DEAR CLERK

PLEASE FIND FOR FILING

WITHIN YOUR OFFICE

(1) APPELLANTS PRO-SE BRIEF

AND CERTIFICATE OF SERVICE

THANK YOU

TITO HARRIS

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BERKLEY COUNTY

DEADRA L. JEFFERSON CIRCUIT COURT JUDGE

THE STATE — RESPONDENT

V

TITO HARRIS — APPELLANT

APPELLATE CASE NO 2011-190108

APPELLANT PRO-SE BRIEF

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TABLE OF AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

(1) WHETHER THE TRIAL COURT COMMITTED PLAIN ERROR OR REVERSABLE ERROR WHEN IT GAVE A BURDENSHIFTING INSTRUCTION CHARGE TO THE JURY, AND WHETHER SUCH DENIED AND DEPRIVED DEFENDANT OF A FAIR TRIAL?

STATEMENT OF THE CASE #1

APPELLANT WAS INDICTED BY BERKLEY COUNTY GRAND JURY FOR THE OFFENSE OF MURDER R459. HIS CASE WAS CALLED TO TRIAL ON MARCH 14, 2011 BEFORE THE HONORABLE DEADRA L. JEFFERSON, AND A JURY. DURING THE TRIAL SHE GAVE THE FOLLOWING INSTRUCTIONS AT THE CONCLUSION OF THE TRIAL THE JUDGE GAVE THE MALICE INSTRUCTION AND THE JURY FOUND HIM GUILTY OF MURDER TRASCRIPT PAGE 426 LINES 1 - 21

ARGUMENT

THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT INSTRUCTED THE JURY THAT MALICE MAY INFERR AND ALSO ARISE WHEN A DEED IS DONE WITH A DEADLY WEAPON

RELEVANT FACTS THE COURT STATED " MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE

INFERRED MALICE MAY ALSO ARISE WHEN A DEED IS DONE WITH A DEADLY WEAPON

A DEADLY WEAPON IS ANY ARTICLE INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE. THE FOLLOWING LADIES AND GENTLEMEN ARE EXAMPLES OF INSTRUMENTS WHICH MAY BE DEADLY WEAPONS.

A PISTOL, A KNIFE A SHOTGUN, A RIFLE, A DIRK, A DAGGER, A SLINGSHOT, METAL KNUCKLES A RAZOR, GASOLINE A FIREBOMB OR MOLOTOV COCKTAIL AND LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT OPERATING

THESE ARE SIMPLY EVIDENTIARY FACTS TO BE CONSIDERED BY YOU ALONG WITH THE OTHER EVIDENCE IN

CASE AND IT IS FOR YOU, THE JURY TO GIVE THE EFFECT, VALUE AND WEIGHT YOU DECIDE IT SHOULD HAVE.

DISCUSSION IN SANDSTROM V MONTANNA 442 US 510 524 1979) THE SUPREME COURT HELD THAT THE DUE-PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IS VIOLATED WHEN A JURY CHARGE CREATES A MANDATORY PRESUMPTION AND IMPERMISSIBLY SHIFTS THE BURDEN OF PROOF TO THE DEFENDANT

CONCLUSIVE PRESUMPTIONS DEPRIVES A DEFENDANT OF THE DUE-PROCESS OF LAW AND ARE THEREFORE UNCONSTITUTIONAL CITING MULLANEY V WILBUR 421 US 684 703-04 1975) HOLDING THAT THE DUE-PROCESS CLAUSE FORBIDS A STATE FROM PLACING THE BURDEN ON THE ACCUSED TO PROVE HIS ACTIONS REDUCED THE CRIME FROM MURDER TO MANSLAUGHTER

HERE THE APPELLANT SHOT HIS WIFE UPON LEGAL PROVOCATION HOWEVER THERE WAS ALSO TESTIMONY FROM APPELLANT THAT SUCH WAS NOT INTENDED AND THAT IT WAS AN ACCIDENT

THE COURT HOWEVER DENIED AND DEPRIVE THE APPELLANT OF THE EVIDENCE THAT TENDS TO MITIGATE OR EXCUSE THE ACT BY NOT FOLLOWING THE NEW RULE THAT WAS ANNOUNCED IN STATE V BELCHER QUOTE " UNDER THE POLICY MAKING RULE IN THE COMMON LAW WE HOLD THAT THE USE OF A DEADLY WEAPON IMPLIED MALICE INSTRUCTION HAS NO PLACE IN A MURDER OR ASSAULT AND BATTERY

WITH INTENT TO KILL PROSECUTION WHERE EVIDENCE IS PRESENTED THAT WOULD REDUCE, MITIGATE EXCUSE OR JUSTIFY THE KILLING OR THE ALLEGED ASSAULT AND BATTERY WITH INTENT TO KILL.

THE HOLDING IN BELCHER ASS AFFIRMED IN GRIFFIN V KENTUCKY 479 US 314, 328 (1987) HOLDING THAT A NEW RULE FOR CONDUCT OF CRIMINAL PROSECUTIONS IS TO BE APPLIED RETROACTIVELY TO ALL CASES PENDING AND NOT YET FINAL SC CONST ART V § 21

THIS NEW RULE WAS APPLICABLE TO THE APPELLANT CASE YET THE TRIAL COURT AND THE JUDGE DID NOT COMPLY WITH SUCH DENYING THE APPELLANT OF EQUAL PROTECTION OF THE LAW IN THIS REGARD.

WHEREFORE APPELLANT PRAYS THAT HIS CONVICTION BE REVERSE AND VACATED WITHIN THE INTEREST OF JUSTICE CITING STATE V MILLER 397 SC 630 725 SE2d 724

RESPECTFULLY SUBMITTED

TITO HARRIS

PRO-SE APPELLANT

STATEMENT OF ISSUE ON APPEAL #2

WHETHER APPEAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO DISCERN WHETHER OR NOT THE TRIAL COURT HAD JURISDICTION TO ACT IN LIGHT THAT THE RECORD REFLECTED THAT THIS CASE WAS TWO (2) YEARS OLD. AND IS DEVOID AS TO WHETHER OR NOT ANY CONTINUANCE WAS GRANTED?

STATEMENT OF CASE #2

APPELLANT WAS ARRESTED ON AUGST 2009 FOR MURDER PURSUANT TO 16-3-10 BUT THE CASE WAS NOT CALLED FOR TRIAL UNTIL THE WEEK OF MARCH 14-17 OF 2011 MORE THAN A YEAR WITHOUT ANY CONTINUANCES GRANTED BY THE CHIEF ADMINISTRATIVE JUDGE FOR THE CRIMINAL DIVISION

ARGUMENT #2

THE COURT WAS WITHOUT JURISDICTION TO ACT BECAUSE THE TERM OF COURT HAD ENDED IN THE MATTER AND NO CONTINUANCE HAD BEEN OBTAIN TO CONTINUE THE CAUSE

FACTS PASE 26 AND 27. LINE 21 AND 1-8

THE COURT LADIES AND GENTLEMEN WE ARE GOING TO SELECT A JURY FOR THE STATE OF SOUTH CAROLINA VS TITO FERNANDO HARRIS 2010 GS-08-0091 ITS AN INDICTMENT FOR A MURDER.

THE INDICTMENT ALLESES AS FOLLOWS THAT TITO FERNANDO HARRIS DID IN BERCLEY COUNTY, ON OR ABOUT AUGUST 19th 2009, WILLFULLY, FELONIOUSLY, AND INTENTIONALLY KILL THE VICTIM SHANTAY HARRIS WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED BY MEANS OF SHOOTING THE VICTIM IN THE HEAD WITH A GUN, AND THE VICTIM DID DIE AS A PROXIMATE RESULT THEREOF ON AUG. 19 2009 IN MONCKS CORNER SOUTH CAROLINA. ALLEGIN A VIOLATION OF CODE SECTION 16-3-10

DISCUSSION # 2

A DEFENDANT IS CONSTITUTIONALLY ENTITLED TO THE EFFECTIVE ASSISTANCE OF APPELLANT COUNSEL EVITTS V LUCEY 469 US 387 105 Sct 830 83 LED 2d 821 (1985)

IN CRIMINAL CASES THE APPELLATE COURT SITS TO REVIEW ERROR OF LAW only STATE V WOOD 362 SC 52 608 SE 2d 435 (ct App 2004)

REVIEW IS LIMITED TO DETERMINATION WHETHER THE TRIAL COURT ABUSE ITS DISCRECTION STATE V REED 332 SC 35 503 SE 2d 747 (1998)

HERE THE TRIAL COURT ABUSED ITS DISCRETION IN CONDUCTING A JURY TRIAL OUTSIDE OF THE STATUTORY TERMS AS REQUIRED FOR WITHOUT ANY WRITTEN ORDER OR CONTINUANCE BEING GRANTED.

AND WITHOUT APPELLATE COUNSEL BRINGING SUCH TO THE ATTENTION TO THE APPEALS COURT BY WAY OF ERROR OF LAW, BECAUSE THE COURT DID NOT HAVE JURISDICTION TO ACT AND SUCH IS NOT SUPPORTED BY THE RECORD.

MEMORANDUM OF LAW #2

COURTS KEY 65 TERM OF GENERAL SESSIONS EXPIRES BY OPERATION OF LAW ON COMMENCEMENT OF NEW TERM OF COURT OF COMMON PLEAS.

THE COURT OF APPEALS HELD THAT THE TERM LACK OF JURISDICTION WE MEANT THAT THE COURT SIMPLY NO LONGER HAS THE POWER TO ACT IN A PARTICULAR MANNER BECAUSE THE TERM OF COURT HAS ENDED SEE ES STATE V DAVIS 375 SC 12. 649 SE 2d 178 (ct APP 2007) STATE V REINHART 312 SC 36 430 SE 2d 536 ct APP 1993)

SUBJECT MATTER JURISDICTION OR THE ISSUE OF JURISDICTION CAN BE RAISED AT ANYTIME INCLUDING FOR THE FIRST TIME ON APPEAL AND SHOULD BE TAKEN NOTICE OF. BY THE APPEALS COURT ON ITS OWN MOTION.

CONCLUSION

A JUDGEMENT BY A COURT CANNOT BE AFFORDED WHERE THE COURT HAD NO RIGHT TO ACT.

COURTS 26 COURTS DO NOT HAVE POWER TO EXTEND THEIR JURISDICTION WHICH IS SET BY CONSTITUTIONAL OR STATUTORY LAW

SC Const Art 1 §3 "NO PERSON SHALL BE DENIED OF EQUAL PROTECTION OF THE LAW, DUE-PROCESS OF LAW PROCEDURAL DUE-PROCESS AND THE RIGHT TO BE IMMUNE FROM PROSECUTION.

PURSUANT TO RULE 7 (A) AND SC Const Art 1 §3 THE APPELLANT WAS IMMUNE FROM STATE ACTION THEREFORE THE CHARGE SHOULD HAVE BEEN DISMISSED AGAINST WHEREFORE APPELLANT MOVES THAT THIS APPEALS COURT DO SO WITHIN THE INTEREST OF JUSTICE.

CERTIFICATE OF SERVICE

THIS IS TO HEREBY CERTIFY THAT I TITO HARRIS THE APPELLANT HAS CAUSED A PRO-SE BRIEF TO BE FILED IN APPELLATE CASE NO 2011-190108 BY PLACING SAME IN THE UNITED STATES MAIL ON THIS 8 DAY OF JANUARY 2013 AND HAVE SERVED THE SAME UPON THE RESPONDENTS

PERSONS SERVED

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TITO HARRIS

APPELLANT