contrary is notwithstanding (Article IV § 2 U.S. Const.).

Again, the State and or prosecuting body, acting unjustly, arbitrarily, conspiring under color of state law, has failed to adhere to their own state laws, in egregious violation of

the appellant's substantial Federal Constitutional rights of Due Process, serving to deny the appellant the Equal Protection Of The Laws against unjust and arbitrary prosecution, also in violation of 18 U.S.C. §§ 241, 242 and 1001, Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin v. Florida supra.; Jones v. State Of Arkansas supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Dozier v. Loop College, City Of Chicago supra.; Hicks v. Oklahoma supra.; Lugar v. Edmondson-Oil Co. Supra.; Williams v. United States supra.; Greenwood v. Peacock supra.; United States v. Otherson supra..

In Wilson v. Lindler, 995 F2d. at 1256, it was held that constructive amendment of an indictment, sometimes referred to as fatal variance, denies the criminal defendant the fundamental guarantee of notice of the charges pending against him. This right is safely guarded and embodied within the 6th. amendment, the 5th. amendment Indictment Clause, and the appellant's 14th. amendment rights of Due Process, as well as pursuant to the appellant's right to equal protection of the laws against arbitrary prosecution and these requirements must be adhered to and not denied. Therefore, due to the enormous amount of prejudice experienced by the appellant, the sentence and conviction must be vacated, State v. Daniels, 401 S.C. 251, 737 S.E.2d. 473(S.C.App.2012); United States v. Kirby, 547 Fed. Appx' 363 CA4 (N.C.2013); Placencia v. McFadden, 2014 WL 2199984(DSC.2014); Sullivan v. Cartledge, 2014 WL 994237(DSC.2014); Van de Kamp v. Goldstein, 555 U.S. 355(2009); Dennis v. Wetzell, 966 F.Supp.2d 489(ED.Pa.2013); Kaley v. United States, 134 S.Ct. 1090(U.S.2014) ; United States v. Direct Sales Co. supra.; United States v. Atlantic Commission Co. supra.; State v. Boyd supra.; State v. Bramlette supra.; Roberts v. State, 408 S.C. 123, 757 S.E.2d. 744(S.C.App.2014); State v. Green, 406 S.C. 589, 753 S.E.2d. 259(S.C.App.2014); S.C. Code Ann § 17-25-10; U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); White v. Manis, 2014 WL 1513280 (DSC.2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240.

(9) Did the trial court err, and was the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution violated, as well as Article IV § 2, and his Due Process rights violated, by the indictment(s) for attempted murder's failure to properly and or sufficiently apprise the appellant of the "[t]ime" of assault(s), in the body of the charging instrument, as "[t]ime" is recognized by law?

The appellant did not object to this defect and or error at the time of his trial and or before he gave his guilty plea, but the defect and or error serves to render the indictment wholly invalid. Defects and or errors in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d. Indictments and Information § 299(1968); State v. Munn supra.. Subject to certain minor exceptions not present, the trial court is prohibited from enacting and or invoking its subject Matter jurisdictionary "[p]ower" given to them by state statutes to convict a defendant for an offense, when there is no indictment charging him with that offense when the jury is sworn, and or before he gives his guilty plea, where such an action would "[v]oid" the court's jurisdiction for Due Process violation, State v. Beachum, 288 S.C. 325, 342 S.E.2d. 597(1986); Grupo Dalaflex v. Atlas Global Group L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.Supp.3d. 582, 2014 WL 1266240.

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra. 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error on the part of the trial court that has an identifiably negative impact on the proceedings to such a degree, that the constitu-

tional rights of the party are compromised. A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at the proceedings, (Black Law Dictionary 8th. Edition).

The appellant humbly contends his 5th., 6th., 14th. amendment rights of the U.S. Constitution were violated, as well as Article IV § 2, and his Due Process rights were violated for the charge in question, because the charging instrument, in the body of the indictment does "[n]ot" state the exact time and or date of the alleged assault(s) as time is recognized by law, which is a necessary and requisite element of the offense for murder and or attempted murder, being made a part of the critical elements of the offense. For example, in State v. Rector, 158 S.C. 212, 155 S.E. 385(1930), the Supreme Court [s]pecifically and [u]nequivocally, with [c]llarity and [p]articularity, stated in Haec [V]erba:

"The State "[m]ust" prove not only the assault and death occurring from it, but also the "[t]ime" of the assault and the "[t]ime" of the death, as "[t]ime" is recognized by law. In addition the state "[m]ust" prove the "[p]lace" of the assault, and the "[p]lace" of death*****".

These necessary elements of the crime "[m]ust" not only be proven before a person may be lawfully convicted, but they "[m]ust" be alleged within the body of the charging instrument, be passed upon by the Grand Jury in the indictment returned against the defendant in accordance to the constitutional rights of the accused(emphasis added).

Assault And Battery With The Intent To Kill embraces the whole of attempted and visa versa. The elements to prove the crimes are the same as it is for murder with the exception of the death ensuing from it, State v. Sutton, 340 S.C. 393, 397, 532 S.E.2d. 283, 285(2000).

Inasmuch, it is the body of the indictment(s) that is the [v]ital part of the charging instrument, State v. Tate, 345 S.C. 577, 549 S.E.2d. 601(S.C.2001), and it "[c]annot" be so cryptic or the wording so loose, vague and ambiguous as to fail to comply with the basic right of the accused to be fully informed as to the "[c]ause and [n]ature" of the accusation being levied against him, which is one of the defendant's most basic, fundamental, and universally recognized rights of Due Process, Smith v. O'Grady, 312 U.S. 329, 61 S.Ct. 572(1941); State v. Tabory, 262 S.C. 136, 141, 202 S.E.2d. 852(1974)(holding that the state may not support a conviction * 334 for an offense intended to be charged by relying upon the caption to the exclusion of the language contained within the body of the indictment). Also see S.C. Code Ann § 17-25-10; United States v. Masotto, 73 F3d. 1233 cert. denied 117 S.Ct. 54, 136 L.Ed.2d. 18; Castillo v. Holder, ---F3d.---, 2015 WL 161952 CA4 (2015); State v. Brandt, 393 S.C. 526, 713 S.E.2d. 591(S.C.App.2011).

Insomuch, the statutory text of S.C. Code Ann §§ 17-19-20 and 17-19-30 also as a fact of "[W]ritten [L]aw", require that the "[t]ime" of the offenses be stated in the body of the charging instrument of the indictment. The language in the charging in the charging instrument for attempted murder in question alleges that the assault occurred "ON OR ABOUT" July 28, 2013. Could this mean July 29th., 30th., August 1st., 2nd., 3rd. 4th., 7th., 10th., 13th., July 27th., 25th., 23rd., 20th., 19th., 15th.? All of these dates can be considered as "ON OR ABOUT" July 28, 2013. The State knew and could have easily allege the exact date of the supposed assault(s). This means that this failure to assert the exact time of the assault(s) was an arbitrary judicial action. Murder is a composite crime. Thus, they, by not alleging an exact time of assault have in some respects destroyed the identity of the Corpus delecti. This cannot be deemed reasonable notice. It is the appellant's contention that this is "[n]ot" a proper or sufficient "[t]ime" of assault, which is made part of the essential elements of the offense, which must be alleged within the body of the charging instrument,

passed upon by the Grand Jury and returned against the accused in accordance to the Constitutional Due Process rights of the defendant. This produces substantial prejudice, denying the defendant his right to proper and or sufficient notice, and serve to deny him the Equal Protection of the Laws.

The appellant contends, that a panel of jurors that embodied the Grand Jury upon their oaths aforesaid, stated the mortal blow and or assault occurred "ON OR ABOUT" July 28, 2013. This is not an exact time of assault. Thus, it becomes a false and invalid oath, tainting this oath producing fraud and misrepresentation requiring that the indictment(s) be quashed. It is universally recognized that every oath "[m]ust" be founded upon "[c]ertain [k]nowledge" (OMNE SACRAMENTUM DEBET ESSE CERTA SCIENTIA). The reality is that such oath was not founded upon certain knowledge where the Grand Jury who swore to such indictments, did not discover as they supposed that the exact "[t]ime" of the assault had not been alleged in the indictment. Failing to properly state the time of assault of the alleged crime are clear grounds that would demand that such a judgment be reversed, especially in light of the overwhelming prejudice to the appellant's Due Process rights. By this injustice the appellant was denied opportunity to make claims of alibi or actual innocence where the State would be permitted to assert the assault occurred on the numerous days afore claimed by alleging "ON OR ABOUT". The law is clear on this issue. No one can say what was in the mind of the Grand Jury which allowed the trial jury to speculate that the Grand Jury intended the time to be exactly July 28, 2013 where by making use of the term "ON OR ABOUT" such is not clear, or is it an exact asserted time of assault. This also denied the appellant his Due Process right to meet the charge by being able to call specific witnesses who could have clearly proven the assault did not occur on all those vague "ON OR ABOUT" dates the appellant previously listed. It is truly unnecessary to cite authority to the fact that it is absolutely essential in an indictment for murder, and in this case, attempted murder, that the exact "[t]ime" of assault and or death of the decease

party, or in thi case, the assaulted party, should be alleged therein, and in absence of such allegation said indictment is fatally defective and should be quashed and or judgment arrested upon motion made, which is done, and further, such a defective indictment is beyond the reach of amendment or repair as in a similar matter as it pertains to "[p]lace" of assault and death, for the indictment to a great extent destroys the identity of the corpus delecti, State v. Blakeney, 33 S.C. 111, 11 S.E. 637 infra State v. Stewart, 26 S.C. 125, 1 S.E. 468; Ball v. United States, 140 U.S. 118, 11 S.Ct. 761, 35 L.Ed. 377; State v. Platt, 154 S.C. 1, 151 S.E. 202.

In State v. Kennedy, (L.A.)(1845) 8 Rob. 590, the court in holding an indictment for murder bad, as not alleging the time and or place of the death said: "The material fact in murder are the mortal stroke and the consequent death being a composite crime, and the death "[m]ust" appear upon the record and or on the face of the indictment to have occurred within one year and a day from the time when the mortal stroke was given". The averment then of each of these material facts "[m]ust" under well established rules of criminal pleading be accompanied by an allegation of a certain time and or place, to include not alleging "ON OR ABOUT" as it pertains to time.

To amplify this proposition, in State v. Rallo, 403 S.E.2d 653 (1991), the court in relevant part stated [v]erbatim:

"It is true that the State need not prove the exact time and or date set forth in the indictment(s), unless "[t]ime" is an essential element of the offense, or is made part of it", Id. at 655.

In State v. Ham, 259 S.C. 118, 191 S.E.2d. 13(S.C.1972). The South Carolina Supreme Court stated in Haec [V]erba:

"If '[t]ime' is '[n]ot' of the essence or gist of the offense, the '[p]recise [t]ime' of which the offense is

charged to have been committed is '[n]ot' material".

On the other side of the spectrum of this language, the "[p]recise [t]ime" at which the offense is said to have been committed "[i]s" material if "[t]ime" is of the essence or gist of the offense as it is in this case.

Inasmuch, to be "ON POINT", in State v. Pierce, 207 S.E.2d 414, which is a murder precedent, the indictment charged that the offense and or crime occurred on a certain date, and does "[n]ot" charge "ON OR ABOUT". The State knew the exact time of assault and also knew that "time" was an essential element of the offense. But they figured since they thought they got away with that Gentry fraud. They continued the arbitrary act and disregarded the appellant's Due Process rights.

Hence, by the Doctrine of "STARE DECISIS ET NON QUIENTA MOVERE", an indictment "[m]ust" properly set forth all the essential elements of the offense. By Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887 (1974), it is well established and recognized under American Jurisprudence: That if an indictment fails to charge all necessary elements, it fails to charge the offense. If it fails to charge the offense, such violates the appellant's 5th., 6th., 14th. amendment rights of the U.S. Constitution, as well as Article IV § 2, and his rights of Due Process which "[v]oids" the trial court's jurisdiction for Due Process violation. Thus, the sentence and conviction "[m]ust" be vacated, United States v. Masotto supra.; Castillo v. Holder supra.; State v. Brandt supra.; United States v. Cabrera-Teron, 168 F3d. 141 (5th.Cir.1999); United States v. Pupo, 841 F2d. at 1239(4th.Cir.1988)(En Banc); United States v. Hooker, 841 F2d. 1225(4th.Cir.1988); U.S. v. \$41,320 U.S. Currency, 9 F.Supp. 3d. 582, 2014 WL 1266240; White v. Manis, 2014 WL 1513280(DSC. 2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); Hunt v. United States, F.Supp.2d., 2007 WL 5131716(DSC.2007); Brown v. U.S., 2014 WL 2871398(DSC.2014).

() Did the S.C. Supreme Court in State v. Gentry supra. err, engaging knowingly, intentionally in acts of fraud upon the court, in their efforts to essentially establish modern day slavery in violation of the Anti-Peonage Act, and abused their discretionary "[p]owers", which they even conspired to take away our right to vote, and or done so surreptitiously , in violation of the Voting Rights Act. And in such, the court's jurisdiction was made void for Due Process violation, and the court was prohibited from enacting and or invoking and or continuing its Subject Matter Jurisdictionary "[p]owers", even though they do indeed possess such "[p]ower" via state legislative statute and or Congressional intent, due to the indictment defects and or errors contained and argued within this document, in violation of the appellant's 4th., 5th., 6th., 13th., 14th., 15th. Amendment rights of the U.S. Constitution, as well as Article IV § 2, also 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986; 18 U.S.C. §§ 241, 242, and the laws of Due Process?

The appellant did not object to these defects and or errors at the time of his trial and or before he gave his guilty plea, but the defects and or errors serve to render the indictments wholly invalid. Defects in an indictment that are of such a fundamental character as to render an indictment wholly invalid are not subject to waiver by the defendant, 41 Am. Jurs.2d. Indictments and Information § 299(1968); State v. Munn supra..

Judicial notice takes place of proof. It simply means that the court will admit into evidence and consider, without proof of facts, matters of common and general knowledge. We are arguing against the precedent established by State v. Gentry pursuant to S.C. Appellate Court Rule 217, Moss v. Aetna Life Ins. Co. supra.; State v. Broad River Power Co. supra. 31 C.J.S. Evidence §§ 6 and 9; Federal Rules Of Evidence, Rule 201(a).

This is also a manifest constitutional error. An error , fraud and machination on the part of the South Carolina Supreme Court that has an identifiably negative impact on all proceedings to such a degree, that the constitutional rights of all defen-

dants within this state, including the appellant's are compromised. A manifest constitutional error, violations of the Anti-Peonage Act and fraud upon the court of this magnitude cannot be waived, is not subject to any time limits, and can be reviewed by a court of appeals even if the appellant did not object at the proceedings, especially in light of the fact that the court's decision and fraudulent actions disproportionately effect African Americans and all other inmates within this state and potentially around the nation, (Black Law Dictionary 8th. Edition); The Amistad supra.; Callon Petroleum Co. v. Frontier Ins. Co. supra.; Digital Equip. Corp. v. Desktop Direct Ins., 511 U.S. 863, 868, 114 S.Ct. 1992, 1996, 128 L.Ed.2d. 842(1994); Chewing v. Ford Motor Company supra.; Appling v. State Farm Mut. Auto Ins. Co. supra.; King v. First American Investigators Inc., 287 F3d. 91, 92(2nd.Cir.2002) cert. denied 537 U.S. 960, 123 S.Ct. 393, 154 L.Ed.2d. 314(2002); The Anti-Peonage Act Of The 13th. Amendment; The Rico Act; Ex Parte Virginia, 100 U.S. 339, 346, 25 L.Ed. 676(1880).

The appellant contends, that the indictment(s) for attempted murder do not properly allege the "[t]ime" of the assault which is an essential element of the offense. The indictment(s) for attempted murder or the conspiracy indictment allege who it was that the appellant supposedly conspired with. The attempted murder indictment(s) do not allege what weapon the appellant was supposedly in possession of. None of these essential elements and or allegations are alleged within the body of the charging instrument. This prejudiced the appellant when it came time to seek a direct verdict which is why the court and parties conspiring under color of state law, in acts of fraud upon the court denied the motion for severance, violating the appellant's Due Process rights voiding their jurisdiction for Due Process violation. These actions placed the appellant at a substantial disadvantage, which is why the state in acts of conspiring under color of state law tried the appellant and his co-defendant together to conceal these fatal deficiencies, knowing fully well the indictments were extremely vague setting the appellant

up for "Indictment Ambush" at the onset of his proceedings. The indictments "[c]annot" be deemed sufficient if the state is permitted to prove all these materially different sets of facts. The indictment(s) do not descend to the essential particulars. All the aforementioned "[m]ust" be alleged in the body of the charging instrument and passed upon by the Grand Jury in the indictments returned against the accused in accordance to the constitutional Due Process rights of the defendant. This cannot be deemed as reasonable notice. No one can say what was in the mind of the Grand Jury, State v. Pierce supra.; State v. Sutton supra.; State v. Platt supra.; State v. Rector supra.; State v. Blakeney supra.; State v. Munn supra.; State v. Rallo supra.; State v. Tate supra.; State v. Tabor supra.; State v. Keith supra.; State v. Hardee supra.; Locke v. State supra.; State v. Wilkes supra.; United States v. Daniels supra.; United States v. Abrams supra.; United States v. Hooker supra.; Russell v. United States supra.; Hamling v. United States supra.; United States v. Pupo supra.; Castillo v. Holder supra.; State v. Brandt supra.; Robinson v. Cohen supra.; United States v. Cohen supra.; United States v. Gomez supra.; Carr v. United States supra.; United States v. Robare supra.; United States v. Umana supra.; United States v. Dinkins supra.; James v. Reynolds supra.; Sullivan v. Cartledge supra.; Dech v. Missouri supra.; Clark v. Arizona supra.; United States v. Whitfield supra.; United States v. Mills supra.; United States v. Naidu supra.; United States v. Allmendinger supra.; State v. Green supra.; Roberts v. State supra.; Eppenger v. McFadden supra.; Blanding v. Warden McCormick Correctional Institution supra.; State v. Daniels supra.; United States v. Kirby supra.; Van de Kamp v. Goldstein supra.; Dennis v. Wetzel supra.; Plecencia v. McFadden supra..

The appellant further contends, that the indictment(s) do [n]ot properly and or sufficiently apprise the appellant of the "[c]ause and [n]ature" of the accusation(s), or of what he is called upon to meet and defend, because the structural constitutional error, defect, language and or charge embodied within the indictment(s) and criminal complaints around the

nation indicate and or inform the appellant, that the burden of production belongs to the appellant and not the government. By such the indictments also violate S.C. Code Ann §§ 17-19-10, 17-19-20 and 17-25-10. The language and or charge in the indictments indicate and inform the appellant that he is called upon to meet the burden of production on the critical elements of dispute, in violation of the appellant's 6th. amendment rights, the relevant statutes, and Due Process Law. They also violate the appellant's 4th. amendment rights to illegal seizure, his 5th. amendment rights to double jeopardy protection, because they predetermine in advance the outcome of the proceedings, taking away our presumption of innocence, and they inform the appellant that for a second time he is made to plea and or go to trial on a prior conviction for the same offense which produces fraud upon the court, modern day slavery in violation of The Anti-Peonage Act because you force us to work once convicted to up keep these institutions. Then you take away our right to vote once convicted in violation of the 13th. 15th. amendments and the Voting Rights Act, The Rico Act, and the holdings made in Ex Parte Virginia, 100 U.S. 339(1880). They infringe upon the appellant's 14th. Amendment right to Equal Protection of the Laws against unjust, arbitrary judicial action and prosecution behind a class based invidiously discriminatory animus because the action disproportionately effect African Americans and other minorities in violation of the holdings made in Ex Parte Virginia. The Grand Jury "[m]ust" refrain from even making an "[o]pinion" (emphasis added) as to our guilt. Yet, here these Knuckleheads swear an "[o]ath", under "[o]ath" mind you, our guilt foreclosing legally any subsequent adjudication. The Grand Jury by State or Federal law, or State or Federal Constitution, do "[n]ot" have the power to convict. This cannot be deemed reasonable notice. No one can say what was in the mind of the Grand Jury as determining whether or not they intended any subsequent adjudication to occur once they themselves determined guilt. Due to the structural constitutional error and or defect in the construction of the indictment(s) and or criminal complaints around the nation, they do "[n]ot" properly,

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sufficiently or fully apprise the appellant of the "[c]ause and [n]ature" of the accusation being brought against him, or of what he is called upon to meet and defend, State v. Lewis supra.; State v. Easler supra.; Mathis v. State supra.; Brown v. State supra.; State v. Browning supra.; State v. Munn supra.; Moore v. Dempsey supra.; The Amistad supra.; Callon Petroleum Co. v. Frontier Ins. Co. supra.; Digital Equip Corp. v. Desktop Direct Ins. supra.; United States v. Direct Sales Co. supra.; United States v. Atlantic Commission Co. supra.; State v. Boyd supra.; State v. Bramlett supra.; Beck v. Washington supra.; State v. Tollin supra.; Byers v. Reynolds supra.; United States v. Jefferson supra.; In Re: Grand Jury Subpoena John Doe, No. 05GJ1318 supra.; In Re: Grand Jury Subpoena (T-112) supra.; United States v. Umana supra.; United States v. Dinkins supra.; Dickerson v. Warden Of Lieber C.I. supra.; James v. Reynolds supra.; Sullivan v. Cartledge supra.; Clark v. Arizona supra.; Deck v. Missouri supra.; Skilling v. United States supra.; Kaley v. United States supra.; Placencia v. McFadden supra.; Jeandron v. Board Of Regents Of University System Of Maryland supra.; United States v. Whitfield supra.; United States v. Mills supra.; United States v. Naidu supra.; Roberts v. State supra.; State v. Green supra.; United States v. Kirby supra.; United States v. Allendinger supra..

This is how this thing went. The inmates of South Carolina were basically getting out of prison by arguing the defects within their indictments. The inmates convicted for murder discovered that there was a fatal flaw in the murder indictments related to "time and place", being essential elements of the offense. The South Carolina Supreme Court, in efforts to stop the inmate exodus from prison, engaged in acts of fraud upon the court in efforts to establish modern day slavery behind racial hatred, even with the black overseer type judges, came up with a plot, plan and scheme to defraud the inmates of this state in their acts of machination in violation of the holding

made in the U.S. Supreme Court case Ross v. Blake, 136 S.Ct. 1850(2016). They knew that beforehand in order to make a fair determination regarding the issue of Subject Matter Jurisdiction. It was required that the court review Ex Parte Bain, Russell, Stirone and Gaither collectively, but they purposely did not do so in order to hatch their plan. If you do not review them together, they knew you can make a fraudulent determination and no one would be the wiser. So, the judges of the South Carolina Supreme Court, conspiring under color of law behind a class based invidiously discriminatory animus, placed the numerous, voluminous pending criminal cases on hold, staying them, many for as long as over (4) or (5) years to allow them to go on a "FISHING EXPEDITION" in search of case law that was vague and ambiguous enough to allow them to enact their acts of fraud and machination. After this exhaustive search for (5) or more years, criminally holding these inmates cases in limbo. The conspiring judges found Cotton and Parkhurst, that would permit them to circumvent the holdings made in Stirone, Gaither and Russell via this fraudulent "FISHING EXPEDITION", due to these newly found cases being adjudicated under the incorrect prong to subject Matter Jurisdiction, Mitchell v. Conseco Life Ins., F.Supp.2d., 2013 WL 2407129(DSC.2013); J & J Sports Productions Inc. v. Wofford, 2014 WL 2980250(DSC.2014); United States v. McDonald, 444 Fed. Appx' 710 CA4 (Va.2011); Gindi v. Strategic Outsourcing, Inc., F.Supp.2d., 2012 WL 7761543(DSC.2012); State v. Jones, 364 S.C. 51, 610 S.E.2d. 846(S.C.App.2005).

This is what the S.C. Supreme Court judges specifically wanted. They wanted these specific cases to permit them to perpetrate the fraud and machination even though they knew there were other U.S. Supreme Court cases that gave greater clarity, which is why Plecones, honorable soul that he is, jumped ship. He knew what they were doing. They knew Ex Parte Bain, U.S. v. Cotton and Parkhurst were vague and ambiguous in that these cases found via the "FISHING EXPEDITION" never addressed the "[j]urisdictional [p]rerequisite" Due Process element, aspect or requirement of the indictment and adjudicated this clear

Due Process issue under the incorrect prong to Subject Matter Jurisdiction. U.S. v. Cotton used "word play", "verbal voodoo", "word winx" to evade the essential question related specifically to the "[p]rerequisite" aspect and requirement of the indictment as it relates to jurisdiction, which is a Due Process claim that "[v]oid" jurisdiction for Due Process violation. Please note that nothing in U.S. v. Cotton stated that they were overruling Stirone, Gaither or Russell,...why? Its because we are dealing with two separate and independent questions related to Subject Matter Jurisdiction, essentially two prongs. One being certain courts jurisdiction itself. The second being the "[p]rerequisites" and or "[r]equisites" that are attached to that jurisdiction, which is a Due Process claim that "[v]oids" jurisdiction for Due Process violation, the corrupt devils that they are, Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.supp.3d. 582, 2014 WL 1266240 (2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md.2010); White v. Manis, 2014 WL 1513280(DSC.2014).

The S.C. Supreme Court judges, in acts of fraud upon the court and machination, only reviewed Ex Parte Bain because it was vague on the "[p]rerequisite" and or "[r]equisite" Due Process issue itself, then added Cotton and Parkhurst because they knew these cases were adjudicated in the same vein, which did not address the prerequisite Due Process requirement of the indictment, which must be adjudicated under the Due Process prong to Subject Matter Jurisdiction, they came up with the State v. Gentry case, in acts of fraud upon the court and machination to halt the pending inmate exodus. Conspiring under color of state law in violation of 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986; 18 U.S.C. §§ 241, 242, 1001, by order of stay, they held Gentry and the massive number of pending cases in limbo, many for over (5) years, until they were time barred from seeking review in the S.C. U.S. District Court. The S.C. U.S. District Court Judges conspiring with them, under color of authority and or law, were privy to this aided the conspiring state judges, courts and actors such as the S.C. Attorney General; knowing

fully well the vast number of inmates whose cases were criminally held in limbo, many for over (5) years, lacked the intelligence to argue past the successive or statute of limitations placed upon them via PLRA and or AEDPA provisions, warranting the recusal and or disqualification of the S.C. U.S. District Court and 4th. Circuit and all these cases in total be transferred to the State Of New Jersey District Court pursuant to 28 U.S.C. §§ 1404 and 1407. We motion for such.

Similar acts were done with intelligence test during reconstruction to deny minorities the right to vote. "How many jelly beans are in this jar?" "How do you get past the Statute of limitations or successive issues placed upon you by PLRA or AEDPA provisions?" It is a similar criminal act argued in Ex Parte Virginia, 100 U.S. 339(1880), in their white racial bonding. This produces fraud upon the court, machination in violation of the holdings made in Ross v. Blake, 136 S.Ct. 1850 (2016), demonstrating that we do not have to exhaust. It establishes a form of modern day slavery by that fraud and machination as is defined within The Convention Against Torture Treaty that Congress signed off on and ratified binding this nation and all states contained therein, where you force us to work to up keep these institutions and other forced labor while in captivity. Then you take away our right to vote by conspiring under color of state law and or authority to keep us labelled as felons and kill our political in what you white nationalist call , "establishing good government" as Senator Cole Blease Of South Carolina once said. It becomes an illegal seizure by this fraud and machination in violation of the 4th. amendment, as well as stand in violation of The Rico Act, the holdings made in Ex Parte Virginia, as well as the 5th., 6th., 8th., 13th., 14th., and 15th. amendments, also 18 U.S.C. §§ 241, 242 and 1001, Moore v. Dempsey supra.; The Amistad supra.; Digital Equip. Corp. v. Desktop Direct Ins. Co. supra.; State v. Means, 367 S.C. 374, 626 S.E.2d. 348(S.C.2006)(Where they applied this criminal act retroactively); Screws v. United States supra.; United States v. Kozminski, (1988) 487 U.S. 931, 101 L.Ed.2d. 788, 108 S.Ct. 2751, 46 C.C.H. E.P.D. ¶ 38067 on remand (1988 CA6 Mich.) 852 F2d 1288; Greenwood v. Peacock, (1966) 384 U.S.

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808, 16 L.Ed.2d. 944, 86 S.Ct. 1800; United States v. Ramey, (1964 CA4 W.Va.) 336 F2d. 512 cert. denied (1965) 379 U.S. 972, 13 L.Ed.2d. 564, 85 S.Ct. 649; United States v. Otherson, (1980) CA9 Cal., 637 F2d 1276 cert. denied (1981) 454 U.S. 840, 70 L.Ed.2d. 123, 102 S.Ct. 149; Means v. Wilson, CA8 (S.D.) 1975, 522 F2d. 833 cert. denied 96 S.Ct. 1436, 424 U.S. 958, 47 L.Ed.2d 364; Berg v. Obama, E.D. Pa. 2008, 574 F.Supp.2d. 509; United States v. Figuerca, CA3 (N.J.) 2013, 729 F3d. 267; Ex Parte Virginia supra.; The Compendium Of United Nations Standards And Norms In Crime Prevention And Criminal Justice ISBN 978-92-1-133765-5.

This is not a situation where the state court simply held a view different its own, when the precedent from the U.S. Supreme Court is, at best ambiguous. They criminally conspired under color of state and stayed, held, all pending cases most for (5) years or more while they and the S.C. Attorney General purposely, maliciously, criminally went on a "FISHING EXPEDITION" in search for a vague, ambiguous U.S. Supreme Court case and the Parkhurst case, to allow them to engage in machination and acts of fraud upon the court when there were other clearly established U.S. Supreme Court cases that gave greater clarity and that were not ambiguous to defraud the inmates of this state. Thus, using the holdings made in cases like Green v. Fisher, 132 S.Ct. 38, 43(2011) would be misplaced due to the criminal and fraudulent intent that conspicuously exist, Barlow v. Colgate Palmolive Co., 772 F3d. 1001, 90 Fed. R. Serv.3d. 85(Md.2014).

Perhaps the court(s) of South Carolina would further contend that Subject Matter Jurisdiction, and the sufficiency of an indictment are, and have been combined in the various cited cases, that the indictment is merely a "notice document" and that Subject Matter Jurisdiction is the court's "[p]ower" to hear and determine a matter, and each should be viewed as separate and distinct from one another and the insufficiency of an indictment does "[n]ot" take away from or "[a]ffect" and or "[h]inder" a "[c]riminal" court's "[p]ower" and or "[a]bility" to hear "[t]his" general class of cases, to which the proceedings

in question belong, State v. Gentry, 363 S.C. 93, 610 S.E.2d. 494, 495(S.C.2005) citing United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d. 860(2002); State v. Parkhurst, 845 S.W.2d. 31(MO.1992). The court(s) has misinterpreted its citings and are in error, and they have abused their discretionary "[p]owers" in their determination of this matter, and they did this purposely in acts of fraud upon the court and machination in violation of the holdings made in Ross v. Blake, 136 S.Ct. 1850(2016). An abuse of discretion occurs when the court(s) are controlled by an error of law, or when the order based upon findings of fact is without evidentiary support or fact. The error of law that they are controlled by is that there are two concepts in question, essentially two prongs to Subject Matter Jurisdiction. One--the courts powers of jurisdiction given to them via state legislative statutes and or congressional intent for federal courts. Secondly---the Due Process jurisdictional "[p]rerequisites" and or "[r]equisites" that are attached to that jurisdiction, which were never properly addressed by the courts involved, which were required to be addressed under the Due Process prong to Subject Matter Jurisdiction, Sharpes v. Sharpes, 535 S.E.2d. 913, 342 S.C. 71(2000).

The State Of South Carolina, by this ludicrous piece of legislation or law, in an egregious abuse of discretionary "[p]ower", acting arbitrarily, unjustly, under color of "state law", in defiance to fundamental fairness and judicial integrity, in violation of the appellant's federal constitutional rights of Due Process, also in violation of 18 U.S.C. §§ 241, 242 and 1001, has either altered, amended, modified, and or deleted, and or diminished and or eradicated, just about every single right and privilege secured and protected by the 4th., 5th., 6th., 13th., 14th., 15th. amendments of the U.S. Constitution, as well as the South Carolina Constitution, as it pertains to the "[p]rerequisite" Due Process requirement and use of an indictment in criminal proceedings, in blatant defiance to the appellant's rights to Equal Protection of the Laws, producing fraud upon the court, machination, essentially establishing

modern day slavery in violation of The C.A.T. Treaty, conspiring under color of state law to disenfranchise us, branding African Americans and other minorities who are disproportionately effected as felons to deny them the right to vote and kill their political voice, creating a racial caste system, See Book Entitled, "Mass Incarceration During The Age Of Colorblindness, the New Jim Crow, by Michelle Alexander; Screws v. United States supra.; State v. Middleton supra.; Eslinger v. Thompson supra.; McLaughlin v. Florida supra.; Dubinka v. Judges Of Superior Court Of The State Of California, For The County Of Los Angeles supra.; Jones v. State Of Arkansas supra.; Dozier v. Loop College , City Of Chicago supra.; Hicks v. Oklahoma supra.; Lugar v. Edmondson Oil Co. supra.; Williams v. United States supra.; Brown v. United States supra.; United States v. Ramey supra.; United States v. Kozminski supra.; Greenwood v. Peacock supra.; United States v. Otherson supra.

Insomuch, the 5th. amendment Indictment Clause has not been held applicable to the states, or the federal concept of a Grand Jury binding on the federal courts under the 5th. amendment are obligatory to the states. Nevertheless, by their own state(s) Constitution(s), the State Of South Carolina, New Jersey , Kentucky, Georgia, New York and (28) other states adopt the federal provisions. requirements, Due Process "[p]rerequisites" and or "[r]equisites", standards and mandates pertaining to the use of an indictment, and the remaining (17) states that make use of a criminal complaint document possess the structural error argued where the Grand Jury by the language presented, adjudicated guilt of the offenses as well. In further resolving the conflict, the Federal courts have held by the "BILL OF RIGHTS", many rights guaranteed by the first (8) amendments of The United States Constitution, have been made applicable to the several states through the Due Process Clause of the 14th. amendment and Supremacy Clause of Art. 6 cl. 2 of The U.S. Constitution, State v. Watts, 465 S.E.2d. 359; Henry v. City Of Rock Hill, 376 U.S. 776, 84 S.Ct. 1042, 12 L.Ed.2d. 79(1964); Also see South Carolina Constitution Art. 1 § 11; Ex Parte Bain, 121 U.S. 1 (1887); Costello v. United States,

350 U.S. 359; Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038(1962); Woods v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d. 569(1962); Frisbee v. United States, 157 U.S. 160, 15 S.Ct. 586, 39 L.Ed. 652 (1895); Hale v. Henkel, 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652(1906); Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d. 491(1968); Hurtado v. California, 110 U.S. 516, 538, 4 S.Ct. 111, 122, 28 L.Ed. 232(1884); Powell v. State Of Alabama, 287 U.S. 45, 67, 53 S.Ct. 55, 63, 77 L.Ed. 682(1948); Gideon v. Wainwright, 372 U.S. 335, 342-344, 83 S.Ct. 792, 796, 4 L.Ed.2d. 799(1963).

Yes, the indictment is a "notice document", but being a "notice document" is one of the many purposes and functions the indictment was created for. The Honorable Judge Plecones in the Gentry court, was the only one with enough judicial integrity and insight to see clear to the truth of this matter in part, and did not agree to the fraud and machination.

Yes, Subject Matter Jurisdiction is the "[p]ower" to hear and determine cases of a general class to which the proceedings in question belong, Bell v. Monsato Corp., 579 S.E.2d. 325 S.C. 553(S.C.2003). Inasmuch, the court's "[p]ower" to hear and determine a case, is also defined as the court's "[a]bility" to hear and determine a case. Inasmuch, Subject Matter Jurisdiction does not only cover and or involve whether or not the matter resides in a proper court of jurisdiction to hear and determine it. This is only the first prong. It also involves any issue that may "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to act in accordance to Rules Of Court, Rules Of Procedure and Due Process Law. This is the second prong that "[v]oids" jurisdiction for Due Process violations. Such matters can be raised at "[a]ny" time, "[c]annot" be waived by the defendant, and the court "[s]hall [n]ot [f]ail" to take notice, Mathis v. State supra.; Brown v. State supra.; State v. Munn supra.; Browning v State supra.; U.S. v. \$41,320 U.S. Currency, 9 F.Supp. 3d. 582, 2014 WL 1266240; Hunt v. United States, F.Supp.2d., 2007 WL 5131716(DSC.2007).

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Subject to certain minor exceptions not present, the trial court's jurisdiction is made void, and or they are prohibited from enacting, and or invoking and or continuing its Subject Matter Jurisdictionary "[p]owers" to convict a defendant for Due Process violation, even though they have such jurisdiction by state legislative statute and or congressional intent, when there is no indictment charging him with that offense when the jury is sworn, or when he gives his guilty plea, and we can add, or when he has already been unjustly convicted by the Grand Jury, illegally acting as the trial jury, being duly sworn and swearing upon their "[o]ath" the appellant's guilt, predetermining in advance the outcome of the proceedings, in violation of their shielding function, also in violation of the appellant's right to double jeopardy protection and Due Process Law, establishing fraud upon the court, modern day slavery, machination, taking away our right to vote conspiring to kill our political voice behind a class based invidiously discriminatory animus in the form of race in violation of the holdings made in Ex Parte Virginia supra.. Also see State v. Lewis supra.; State v. Easler supra.; Moore v. Dempsey supra.; The Amistad supra.; United States v. Umana supra.; United States v. Dinkins supra.; Dickerson v. Warden Of Lieber C.I. supra.; James v. Reynolds supra.; Sullivan v. Cartledge supra.; Clark v. Arizona supra.; Deck v. Missouri supra.; Skilling v. United States supra.; State v. Beachum, 288 S.C. 325, 324 S.E.2d. 572(1986); S.C. Code Ann § 17-25-10.

The Gentry court misinterpreting its citings are in error in their determination of the matter in acts of fraud upon the court and machination. What gives the court in "[c]riminal" cases and or proceedings the "[a]bility" to hear and determine cases of "[t]his" general class to which the proceedings in question belong, and allow it to enact and or invoke and or continue its Subject Matter Jurisdictionary "[p]owers" in these type of cases, placing those "[p]owers" in operation is "an indictment".

S.C.R.C.P., Rule 3(c) Provides:

"Disposition on arrest warrant(s):

The solicitor shall take action on the warrant(s) within (90) days by preparing 'an indictment' for presentment to the Grand Jury". In turn said indictment is to be passed on to the trial court to allow it to enact and or invoke and or continue its "[p]owers" of Subject Matter Jurisdiction, Sharpe v. Johnson, 107 F3d. 282(foot notes)(5th.Cir.1997); Santos v. State, 843 S.W.2d. 953, 956(Tex.App.1992); Studer v. State, 799 S.W.2d. 263(Tex.App.1990); Williams v. Morris, 320 S.C. 196, 464 S.E.2d. 97(1995).

The indictment is also the legal document that confirms the "[c]riminal" court's "[p]ower" and or "[a]bility" to hear the particular case, by stating and documenting the class of case, or alleged offense, and the statute of the offense charged, stating the offense in the language of the statute, further validating that the matter(s) reside in the proper court of jurisdiction to hear and determine the matter. These indisputable facts make the indictment more than merely a "notice document". It is the vehicle in "[c]riminal" cases and or proceedings which invest and or attach the "[c]riminal" court the Due Process mechanism and right to act, and or confirms that right to act, which is an intrinsic part of the Due Process Prong To Subject Matter Jurisdiction in these cases; Thereby making them inter-linked, inter-locked and inter-dependent upon the viability of each other. To determine that without the indictment(s), it does "[n]ot" "[a]ffect" and or "[h]inder" a "[c]riminal" court's "[p]ower" and or "[a]bility" to hear and determine cases of "[t]his" general class to which the proceedings in question belong, is an error of law, and is like stating not having a "soul", "consciousness", or "lifeorce", do "[n]ot" "[a]ffect" or "[h]inder" a man's "[p]ower" or "[a]bility" to be a man. Without a "soul" or "lifeorce", by the laws of reason you will still have a "man", but the total truth of the matter is that

you will have a "[d]ead man", whose worth to society is useless; the same way the "[c]riminal" court's "[p]ower" and or "[a]bility" to hear and determine "[t]his" particular class of case is useless without the essentially needed vehicle in the form of the indictment(s). The Sufficiency of an Indictment is a "[j]urisdictional [p]rerequisite" in cases of "[t]his" general class, to which the proceedings in question belong, and for which an indictment is needed and or required even though the courts do indeed have jurisdiction via state legislative statute and or via congressional intent. See Indictment sufficiency, 70 Colum L. Rev. 876, 888(1970); United States v. Abrams, 539 F.Supp. 378, 384(S.D.N.Y.1982); Stirone v. United States, 361 U.S. 212 (1960); Gaither v. United States, 413 F2d. 1061(D.C. Cir.1969); Also see S.C. Constitution Art. 1 § 11; S.C. Code Ann § 17-25-10.

The Gentry court, by it misinterpreting its citings changed Federal law made applicable to the state(s) by they adopting such via their own state(s) Constitution(s) standing unchallenged for well over (100) years. For the Gentry court by it misinterpreting its citings, in acts of fraud upon the court and machination in violation of Ross v. Blake, 136 S.Ct. 1850(2016), to view the two concepts of Subject Matter Jurisdiction and the Sufficiency of an Indictment as being combined, when Federal law adopted by their own state(s) constitution(s), dictate that the Sufficiency of an Indictment is a "[j]urisdictional [p]rerequisite" to Subject Matter Jurisdiction in a "[c]riminal" court, which is a Due Process claim, is an error of law. Nothing in United States v. Cotton or State v. Parkhurst addressed and or adjudicated the "[p]rerequisite" Due Process aspect of the indictment. Nor did anything in those cases say that Abrams, Stirone, Russell and Gaither are overruled. If they are no officially overruled by The U.S. Supreme Court, then the [p]rerequisite Due Process aspect of the indictment is still controlling law. The Abrams, Stirone, Russell and Gaither court(s) intent should be ascertained from the plain language of these citings of law as is adjudicated by those

courts. The language must read in a sense that harmonizes with its subject matter and accords with its general purpose. Once these precedent setting courts have made a choice, there was no room for the Gentry court to impose a different meaning or judgment based upon their own misguided notions. If the provisions of law language is clear, there was no need to employ the rules of statutory and or common law construction, and the Gentry court had no right to go on a "FISHING EXPEDITION" holding those cases in limbo for (5+) years to force the inmates past the statute of limitations to prevent review in another higher court to which they were void of all jurisdiction in acts of fraud upon the court and machination. Also, due to they imposing another meaning to this prescribed law, in their efforts to essentially establish modern day slavery in violation of the C.A.T. Treaty, to which congress confers upon no court the "[p]ower" to establish slavery of any kind. Their jurisdiction is void from the onset, even making it an administrative function stripping them of immunity due to the fraudulent intent. These were the same such acts that were at the heart of the issues sought remedied in Ex Parte Virginia in 1880. The convictions are not "DULY" established. Where the language of the aforementioned citings of law are clear and explicit, the Gentry court "[c]annot" go on a "FISHING EXPEDITION" to purposely search for a vague, ambiguous provision of law that did not address the "[j]urisdictional [p]rerequisite" Due Process aspect and requirement of the indictment to criminally, in acts of fraud upon the court and machination, rewrite the provisions of the law in and inject matters into the holdings which are not in the language found in Russell, Stirone, Abrams and Gaither. Under the plain meaning rule, it is not the Gentry court's place to change the meaning of clear and unambiguous provisions of law by citing of a law that is ambiguous and vague, to disproportionately affect African Americans and other minorities within this state and water down the protections established under Ex Parte Virginia. The law clearly states that the two concepts are not combined, but one is a "[j]urisdictional [p]rerequisite" of the other which "[m]ust" be adjudicated under the Due Process Prong of Subject Matter Jurisdiction. The law clearly states

that yes, the courts have jurisdiction via state legislative statutes and or congressional intent, but with that jurisdiction there are "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites" that "[m]ust" be adhered to related to Due Process which void jurisdiction for lack of compliance. If these two concepts are to be viable and operate in the fullness and purpose for which they were established and created, they are not to be viewed and or separated in the manner reasoned by the Gentry court misinterpreting the holdings made in the Cotton and Parkhurst courts, Mitchell v. Conseco Life Ins. supra. ; J & J Sports Productions Inc. v. Wofford supra.; United States v. McDonald supra.; Gindi v. Strategic Outsourcing, Inc. supra.; State v. Jones supra.; Bass v. Isochem, 617 S.E.2d. 369(S.C.App. 2005); State v. Brannon, 666 S.E.2d. 272(S.C.App.2008); State v. Pittman, 647 S.E.2d. 144(S.C.2007); Liberty Mut. Ins. v. S.C. Second Injury Fund, 611 S.E.2d. 297(S.C.App.2005).

Further, the indictment(s) serve as a "[s]afeguard" to protect the American citizenry, all those who are held by us, and those who enter our borders or territories, from violations of their inalienable constitutional rights. Rule 7(c) requires that the indictment(s) contain a "[p]lain", "[c]oncise", and "[d]efinite" written statement of essential elements and or allegations constituting the offense charged. This requirement performs three constitutionally required functions: It fulfills the 6th. amendment right to be informed as to the "[c]ause and [n]ature" of the accusation (notice document); Yet, more than this, it prevents a person from being subject to double jeopardy as required by the 5th. amendment. It also serves the 5th. amendment protection against crimes based upon evidence not presented to the Grand Jury (constructive amendment of the indictment claim), State v. Lewis supra.; State v. Easler supra.; United States v. Silverman, 30 F2d. 106, 110(2nd.Cir.) listing these functions, modified 439 F2d. 198(2nd.Cir.1970) cert. denied 402 U.S. 953, 91 S.Ct. 1619, 29 L.Ed.2d. 123(1971). The Indictment Clause of the 5th. amendment requires that the indictment(s) contain some amount of factual particularity, to ensure that the prosecution will not fill in elements of his case with facts

other than those considered by the Grand Jury (constructive amendment of the indictment issue), United States v. Abrams supra.

The judges in State v. Gentry supra.; United States v. Cotton supra.; and State v. Parkhurst supra., in their determination, it is perspicuous that they have "[n]ot" given "[f]ull" weight to the total requirements and purpose of S.C. Code Ann §§ 17-19-10, 17-19-20, 17-19-30 and 17-25-10, or the "[j]urisdictional [p]rerequisite" ~~Due Process aspect and requirement of~~ the indictment. It is for the reasons aforementioned, in relevant part, and Federal Rules Of Criminal Procedure, Rule 7(c), that the requirements of the mentioned statutes are in effect, to ensure that the indictment(s) comply with Federal and State Rules of Criminal Procedure, The U.S. Constitution, The S.C. Constitution, and the Laws of Due Process, which make them more than merely a "notice document".

In addition to this, the indictment(s) aid in instructing the jury of the circumstances of the crime, and the incidentals, as well as the elements of the offense, that they are to confirm, or reject the confirmation of, by the preponderance of evidence presented before them by the prosecution and or defense in reaching a verdict. This too, makes them more than merely a "notice document", United States v. abrams supra.; United States v. Silverman supra.. This requirement that the offense be stated**** specifying in detail each element of the crime was seen as providing assurance that both the Grand Jury understood what was necessary to establish the offense, not convict, and that the trial jury did not engage in unanticipated extensions of the substance of the offense, which is a constructive amendment of the indictment claim proving these are Due Process arguments which are to be adjudicated under the Due Process prong to Subject Matter Jurisdiction.

Lastly, the requirement of the indictment(s) limit and constrain the "[p]owers" of Subject Matter Jurisdiction of both

the prosecution and the court, by limiting what can be presented at trial, conviction and sentencing. This too, is potentially a constructive amendment of an indictment claim which demonstrate the deficiencies within the indictment(s) produce Due Process challenges that void jurisdiction for Due Process violation, United States v. Promise, 255 F3d. 150(4th.Cir.2001); State v. Guthrie, 352 S.C. 103, 572 S.E.2d. 309. It is the command of The U.S. Constitution that anything to the contrary is notwithstanding, (Article IV § 2 U.S. Const.).

The appellant places forth this issue in a straightforward fashion and want to make certain that there is no misunderstanding as to the specific claim(s) and or question that is placed before the court. The appellant is not arguing whether the criminal court has jurisdiction to hear and determine cases of "[t]his" general class to which the proceedings in question belong. The appellant concedes this fact. The appellant in this context agrees with all (3) Gentry, Cotton and Parkhurst court(s) when they determined that the criminal court does have Subject Matter Jurisdiction to hear cases of this general class and nature via state legislative statute and or congressional intent, this is not the issue. What the appellant is indisputably arguing is a question which clearly was not answered by either the Gentry, Cotton or Parkhurst court(s) is this. Despite the fact that the criminal court does have Subject Matter Jurisdiction to hear cases of "[t]his" general class to which the proceedings in question belong via state legislative statutes and or congressional intent. Do their egregious, blatant failure to be in compliance to said certain, essential, crucial Due Process "[j]urisdictional [p]rerequisites" and or "[j]urisdictional [r]equisites" at various phases of, and or at the commencement of the Subject Matter Jurisdictionary action and or process before the court, which is to be adjudicated under the Due Process prong to Subject Matter Jurisdiction. Do the State and or Federal government and or courts' egregious, blatant failure to be in compliance to these said certain, essential, crucial Due Process "[j]urisdictional [p]rerequisites" and or "[j]uris-

dictional [r]equisites" at various phases of, and or at the commencement of the Subject Matter Jurisdictionary action and or process, which is a Due Process issue. Do that failure halt, check, constrain, restrain, limit, arrest, stop or void the continuance of the court's Subject Matter Jurisdictionary "[p]owers" before the court for Due Process violation (ei vagueness in the indictment), even though the court do indeed possess such "[p]ower" by state legislative statute and or congressional intent? See Loumiet v. United States, 65 F.Supp.3d. 19(2014); U.S. v. \$41,320 U.S. Currency, 9 F.supp.3d. 582, 2014 WL 1266240 (2014); U.S. v. Aladekcha, 2010 WL 4054267(D.C.Md. 2010); White v. Manis, 2014 WL 1513280(DSC.2014).

This is a crucially, materially, distinctly different question related to Subject Matter Jurisdiction that was never answered by any of the courts involved pursuant to the Gentry case. This is why Judge Plecones in the South Carolina Supreme Court refuse to be a part of the arbitrary, unjust acts of the S.C. Supreme Court and conspiring parties handling of the Ezekial Hayes case. The highest court had opportunity to deal with the issue and instead chose to engage in further acts of fraud. Thus, even by this act the exhaustion and equitable tolling requirement is satisfied. This is a jurisdictional challenge to the Federal Courts as well. For if the federal courts fail to take notice they would be conspiring in acts created for the purpose of establishing modern day slavery. Congress confers no "[p]ower" on the State or Federal Courts to establish modern day slavery which would strip all of immunity. The Court would also be in violation of the C.A.T. Treaty(Convention Against Torture Treaty) where the definition for slavery is found that Congress signed off on. It becomes a jurisdictional duty of the Federal Courts to act. Thus, using the holdings made in the Gentry case would be misplaced, especially in light of the fact that it has been adjudicated under a cloud of fraud upon the court and machination where they went on a "FISHING EXPEDITION" to find a vague, ambiguous citing of law that did not address the Due Process "[j]urisdictional [p]rerequisite" aspect

of the indictment(s). Such a new question of law and fact is not barred from seeking relief for, does relate to Subject Matter Jurisdiction, "[c]annot" be waived by the appellant, and the court "[s]hall [n]ot" fail to take notice, Grupo Dalaflux v. Atlas Global Group, L.P., 541 U.S. 567, 124 S.Ct. 1920, 158 L.Ed.2d. 866(U.S.2004); South Carolina Department Of social Services v. Tran, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); McCain v. Brightharp supra.; Loumiet v. United States, 65 F.Supp. 3d. 19(2014); The Amistad supra.; Nezirovic v. Holt, 779 F3d. 233 CA4 (Va.2015); Kwai Fun Wong, 135 S.Ct. 1625, 191 L.Ed.2d. 533, 83 U.S.L.W. 4258(U.S.2015).

Insomuch, Rules of Criminal Procedure, the Sufficiency of an Indictment, Subject Matter Jurisdiction, and Due Process Law are inter-locked and inter-linked in these matters. Yes, Subject Matter Jurisdiction and the Sufficiency of an indictment are two distinct concepts, but the indictment(s) in "[c]riminal" cases and or pleadings is the Due Process required vehicle upon which the Due Process aspect of Subject Matter Jurisdiction is conferred upon the "[c]riminal" court, and or is that which enable the "[c]riminal" court the "[a]bility" and or "[p]ower", and or right or means to enact, and or invoke, and or continue its Subject Matter Jurisdictionary "[p]owers". It is not so much that they are combined or that the court does not have jurisdiction to hear these types of cases via state legislative statute and or congressional intent. The sufficiency of an Indictment is a Due Process "[j]urisdictional [p]rerequisite" in cases of "[t]his" general class to which the proceedings in question belong, and for which an indictment is needed and or required as Due Process demands. English 101 and English 102 are two separate and distinct English courses, but "[b]oth" make up one English program towards one single College degree. English 101 is a "[p]rerequisite" to English 102. You "[m]ust" have and or take English 101, before you can have and or take English 102. Its a simple concept. Its not hard. You "[m]ust" have and or take a sufficient, not vague(emphasis added) Indictment, passed upon by the Grand Jury, before you can enact and or invoke and or continue the court's Subject Matter Jurisdic-

tionary "[p]owers" given to a "[c]riminal" court, even thought that court do indeed possess such "[p]owers" via state legislative statute and or Congressional intent. To view the two concepts of Subject Matter Jurisdiction and the Sufficiency of an Indictment as being mistakingly combined, when, by Federal law made applicable to the States through the Due Process Clause and or South Carolina, New Jersey, Kentucky, Georgia, New York or other (28) relevant State(s) Constitution(s), dictate that one is a Due Process "[j]urisdictional [p]rerequisite" of the other is an error of law, fraud upon the court and machination. To determine that failure to be in compliance to Due Process "[j]urisdictional [p]requisites" and or "[j]urisdictional [r]equisites" do not effect the court's "[p]ower" to hear and determine a case is an error of law, fraud upon the court and machination. This question was circumvented by the courts involved conspiring under color of state law, and must now be answered in fundamental fairness to the appellant(s).

Even if you separate the two concepts aforementioned from one another, the "[e]ffect" and or "[o]utcome" on the trial court's "[p]owers" of Subject Matter Jurisdiction are the same. Due to the deficiency in the "[j]urisdictional [p]rerequisite" pursuant to the presentment of the fatally defective indictments, it "[n]ullifies", "[v]oids" the Subject Matter Jurisdictionary action, which must be adjudicated under the Due Process Prong to Subject Matter Jurisdiction, even though the "[c]riminal" court do indeed possess such "[p]ower" via state legislative statute and or congressional intent. They are distinct from one another the same way the inner-makings are distinct from the bread of a "sandwich", but "[o]th" make the "sandwich". They are distinct from one another the same way a man's soul is distinct from his body, but "[b]oth" make the man. The "[c]riminal" court can have Subject Matter Jurisdiction all day long, but without the indictment(s), when indictments are needed and or require in this instance by Due Process Law, that "[p]ower" is useless. The lack thereof do "[a]ffect" and or "[h]inder" that "[p]ower" and or "[a]bility" to hear and determine cases

of "[t]his" general class to which the proceedings in question belong. To determine otherwise is an egregious error of law, machination, an act of fraud upon the court and conspiracy to establish modern day slavery in violation of 18 U.S.C. §§ 241, 242, 1001 and The Anti-Peonage Act as well as in violation of The Rico Act to include the holdings made in Ex Parte Virginia designed to disenfranchise us of our right to vote in violation of the 15th. amendment.

~~In comparison, you can have two pieces of bread all day~~ long, but without the inner-makings you will never have a "sandwich". Being a "notice document" is only one of the numerous purposes and functions that the indictment serves. These numerous purposes and functions cannot be viewed and or work separately and independently of each other without affecting the "[t]rue" nature and purpose for which the indictment was created. To do so would be an error of law, see Herman Winns v. State, memo No. 2000 Mo-078 Daniel F. Piper Judge.

Insomuch, what the honorable court(s) in Gentry, Cotton and Parkhurst failed to see, is that the "[c]onfusion" that the Gentry court spoke of is "[n]ot" coming from our modern day courts mixing the two concepts of Subject Matter Jurisdiction and the Sufficiency of an Indictment together. The "[c]onfusion" that the Gentry court spoke of, is coming from our modern day court(s) and system of jurisprudence losing vision and insight of that which is laid and set before us by our Constitutional Forefathers in the establishing of our judicial system, that by all jurisprudence was not meant to be tampered with. That being a system of checks and balances, within a system of checks and balances. You have issues of Subject Matter Jurisdiction, jurisdictional prerequisites and or requisites, rules of criminal procedure, sufficiency of indictment issues, and issues of Due Process Law pertaining to the U.S. Constitution, as well as the South Carolina, New Jersey, New York, Kentucky, Georgia and remaining states constitutions, overlapping each other, and checking each other, as a "[s]afeguard" to ensure that the

U.S. citizen, those who are held by us, and those who enter our borders or territories, inalienable rights to a fair and impartial trial and or plea hearing are preserved. Our Constitutional forefathers purposely meant and designed for them to be viewed as a whole unit, inter-locked and inseparable though independent to themselves as an integral part of the overall judicial machine, so that if one part fails, the other parts would pick up and kick in. Thus, remaining true to the very nature of [l]egal "system". A system is comprised of various components, nevertheless, it is still to be considered as one.

~~As the appellant mentioned in one of the previous issues. Our~~ Constitutional forefathers in their wisdom and jurisprudence set up "[b]ulwarks", "[b]arriers" of protection forthrightly established to protect the American citizenry, those who are held by us, and those who enter our borders or territories, from unjust, arbitrary prosecution, that outside of an individual committing acts of treason were "[n]ot" meant to be torn down. These are those sacred "[b]ulwarks", "[b]arriers" of protection. To view them as separate and independent in the manner viewed by the Gentry court(s), as they relate to each other, or to determine that they do not affect the criminal court's "[p]ower" to hear and determine "[t]his" class of case, goes against the rightly established pattern and design of our judicial system, is fraud upon the court and machination, an act of establishing modern day slavery by forcing us to work once convicted, and is an error of law. It is a form of treason. It is the very epitome of betrayal to our Constitution, and sets itself at war and enmity to the substantial rights of the commonwealth, and seek to eradicate the very core integrity of the rights, immunities, and privileges of all citizens, those who are held by us, and those who enter our borders or territories, our Constitutional forefathers have died and sacrificed their best blood to establish and preserve. These sacred "[b]ulwarks" aid to ensure that "[L]ady [J]ustice" remains blindfolded, and the defendant's inalienable rights to a fair and impartial trial and or plea hearing remain secure and are never taken away. Such actions produce fraud upon the court, machination, modern day slavery vitiating all convictions, The Amistad supra.; Ex

Parte Virginia, 100 U.S. 339, 348-349, 25 L.Ed. 676(1880); Pul-
liam v. Allen, 466 U.S. 522, 536-543, 104 S.Ct. 1970, 1977-1982,
80 L.Ed.2d. 565(1984); Mireles v. Waco, 502 U.S. 9, 112 S.Ct.
286(U.S.Cal.1991); Schmidt v. Degen, Ed. Pa. 1974, 376 F.Supp.
664; 18 U.S.C. §§ 241, 242, 1001; S.C. Code Ann § 17-25-10.

Insomuch, these very issues were at the heart of the matters that existed, in relevant part, during the time of Ex Parte Bain in 1887, and still vividly, with all certainty, exist now via Due Process within our modern day courts and system of jurisprudence, and by the constitutional rights of every citizen, of those who are held by us, and those who enter our borders or territories, these issues "[c]annot" be ignored. These issues of Due Process secured and protected by the rulings made in Ex Parte Bain in 1887, as well as in Gaither, Russell, Stirone and many other such holdings in other similar cases, still apply today and are protected by The U.S. Constitution and the laws of the United States. These concepts are designed to overlap in these matters to ensure a more true court of jurisprudence to its citizens, those who are held by us, and those who enter our borders or territories, for the sake of "justice and fairness".

In regard to State v. Gentry supra.; we are dealing with a "state law", in such a way designed, crafted, drafted, initiated, and set into place, that is egregiously contrary to the U.S. Constitution's inherent, intrinsic, and explicit presuppositions that by its very nature is intense espionage and diabolical sabotage, and stands in defiance to the rights of the commonwealth in violation of Due Process Law, establishing fraud upon the court, machination, modern day slavery behind a class based invidiously discriminatory animus in the form of racial hatred, surreptitiously done, because it disproportionately affect and harm the African Americans and minorities of the state and or nation. It creates the similarities seen in trials and or plea hearings that manifested themselves during the Nazi Occupation, the English Inquisition of 1518, the Spanish Inquisition of 1478, the Salem Witch Trials of the 17th. Century, the trials

and or hearings prior and during the Civil Rights Era, and the like; where trial and or plea hearings became an arbitrary action, a mere hollow and deceptive formality and or mechanism, utilized to snatch from the commonwealth their inalienable rights, and rob them of their God given liberty. The Judges of the Gentry court and defendants involved in these cases across the nation entered themselves into a deliberate plot and scheme to directly subvert the judicial process. The fraud in these cases is so broad that it involves far more than injury to a single litigate, but was rather a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot be complacently tolerated consistently with the good order of society Id at 246, 64 S.Ct. 997. This plot and fraud not only involved an intentional scheme to deceive the judiciary and any future subsequent higher court, but also touch on the public interest in a way that fraud between individual parties generally does not. These parties have enacted and or attempted a more egregious form of subversion of the legal process, one that was specifically designed to prevent us from being heard on the issue. Those forms of subversion that we cannot necessarily expect to be exposed by the normal adversarial process. No timely objection is necessary to address this issue. It can be raised at any time, even for the first time on appeal, creates extraordinary circumstances, manifest injustice, tolls the time of appeal and the court shall not fail to take notice, Fox Ex Rel Fox v. Elk Run Coal Co., Inc., 739 F3d. 131 CA4(2014); Massi v. Walgreen Co., 2013 WL 5410810 (DSC.2013); DeVeaux v. United States, F.Supp.2d., 2010 WL 8738108 (DSC.2010); Arata v. Village West Owners Ass'n Inc., S.E.2d., 2011 WL 11735004(S.C.App.2011); Chritianson v. M.B.N.A. American Bank N.A., S.E.2d., 2013 WL 8507850(S.C.App.2013); Ge-Zhang v. Promontory Interfinacial Network LLC,---Fed. Appx'---, 2015 WL 75360 CA4 (Va.2015); Baccus v. Merchant, 2014 WL 1330984(DSC. 2014); McKissick v. Warden Evans C.I., 2013 WL 4585613(DSC.2013); Conyers v. Virginia Housing Development Authority, 585 Fed. Appx' 66 CA4 (Va.2014); Rogers v. Carr, S.E.2d., 2014 WL 2721025 (S.C.Ap..2014); Inglesias v. Wal-Mart Stores East L.P., 542

Fed. Appx' 295 CA4 (Va.2013); Simmons v. Bailum, S.E.2d., 2013 WL 8482376(S.C.Ap..2013); Davis v. Davenport, 2013 WL 6840473 (DSC.2013); Burris v. Ware, 2014 WL 4293805(DSC.2014); United States v. Denedo, 556 U.S. 904, 129 S.Ct. 2213, 173 L.Ed.2d. 1235, 77 U.S.L.W. 4466, 09 Cal. Daily Op. Serv. 7069, (2009); McCann v. Brightharp, 399 S.C. 240, 730 S.E.2d. 916(S.C.App.2012) ; United States v. Boston, 539 Fed. Appx' 209 CA4 (N.C.2013); The Amistad supra., 40 U.S. 518, 15 Pet. 518, 1841 WL 5024, 2006 A.M.C. 2955, 10 L.Ed. 826, U.S. Conn. January 1841; Moore v. Dempsey, 43 S.Ct. 265, 67 L.Ed. 543; United States v Umana, 750 F3d. 320 CA4 (N.C.2014).

Inasmuch, the issues here go far beyond that of dealing with indictment defects, which are to be quashed by motion before a jury is sworn, or acknowledged, and or objected to before a guilty plea is given. The matters here in crucial part, do not have to necessarily be preserved for appellate review by a timely objection, but only need to be considered as a matter brought, conducted and or presented before the court in some fashion. The government "[m]ust [a]llways" be held accountable to judiciary for a man's imprisonment, and the restraints on liberty if the imprisonment does not conform to the basic requirements of Due Process Law. For the sake of "justice and judicial fairness", the appellant should not be penalized and made to suffer an onerous conviction, because hired counsel, and or counsel that the state appointed to represent him, was so inept and constitutionally ineffective, and or conspired under color of state law with the prosecution to cause irreparable harm to his proceedings, that he or she could not even see, or refuse to see the overwhelmingly obvious defects in an indictment presented before the court. Thereupon, the appellant, who later after conviction, or the fraud produced by the Gentry case, previously having no knowledge of law, and little to no access to legal books or materials before his trial and or plea hearing, later discovers the Gentry fraud and these "[p]lain", "[c]lear", "[e]gregious", Subject Matter Jurisdiction and Due Process issues and or errors producing manifest injustice should not in all fairness be barred from calling these matters

to the attention of the courts in order to seek relief, Shelton v. Ciccone supra.; Evitts v. Lucy supra.; Gray supra.; Powell v. Alabama supra.; United States v Promise supra.. The issues disproportionately effect and harm African American and other minorities.

CONCLUSION:

Insomuch, there were no holdings made in the Gentry, Cotton and Parkhurst cases that would justify and or serve to detach from the indictment(s) the 4th., 5th., 6th., 13th., 14th. and 15th. Amendment issues aforementioned within this document made applicable to states by they adopting such via their states Constitutions and or via the Supremacy Clause of the U.S. Constitution. Likewise, there were no holdings made in those cases that would justify and or serve to detach from the indictment the Due Process issues aforementioned within this document.

By the holdings made in the Gentry case. That court essentially took the position that the court's powers of Subject Matter Jurisdiction are "[a]bsolute" via state legislative statutes or Congressional statutes or enactments of law, and at "[n]o" time can that "[p]ower" be divested and or voided. The Gentry court essentially claimed there can be no situation that can divest or void jurisdiction. This is a ludicrous and criminal position to take which will be proven by judicial determinations made after the Gentry case was established.

There are essentially (2) prongs to Subject Matter Jurisdiction. One (1) is where the courts "[l]ack" Subject Matter Jurisdiction (ei. where a Family Court would attempt to try a criminal case, or a Probate Court would attempt to try a Military Tribunal case.). Of course in these situations those courts would "[l]ack" Subject Matter Jurisdiction.

This is essentially what the Cotton court was saying which is the reason why the litigant in that case did not prevail. By state and Federal statutes or Congressional enactments, specific courts have jurisdiction to hear cases of a general class (ei. criminal courts have jurisdiction to hear criminal cases). But (2) There is a second prong to Subject Matter Jurisdiction where jurisdiction is made void because of Due Process violation despite any existing state statute or federal law. So the Cotton court was essentially saying was that the litigant, by the language he presented. He was arguing his claim under the incorrect prong. More specific, the litigant should have asserted that jurisdiction is made void due to a particular Due Process violation, see U.S. v. \$41,320 U.S. Currency supra.; Hunt v. United States supra.; White v. Manis supra.; U.S. v. Aladekcha supra.; Brown v. U.S. supra..

The Gentry court knew the Cotton court was vague on this issue and went on a "FISHING EXPEDITION" to find Cotton and Parkhurst so that they could adjudicate the Gentry case under the same incorrect prong to defraud the inmates of this state in acts of machination in violation of the holdings made in Ross v. Blake, 136 S.Ct. 1850(2016). Like the Article V § 4 orders leading to the claims of default and collateral estoppel in these cases emerging from case 2013-CP-400-0084 in the Richland Court Of Common Pleas. The Sufficiency of an indictment is a "[j]urisdictional [p]rerequisite" and Due Process claim that voids jurisdiction as opposed to the other prong where the Family Court would attempt to try a criminal case and would "[l]ack" Subject Matter Jurisdiction. The Due Process Prong is what we are arguing the Article V § 4 orders, the claim of default and collateral estoppel, to include the structural constitutional error of religious prophesy pertaining to the indictments predetermining in advance the outcome of the proceedings, taking away our presumption of innocence, convicting us before we plea or go to trial, disenfranchising us of our right to vote, establishing modern day slavery in violation of the C.A.T. Treaty under. Congress confers upon no court the power to esta-

blish modern day slavery, The Amistad, 40 U.S. 518, 15 Pet. 518, 1841 WL 5024.

When the constitutionality of a ruling is in doubt (ei. The Cotton and Gentry cases). The court has an obligation to interpret the Cotton case as it relates to Gentry, Abrams, Gaither, Stirone, Russell and the voiding of jurisdiction for Due Process violation under the Due Process Prong, not the other. "STARE DECISIS ET NON QUIENTA MOVERE". Once this was decided ~~the courts should have never moved from it.~~ Certain violations of Due Process void jurisdiction when they give way to arbitrary judicial action. See S.C. Code Ann § 17-25-10 and 9 F.Supp.3d. 582.

If a criminal case is appealed, but no trial transcript is produced, what occurs? The trial transcript is a "[j]urisdictional" requirement in the appeals court. The court must remand for a new trial and or reconstruction hearing. If a case is in the state court, and a petition to remove is filed, what occurs? The state court's jurisdiction is divested and that court cannot proceed until remand order is issued or the federal case is dismissed, State v. Ladson, 373 S.C. 320, 644 S.E.2d. 271(S.C.App.2007); Lovett v. Deutsche Bank Nat' Trust Co., F.Supp 2d., 2013 WL 841679(DSC.2013). A case is in the lower court. A motion is filed where adverse ruling is given. The person appeals it, what occurs? The higher court cannot hear it without the "[j]urisdictional [p]rerequisite" final order, see Fortmill v. Fitzgerald, S.E.2d., 2014 WL 7339453(S.C.App.2014). In civil cases parties must be in compliance to all the rules of constructive service. Compliance is "[j]urisdictional [p]rerequisite". If step is omitted (comparingly a sufficient indictment is omitted) decree or ruling is void, see Caldwell v. Winkquist, 402 S.C. 565, 741 S.E.2d. 583(S.C.App.2013). Where case is filed in the U.S. District Court, but parties file a second to subvert the District Court's jurisdiction in the state court. This act would void the state court's jurisdiction. Thus, jurisdiction is "[n]ot" absolute despite legislative statute or state or federal law, see Ackerman v. Exxon Mobil Corp., 734 F3d. 237

CA4 (Md.2013). Money amounts are jurisdictional in Wills, Probate and Estates, see Dickerson v. Alexander Hospital, 177 F2d. 876 CA4 (Va.1949); Aladeckcha, 2010 WL 4054267(2010).

When a conviction fails to comport with Due Process if statute under which it is obtained, and we can add to this, an indictment fails to comport to Due Process and fails to provide a person of ordinary intelligence "fair" notice or other essential requirements of Due Process (ei. Double jeopardy protection, presumption of innocence) jurisdiction is void. If the court fails to act in a manner consistent with Due Process and authorizes and or engages in or encourages arbitrary and discriminatory judicial or other practices (ei. Deny us the Equal Protection of the Laws, constructively amending indictments on essential elements, taking away our presumption of innocence, predetermining in advance the outcome of the proceedings by indictment language, spoliating documents and or evidence, illegally seizing evidence and or Foreign Sovereigns, engaging in acts of machination, fraud upon the court, essentially establishing modern day slavery where we are not "DULY" convicted, disenfranchising us of the right to vote behind racial animus, depriving us of proper notice in violation of S.C. Code Ann § 17-25-10, the 4th., 5th., 6th., 8th., 13th., 14th., 15th. amendment(s), producing arbitrary judicial action. Jurisdiction is made void for Due Process violation, Gentry Technology Of S.C. Inc. v. Baptist Health South Florida,...2015 WL 1219251 (DSC.2015); Yates Estate Of Yates, 2014 WL 2579917(S.C.App.2014); Ware v. Ware, 404 S.C. 1, 743 S.E.2d. 817(S.C.App.2013); Orlando Residence Ltd. v. Hilton Head Hotel Investors, F.Supp.2d., 2013 WL 1103027(DSC.2013); Federal Land Bank Ass'n Of Asheville N.C. v. C.I.R., 573 F2d. 179 CA4 (1978); Al Shimani v. C.A.C.I. Inter. Inc., 679 F3d. 205 CA4(Md.2012). The use of United States v. Cotton, Parkhurst and Gentry must be deemed misplaced and or overruled due to vagueness, Johnson v. United States,---S.Ct.--,2015, WL 2473450(U.S.2015); U.S. v. McKee, 506 F3d. 225, 229-232(3rd.Cir.2007); U.S. v. Huet, 665 F3d. 588(3rd.Cir.2008);

Ingram v. Phillips, 36 S.C. L. 200, 1850 WL 2857 S.C. App. Law 1850; Lewis-Murray v. Murray, S.E.2d., 2005 WL 7084812(S.C.App. 2005); Bankers v. South Carolina, F.Supp.2d., 2010 WL 558580 (DSC.2010); Lampman v. Demolff Boberg & Associates Inc., 319 Fed. Appx' 293 CA4 (S.C.2009); United Student Aid Funds Inc. v. Espinosa, 559 U.S. 260, 130 S.Ct. 1367(U.S.2010); Arata v. Village West Owners Ass'n Inc., S.E.2d. 2011 WL 11735004(S.C.App. 2011); Elderberry Of Weber City, LLC v. Living Centers Southeast Inc., ---F3d.---, 2015 WL 4430836 CA4(Va.2015). The judgment in the appellant(s) case and these other cases (ei. Gentry et.al.), are effected by fundamental infirmities. These infirmities may be raised after any judgment becomes final. Thus, the appellant(s) motion that the conviction and sentence be vacated, that an order issue expunging my record and the other inmates records due to seeking of class action certification and all monies that were paid out (ei. restitution etc.) be returned, United States Aid Funds, Inc. v. Espinosa supra.; Vose v. Hannah, 10 Rich 465, 1857 WL 3239 S.C. Err. 1857; Norberger v. Hinkle, 576 Fed. Appx' 224 CA4(Va.2014); Jones v. Sternheimer, 387 Fed. Appx' 366, 2010 WL 2711305 CA4(Va.2010); U.S. v. Watson, ---F3d.---, 2015 WL 4385697 CA4(Va.2015); Harley v. South Carolina Dept. Of Corrections, 2013 WL 5428585(DSC.2013); People v. Rogers F.Supp.2d., 2010 WL 424201(DSC.2010); Gentry Technologies Of S.C. Inc. v. Baptist Health South, Florida Inc., 2015 WL 1219251 (DSC.2015).

The S.C. Attorney General and The United States are both parties to the default and claims of Res Judicata and or collateral estoppel emerging from case 2013-CP-400-0084 in the Richland County Court Of Common Pleas as they relate to these issues presented despite their efforts at fraud, machination and criminal conspiracy. Jurisdictional bar to challenge attaches, In RE: Variant Enterprise Inc., 81 F3d. 1310(4th.Cir. 1996); Bashnight, 551 S.E.2d. 274; Reot v. County Of Fairfax, 541 Fed. Appx' 333(4th.Cir.2013); Wells Fargo Bank, N.A. v. Farag, 2016 WL 2944561(2016).

RESPECTFULLY SUBMITTED,
JASON MORRIS GOURDINE

A handwritten signature in cursive script, reading "Jason Morris Gourdine". The signature is written in dark ink and is positioned below the printed name.

APRIL 25, 2017

JASON MORRIS GOURDINE
#199055 WANDO C-255
LIEBER C.I. P.O. BOX 205
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IN RE: CASE No. 2016-000640

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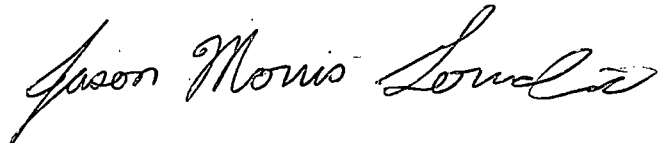
SC Court of Appeals

TO: THE S.C. COURT OF APPEALS,

THE ATTACHED DOCUMENTS ARE BEING SUBMITTED TO NOTIFY THE COURT THAT THE ABOVE CAPTIONED CASE IS NOW PETITIONED TO BE REMOVED TO THE S.C. U.S. DISTRICT COURT. THIS NOW DIVEST THE COURT OF APPEALS OF JURISDICTION. FURTHER, THE S.C. COURT OF APPEALS AS AN ENTITY IS A DEFENDANT IN THE PARALLEL CASES THAT ARE PENDING BEFORE THE DISTRICT COURT INVOLVING MYSELF AND THE OTHER PLAINTIFFS. THUS, PURSUANT TO WILLIAMS v. PENNSYLVANIA, 136 S.Ct. 1899(2016) YOUR PRESENCE CREATES A STRUCTURAL ERROR THAT VOIDS YOUR JURISDICTION FOR DUE PROCESS VIOLATION. THUS, FOR THIS REASON ALSO THE COURT CANNOT SIT UPON THESE PROCEEDINGS. THE CASE IS PETITIONED REMOVED PURSUANT TO 28 U.S.C. §§ 1443(1), 1602-1612 ET. SEQ.. IF THE COURT HAS ANY FURTHER QUESTIONS. PLEASE DO NOT HESITATE TO CONTACT ME. STILL REMAIN,

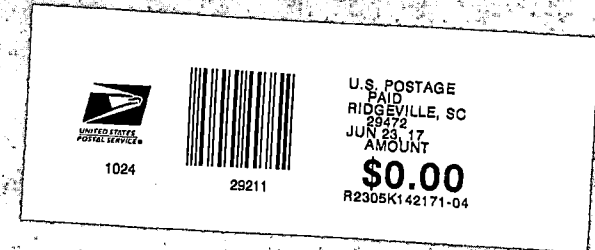
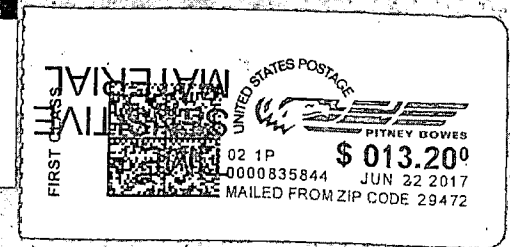
RESPECTFULLY,

JASON MORRIS GOURDINE



JUNE 21, 2017

TASON MORRIS GOURDINE
99055 WANDO C-255
LIEBER C.I. P.O. BOX 205
RIDGEVILLE, S.C. 29472



SOUTH CAROLINA COURT OF APPEALS
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