

THE SOUTH CAROLINA COURT  
OF APPEALS

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SEP 24 2018

SC Court of Appeals

LARRY TYLER, PETITIONER,  
V.

STATE OF SOUTH CAROLINA, RESPONDENT.

APPELLATE CASE NO. 2016-002364

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PETITIONER'S RESPONSE TO ORDER

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PETITIONER NOW COMES TO ADDRESS THE  
FOLLOWING QUESTION AND OTHER QUESTIONS  
OF ARGUABLE MERIT:

WAS TRIAL COUNSEL INEFFECTIVE IN  
FAILING TO MOVE TO SEVER THE TRIAL  
OF PETITIONER'S CHARGE FOR SECOND-  
DEGREE SEXUAL EXPLOITATION OF A  
MINOR FROM THE TRIAL OF HIS REMAINING  
CHARGES?

1. The Petitioner would first state he is addressing this to the court under duress. Because the appellate defense refuse to represent the Petitioner. 2011 10

The Petitioner has no access to any legal research material at this jail, no legal supplies for litigation. Very little experience in the law.

2. Charges in Proper Sequence

The state would have the court to believe that the Petitioner's second-degree sexual exploitation of a minor charge came first in the four charges. It did not, but came almost three months after the incident of the alleged nude cell phone photos which generated the first three charges.

This is a vital issue to verify that the Petitioner had a legal right to sever the two trials. EXHIBITS A, ~~B~~ show the time line. "A" show the date 9-26-2011 for my first appearance, on the disseminating obscene materials to a minor. This was the reason the police felt like they had the right

STATE OF SOUTH CAROLINA  
COUNTY OF DARLINGTON

IN THE COURT OF GENERAL SESSIONS

EX A

STATE OF SOUTH CAROLINA  
vs  
LARRY JAMES TYLER

NOTICE OF DATE AND TIME  
OF  
MANDATORY COURT APPEARANCES

DEFENDANT

Warrant/Ticket#/Charge

1. M820128 / Obscene / Disseminating obscene material to a minor 12 Y or younger	4.
2.	5.
3.	6.

**\*\*\*\*THIS IS THE ONLY NOTICE YOU WILL RECEIVE  
KEEP A COPY FOR YOUR RECORDS\*\*\*\***

You are a defendant in a criminal case. You are required to appear on two (2) separate occasions at: **The Darlington County Courthouse, 1 Public Square, 5th Floor, Darlington, SC.** The date and times of these appearances **CANNOT** be changed for any reason.

1. Your first, **INITIAL APPEARANCE** is set for **JUNE 6, 2012, at 9:00 A.M.**, on the 5th Floor of the Darlington County Courthouse.
1. Your second **DOCKET APPEARANCE** is set for **JULY 25, 2012, at 2:00 P.M.**, on the 5th Floor of the Darlington County Courthouse.

**You MUST be present at these appearances. If you FAIL TO APPEAR on these dates and times, a BENCH WARRANT will issued for your arrest. You will be placed in jail and may be held until the trial of your case. In addition, it may be necessary for you to appear in Court beyond the dates listed above. You will receive notice of dates to appear that are in addition to those listed above.**

You have qualified for a Public Defender and the Public Defender is hereby appointed to represent you. You must report to the Public Defender's Office within 15 days from the date of your release from jail. At that time, you need to bring all of your papers with you, have an initial interview and pay the \$40 application fee. Your bond could be revoked if you do not report to the Public Defender's Office within 15 days from your release.

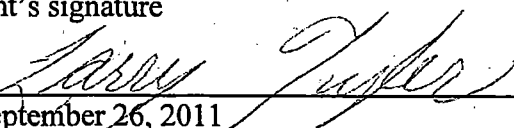
After a quick review of your finances, you do not appear to qualify for the Public Defender. However, you should contact the Public Defender's Office for a more in-depth review regarding qualification for the Public Defender.

The Public Defender's Office is located at, 300 Russell St. Suite 113, Darlington, SC 29540.

You may wish to hire a private attorney. There are listings of local attorneys in the yellow pages of the phone book. *If you do not have an attorney, you must appear in Court until your case is disposed.*

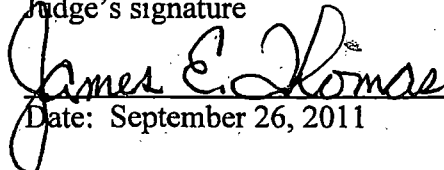
**I HAVE READ THIS FORM OR HAVE HAD IT READ TO ME. I UNDERSTAND THESE INSTRUCTIONS, AND I HAVE BEEN GIVEN A COPY TO KEEP.**

Defendant's signature



Date: September 26, 2011

Judge's signature



Date: September 26, 2011

to obtain search warrants for the Petitioner's home and property. If the police had seized my computer before the cell phone, they would have no reason for doing so. The alleged victims never said the Petitioner had nude photos on his home computer for the police to get a seizure warrant. The two incidents happened at two different times not related to each other.

Petitioner alleged and testified counsel was ineffective for failing to request to sever the charges for separate trials.

Three types of prejudice may result from trying a defendant for several offenses during the same trial: (1) the defendant may become embarrassed or confounded in confronting separate offenses; (2) proof that the defendant is guilty of one offense may be used to convict him of a second offense, even though such proof would be inadmissible in a second trial for the second offense; and (3) a defendant may wish to testify on his own behalf on one of the offenses but not another, forcing him to ~~testify~~

make the difficult choice of testifying as to both or neither.

Counsel allowed prejudicial inference. The Petitioner does not know state rules on improper joinder, but it should be the same as Rule 8 of federal guidelines. The two offenses were not involved in the same act or transactions. U.S. v. SARKISIAN, 197 F.3d 966, 976 (9th Cir 1999) (joinder of counts improper because counts did not "naturally flow" from each other, counts did not fall in the same category of simple conspiracy, and no substantial overlap in evidence); U.S. v. HAWKINS, 589 F.3d 694, 702-04 (7th Cir 2009) (joinder of possessing 2 different types of weapons 3 weeks apart improper because not logically or temporally related).

An important factor in determining whether transactions are connected is whether evidence supporting separate counts sufficiently overlaps so that the same evidence would be admissible at separate trials if the counts were tried ~~together~~ separately.

908 10  
U.S. V. TRAMER, 477 F.3d 24, 36 (1st Cir. 2007). The evidence in Petitioner's trials could not be interchangeable. U.S. V. Randazzo, 80 F.3d 623, 628 (1st Cir. 1996) (juries of unrelated transactions and dissimilar crimes improper though some evidence common to both courts).

The prejudicial inference allowed by the court worked to the Petitioner's actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. Once the jury was informed that Petitioner allegedly had child porn on his home computer, the jury could not separate this fact that the Petitioner had intent to entice the victims to get sexually involved with him, by using the alleged nude cell phone photos.

Once the alleged victims testified they saw no nude photos or read any indecent messages the Petitioner supposedly had written to them, counsel should have moved for a motion to suppress any evidence the police seized after his initial charges of the cell phone.

because the government had no valid reason to seize the Petitioner's computer. 60F 10

GUTIERREZ V. SMITH, 702 F.3d 103, 112 (2d Cir. 2012) (counsel's failure to object to legal sufficiency of evidence at trial created actual prejudice because evidence resulted in conviction for second-degree murder rather than manslaughter).

Counsel's failure to inform jury that the police obtained seizure warrants improperly having no valid legal reason to do so in violation of the Brady rule.

Wolf v. Clarke, 691 F.3d 440, 470 (4th Cir. 2012) (petitioner fulfilled actual prejudice requirement by proving elements of Brady claim); JOSHUA V. DEWITT, 341 F.3d 430, 449-50 (6th Cir. 2003) (ineffective assistance claim granted where trial and appellate counsel failed to raise meritorious 4th Amendment claim)

For the above issues this court should grant Petitioner a new trial due to trial counsel and abuse of discretion by the court for failing to move to

sees the two trials

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## OTHER QUESTIONS OF ARGUABLE MERIT

The Petitioner has submitted an extensive amount of evidence on the twenty three errors he has found in his trial to the Supreme Court of South Carolina.

Petitioner does not know the S.C. Rule comparable to Federal Rule 24(c) but the Petitioner has included with this reply a motion for this court to get the full submission the Petitioner submitted to the Supreme Court since his appellate counsel refused to represent him.

All of the issues listed below have merit based on plain error since the Petitioner had no knowledge of these facts until a year after trial and learned of them in the prison, state law library.

1. POLICE MISCONDUCT
2. PROSECUTOR MISCONDUCT
3. PLAIN ERROR
4. ABUSE OF DISCRETION

5. DEFECT IN WARRANT AND INDICTMENT 8 OF 10
6. CONSTRUCTIVE AMENDMENT
7. PREJUDICIAL INFERENCE
8. DOUBLE JEOPARDY
9. MISDINDER
10. SUPPRESSION
11. OPENING AND CLOSING ARGUMENTS
12. ILLEGAL CUSTODIAL INTERROGATION
13. INEFFECTIVE ASSISTANCE OF COUNSEL
14. PRESUMPTIONS JURY INSTRUCTIONS
15. BEYOND REASONABLE DOUBT
16. DUE PROCESS VIOLATION
17. IMPROPER CONSIDERATIONS
18. MISCARriage OF JUSTICE
19. SPEEDY TRIAL ACT VIOLATION
20. IMPROPER AMENDMENT OF AN INDICTMENT
21. EXCLUSIONARY RULE
22. POLICE CREDIBILITY
23. DEFECTIVE SENTENCING SHEET
24. PRIOR CRIMINAL HISTORY REVEALED.

All of the above took place at the Petitioner's trial and his court appointed counsel never made any stand to defend the Petitioner. Except the Police credibility issue.

investigator in my case Ricky Williams 9 of 10  
was fired in 2017 for stealing from  
the police property room. All the  
officers went along with covering officer  
Eric Hodges to lie to the Grand  
jury about the Petitioner being  
nude in photos on his cell phone  
when there was no photos of the  
Petitioner in the nude.

### Conclusion

Due to counsel's deprivation of the  
Petitioner's substantive and procedural  
rights to which the law entitles him,  
it prejudiced the jury significant to  
render the Petitioner's trial fundamentally  
unfair. Therefore this court should  
grant the Petitioner a new trial and  
declare his trial illegal constitutionally.

LARRY BANNES THERE  
2349 ROBERTS RD  
DARLINGTON, S.C. 29532

*Certificate of Service*

10 of 10

I have served counsel of opposing parties a copy of: "PETITIONER'S RESPONSE TO ORDER" at the address below:

JAMES BOONE JR.  
ATTORNEY GENERAL  
BOX 11549  
COLUMBIA, S.C. 29211-1549

LA NEANE DURANT  
DIV. OF APPELLATE DEFENSES  
BOX 11589  
COLUMBIA, S.C. 29211-1589

*Larry J. Tyler*

LARRY J. TYLER  
2349 ROBERTS RD.  
DARLINGTON, S.C. 29532

DATE

THE SOUTH CAROLINA COURT  
OF APPEALS

LARRY TYLER, PETITIONER,

V.

STATE OF SOUTH CAROLINA, RESPONDENT.

APPELLATE CASE NO. 2016-002364

---

PETITIONER'S MOTION TO TRANSMIT RECORDS

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PURSUANT TO SOUTH CAROLINA'S RULE  
EQUAL TO FEDERAL RULE 24(C),  
PETITIONER REQUEST THIS COURT TO  
OBTAIN THE PETITIONER'S SUBMITTED  
BRIEF TO THE SUPREME COURT FOR  
REASONS AS FOLLOWS:

1. The Petitioner wish this court to address every issue the Petitioner discovered to be errors of law in his trial that the appellate attorneys refused to submit.

UNIVERSITY  
of VIRGINIA  
LIBRARY

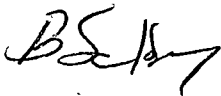
June 22, 2018

Dear Sir,

We can offer very limited service for your requests. For the South Carolina specific information you should contact a library in South Carolina.

I'm enclosing a few printouts with some of the information you seek.

Sincerely,



Barbie Selby  
UVA Library

These issues have merit because they all stem from the ineffectiveness of the Petitioner's counsel at trial. 2053

They should be addressed because they will substantiate, the multiple errors caused by counsel, just how severe his lack of defense deprived the Petitioner's right to a fair trial was clearly violated.

I would also like the court to obtain the one photo which the police say was child's pose. Officer Eric Hodges testified all the websites said all were 18 years old and older. There are no nude photos of children.

LARRY TYLER  
2349 ROGERS RD  
DARWINVILLE, S.C. 29532

DATE

CERTIFICATE OF SERVICE

31F3

I HAVE SERVED ALL PARTIES  
WITH A COPY OF: "PARITIFF'S MOTION  
TO TRANSMIT RECORDS" AT THE  
ADDRESS BELOW:

JAMES BOGLE SR.  
ATTORNEY GENERAL  
BOX 11549  
COLUMBIA, S.C. 29211-1549

LA NELLE DURANT  
APPL. DEFENSE  
BOX 11589  
COLUMBIA, S.C. 29211-1589

Larry J. Tyler

LARRY J. TYLER  
2349 ROGERS RD.  
DARLINGTON SC 29532

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SC Court of Appeals



*MEMORIAL DAY  
THE FAMILY, S.C. 29934*

FRI 21 SEP 2018

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SEP 24 2018  
SC COURT OF APPEALS

*S. C. COURT OF APPEALS  
BOX 11629  
COLUMBIA, S. C. 29211*