

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM BAMBERG COUNTY  
COURT OF GENERAL SESSION

Doyet A. Early, III. Circuit Court Judge

**RECEIVED**  
MAR 22 2019  
SC Court of Appeals

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Appellate Case No: 2017-002619

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State of South Carolina,

Respondant,

V.

JOHNNIE L. JONES

Appellant,

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**[FINAL] BRIEF OF APPELLANT**

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Johnnie Lee Jones,  
Johnnie Lee Jones, SCDC, #340271.  
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## STATEMENT OF ISSUE OF APPEAL

Appellant contends courts did error in denying of Petition/Motion for Newly Discovered Evidence on claims of Extrinsic Fraud, Where opposing - parties Solicitor and Clerk of court fail to produce supportive evidence from courts records that rebutted the claim of fraudulent actions made by the Solicitor and Grand Jury foreperson of signing and processing such document (Indictment) of this action out-side the convening of the courts of General Sessions...

## STATEMENT OF CASE

Appellant is currently incarcerated in the South Carolina Department of corrections pursuant to orders of commitment of the Bamberg counties Clerk of court. The appellant was indicted during the May/June of 2007, term of Bamberg County Grand Jury for Assault and Battery with an intent to kill, (2007-GS-05-0168), and Attempted Kidnapping, (2007-GS-05-0169), During trial proceedings he was represented by Mr. Dan Luginbill, Esquire and was found guilty by juror's of Attempted Kidnapping and assault and battery of a high and aggravating nature, on April 19, 2010. The Honorable Judge Doyet A. Early, III. past judgement to a period of eighteen - (18) years confinement on Attempted Kidnapping and ten - (10) years concurrent on assault and battery of a high and aggravating nature...

Defendant filed a Notice of Appeal and the Appeal was perfected, on January 25, 2012. The South Carolina courts of Appeals affirmed the conviction and sentencing and dismissed the appeal, (see): State V. Jones, Op. No: 2012-up-0341.. Thereafter on April 30, 2012, Defendant filed a Pro-Se petition for Post-Conviction relief and was presented before the Honorable Judge R. Ferrell Cothran, who dismissed the action by orders dated on the day of August 19, 2013...

Defendant subsequently file a motion caption, " Motion for Newly Discovered Evidence " and " Motion to Expand the record " and subsequently to that file a ' petition for Writ of Mandamus " which was presented before and denied by the Honorable Judge Doyet A. Early, III., on April 24, 2017, Defendant filed a Notice of Appeal...

## STATEMENT OF FACTS

Appellant contends circuit court's violated his Fifth and Fourteenth Constitutional Amendments of the United States and Article §I,3 and 11, of South Carolina Constitution Amendments by the errored judgement with in denying the motion for Newly Discovered Evidence, Where during court proceedings the opposing parties (Solicitors and/or Clerk of court) fail to provide or present rebuttal evidence from court records that did substantially support appellants claim of Extrinsic Fraud by the Solicitor and Grand Jury fore-person to be with-out merit. Infurtherence, Court's lack the jurisdiction to process a fraudulent document (Indictment) under a unlawful and illegal impanelment and/or a signed order by the supreme Courts Chief Justice to do such action..Appellant should be granted such relief as requested in the original application as a matter of Law. This arguement is as follows:

### "ARGUMENT"

Appellant first objects and addresses respondants contention that the alligation of the Motion for Newly Discovered Evidence and/or the Initial brief of appeallant was posed in pursuant to rule: 29-(b) SCR crim. P. for motion requesting a new trial. Respondant submits appellant arguments in this regard are both untimely and without merit under this relevent rule carring a explanation within the context of the rule of a one (1) - years limitation and quoting a application of merit under a five (5) factor requirement of obtaining a new trial.(see): Respondants Initial and Final Briefs, Arguments #1, pg. 8-14..

Appellant contends, The argument is a erroneous assessment in several seperate issue's. "First", The motion was based specifically on a claim of "Extrinsic Fraud" by the Bamberg county Solicitor office on a "Procedural error" and "Contempt of the proceedings" by " unlawfully and illegally " processing the indictment of this case outside of a Grand jury term pursuant to rule: 60-(b)-(3), SCRCF. Then willfully printing and publishing the false and misleading information of the document for a court proceeding to deep secret its violation of statutory Law.(see): Record on Appeal Exhibit # A. pg. (4), (I due process).., Exhibit # C. Initial Brief of the Appellant, pg. (1), statements of the issue's, section (1)-(2)..

The standards of rule 60-(b)-(3), SCRPC. [Fraud, Misrepresentation, or other misconduct by an adverse party] is supported by courts, That there are no statute of limitations when a party seeks to set aside a judgement due to fraud or other misconduct of an adverse party who commits a unlawful act upon the court. (see): Aoude V. Mobil Oil Corp. 863 F. 2d 890 ( 1st cir, 1988) and many more. Infurtherence, This rule does not request a five (5) factor requirement reported by the respondant. The challenge is not one of guilt and/or innocence or a presentation of evidence to change the logic of a theory. Although, appellant claims actual innocence of the charged offense, The question posed through the application on the Motion for Newly Discovered Evidence is one based on due process and equal protection of Law. (see0: Exhibit #B, pg (2-3), Initial Brief of appellant, pg. (1-2) sections: (1-4). USCA. section: §V., S.C. Const. Amend. Art. § I, section, 11.[Indictment presentment], State V. Beachum 288 SC 325, 342 SE2d 597 (1986) and many more...

Appellant claims the adverse party (Solicitor) committed " Procedural error " Fabricating and falsifying a legal document (indictment) out-side a grand jury term of court and by a mode courts have no authority adopting and " Contempt of the proceedings " unlawfully and illegally processing the indictment through a court procedure. In this sence of preception appellant challenges the legallity of the indictment and questions courts authority over jurisdiction to obtain a conviction without a presentment or wavier of the indictment to confer courts to try the accused. (see): - State V. Hann 196 SC 211, 12 SE2d 720 (1940), State V. Grim 341 SC 63, 533 SE2d 329 (2000), Pringle V. State 287 SC 409, 339 SE2d 127 (1986), State V. Evans 363 SC 493, 611 SE2d 510 (2005) and many more...

The fundamental requirements of the court procedural due process of a indictment is established through the holdings of the United States Constitution Amendment, § V. and S.C. Const. Amend. Art. §I. 11.[Presentment of Indictment], Quoting:"No person may be held to answer for a capital or otherwise infamous crime, unless on a presentment of the indictment of a grand jury". This intends not merely an indictment in form, But a valid indictment found and presented according to the settle usage and established mode of procedures. (see): United States Constitution Amendment, § V., SC Const. Amend. Art. § I,11., Pringle V. State, Supra., State V. Rector 158 SC 212, 155 SE2d 385 (1930).., State V. Bultron 318 SC 328, 457 SE2d 616 - (ct. App. 1995).., and many more...

Therefore, Reconizing the jurisdiction requirements set forth in the S.C. code ann: §14-9-210, With strict compliances in its provision and mandate that a grand jury must be impanel under the jurisdiction of the court of General session and must comply to S.C. code ann: §14-5-630-(A) regulating the only process allowed for impanelingtoftaagrandjüryybeforee a lawful return of a true bill indictment can take place, any and/or all other modes or procedures outside those statutory restrictions without a signedorderbytheSupreme Court Chief Justice would be by necessity a document (indictment) made Null and Void. (see): State V. EDwards 68 SC 31 318, 47 SE2d 394 (1904),, State V. Henderson 136 SC 363, 34 SE2364 (1962) State V. McClure 277 SC 432, 289 SE2d 158 (1982)., State V. Thunderburk 259 SC 256, 191 SE2d 520 (1972)., State V. Wheeler 259 SC 57, 193 SE2d 515 (1972)., and many more...

In the context of these rules and codes of Laws to constitute a valid indictment in a court procedure, it must have been publicly presented in open court, stating all presumed alligations with sufficiency, presenting evidence, testimony, ect. With all grand juror's present and answering to thier names, noting the prcess and voting on the indictment, then being signed and delivered by the foreman to the Clerk of court for publishing, All such actions and facts presented being recorded and entered into the Clerk of courts records for further proceedings. (see): Zuger V. State 194 GA. 285, 21 SE2d 647 (1942)., U.S. V. Jensen 76 Fed. Appx. 507, 2003: WL: 22244896. and many more...

The case at hand, Appellant states the indictment, as set forth, Will establish courts without jurisdiction of court proceedings, Where [Foreperson of grand jury] signed the [True Bill] dated May 31,2007, Thereby, committing [constructive Fraud] upon the court by signing such documents before a full panel was assemble by the general sessions on June 4,2007, and violatingthelstrictmandatediprovisionsset upbytheslegislatures opporation manual for the unified judicial system. Furthermore, Court's actions violated appellants costitutional rights to due process and/or equal protection of Law. (see): Exhibit #C., Fifth and Fourteenth Const-itutional Amendments of the United States and Article §I,3 and 11,,ofithee South Carolina Const. Amend., Gathers V. United States 413 F.2d 1061, 134 US App. D.C. 154 (1969)...

A paper purported to be an indictment, indorse as a True Bill outside of a grand jury court procedure and delivered to the Clerk of court in a courtroom when court was not in session, is not an indictment and confers

no jurisdiction on the court to try the accused.. (see): Raniger V. U.S. 172 Fed. 646, 26 L.R.A.N.S. 683, 97 C.C.A. 172 (1909). A substantial body of South Carolina Law holds that failure to comply with statutory Law of jurisdiction in nature, deprives the court of subject matter jurisdiction. (see): State V. Loftin 275 SE2d 575, (SC 1981).., Gray V. State 276 SC 634, 281 SE2d 226 (SC 1981).., State V. Ervin 333 SC 351, 510 SE2d 220 (ct. App. 1998).., and many more..

This brings us to the "Second" contention of the respondent claiming the appellant motion for Newly Discovered Evidence was untimely because the alleged evidence does not implicate the subject matter jurisdiction of the trial court and the motion was without merit because appellant's argument fail to carry his burden of proving the grand jury was not properly impaneled in pursuant to the relevant statutes. (see): Respondants Initial Brief, argument, #1..:

An indictment is a critical document in a criminal defense preparation that is grounded in constitutional and statutory principles: (see): South Carolina Const. Amend. Art. §I,11. [Presentment of indictment] and South Carolina code ann:§ 17-19-10-(2014), Quoting:[No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury]. As explained in State V. Gentry 363 SC 93, 610 SE 2d 494 (2005). If the validity and/or sufficiency standards of the indictment are challenged, it must do more than recite just basic elements of a offense charged. The indictment must contain trueful sufficient alleged alligations and evidence before a court of competent jurisdiction that is processing the document through a procedure of authority to permit accuse a fair and just opportunity to be able to prepare a defense for trial. All other modes would leave reasonable doubt as to what evidence was used for the process of the document. (see): [Per Judge Don Beatty; Quoting: With one justice concurring and one justice concurring in the result]. State V Baker 411 SC 583, 769 SE2d 860 (2015).., State V Knuckles 348 SC 593, 560 SE2d 426 (2002)...

S.C. Const. Amend. Art. §I,3 [Privileges and immunities], Quotes: The privileges and immunities of citizens under this constitution shall not be abridged, nor shall any person be deprived of life, liberty or properties without due process of Law. Nor shall any person be denied the equal protection of the Law. South Carolina Law requires presentment of a indictment to the grand jury as a condition precedent to the trial of a crime.. The accused demanding a trial, Has a right to be tried only upon a indict-

ment presented to and rule by a legal grand jury. Here, The adverse party intrugue act of illegally and unlawfully processing, where such indictment is required, deprives accused of life, liberty and property without a due process and equal protection of Law.. (see): State V. Beachum, Supra. State V. Rector 138 SC 212, 155 SE2d 385 (1930)...

The jurisdiction of a court over (Subject Matter) of a proceeding is fundamental. (see): Brown V State 343 SC 342, 540 SE2d 864 (2001), Jurisdiction: (Being the power to exercise authority over all persons and/or things within a territory). Subject Matter: (Being the [Issue] allegation presented for consideration, The thing in disput). Indict: (is to charge a [person] with a crime by formal legal process: Bespre By grand jury proceedings). Indictment: ( is a formal legal written accusation of a crime made by a Grand Jury and presented to the court for prosecution). (see): Blacks Law Dictionary, 8th edition: Therby, Subject Matter Jurisdiction of the court and the sufficiency of an indictment are two distinct concepts. (see): Evans V. State 363 SC 495, 611 SE2d 510 (2005)., Courts acquires Subject Matter Jurisdiction to hear particular cases by way of a valid indictment and through the presentment of a grand jury. The lack of evidence to show a legal process of a document (indictment) purported to be authentic with in itself does not support the validity of such in nature, failure of proper proceedings in a general jurisdiction of a court "Will be assumed" to be absent of evidence to the contrary. (see): State V. Grim 341 SC 63, 533 SE2d 329 (2000), Anderson V. State 338 SC 629, 527 SE2d 398 (2000)., State V. Dudley 354 SC 514, 581 SE2d 171 (2003)., State V. Funderburk, Supra..

Consequently, and keeping with the mandatory provisions setup for the processing of a indictment. The State had "No jurisdiction to issue" the return of a true billed indictment except during a time when the General Session court was lawfully convened to over-see a Grand Jury process. Any acts of the courts that is taken out-side of those statutory restrictions would clearly by necessity be Null and Void. Thereby, The unlawful Signing of the indictment by Grand Jury foreman on May 31, 2007, outside of the convening of grand jury on June 4, 2007, would be Null and Void and would question the moral Law requirements if the court was vested with jurisdiction and authority to present [Defendant] to the trial proceedings. (see): State V. Grim, Supra., Anderson V. State, Supra., State V. Bultron, Supra, State V. Gray 276 SC 634, 281 SE2d 226 (SC 2981), and many more...

Although, Appellant has established through relentless investigations and intrusive study, presumptive evidence of rebuttal that conclively

settels the matter of a States fraudulent actions. The information that's contain in the indictments will show the courts allowed a procedural mode by Solicitor's office that was not authorized to be utilized. The Indictment specificaly quotes: At a court of General Sessions, Convened on June 4,2007, The Grand Jury presented upon thier oath: (see): Exhibit #C. [the indictments]., Infurther note the signed purported section by the fore person of the Grand Jury was dated and stating MAY 31,2007,The prima facie evidence substantually supports appellants claim of fraudulent actions by the Solicitor's office. (see): Initial Briefs of Appellant, Exhibit #C. and Designation of Matter and all contents thereof...

In contrast, The courts of Appeals reasoned in Butron and Anderson case wer issue's are virtually identical to the case exhibited here... where actions of a Grand Jury and/or evidence did not exist with-in the court's records of Clerks office to indicate the activity proceedings of a Grand jury procedure on a specific date and/or time exist. Nor where there any signed documents [Orders] by Supreme courts Chief Justice to indicate any special terms for such actions. Thereby, Courts lack jurisdiction to process the document and would question a review by Appellate court's to find if circuit courts was vested with Subject Matter Jurisdiction soas allowing a trial procedure. This is persuasive enough to request court's for a remand of the case for a judicial hearing so as to determine whether such documents was True Billed and processed under a legal and lawful action by Solicitors office and Grand Jury foreperson. (see): State V. Bultron, Supra, Anderson V. State, Supra., State V. Grim, Supra., and many more...

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"IN CONCLUSION"

**THEREBY, For all the reasons stated herein above,** The Appellant would respectfully request this Honorable court to please find a conclusion of Trial courts error in the ruling of denial on the **Motion for Newly Discovered Evidence** and find merit in the appellant's claim, Granting this application to vacate the conviction and sentencing as a matter of Law..

  
Johnnie Lee Jones, SCDC # 340271.