

Kevin E. Herrriott #313862
Kershaw Correctional Institution
4848 Goldmind HWY
Kershaw, SC 29067

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S.C. SUPREME COURT

December 11, 2018

S.C. Court of Appeals
Daniel E. Shearouse
Supreme Court Clerk
Post Office Box 11330
Columbia, SC 29211

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DEC 18 2018

SC Court of Appeals

Re: Kevin Herrriott vs. The State

Appellate Case No. : 2018-001966

J NOV MOTION

Honorable Shearouse :

Please find notice of motion J NOV for filing purposes within
your office sending me a(n) stamp checked dated of its service for my
records. Thanks in advance. Have a Jesus Filled day walking in your
blessings.

Yours Very Truly,


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HERRIOTT-313862

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Kevin E. Herriott, #313862,
Appellant

v.

THE STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF APPEALS
FOR THE NINTH JUDICIAL CIR.

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S.C. SUPREME COURT

Appellate
Case No. : 2018-001966

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SC Court of Appeals

This matter comes before the Court by way of an Final Order of Dismissal filed stamped clock dated 2018 OCT 23. The Appellant Appealed November 02nd 2018 followed by a written explanation Pursuant to South Carolina Appellate Court Rules Rule 243(C) as to why the Ninth Judicial Circuit Court determination was improper.

The Appellant moves for verdict in arrest of judgment to prevent entry of judgment on the grounds of the insufficiency of the indictment(s) and that The Final Judgment of Order was dismiss Pursuant to Rule 74, although the Final Order derived from A Conditional Order of Dismissal that was to be held in Accordance to S.C. Code Annotation § 17-27-70(b).

The Proceedings of the State Grand Jury are secret and a witness's testimony may not be disclosed by anyone except where directed by a court for the Purpose(s) of:

- 1) Ascertain whether it is consistent with the testimony given by the witness before the court in any subsequent Proceedings;
- 2) determining whether the witness is guilty of Perjury;
- 3) assisting local state, other state or federal law enforcement or investigating agencies, including another grand jury, in investigating crimes under their

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investigative jurisdiction;

- 4) Providing the defendant the material to which he is entitled to Accord Section §14-7-1700;
- 5) Complying with constitutional; statutory; or other legal requirements or to further justice.

Before trial jurors were selected and sworn on September 04, 2012 the Appellant submitted an motion Directed Verdict of Dismissal raising the issue whether the trial Court has the Power to hear this case and/or whether the indictment is sufficient. Also questioned the Propriety of the accusation the manner in which it has been Presented, the source from which it Proceeds. On or before July 24, 2010 Sgt. M. Niblock of the Charleston County Police Department alleged that the Appellant did violate S.C. Code of Laws: 16-3-10; murder, 16-3-29; attempted murder, and 16-5-490; Use of Deadly Weapon within the city limits of Charleston, South Carolina. Sgt Niblock sworn before Honorable P. Baldwin inconsistent testimony that did not support the evidence seeking three arrest warrants that derived from coerced statements which was done to undermined the Court.

These events followed by three affidavits and three indictments. The Language inside the said indictments were consistent with Sgt. M. Niblock testimony, but inconsistent with offered evidence the state list at the chief of trial. The appellant moved before the court requesting Rule 5 SCRCrimP disclosure Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, L. Ed. 2d 215 in which the state were in violation of Brady not disclosing the Appellants discovery for it would have confirmed that the state Grand Jurors did not indict Mr. Herriott. The appellant requested for the minutes of the grand jury hearing because in the initial Rule 5 discovery non disclosure of alleged victim Brian Williams first initial statement were missing whom admitted in an interview he gave statement to the authorities and alleged eye witness Kaiasha White accounts were inconsistent with factual evidence among three other inconsistent testimonies. Pursuant to Statute 14-7-1700, A court reporter shall record, either stenographically or by use of an electronic recording device, all proceedings except when a state grand jury is deliberating or voting. Subject to the limitations of section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure

(S.C.R.CrimP) and defendant has the right to review and to reproduce the stenographically or electronically recorded materials. Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. see FRCP Rule 6 United States Annotated, Rule 6(E) The Court may authorize disclosure-- at a time, in a manner and subject to any other conditions that it directs-- of a grand jury matter:

- (i) Preliminarily to or in connection with a judicial proceeding;
- (ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;

The Appellant filed a second PCR 2018-CP-10-600 asserting that the Ninth Judicial Circuit Court lacked subject matter jurisdiction. The Appellant had been held to answer for an alleged crime without being indicted by the grand jury and the Ninth Judicial Circuit Court apparently overlooked certain law accepting Appellant plea of guilty, for the lower court was without authority to act as well as being void. Pursuant to S.C. CONST. Art. 1 § 11; S.C. Code Ann. § 17-19-10; see also Gentry v. State, 363 S.C. 93, 610 S.E.2d 494 (2005).

In Gentry, an indictment is a "notice document," albeit one required by our state constitution Art. V § 11. The required notice is a component of the due process S.C. CONST. Art. 1 § 3, "One who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, liberty, or property without due process of law" Evans v. State, 363 S.C. 495, 611 S.E.2d 510.

The appellant asserts that the said indictment states that the grand jury convened on the 10th day of January, 2011 and true billed on the 12th day of January, 2011. Accord to 14-5-740(2) Charleston County S.C. Ann.; Term of

Court. General sessions shall be held on the first Monday of January and for one week shall court be held which the first Monday in January, 2011 fell on the 3rd and for one week ended on the 8th. The grand jury on the said indictments did not convened on the 10th which fell on the 2nd Monday of January, 2011 where the statute further states, "the second week shall consist of common pleas and motions". See 2018-CP-10-600 Memorandum In Support.

Nevertheless, The Final Order dismissing this action barring its grand lacked of Subject Matter Jurisdiction Pursuant to Rule 77 SCRPC is in conflict with the Conditional order that was to be held in accordance to SC Code Annotation §17-27-70(b). The Supreme Court has held that A defendant must challenge the legality and sufficiency of the Process of the state grand jury before the jury renders a verdict in order to preserve the error for direct appellate review, see S.C. Code Ann. §14-7-1140. Upon petition by the Attorney General, the chief administrative judge of the circuit in which the State Grand Jurors was impaneled may order the term of the Grand Jurors *246 extended for a six month period. S.C. Code Ann. §14-7-1630(C) (2001 supp.) However, the total term of a particular State Grand Jury, including extensions shall not exceed two years, Id. This course of action was available to the state to sought for an extension to properly indicted the appellant. The motion Directed Verdict of Dismissal quashing the indictments which went unopposed Accord §18.33 ALL Federal, consequently, the election not to reply to an affirmative defense does not waive the right to contest that affirmative defense.

WHEREFORE, based upon the aforementioned, this response is to be sought reviewed, and ruled before this Court.

Swear subscribed before me on
the 11th of December 2018.

Catherine A. Amoss

My Commission expires: December 23, 2018
December 06, 2018

cc: Benjamin H. Limbaugh, Esquire
Assistant Attorney General

Respectfully Submitted,

K. Herritt

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S.C. Court of Appeals
Daniel E. Shearouse, Supreme Court Clerk
Post Office Box 11330
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