

State of South Carolina

IN the Court of Appeals

Appeal From Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

The State, Respondent,
V.

Jimmy Edward Duncan, Appellant,

Appellate Case No. 2016-002126

Anders Prose Response Brief of Appellant

Jimmy E. Duncan
Jimmy E. Duncan
Appellant (Prose)

Jimmy E. Duncan #302449
Lieber C.I. Ashley A-02
P.O. Box 205
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Exhibit 4, Letter from S.C. Court Administration

Statements of Issues on Appeal

1. Did the Trial Judge err by admitting Testimonial Evidence in the form of testimony from Lay Witness Tyrell Woodrings into Evidence over objection?
2. Did the Court of General Sessions have the proper jurisdiction to hear and determine my case. The Court of General Sessions lacked jurisdiction in overseeing Grand Jury proceedings. Jurisdiction may not be waived even with the consent of all parties, and may be raised at any time. I was Indicted in a lawfully convened session of the Court of Common Pleas. The Honorable Alison Renee Lee was in fact the Chief Administrative Judge of the Court of Common Pleas, which is a clear violation of statutory and constitutional law.

Statement of the Case

Appellant, (Prose), Along with twenty-Six other Co-defendants was indicted for a mass drug conspiracy created by the State Grand Jury of South Carolina on Oct. 22, 2015 (see Exhibit 1,2) for Conspiracy to Traffick Methamphetamine 400 grams or more. R. 585. The State represented by Joshua Underwood and David Fernandez, called the case for Trial on Oct. 3, 2016 before The Honorable Perry H. Gravely and a jury. R. 1. Richard Warder represented Appellant. R. 1.

After a four day Trial, the Jury found Appellant guilty R. 574, 1.6. Judge Gravely sentenced Appellant to a period of twenty-eight years incarceration. R. 579, II, 8-10.

This brief follows.

Argument

The Trial Judge erred in admitting into evidence Testimony of Lay Witness Tyrell Woodrings, and covering up the fact that during my Investigation that Lt. Henry Dale Campbell would have been been Sled's Co-Case Agent Not Brett Barwick.

Background

Appellant, contends that he was largely convicted by the Existence of Evidence and not its weight. For example Lt. Henry Dale Campbell was in fact the Affiant on my Trafficking 28-100 and both gun charges. Yet the State knowingly suppressed any mention of Lt. Campbell or the fact that he was fired from the Pickens County Sheriffs Office, when he was charged with criminal charges. Under the rule laid down by Brady v. Maryland, This would have been both exculpatory and impeaching in undermining the states. Whether requested or not the state should have disclosed this info And Agent Woodrings clearly stated R. 81-82 that nearly any of his testimony was based on his personal perception or knowledge.

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Discussion

Rule 701, S.C. Rules of Evidence

Opinion testimony by lay witnesses; States that if the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences which (a) are rationally based on the perception of the witness (b) are helpful to a clear understanding of the witness testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training. Subsection (a) appears to be consistent with prior law (cf. State v Bottom 260 S.C. 187, 195 S.E.2d 116 (1973) (opinions must be based upon personal observations of the witness and not merely upon the statements of another witness.))

As to subsection (b), prior case law has held that opinion evidence must be helpful. First, let's clearly define Brett Barwick R. 472.2-6, States that he had been the Lieutenant for a little under a year. And prior to that he was just an agent investigating cases. My trial date was Oct. 3, 2016. So, he became Lieutenant approximately August or September 2015. So prior to that Lt. Henry Dale Campbell would have been Pickens County's Co-Case Agent not Brett Barwick.

I've been incarcerated since Nov. 2015
Throughout Agent Woodrings testimony he
attributed several assumptions toward me
that evidence wouldn't support R. 80, 24 he
says im from Greenville, I'm from Pickens
R. 78, 15. He states I sold drugs to Jeff
mauldin And R. 191, 13-19 Jeff Mauldin states
that he never got drugs from me. R. 82, 2-15
says that all the inferences that he just
attributed towards me were the investigations
of many different law enforcement agents
and Co-Operating individuals. His testimony
is vague and overbroad and without him
identifying who these UN-NAMED officers and
co-operating individuals are it violates my
Due Process. The Sixth amendment provides
in pertinent part that in a criminal prosecution,
the accused shall enjoy the right... To be
confronted with his accusers. U.S Const. Amend VI
this right extends to State prosecutions
through the Due Process clause of the
Fourteenth Amendment. Pointer v. Tex 380 U.S 400, 403
The Confrontation Clause provides a criminal
defendant the right to directly confront adverse
witnesses. See Md. v. Craig 497 U.S 836, 846, (1990)
(face to face confrontation enhances the accuracy
of fact finding by reducing the risk that a
witness will implicate an innocent person.

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also Bullcoming v. N.M. 131 S.Ct. 2705, 2716 (2011)
(The Clause does not tolerate dispensing with
confrontation simply because the court believes
that questioning one witness about another's
testimonial statements provides a fair enough
opportunity for cross-examination). I couldn't
confront him on his accusations because,
he didn't reveal his sources and he had
no personal involvement in my case only
facts that he'd been told. His testimony
should have been stricken from the
record. Judge Gravely did tell the jury
that I had come in there and had plead
guilty what kind of inference would a
reasonable jury draw from such a remark
R. 43, 10-11

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Argument

Can the State maintain a conviction that resulted from an illegal Grand Jury proceedings, Void Indictment, and Criminal Acts?

Background

Appellant, contends that the State Grand Jury, unlawfully impaneled the Statewide Grand Jury outside the Jurisdiction of the Court of General Sessions. It was impaneled in a lawfully convened session of the Court of Common Pleas which is civil and cannot vest any authority over a criminal Indictment. The Honorable Alison R. Lee was the presiding Judge and was in fact the Chief Administrative Judge over the Court of Common Pleas during the week of Oct. 19-23, 2015. This procedure is in violation of Statutory and Constitutional Law.

Discussion

Here Appellant will show that State willfully and knowingly employed the use of unlawful procedures for the

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return and publications of its True-Billed Indictment. That State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions, and then caused misinformation to be printed in its indictment.

Consequently, the unlawful and illegal acts committed by the State require this Court to hold Appellant's indictment null and invalidate all Judicial proceedings taken in this case.

A. Invalid Proceedings and Void Indictments

The matter presented below for review is not a challenge to the Courts general grant of authority to hear and determine cases. That Authority is rightfully granted by our Constitution (State v. Gentry, 363 SC 93, 610 S.E.2d 494 (2005)). And will not be at issue here.

Instead Appellant contends that the Court of General Sessions failed to comply with Statutory Law Jurisdictional in nature, specifying the manner and means for lawful return of True-Billed Indictments.

S.C. Code ANN: 14-7-1640; A State Grand Jury may return Indictments irrespective of the County or Judicial Circuit where the offense is committed or triable. If an Indictment is returned, And transferred for prosecution to the County where the offense was

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committed in accordance with Section 14-7-1750.
The powers and duties of and the law applicable
to County Grand Juries apply to a State Grand Jury.
OK, so the State Grand Jury has to abide by
Statute 14-9-210

"The Jurisdiction over the Subject matter
of a proceeding is determined by the Constitution,
The laws of the State, and is fundamental"
State v Heyward 564 S.E.2d 379 (SC App 2002) Citing
Anderson v Anderson 299 SC 110, 115, 382 S.E.2d 897, 900 (1989)
(emphasis added). Subject Matter jurisdiction may
not be waived even with the consent of the parties,
and may be raised at any time.

Brown v. State 343 SC 342, 540 S.E.2d 846 (2001)

And "No Indictment may be true billed by a
grand jury when circuit court lacks jurisdiction,
Since Grand jury's jurisdiction is co-extensive with
criminal jurisdiction of the Court in which it is
impaneled and for which to make its inquiry"
State v McClure 277 SC 432, 289 S.E.2d 158 (SC 1982) and
State v Funderburk 259 SC 256, 191 S.E.2d 520 (1972)
State v Wheeler 259 SC 571, 193 S.E.2d 515 (1972)

The primary questions before this Court are
whether S.C. Code Ann. 14-9-210 is Jurisdictional in
nature, and whether it requires that all criminal
indictments must be issued through a Grand Jury
impaneled before a court of General Sessions, and
whether States non-compliance with mandatory
indictment procedures, and
willful act of perjury have rendered

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all judicial proceedings invalid and its indictments null.

The Statutory provisions are contained in sections 14-7-1640 and 14-9-210, and provide in pertinent part that the prosecutor shall prepare and through the presiding Judge of the Court of General Sessions submit to the Grand Jury while in attendance upon the Court of General Sessions bills of Indictment in all cases pending in the County Court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the Grand Jury. The Grand Jury shall act thereon, and shall report its action to the presiding Judge of the Court of General Sessions and said Judge shall direct the Clerk of the Court of General Sessions to report the same to the presiding Judge of the County at its next ensuing term.

The Statutory terms above clear, and unambiguous and require the solicitor to prepare and submit bills of Indictments through the presiding Judge of the Court of General Sessions to a Grand Jury impaneled under the authority of the Court of General Sessions. NO EXCEPTIONS.

It is a Cardinal rule of Statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature
Hodges v. Rainey 341 SC 79, 85, 533 S.E.2d 578, 581, (2000)
State v Martin 293 SC 46, 358 S.E.2d 697 (1987)

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When Statutes terms are clear and unambiguous on their face, there is NO room for statutory construction and the Court must apply the Statute according to its literal meaning

Carolina Power & Light Co v. City of Bennettsville

314 SC 137, 139, 442 S.E.2d 177, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the Statutes operation.

Bryant v. City of Charleston 295 SC 408, 368 S.E.2d 899 (1998)

Moreover, penal statutes must be construed strictly against the State and in favor of the defendant. State v. Blackmon 304 SC 270, 403 S.E.2d 660

Accordingly, Sections 14-7-1640 and 14-9-210 requires strict compliance with their provisions, and mandates the Grand Jury must be impaneled under the Jurisdiction of the Court of General Sessions before a lawful return of a true-billed indictment can take place.

However, here evidence will establish that State unlawfully impaneled its Grand Jury outside the Jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading info.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the Court utilized an unlawful mode of procedure not allowed under Section 14-9-210.

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State lacked the requisite jurisdiction to complete return of its true billed indictments

As established above, section 14-9-210 is clearly a jurisdictional statute, and sets forth mandatory procedure to be utilized by State for lawful true billed indictment. A substantial body of South Carolina law hold that a failure to comply with statutory law jurisdictional in nature deprives the court of subject matter jurisdiction
State v. Lee 564 S.E.2d 559 (S.Ct. 2002)

State v. Brown 570 S.E.2d 559 (Ct. App. 2002)

State v. Felder 437 S.E.2d 43 (SC 1993)

State v. Richburg 304 SC 162, 403 S.E.2d 315 (1991)

State v. Loftin 275 S.E.2d 575 (SC 1981)

Gray v State 276 SC 634, 281 S.E.2d 226 (SC 1981)

And many more

Consequently, and in keeping with the mandatory provisions of section 14-9-210, State has no jurisdiction to issue return of True Bill Indictment except during a time when the Court of General Sessions is lawfully convened to oversee Grand Jury process. Any acts of the Court taken outside those statutory restrictions would by necessity be null and void. In fact, our Supreme Court has already determined that NO indictment may be true billed by a Grand Jury when the Court lacks jurisdiction. The Grand Jury must be impaneled under the jurisdiction of a lawfully convened session of the Court of General Sessions, before a lawful return of Indictment

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Can take place. see State v McClure
State v Funderburk and State v. Wheeler

Court Rules, Order or other processes

It should be noted that section 14-9-210 is not a local rule or statute but a general provision applicable to the courts in every county, and as shown, mandates that the Grand Jury must be impaneled under the Jurisdiction of a lawfully convened sessions of the Court of General Sessions before lawful return of True-Bill indictment can take place. Thus, section 14-9-210 is clearly a jurisdictional statute, and sets forth the only process allowed for lawful return of Indictment

No local rule of Court, Administrative Order, policy, or other procedure can take precedent over statutory law, which is always controlling
See S.C. Constitution Article V sections 1,4

State v Cottingham 77 S.E.2d 897, 224 SC 181 (1953)
(Statutes override rules of Court if in conflict)

(State v. Duncan 264 S.E.2d 421 (SC 1980)) (Circuit Court rule promulgated by individual circuit was unconstitutional and void) However, the issue of whether or not a local rule, Order, or policy, procedure was utilized for process and return of True-Billed indictment 2015-GS-47-07 is irrelevant, because by State Law,

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it would still have to be in agreement with the provisions of Section 14-9-210 for it to be constitutional. Article V, Section 4 of our constitution provides in pertinent part; "The Supreme Court shall make rules governing the administration of all courts of this state, subject to statutory law the Supreme Court shall make rules governing the practice and procedures in all such Courts (emphasis Added)

And S.C. Code ANN. 14-5-310, Rules of Court "The Circuit Courts shall make and establish all necessary rules for the orderly conducting of business in said courts, provided such rules are not repugnant to the laws of the state or the rules prescribed by the Justices of the Supreme Court and Circuit Judges."

Thus, under those requirements, No rules can be made or established for process and return of Indictments, unless it comports with 14-9-210. Otherwise it would be unconstitutional and Null, being without binding effect.

Additionally, it should be noted that the Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of True Bill Criminal Indictments "The Court is made up of the Court of Common Pleas which hears Civil actions and the Court of General Sessions which hears Criminal Cases.

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See Dove v. Goldkist Inc. 314 SC 235, 442 S.E.2d 598, 600

Also see S.C. Constitution Article V Section 1

Thus, there is NO concurrent Jurisdiction and therefore NO true bill criminal indictment can be lawfully issued through grand jury proceedings held before a Court of Common Pleas

Lastly, it should be noted that a circuit court Judge retains NO authority on his own standing to conduct and oversee grand jury proceedings outside the bounds of a lawfully convened session of the General Sessions Court.

Please see Attached Exhibit 2, States that a true bill of Indictment in Case # 2015-GS-47-07 was in fact issued on Oct. 22, 2015 and the Honorable Alison R. Lee was the Presiding Judge and is in accordance with the provisions of the State Grand Jury Act, Found in S.C. Code ANN. §§ 14-7-1600 - 1820. Section 14-7-1640 states that the state grand jury must comply with section 14-9-210 this is statutory law and when in conflict statute will override all. Please see Exhibit 3 its the 5th Circuit Court calendar for Oct. 2015. Please note that on Oct. 22, 2015. The Honorable Alison R. Lee was the presiding Judge over a lawfully convened Court of Common Pleas. Please see Exhibit 4 Clearly states that the Honorable Alison R. Lee was the Chief Administrative Judge of the Court of Common Pleas.

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If you follow these three statutes sections 14-7-1630(E) to section 14-7-1640 to section 14-9-210 The Grand Jury was impaneled in violation of Statutory and Constitutional Law.

Accordingly, and in this case, no court rules, orders, or other procedures can be invoked or cited by the State to save its unlawful Grand Jury process, and Null Indictment, Therefore execute Justice and Righteousness.

CONCLUSION

For the reasons stated above and in the interest of Justice, And protect the Appellants State and Federal Due Process rights. Appellant moves for this Honorable Court to rule on this matter within State statute and State and Federal Constitutions. And apply the Laws laid down by the legislature and the Supreme Court. And vacate my sentence and conviction.

Respectfully Submitted
Jimmy E. Duncan
Jimmy E. Duncan
Appellant (ProSe)

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

CASE NO. 2015GS 47 07

- JORGE DAVID MARTINEZ,)
- (A.K.A. "CHEESE"),)
- (A.K.A. "JUAN"),)
- (A.K.A. "JONATHAN"))
- GLADIS TRUJILLO)
- (A.K.A. "GLADIS MARTINEZ"))
- (A.K.A. "GLADIS BAEZ"),)
- ADRIAN HERNANDEZ-MARTINEZ,)
- ERIKA YOSALETTH GUERRERO-)
- SERRANO,)
- MARCELA ALEJANDRA GUERRERO,)
- ANTONIO ORTIZ LOPEZ,)
- CARMICHAEL HILL,)
- (A.K.A. "BROTHER"),)
- TRACY ELAINE RUMSEY,)
- LARRY EUGENE COLEMAN,)
- (A.K.A. "BUBBA"),)
- (A.K.A. "POPPY"),)
- JIMMY EDWARD DUNCAN,)
- MATTHEW RYAN CARTER,)
- JOSE MANUEL CARILLO,)
- (A.K.A. "MEXICAN JOEY"),)
- TAVARUS DEMONTAE DOWNS,)
- (A.K.A. "T"),)
- KIMBERLY NICOLE TURNER,)
- NICOLE RENEE HOGUE,)
- STACEY LYNN KELLEY,)
- JEFFERY SHANE MAULDIN,)
- MARTHA MICHELLE COLLIER,)
- (A.K.A. "BABY GIRL"),)
- JENNIFER DIANNA TYNER,)
- LACEY DEANNA SEYMORE,)
- ADAM LEM GRISWOLD,)
- EVELYN JANE HOLIDAY,)
- (A.K.A. "HOLLY"),)
- CHRISTOPHER GENE SORGEE,)
- BRANDON TERRILL DODD,)
- (A.K.A. "KOOL AID"),)
- ELIJAH SHAWN IRBY,)
- (A.K.A. "PERROS"),)

VENUE ORDER

FILED

OCT 22 2015

JAMES R. PARKS
CLERK, STATE GRAND JURY

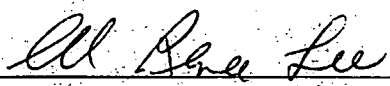
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CALVIN D. HILL,
 (A.K.A. "MONEY MAKER")
 (A.K.A. "MM"),
 DONTAE LAMERRO WILLIAMS,
 (A.K.A. "DONTAE LAMERRO
 PEARSON"),

DEFENDANTS.

The State Grand Jury of South Carolina returned a True Bill of the Indictment in the above case on October 22, 2015. The Indictment is within the authority of the State Grand Jury and is otherwise in accordance with the provisions of the State Grand Jury Act, found in S.C. Code Ann. §§14-7-1600 to -1820 (Law. Co-op. 1976). Venue is appropriate under South Carolina law in the County of Greenville. Accordingly, it is hereby

ORDERED that the instant Indictment be returned to Greenville County for prosecution by the Attorney General or his designee.



ALISON R. LEE
 FIFTH JUDICIAL CIRCUIT
 PRESIDING JUDGE
 STATE GRAND JURY OF SOUTH CAROLINA

Columbia, South Carolina

10/22, 2015

**Terms of Circuit and Family Court
October 2015**

Circuit Number	10/5/2015	10/12/2015	10/19/2015	10/26/2015
5	<p>General Sessions Richland Nicholson, J.</p> <p><u>NO CR NEEDED</u></p> <p>Administrative Week Lee, Alison</p> <p>Common Pleas/Common Pleas Nonjury Richland Manning, L.</p> <p><u>NO CR NEEDED</u></p> <p>Common Pleas/Common Pleas Nonjury Richland Gee, Tanya</p> <p><u>NO CR NEEDED</u></p> <p>Common Pleas/Common Pleas Nonjury 8, 9 Richland Benjamin, DeAndrea</p> <p><u>NO CR NEEDED</u> 8, 9</p> <p>Common Pleas Non- Jury 8 Cooper, G. Thomas</p> <p><u>AMBROZIAK</u> 8</p>	<p>Common Pleas Non- Jury Benjamin, DeAndrea</p> <p><u>MCCURDY</u></p> <p>Common Pleas/Common Pleas Nonjury Richland Cooper, G. Thomas</p> <p><u>HARRIS</u></p> <p>Common Pleas/Common Pleas Nonjury Richland Hood, Robert</p> <p><u>HARDY</u> 12, 13 <u>NO CR NEEDED</u> 14, 15, 16</p> <p>General Sessions Richland Manning, L.</p> <p><u>NO CR NEEDED</u> 12 <u>HOLMES</u> 13, 14 <u>NO CR NEEDED</u> 15, 16</p> <p>Common Pleas/Common Pleas Nonjury Richland Lee, Alison</p> <p><u>NO CR NEEDED</u> 12 <u>AMBROZIAK</u> 13 <u>NO CR NEEDED</u> 14, 15, 16</p> <p>General Sessions Richland Gee, Tanya</p> <p><u>REED</u> 12, 13, 14, 15 <u>HOLMES</u> 16</p> <p>General Sessions 12 Richland Hood, Robert</p>	<p>General Sessions Kershaw Barber, James</p> <p><u>HARRIS</u> 19 am <u>NO CR NEEDED</u> 20 <u>HARRIS</u> 21 am <u>NO CR NEEDED</u> 22, 23</p> <p>General Sessions Non-Jury Hood, Robert</p> <p><u>AMBROZIAK</u> 19, 20 <u>NO CR NEEDED</u> 21, 22 <u>AMBROZIAK</u> 23</p> <p>Common Pleas/Common Pleas Nonjury Richland Manning, L.</p> <p><u>HOLMES</u> 19, 20, 21 <u>NO CR NEEDED</u> 22, 23</p> <p>General Sessions Richland Gee, Tanya</p> <p><u>NEVERS</u> 19, 20, 21, 22 <u>HOLMES</u> 23</p> <p>Common Pleas/Common Pleas Nonjury Richland Lee, Alison</p> <p><u>JOHNSON</u> 19, 20 <u>NO CR NEEDED</u> 21, 22, 23</p> <p>Common Pleas Non- Jury/PCR 19 Gee, Tanya</p> <p><u>NEVERS</u> 19</p> <p>General Sessions 21, 22, 23 Richland</p>	<p>Common Pleas/Common Pleas Nonjury Richland Benjamin, DeAndrea</p> <p><u>MCCURDY</u></p> <p>General Sessions Richland Hood, Robert</p> <p><u>AMBROZIAK</u></p> <p>Common Pleas/Common Pleas Nonjury Richland Lee, Alison</p> <p><u>LEBLANC</u> 26, 27 <u>NO CR NEEDED</u> 28, 29, 30</p> <p>General Sessions Richland Gravely, Perry</p> <p><u>KELLY</u> 26, 27, 28 <u>NO CR NEEDED</u> 29, 30</p> <p>General Sessions Non-Jury 29 Hood, Robert</p> <p><u>AMBROZIAK</u> 29</p>



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

TONNYA K. KOHN
INTERIM DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355

December 4, 2017

[REDACTED]
Lieber Correctional Institution
Ashley A-02
Post Office Box 205
Ridgeville, South Carolina 29472

Re: Your correspondence received December 1, 2017

Dear Mr. [REDACTED]

Your request for information has been received by this office and forwarded to this section for response. You requested the names of the judges who were serving as Chief Administrative Judges in the 5th Judicial Circuit during October 2015. Below is the information you requested.

Common Pleas: The Honorable Alison Renee Lee
General Sessions: The Honorable Robert E. Hood

They can both be reached at Post Office Box 192, Columbia, South Carolina 29202-0192.

Sincerely,

Staff Attorney Section/tr