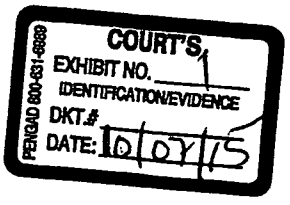
Defendant's Request to Charge № 1

Every circumstance relied upon by the State [must] be proven beyond a reasonable doubt; and ... all of the circumstances so proven [must] be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989)



Defendant's Request to Charge № 1-A

Every circumstance relied upon by the State [must] be proven beyond a reasonable doubt. All of the circumstances so proven [must] be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed. The state must eliminate every reasonable hypothesis except that of the guilt of the accused.

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989)

Defendant's Request to Charge № 2

To convict the defendant of possession of illegal drugs, the state is required to prove these elements: 1. Knowledge that the drugs were present, 2. Intent to exercise control over the drugs, and 3. the right to control the drugs. Unless the government has proven all three of these elements beyond a reasonable doubt, you are to find the defendant not guilty.

Principle established by:
" Conviction of possession of marijuana requires proof of possession—either actual or constructive, coupled with knowledge of its presence. To prove constructive possession the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the marijuana. Such possession can be established by circumstantial as well as direct evidence and may be jointly shared." *State v. Brown*, 267 S.C. 311, 315, 227 S.E.2d 674, 676 (1976).

Defendant's Request to Charge № 3

In order to convict the defendant, the state is required to prove that the items seized were in fact the same items analyzed by the laboratory of the State Law Enforcement Division (SLED). To accomplish this the state is required to establish a complete chain of custody that the items seized were in fact the same items analyzed If you find the state has not established this complete chain of custody, then you are to find the defendant not guilty.

"The evidence that a saliva sample was placed in the kit simply contradicts the State's evidence negating tampering, thereby creating a factual issue. In sum, we find the evidence of a discrepancy in the contents of the kit does not render the blood sample inadmissible but goes only to its weight as credible evidence."

State v. Carter, 344 S.C. 419, 425, 544 S.E.2d 835, 837 38 (2001)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS	)	
The State,	)	
	)	
	)	2013-GS-30-1581
-vs-	)	
	)	Brief in Opposition to
	)	Charge on Inference
Timothy Pulley,	)	
	)	
Defendant.	)	

The South Carolina Supreme Court has held on several occasions that telling a jury they may infer a fact from the proof of other facts is a charge on the facts in violation of our state constitution. Presently such a provision is found in Article V, § 21 of the Constitution of the State of South Carolina.

In *Yarborough v. Southern Ry*, 78 S.C. 103, 58 S.E. 936 (1907) the South Carolina Supreme Court discussed the issue of the trial judge giving a charge to a jury which permits them to infer a certain fact. The Court held "The circuit judge laid down in the charge the proposition that the jury might properly infer the consent of the railroad company to the placing of property on its platform from the facts that an agent has notice of its being placed there and makes no objection. In view of the issues made on the trial, we think this was a charge on the facts." *Id.* at ___, 58 S.E. at 937. The principle in that case were re-affirmed in *Finch v. Atlanta & Air Line Ry.*, 87 S.C. 190, 69 S.E. 208 (1910). In *Finch* this Court said "The Constitution does not allow the presiding judge to state the evidence, much less does it allow him to single out any particular act or omission of the defendant, and instruct the

jury that, if that appears, then they may infer that the defendant was negligent." *Id.* At ___, 69 S.E. at 209.

Unless the prohibition against commenting on the facts is to have one meaning in a civil trial and another in a criminal trial this Court should not give such a charge in this case. While on the website for the Supreme Court of the State of South Carolina the recommended jury charges in criminal cases contain no less than three occasions that the suggested charge uses an inference in a manner that violates the two civil cases cites above, (http://www.judicial.state.sc.us/juryCharges/GS%20InstructionsJune2013.pdf at 137, 142, and 147) no real analysis of the charge is given.

In the suggested jury charges reference is made to *State v. Adams,* 291 S.C. 132, 352 S.E.2d 483 (1987) for the proposition that a trial judge may charge the jury they may infer possession if the property is under the dominion and control of the defendant. In *Adams* the Supreme Court said "The proper charge on constructive possession is to instruct the jury that the defendant's knowledge and possession may be inferred if the substance was found on premises under his control." *Id.* at 135, 352 S.E.2d at 486. In support of this statement the Court cited *State v. Hudson,* 277 S.C. 200, 284 S.E.2d 773 (1981). But *Hudson* does not support such a charge. All *Hudson* holds is that if a defendant is exercising dominion and control over the premises then the case generally should be submitted to the jury. The Court said "Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge which may be sufficient to carry the case to the jury." *Id.* at 203, 284 S.E.2d at 775. The Court in *Hudson* made no reference to a jury charge. In addition, for a judge to tell the jury they may infer what the *Hudson* court said they may infer

on their own, is, as stated above, a charge on the facts in violation of our state constitution. The charge places emphasis on one particular fact to the exclusion of other facts. For the jury to reach such a conclusion on their own without an instruction from judge is certainly permissible. To give the state the edge by telling, and thus encouraging, the jury to make such an inference, is not permissible.

In addition in *Adams* and *Hudson* the drugs were found on the property either owned by or the residence of the defendant. In the present case, the Timothy Pulley was driving an automobile owned by a third party. To tell a jury they may infer knowledge and possession from the fact that Mr. Pulley was driving an automobile of another is not only a charge on the facts but a misleading charge on the facts. Surely this Court does not mean that a jury can infer a driver of a borrowed car permits a jury to infer they know the contents of that car.

In *Leary v. United States*, 385 U.S. 6 (1969) the United States Supreme Court addressed the question of whether Congress could constitutionally pass a statute that established a presumption of knowledge of illegal importation from the mere fact that the defendant possessed a small amount of marijuana. In rejecting such a presumption the Court held "Such information is 'not within specialized judicial competence or completely common place.'" *Id.* at 38. Likewise, under the facts of this case, it is not commonplace to infer knowledge and possession from the mere fact that Mr. Pulley, or any defendant, is driving an automobile owned by a third party.

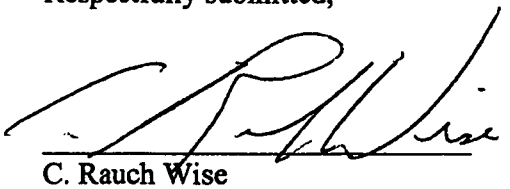
In *State v. Hartley*, 307 S.C. 239, 414 S.E.2d 182 (1992) the defendant requested that a charge to the jury simply stating that the absence of motive "is to be duly considered by you in weighing the question of guilt regarding him." *Id.* at 240, 414 S.E.2d at 183. The South

Carolina Supreme Court held that such a charge was improper as it was a charge on the facts in violation of the state constitution. As the Court held "Thus, the trial judge was requested, in effect, to charge that particular evidence (*i.e.* evidence of lack of motive) is entitled to receive weight or consideration. The requested charge is clearly a charge on the fact that the jury was to determine." *Id.* at 241, 414 S.E.2d at 184.

The inference charge in this case is legally no different. A judge would in essence tell the jury that particular evidence is entitled to receive weigh or consideration. In fact, he would tell the jury that a certain fact is entitled to special weight or consideration. No court would charge a jury the inverse of this charge - you may infer the defendant does not have dominion and control over the drugs if he does not have control over the building but is merely present.

Finally, the Court will charge the jury that mere presence is not sufficient to convict. To tell the same jury mere presence is not sufficient but they may infer such knowledge from the mere fact he is in the automobile with the drugs is inconsistent and confusing.

Respectfully submitted,



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