

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM HORRY COUNTY
COURT OF GENERAL SESSION

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED
JUL 12 2018
SC Court of Appeals

Case No: 2007-GS-26-00418

The State of South Carolina,

Respondant,

v.

Arnold Lea Ward, SCDC #109169,

Appellant,

RECORD ON APPEAL

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3727

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

Post Office Drawer 1276
Conway, South Carolina 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

s/ Arnold Lea Ward #109169,
Arnold Lea Ward, SCDC #109169.
Acting Pro-Se Attorney...
Allendale Correction Institution
Post-office Box 1151 F-4-B-20
Fairfax, South Carolina 29827

" INDEX " 99

| <u>Content:</u> | <u>Page:</u> |
|--|---------------|
| (1). Index. | 1. |
| (2). Certificate of Counsel: | 2. |
| (3). Exhibit. # A. Indictment of proceeding. | 3. |
| (4). Exhibit. # B. Order of denial, Newly Discovered Evidence, September 1,2025: Motion for Newly Discovered Evidence, filed June 15,2015: | 4. 5-9. |
| (5). Exhibit. # C. Order of denial, Reconsideration, September 17,2015: Motion for Reconsideration, filed September 9,2015: | 10. 11-12. |
| (6). Exhibit. # D. Transcript of Record, [including entire pages of Transcript]: | 13-18. |
| (7). Exhibit. # E. Designation of Matter, to be included in the record on Appeal: | 19. |
| (8). Proof of Service: | 20. |

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM HORRY COUNTY
COURT OF GENERAL SESSION

Benjamin H. Culbertson, Circuit Court Judge

Case No: 2007-GS-26-00418

The State of South Carolina,

Respondant,

V.

Arnold Lea Ward, SCDC. #109169,

Appellant,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by appellant and not any other material. In pursuant to SCACR: rule: 210,267. and in compliance thereof...

s/ Arnold Lea Ward #109169 ,
Arnold Lea Ward, SCDC #109169.
Acting Pro-Se Attorney...
Allendale Correction Institution
Post-office Box 1151 F-4-B-29
Fairfax, South Carolina 29827

Exhibit # A. Page 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR:

BURGLARY 1ST DEGREE (ATTEMPTED)

At a Court of General Sessions, convened on January 25, 2007, the Grand Jurors of Horry County present upon their oath:

BURGLARY 1ST DEGREE (ATTEMPTED)

CDR: 0079 C/L 16-11-311, 16-1-80, 16-1-60

That ARNOLD WARD did in Horry County on or about October 31, 2006, willfully and unlawfully attempt to enter the dwelling of Shane Holley, located at 4901 Willow Lane in the Myrtle Beach section of Horry County, without consent and with the intent to commit a crime therein, and the defendant had two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

ORIGINAL

LEWIS/HCPD
WITNESSES

DOCKET NO. 2006-GS-26-418

C

THE STATE OF SOUTH CAROLINA
FILED
Horry County
COUNTY OF HORRY

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BCR

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2010 APR 22 PM 3:08
83437

MELANIE HUGGINS WARD
CLERK OF COURT
JANUARY
COURT OF GENERAL SESSIONS
CLERK OF COURT
Horry County
TERM 2007

ARREST WARRANT NO. J316250

THE STATE
VS

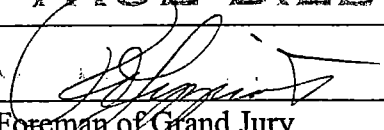
CDR: 0079 C/L 16-11-311, 16-1-80, 16-1-60

ARNOLD WARD W/M
3286 BLUE JAY DRIVE
MYRTLE BEACH, SC
DOB: 08-04-62
SS#: 249-19-5594

DOA: 11-01-06

ACTION OF GRAND JURY

TRUE BILL


JAN 25 2007
Foreman of Grand Jury

ATTORNEY: THOMAS FLOYD

VERDICT

INDICTMENT FOR:

BURGLARY 1ST DEGREE (ATTEMPTED)

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

Exhibit B-19

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ORDER IN A CRIMINAL CASE
WARRANT(S) J316250

IN THE COURT OF GENERAL SESSIONS

INDICTMENT(S):

State of South Carolina

ARNOLD LEA WARD
DEFENDANT(S)

This form order submitted by: Judge Benjamin H. Culbertson
Administrative General Session Judge

Attorney for : State Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE

- DECISION BY THE COURT AFTER HEARING. This action came to a hearing before the court. The issues have been heard and a decision rendered. See below for additional information.
- DECISION BY THE COURT AFTER STATUS CONFERENCE. This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. See below for additional information.
- MOTION: MOTION FOR NEWLY DISCOVERED EVIDENCE
 - GRANTED DENIED CONTINUED WITHDRAWN
 - WITHDRAWN BY MOVING PARTY: _____
Signature of Moving Party
 - OTHER:

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CLERK OF COURT
SEP 1 3 AM 8:27

IT IS ORDERED AND ADJUDGED: See Order of the Court below See attached order
 Formal Order to follow; to be prepared by: State Defendant Other: _____

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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Benjamin H. Culbertson
Circuit Court Judge

2148
Judge Code

Sept. 1, 2015
Date

SUPPORTING FACTS AND ARGUMENT

The Defendant humbly contends that the Solicitor did commit a "Procedural Error" and "Contempt of the Proceedings" by unlawfully impaneled its Grand Jury outside the Statute of S.C. Code Ann§ 14-5-810 and then willfully printed and published false and misleading information in its indictment in order to deep secret its violations of statutory law.

However, here evidence will establish that the General Assembly did not set forth a "Term of Court" in S.C.Code Ann.§ 14-5-810 (1),for fourth week in "January".

S.C.Code Ann.§ 14-5-810 (1). Term of Court in the Fifteenth Circuit.

- ° The Courts of the Fifteenth Judicial Circuit shall be held as hereinafter provided.
- ° Horry County.-The Court of General Sessions for Horry County shall be held at Conway on the Second Monday in January for one week, on the First Monday in March for two weeks, on the First Monday in June for two weeks, and on the First Monday in October for two weeks.

According, Section 14-~~7~~-210, requires strict complaine with its provisions and mandates that the Grand Jury must be impaneled under jurisdiction of the Court of General Sessions before lawful return of a true-bill indictment can take place.

Next in Ex Parte Lilly, 7 S.C. 372 (1876), WL 5977, the S.C. Supreme Court of South Carolina briefly recounted the procedural history of Lilly against the background of State v. Henderson, 134 S.E. 364,136 S.C. 363 (S.C.Aug. 16,1926). The Court in Lilly case Noted that the South Carolina Supreme Court had apparently already concluded the "Term of Court" in the Statute and which analyzed a "Term of Court" very similar-

In the case at hand the indictment reads as follows:

- At a Court of General Sessions, Convened on January 25, 2007 the Grand Jurors of Horry County presented upon their Oath:

Therefore, recognizing the jurisdictional requirements set forth in section 14-9-210, mandating the only process allowed for impaneling a lawful grand jury, and often consideration of the facts and evidence presented above, it becomes apparent that the [Defendant] was indicted outside the jurisdiction of the Court of General Sessions and by a mode of procedure that State had no lawful authority to adopt.^k

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 ~~another~~ way. Thus, since the Court utilized an unlawful mode of procedure not allowed under section 14-9-210, state lacked the requisite jurisdiction to complete return of its true-billed indictment.

As established above, section 14-9-210 is clearly a jurisdictional statute, and sets forth mandatory procedure to be utilized by State for lawful return of a true-billed indictment. A substantial body of South Carolina law holds that a failure to comply with statutory law jurisdictional in nature deprives the court of subject matter jurisdiction, State v. Loftin, 275 S.E.2d 575 (S.C.1981); Gray v. State, 276 S.C. 634, 281 S.E.2d 226 (S.C.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-billed indictment except during a time when the Court of General Sessions is lawfully convened to oversee the grand jury process. Any acts of the court taken outside those statutory restrictions would by necessity be null and-

Exhibit # B. pp 1-3

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 the Court of General Sessions before lawful return of indictment can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler.

One additional piece of evidence very clearly settle the matter of State's FALSE condition. The information contained in the indictment, also establishes that no special term of the Court of General Sessions was convened on January 25, 2007 under the provisions of either Section 14-5-410, Section 14-5-910, or Section 14-5-920. See also, State v. Gossett, 117 S.C. 76, 108 S.E. 290 S.C. 1921, the power to call a Special Term of the Court of Common Pleas and General Sessions, conferred on the Chief Justice of the Supreme Court or the presiding Associate Justice by Rulle 77 (e), SCRCP [Cancelling or Ordering Terms of Court]. (No turn of court shall be cancelled nor additional term scheduled without the prior approval of the Chief Justice. When the local bar requests that a week of common pleas court be not held, or the solicitor requests that a week of general sessions court be not held, the clerk shall immediately notify the Administrator of this State.)

Here, the Solicitor ^{has} did committed a Neglect of Duty, by unlawfully impaneled its grand jury out side the Statute 14-5-810 (1). Pursuant to Section 14-5-140. Neglect of duty as to holding terms, disobeying order assignment, and other violations; proceedings.

Specifically, it should be noted that the Code of Judicial Conduct, Cannon 2 (A), states. "A judge shall respect and comply with the law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary".

Exhibit B. p9c

CONCLUSION

Based on the forgoing, the Defendant respectfully request this Honorable Court grant the Defendant's Motion and vacate the conviction and sentence as a matter of law.

Respectfully Submitted,

Arnold Lea Ward

Arnold lea Ward, #109169
Allendale Correctional Institution
P.O.Box 1151 F-3-B-13
Fairfax, S.C. 29827

SWORN OR AFFIRMED TO AND SUBSCRIBE BEFORE ME

This 10th day of June, 2015

Debbie L McCaskey
South Carolina Notary Public

My Commission Expires: July 10, 2021

2015 JUN 15 PM 3:14
JERRY COUNTY
CLERK OF COURT

Exhibit # C 290 10

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

ORDER IN A CRIMINAL CASE
WARRANT(S) J316250

IN THE COURT OF GENERAL SESSIONS

INDICTMENT(S): 2007GS00418

State of South Carolina

ARNOLD WARD
DEFENDANT(S)

This form order submitted by: Judge Benjamin H. Culbertson
Administrative General Session Judge

Attorney for : State Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE

DECISION BY THE COURT AFTER HEARING. This action came to a hearing before the court. The issues have been heard and a decision rendered. See below for additional information.

DECISION BY THE COURT AFTER STATUS CONFERENCE. This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. See below for additional information.

MOTION: MOTION FOR RECONSIDERATION

GRANTED DENIED CONTINUED WITHDRAWN

WITHDRAWN BY MOVING PARTY: _____

Signature of Moving Party

OTHER: *This motion is decided without oral argument.*

IT IS ORDERED AND ADJUDGED: See Order of the Court below See attached order
 Formal Order to follow; to be prepared by: State Defendant Other: _____

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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| | MET AMIL RECONSIDERATION WARD CLERK OF COURT 2015 SEP 21 AM 8:27 FILED |
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Benjamin H. Culbertson
Circuit Court Judge

2148
Judge Code

Sept. 17, 2015
Date

SCRCP RULE 77(e) provides:

- ° No term of court shall be cancelled nor additional term scheduled without the prior approval of the Chief Justice. When the local .. bar requests that a week of common pleas court be not held, or the solicitor requests that a week of general sessions be not held, the clerk shall immediately notify the Court Administrator of this state.

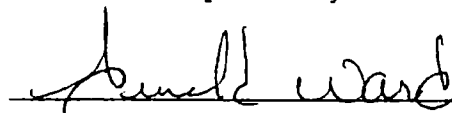
As set forth, what competent authorith:the [Solicitor] has to alter the term of court set forth in S.C.CODE ANN.§ 14-5-810 (1)? This motion is based on the grounds that the Court determined an issue of fact regarding Defendant's discovery of his.. claim regarding the Solicitor unlawfully impaneling its Grand Jury out side the [term of court] set forth in 14-5-810 (1), without an adequate record and without taking the facts in the light most favorable to Defendant. This motion will be supported by applicable case law, statutes, and any supporting memoranda and exhibits that may be submitted to the Court prior to the hearing of this matter.

With respect, pursuant to SCACR 501 Canon 3 (B)(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be sawyed by partisan interests, public clamor or fear of crimiticism. The Adjudicative Respon- sibilities of this Court to be faithful to the law. To reiterate, what competent .. authority ^{can} the Solicitor ~~can~~ produce to this Court that the [Chief Justice] order a special term of court for "Thursday, January 25,2007. As set forth,|on September 1, 2015, the Solicitor mislead the court to believe that Rule 40. General Docket... Trial Roster, and Call of Cases for Trial, was the official document for legal term. The question still remain, did the Chief Justice Order a Special Term of Court on "Thursday, January 25,2007"?

CONCLUSION

For all the reasons stated herein above, it is respectfully request that the Honorable Court reconsider the previous ruling of the Court. And set forth, another "Evidentary Hearing" as a matter of law.

Respectfully submitted,



Arnold Lea Ward, #109169

Exhibit # D-13

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2007-GS-26-00418

| | | |
|------------------|---|----------------------|
| State, |) | |
| |) | |
| Plaintiff, |) | Transcript of Record |
| |) | |
| vs. |) | September 1, 2015 |
| |) | |
| Arnold Lea Ward, |) | |
| |) | |
| Defendant. |) | |

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Bradley C. Richardson, Esquire
Attorney for Plaintiff

Defendant Appearing Pro Se

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

STATE OF TEXAS
COUNTY OF DALLAS

State v. Ward (9-1-15)

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1 (There were no exhibits marked during the hearing.)

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~~Exhibit 1~~

State v. Ward (9-1-15)

3

1 (On the record, September 1, 2015.)

2 THE COURT: All right. As I said, this is citation
3 J316250, State of South Carolina versus Arnold Lea Ward. The
4 matter is before the Court -- my roster says motion for after
5 newly discovered evidence. Present Mr. Bradley C. Richardson
6 for the State and you are Mr. Ward?

7 MR. WARD: Yes, sir.

8 THE COURT: All right. Mr. Ward's appearing pro se. All
9 right. Mr. Ward, this is your motion.

10 MR. WARD: Yes, sir.

11 THE COURT: All right. Let me hear from you.

12 MR. WARD: I put a motion for a null and a void
13 indictment on the rule that 14-9-210 that the indictment was
14 processing through a Grand Jury that it wasn't convened on the
15 25th of January and I move to have that indictment removed.

16 THE COURT: Okay. What do you mean they weren't
17 convened? How do you know that?

18 MR. WARD: The -- in 14-5-810 it states the time that you
19 could have an indictment run through a Grand Jury and there --
20 it doesn't -- those dates doesn't match up. January 25th is
21 one of the dates that doesn't match up with that, that
22 statute.

23 THE COURT: Okay. All right. Mr. Richardson, have we
24 got an indictment?

25 MR. RICHARDSON: I've got a copy. I've got a copy of the

Exhibit D-9-15

State v. Ward (9-1-15)

4

1 indictment, Your Honor.

2 THE COURT: The true-billed indictment?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: All right.

5 MR. RICHARDSON: This is the file copy.

6 THE COURT: All right. Shows true-billed indictment
7 signed by the Grand Jury foreman on January 25th, 2007.

8 MR. WARD: Yes, sir.

9 THE COURT: And so what is your argument?

10 MR. WARD: There wasn't a Grand Jury convened on January
11 25th of 2007.

12 THE COURT: Okay.

13 MR. WARD: They convened, Grand Jury only convenes the 2nd
14 week of January in 2007 and the first week in March of 2007.
15 So there's no way they could have convened during the 25th.

16 THE COURT: Okay. You're referring to a statute that
17 sets it? I think it's allowed -- that those --

18 MR. WARD: Statute 14-7 -- I'm sorry, 14-5-810.

19 THE COURT: Yeah. And, and, and it allows the
20 administrative judge can set alternate dates for the Grand
21 Jury. So I'm going to deny your motion. I see where he's
22 presented one that's been signed by the foreman that showed
23 that they did convene on January the 25th. All right.

24 MR. RICHARDSON: Thank you, Your Honor.

25 THE COURT: Thank you.

Exhibit D Page 17

State v. Ward (9-1-15)

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(Adjourned.)

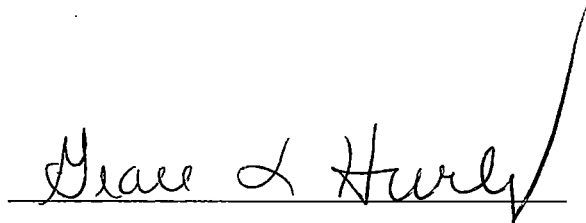
Exhibit D-2-16

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of State versus Arnold Lea Ward, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 1, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M
Official Reporter

July 1, 2017.

Exhibit # E. pg. 19.

RECEIVED
JUL 12 2018
SC Court of Appeals

Personal copy

STATE OF SOUTH CAROLINA
IN THE COURTS OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF GENERAL SESSIONS

Benjamin H. Culbertson, circuit court judge

Case No: 2007-GS-2600418

The State of South Carolina,

Respondant,

v.

Arnold Lea Ward, SCDC #109169,

Appellant,

Designation of Matter
to be included in the record on Appeal

Appellant proposes the following be included in the record on Appeal:

- (1). Order of denial, September 1, 2015- Motion for Newly Discovered Evidence.
- (2). Order of denial, September 17, 2015- Motion for Reconsideration.
- (3). Transcript of proceedings, Pg.3, section 12-25, Pg.4, section 10-25.
- (4). Exhibit #A. [Signatures and REPORTS OF Horry County Grand Jury's action for the year of 2007]...

I certify that this designation contains no matter which is irrelevant to this Appeal...

August 11, 2017:

Arnold Lea Ward #109169,
Arnold Lea Ward, SCDC #109169
Acting Pro-Se Attorney...
Allendale Correction Institution
Post-office Box 1151 F-3-B-23
Fairfax, South Carolina 29827