

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions  
Frank R. Addy, Jr., Circuit Court Judge

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Court of Appeals Case No. 2016-001004

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**RECEIVED**  
OCT 05 2017  
SC Court of Appeals

The State of South Carolina,.....Appellant/Respondent

v.

Edward Lee Dean,.....Respondent/Appellant.

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***Initial Reply Brief of Appellant by Respondent/Appellant Edward Dean***

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Edward Dean***

**TABLE OF CONTENTS**

Table of Contents..... i

Table of Authorities ..... ii

Arguments.....1

*Question 1*

Did the trial court judge err by not quashing the indictments because the grand jury presentment process in Greenwood County, including in Mr. Dean’s case, violates the state constitution, statutory law, and equal protection? .....1

*Question 2*

Did the trial judge err by not quashing the indictment for first degree burglary because it did not fully inform Edward Dean about the nature and cause of the accusation as required by S.C. Const. Art. I, §§ 11 and 14? .....2

*Question 3*

Did the trial judge err by admitting testimony about ammunition and gun holsters being found in Edward Dean’s home when there was not testimony that the ammunition or gun holsters were the ammunition or gun holsters stolen in the burglary, when such testimony was not relevant or, if relevant, the prejudicial effect substantially outweighed its probative value?.....2

*Question 4*

Did the trial judge err by not charging the jurors that an informant’s testimony “must be examined and weighed by the jury with greater care than the testimony of an ordinary witness” and to “determine whether the informer’s testimony has been affected by interest or by prejudice against the defendant?” .....2

*Question 5*

Did the trial judge err by considering Edward Dean exercising his right to a jury trial when imposing sentence? .....3

Conclusion .....4

**TABLE OF AUTHORITIES**

**Cases**

*Edwards v. State*, 392 S.C. 449 fn. 1, 710 S.E.2d 60 fn. 1 (2011)..... 3

*Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984) ..... 4

*State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) ..... 2

*State v. Moses*, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010)..... 1

**Statutes**

S.C. Code §14-7-1550..... 1

**Constitutional**

S.C. Const. Art. I, §§ 11 and 14..... 1, 2

## ARGUMENTS

### *Question 1*

**Did the trial court judge err by not quashing the indictments because the grand jury presentment process in Greenwood County, including in Mr. Dean's case, violates the state constitution, statutory law, and equal protection?**

The State's Brief of Respondent (hereinafter "State's BOA"), at 5, acknowledges a violation of S.C. Code §14-7-1550 that requires all of the witnesses testifying in front of the grand jury to be listed on the indictment. Although Dale Boyer is listed as the sole witness on all three indictments, the State acknowledges that Bryan Lewis testified to obtain the grand larceny indictment and Kenny Downing was the witness that probably testified to obtain the burglary and malicious injury to real property indictments. Proof of a statutory violation is "clear evidence" of an irregularity in the Grand jury process. *See State v. Moses*, 390 S.C. 502, 521, 702 S.E.2d 395, 405 (Ct. App. 2010). This Court, therefore, should reverse the trial court and quash the indictments.

Mr. Dean also takes this opportunity to correct an error in the State's brief. The State argues Mr. Dean "speculates that whichever officer testified before the grand jury might not have been sworn." State's BOR at 5. Mr. Dean has no way of knowing whether the witnesses were sworn because there is no transcript of the grand jury proceedings. Mr. Dean's argues, in part, a violation of S.C. Code §14-7-1550.

## *Question 2*

**Did the trial judge err by not quashing the indictment for first degree burglary because it did not fully inform Edward Dean about the nature and cause of the accusation as required by S.C. Const. Art. I, §§ 11 and 14?**

In his Brief of Appellant, at 19, Mr. Dean argued, “The indictment ‘proposes alternate theories’ of the crime with no indication ‘which theory was presented to the Grand Jury.’” In its brief, the State never addressed this argument, but rather argues that the indictment quoting the statutory language of first degree burglary is sufficient. The problem is that the indictment alleged every possible theory of first-degree burglary. An “indictment is a notice document.” *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). For it to provide proper notice, the indictment must set forth the Solicitor’s *actual* theory of the case.<sup>1</sup>

## *Question 3*

**Did the trial judge err by admitting testimony about ammunition and gun holsters being found in Edward Dean’s home when there was not testimony that the ammunition or gun holsters were the ammunition or gun holsters stolen in the burglary, when such testimony was not relevant or, if relevant, the prejudicial effect substantially outweighed its probative value?**

Edward Dean stands on his opening Brief of Appellant.

## *Question 4*

**Did the trial judge err by not charging the jurors that an informant’s testimony “must be examined and weighed by the jury with greater care than the testimony of an ordinary witness” and to “determine whether the informer’s testimony has been affected by interest or by prejudice against the defendant?”**

Mr. Dean stands on his opening Brief of Appellant.

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<sup>1</sup> In a recent oral argument, Justice John Few was very critical of this Solicitor’s Office practice for drafting indictments. *State v. Ledford*, Appellate Case No. 2016-000791, at 15:58 (found at <http://media.sccourts.org/videos/2016-000791.mp4> (last viewed Oct. 3, 2017). <http://media.sccourts.org/videos/2016-000791.mp4> <http://media.sccourts.org/videos/2016-000791.mp4>

### *Question 5*

**Did the trial judge err by considering Edward Dean exercising his right to a jury trial when imposing sentence?**

Judge Addy assumed jurisdiction over Adrian Gaston's and Antwine Anderson's charges "so that everybody can be fed out of the same spoon and treated fairly." Tr. 223; 228-30. No doubt, Judge Addy is aware that the appellate courts are "troubled" when the circuit court imposes "disparate sentences" on co-defendants for the same offense. *Edwards v. State*, 392 S.C. 449, 454 fn. 1, 710 S.E.2d 60, 63 fn. 1 (2011). During the new trial motions hearing, Judge Addy explained he was concerned about the "integrity of the Court." Tr. 12. At the December 2013 hearing, Judge Addy had promised Edward Dean that, if convicted, the Court would not punish him for exercising his right to a jury trial. Tr. 38-43.

The State's argument that Mr. Dean's sentence is supported by his "egregious crime" and "extensive criminal record," State's BOR at 29, fails once the co-defendants' crimes and prior records are considered. The State prosecuted Mr. Dean for charges arising out of only one incident. Adrian Gaston's extensive crime sprees are summarized in Mr. Dean's Brief of Appellant, at 7-8, and Brief of Respondent, at 9-10. Although Antwine Anderson ended his crime spree with his August 2012 arrest, he absconded and faced justice only after being arrested on a bench warrant. In 1987, Mr. Anderson received a youthful offender sentence for second-degree burglary, failure to stop for a blue light, larceny, and receiving stolen goods. In 2000, he received fifteen year

sentences for two counts of common law robbery. Ironically, Mr. Anderson received a shorter sentence for his most recent crime spree.<sup>2</sup>

If this Court decides to reverse Judge Addy's order granting Mr. Dean a new trial and affirms the convictions, then this Court should remand this case for Judge Addy to convene a hearing on MR. Dean's motion to reconsider the sentence as that motion has never been ruled on and became moot once Judge Addy ordered a new trial.

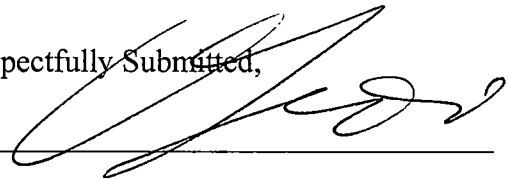
### CONCLUSION

In the State's cross-appeal, this Court should affirm the trial court judge granting Mr. Dean a new trial.

If this Court reverses the trial court judge granting Mr. Dean a new trial, then this Court should order a new trial. In the alternative, this Court should remand this case to the trial court judge to reconsider the sentence.

Respectfully Submitted,

By



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October 3, 2017  
Greenwood, South Carolina

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<sup>2</sup> "A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984). Mr. Anderson's convictions and sentences are reported on the Greenwood County Public Index (found at <http://publicindex.sccourts.org/greenwood/publicindex/> (last viewed October 3, 2017)).

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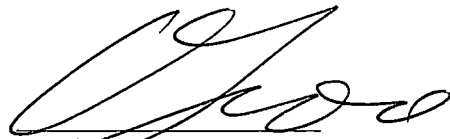
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**Certificate of Service**

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I certify that I have served the Respondent/Appellant's Initial Reply Brief of Appellant on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

David Spencer, Esquire  
Office of the Attorney General  
P.O. Box 11549  
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October 3, 2017

The Honorable, Jenny Abbott Kitchings  
Clerk of Court, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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Re: *State v. Edward Lee Dean*  
Appellate Case Number 2016-001004

Dear Ms. Kitchens:

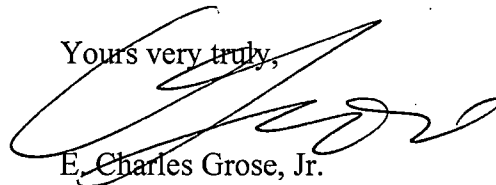
Enclosed for filing please find Mr. Dean's Initial Reply Brief of Appellant, along with a certificate of service.

Also enclosed is Mr. Dean's petition for a one-day extension of time to file his Initial Reply Brief of Appellant.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

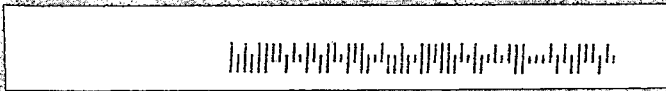
Yours very truly,



E. Charles Grose, Jr.

cc: Mr. Edward Dean  
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