

IN THE COURT OF APPEALS
FOR THE STATE OF SOUTH CAROLINA

APPEAL FROM LEE COUNTY
COURT OF GENERAL SESSIONS
THE HONORABLE R. F. COTHREN, JR.
THIRD JUDICIAL CIRCUIT JUDGE

APPELLATE NUMBER 2019-969

RECEIVED

SEP 09 2019

SC Court of Appeals

The State,

Respondent,

v.

Kevin E. Herrriott,

Appellant.

SUPPLEMENTAL BRIEF

page 1 of 35.

Kevin E. Herrriott, #313862
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Bishopville, South Carolina 29010

LEGAL
[Signature]
HERRIOTT-313862

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EXHIBIT (D)

ISSUES

- 1) Did the trial judge err in denying Defendants Motion To Quash Indictments?
- 2) Did the Circuit Court lacked Subject-Matter Jurisdiction?
- 3) Did the Circuit Court gained Subject-Matter Jurisdiction to judicially decide the Defendants innocence or guilt?
- 4) Was the Defendant deprived of Sixth Amendment, to be informed of the nature and cause of the accusation with specificity?
- 5) Was the Defendant deprived of a(n) substantive and/or procedural rights after he had challenged the legality and sufficiency of the process of the State and/or County Grand Jury?
- 6) Did the Circuit Courts err in the denial of Defendants Motion for (an) directed verdict prejudicial to the Defendants legal rights that was protected for the Defendant to exercise therein?
- 7) Whether the evidence is sufficient to withstand a directed verdict motion when the State relies upon inadmissible evidence?
- 8) Did Circuit Court cured former Counsel Thompson Kinney of the Defendant defenses after relieving him of his duties when the Defendant was still suffering from?

9) Did trial counsel, Mr. Timothy L. Griffith of the Defendant abandoned Defendant's defense of duress?

The Appellant Kevin E. Herriott brings this Supplemental Brief before this Court ACCORD SCACR Rule 227 (g)(1). The Appellant submits a separate brief addressing each direct appeal issue intended to be raised.

The Appellant (Herriott) submits that on or before January 11, 2019 and again on or before February 14, 2019 Appellant Herriott had submitted several Motions to Quash Indictments in the Third (3rd) Judicial Circuit during the critical stages awaiting trial by a(n) impartial jury and tribunal. Pursuant to SCRPC Rule 12(b), during the time of receiving discoveries Accord Rule 5 SCRCm.P., the Appellant Herriott admits he was presented a(n) indictment document that consisted of three separate charging offenses of one count each that entailed a(n) summary of South Carolina Code of laws among brief descriptions of each charging offenses absent Affidavits.

The Appellant Herriott submits that in recognition of the indictment single sheet document that he held, the Appellant Herriott, identify that the instrument were faulty on its face and bad; therefore, the Appellant Herriott challenged the propriety of the accusation, the manner in which it has been presented and the source from which it proceeds. Accord State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005). However, the initial indictment once presented were not the official charging document for it was an altered sheet that were missing slots of the witness of whom appeared at the convening of the Grand Jury, the Action of the Grand Jury, and the true bill stamp of a seal along with the missing signature of the foreperson of the Grand Jury. (see attach)

The Appellant Herriott had objected to the invalid and illegal indictments and was heard upon on June 04, 2019, after timely submitting a(n) Motion to Quash Indictments and a(n) Directed Verdict before the jury was sworn. The Appellant Herriott, then raised ground of the (14th) Fourteenth and (5th) Amendment of the United

States Constitution, an substantive and procedural right he was entitled to in which the Appellant Herriott invoked to enforce the law of a(n) constitutional protected right.

Trial Judge, the Honorable R. Ferrell Coltran, Jr., denied the Motion to Quash Indictments on the basis of secrecy of the Grand Jury unreasonably ruling Contrary to the State v. Evans, 363 S.C. 495, 611 S.E. 2d 510, "The secrecy provisions applicable to a particular case are relaxed after an indictment has been issued by the State grand jury." "Upon grant of Writ, the Supreme Court, Burnett, J., held that, grand jury impanelment documents may be released to a defendant prior to trial upon timely request or to an applicant in a PCR proceeding; *ibid*, 611 S.E. 2d 510. The Appellant Herriott standing is there were no issuance of indictments by the State Grand Jury; Once objecting to the Faulty documents on its face, he had demanded that a grand jury who are properly established and constituted under law consider the criminal allegations [redacted] and was denied; that caused actual injury being deprived of fairness as well as justice. For the interest sought to have the Appellant case adjudicated by deliberation and vote was protected within the zone of interests in which meant to be regulated by the statutory or constitutional guarantee in question.

Nonetheless, in Gentry, turning to the earlier view that an indictment is a "notice document", albeit one required by the State of South Carolina Constitutions and Statutes; see S.C. CONST. Art. 1811; specifically states, "No person shall be held to answer for any crime the jurisdiction over which is not within the Magistrate's Court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed..." "This required notice is a component of the due process that is accorded every criminal defendant. Evans, *supra*, 363 S.C. 495; see also S.C. CONST. Art. I §3; specifically states, "The privileges and immunities of citizens of this State and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In Gentry, the primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., (that is) to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit to know what judgment to pronounce if the defendant is convicted. The Appellant asserts that how could the judge of the circuit know what judgment to pronounce when the instruments that were before the circuit was invalid and illegal, thus, this sentence is invalid and illegal.

However, pursuant to S.C. Statute § 17-19-10, states, "No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury..." The Appellant submits that he had attempted to cure the deficiencies that were so defective that it deprived the Circuit Court of jurisdiction to hear and determine the case on the subject-matter. The Appellant contends that during the motion hearing the factual challenge were the non-summoning of the grand jury, the grand jury was not selected, there were no drawing of the grand jury; therefore, the Circuit Court lacked subject-matter jurisdiction. The Appellant further contends that he had entitlement to protected rights and was deprived of his protected federal rights in respect to the U.S. Constitution.

In keeping with the approach in Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), the Justices concluded, 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 Motion attach) "In a direct appeal, the focus is generally upon the propriety of rulings made by the circuit court in response to a party's motions or objections." Al-Shabazz v. State, 527 S.E.2d 792, 797 (S.C. 2000). see Also, S.C. Code Ann. § 14-7-1140 (Supp. 2003) (in statute which has been found to apply to petit and grand juries, "no irregularity... in the drawing, summoning, returning, or impaneling of jurors is sufficient to set aside verdict, unless the party making the objection was injured by the irregularity or unless the objection

is made before the returning of the verdict.

In this case, *The State v. Kevin E. Herriott*, the Appellant did challenge the veracity of the indictments and not being put on specific notice to what he was called/or summons to answer to. On the face of the initial presentment of charging offenses that were on an illegal and invalid document, the Appellant received a true copy of a(n) original indictment document after the trial proceeding once the judge pronounced the sentence and it was handed down by the Clerk of Court, yet these acts constituted a(n) conflicting unreasonable ruling during the Motion Hearing because absent specific notice deprived the Appellant of fairness and due process.

In Accordance to *McKane v. Dunston*, 153 U.S. 684, 687, 14 S.Ct. 913, 914, 38 L.Ed 867 (1894), the Supreme Court has held that if a State has created appellate courts as "an integral part of the... system for finality adjudicating the guilt or innocence of a defendant," *Griffin v. Illinois*, 351 U.S., at 18 [76 S.Ct. at 590], the procedures used in deciding appeals must comport with the Demands of the Due process and Equal protections. As a(n) result, this extends to "critical stages" in respect to Post-Indictments and the "procedures of service for process" an indictment to which "the grand jury is a central component of the criminal justice process" *Campbell v. Louisiana*, 523 U.S. 392, 398, 118 S.Ct. 1419, 1423, 140 L.Ed. 2d 551, 559 (1998).

The Appellant assertions are that the State has contrived a conviction through the pretense of a trial which in truth is used as a means of depriving him of liberty through a deliberated deception of the tribunal and impartial jury upon presentment of indictments known to be faulty on its face, yet denied the Appellant of an fundamental right. For the Judicial System of the administration of justice suffers when any accused is treated unfairly. When such a contrivance by the State to obtain the conviction and imprisonment of the accused is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by wrongful acts,

should be rectified.

Dallin H. Oaks has observed, "I am criticizing, not our concern with procedures, but our preoccupation, in which we may lose sight of the fact that our procedures are not the ultimate goals of our legal system. Our goals are truth and justice, and procedures are but means to these ends..." "Truth and justice, are ultimate values, so understood by our people, and the law, and the legal profession will not be worthy of public respect and loyalty if we allow the legal attention to be diverted from these goals." *Ethics, Morality, and Professional Responsibility*, 1975 B.V. U.L. Rev. 591, 596 (emphasis added)

The Appellant submits, therefore, in identifying legal governing principles in respect to precedents of the Appellant's federal rights, see Fed. R. Crim. P. Rule 7(a)(1) An offense (felony) must be prosecuted by an indictment; Rule 7(a)(1)(B) by imprisonment for more than one year. (C) Information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. See Also, Fed. R. Crim. P. Rule 6(b)(1) Objection to the Grand Jury or to a Grand Juror challenges either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

When a defendant timely moves to quash an indictment on grounds of the illegally process of indictments, yet it is issued by the prosecution implicates an issue of subject matter jurisdiction that may be raised at any time. See 5 S.C. Jur. Abatement, Revival, and Survival of Actions § 5; Under the Rules of Civil Procedure, a defense of lack of jurisdiction over the subject matter of a case is asserted in a Rule 12(b)(1) motion. "One who demands and is refused the right to be tried for a crime charge 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," in violation of S.C. Const. Art. V § 22; see Evans, supra, 611 S.E. 2d 510.

Turning Now to Subject-Matter Jurisdiction, the Appellant raises the ground that his Fourteenth Amendment, due process and equal protection of laws clauses to the U.S. CONST., and Sixth Amendment, specific notice clauses, to the U.S. Const., rights have been violated. Assuming arguendo, the Lee County Court of General Sessions did not have the subject-matter jurisdiction to pronounce judgment to arrest warrants numbers 2018A3110100194, 2018A3110100195 to which are offenses of Attempted-Arm Robbery and Inmate carrying a Weapon.

The initial presentment of indictments to which Appellant's trial verdict pronounced guilty states, the indictments were presented before a Lee County Court of General Sessions grand jury that convened on August 30, 2018 and was not true billed nor were there any space provided for such action to be determined. (see attach). This indictment list several offenses that were presented to the grand jury and upon oath decided, deliberated, and voted on.

In Accordance to S.C. Code Ann. § 14-5-640(2), Lee County, "Terms of Court in the Third Judicial Circuit" (See attach. Court Calendar) states, "The court of general sessions for Lee County shall be held at Bishopville, No Jury Trials at the summer term of the court of general sessions unless a majority of the Lee County Bar Association deems it advisable and notifies the Judge of the Circuit..." For there was no court in August of 2018 and that the indictments to which the trial verdict returned guilty are constitutionally and statutorily, illegal and invalid. Thus, the Lee County Court of General Sessions did not have the subject-matter jurisdiction to accept and/or upheld the verdict to those indictments for the Circuit Court act were void.

As Justice, former, Honorable Jean W. Toal, noted in Curtis v. State,

345 S.C. 557, 549 S.E.2d 591 (2001), [a] law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application. . . . One to whose conduct that clearly applies does not have standing to challenge it for vagueness. A statute is not unconstitutionally vague if a person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of the conduct the Statute makes criminal. *Johnson v. Collins Entertainment Co. Inc.*, 349 S.C. 613, 564 S.E.2d 653 (2002) The Established Test for vagueness is whether the Statute provides "fair notice to those to whom the law applies. *Main v. Thomason*, 342 S.C. 79, 92, 532 S.E.2d 918, 925 (2000). "Consider the ordinary commonsense meaning of the words" *U.S. v. Dauray*, 215 F.3d 257, 260 (2d Cir. 2000). Moreover, "a statute is to be considered in all its parts when construing any one of them. If, and only if, the statutory text is ambiguous should the Court turn to the legislative history to ascertain Congress's intent.

The S.C. Supreme Court has held that "subject-matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Gentry, supra*, 610 S.E.2d 494 (2005); see Also, *Thompson v. Warden Perry Correctional Institution*, 2007 WL 2579570 (S.C.D.C., September 04, 2007) (The criminal jurisdiction of the circuit court in South Carolina is established by Article V § 11, 15 S.C. CONST ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases".))

However, the Circuit Court gains subject-matter jurisdiction in a criminal case in one of three ways: (1) the grand jury true bills an indictment which sufficiently states the offense; (2) the defendant waives presentment in writing; or (3) the offense is a(n) lesser-included-offense of a crime adequately charged in a true bill of indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003).

The Appellant warns this Court that he did not waive presentment in writing

nor verbally. For the indictments were fundamentally defective and the variance of the indictments were differential of the presentation of the evidence proffer by the State's prosecution who did not prove beyond a(n) reasonable doubt the elements in the indictments. Furthermore, the Appellant contends that Due Process of law encompasses all rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice. See SCRE Rule 102, discussion, §1.2

Nevertheless, "A defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged." *State v. McHoney*, 344 S.C. 85, 97, 544 S.E. 2d 30, 36 (2001). In deciding whether the Circuit Court erred in denying a motion for a directed verdict, the appellate court must view the evidence in the light most favorable to the State; see *State v. Hudson*, 277 S.C. 200, 201, 284 S.E. 2d 723, 774 (1981). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the court must find the case was properly submitted to the jury. *State v. Curtis*, 356 S.C. 622, 591 S.E. 2d 600 (2004).

The Appellant argues that the Circuit Court erred in denial of a(n) Motion for a directed verdict because the state failed to show that his physical acts constituted a crime in which the Appellant contends a crime never occurred.

In Accordance to 21 A.M. Jur. 2d Criminal Law §176, a "defense" is a(n) set of identifiable conditions or circumstances that may prevent conviction for an offense. A "defense" typically negates or raises a reasonable doubt about an element of the offense, whereas a defendant relying on a "legal excuse" admits all the elements of the crime, but argues that the defendant acted under extenuating circumstances that the law recognizes as excusing the wrongful conduct or requiring that conviction and punishment be withheld.

The crux of the Appellant's contention is that while his flight demonstrates that he is not fleeing being that a crime was alleged, but he had staged the encountered

incident between Prison Official Lieutenant Lucky a(n) former Sergeant and Appellant Herriott to preserve himself from further irreparable harm that was intended to be inflicted upon his persons. Given the cumulative evidence that was proven and uncontested of the probative fact, the Appellant was under duress prior to the arrival of Lee Correctional Officers that were dispatched to the Appellant's Herriott cell 1110A of dormitory F3 by warning of the Appellant's Herriott Mother who called the Administration (ADM) Building at Lee Corrections clearly establishes corroborative evidence that's substantive to confirm the state of mind of the Appellant.

LAW

The rule of duress is that the doing of a prohibited act is not a crime if reasonably believed to be necessary to save from death or great bodily injury. When a defendant is under duress i.e., any wrongful act or threat which overcomes the free will of a party constitutes duress. This simple statement of the law conceals a number of questions, particularly as to the meaning of "free will" and "wrongful." Duress is defined as a threat of harm made to compel a person to do something against his or her will or judgment; especially, a wrongful threat made by one transaction without real volition.

The Appellant demonstrates that he was not a participant in the April 15, 2018 "Deadly Riot" and approximately three weeks to the date of the incident in question, he was not a(n) directed target during the course of the riot. For the Appellant had nothing to do with what transpired; however, upon intercepting a text message from his cell phone to which was on the night of May 10th, 2018, from the read of the text the Appellant perceived he would have received and/or sustain life threatening injuries. (see Trial Transcript)

¹ read as "cell-mate's phone"

LEGAL MAIL ONLY

In showing relevancy, the Appellant recalls the beating in the cell vents while the Appellant was confronting his cell mate combined with accompanying threats "you next" "doors open you next" goes to the external pressure compelling the Appellant to do something against his will and/or better judgment to involving his mother to preserve his life by terminology "checking-out".

These factors once assess, led to the Appellant decision-making not to commit a crime, but to cause a disturbance in which not to leave an perception or look like what he was portrayed as a "jailhouse snitch". The Courts know and understand very well that the Stereotype of a(n) informant comes with brute consequences even the likelihood a(n) informant is face with death. For the State's prosecution did not contend nor refute with the Appellant in this stead during the flight upon leaving the dormitory due to the above consequences that the law protects an inmate from *Sweets vs. SCDC*, 529 F.2d 854 (1975) Prison authorities have responsibility for taking all precautions and reasonable steps to protect inmates from and/or against assaults. *Woodhouse v. Common Wealth of Virginia*, 487 F.2d 889 (1973), It is well settled that Prisoners has constitutional rights to be reasonably protected from constant threat of violence. For eleven inmates died and (22) twenty-two plus inmates were injured in the riot.

The Appellant submits that Solicitor Mr. Gentry could not prove mens rea nor actus reus. For actus reus is essential to crime, but is not sufficient for the purpose without the necessary mens rea, just as mens rea is essential to crime, but is insufficient without the necessary actus reus.

Moreover, in reference to the incident itself was not the intent of the Appellant to disarm Prison Official Lieutenant Lucky, Under the Model Penal Code Black's Law Dictionary eleven edition 2019, states, "An attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for, or following the intended victim or unlawfully entering a building where a crime is expected to be committed.

LEGAL MAIL ONLY

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In respect to S.C. Code of Laws, §16-11-330(B), Attempted-Arm robbery, the Appellant Herrriott asserts that he did follow Lieutenant Lucky up until a certain point which was the Appellant who had stopped pursuing Lt. Lucky that ended at the Officers Station's desk located in the middle of the Aving rock area. Lieutenant Lucky ran from the desk area out the Aving entrance into the hallway of F3. Lt. Lucky, once had exited, collapsed onto the floor on his own without anybody pursuing, chasing, nor following after him. The Appellant only went to see what the loud crashing sound was only then seeing Lt. Lucky on the floor propped at an angle with his hand clutching the mace trigger as if to squeeze. At this time, the Appellant decide to reach for the canister he (Lt. Lucky) was holding only to get maced. The purpose the Appellant asserts was to make it look like the Appellant was non-complying with the institutional rules and regulation to initiate a(n) separation between Lee Correctional Officers and housed inmates on F3 West Yard.

Additionally, the officer was not hurt, nor pushed from what he (Lt. Lucky) asserted at trial, yet when making a statement twice there's no mentioning of him being assaulted. (see attach) Once, Lt. Lucky made an incident report that did not include specifically what happened upon ^{his} arrival to the Appellant exiting the F3 Dormitory. The second, Lt. Lucky made an official voluntary statement and still did not included being assaulted which was eight (8) days later of the incident on May 10, 2018. The failure to show proof of injury goes to the relevancy of the surveillance cameras. However, the angle of the camera(s) in which were one¹ that the State proffer actually was prejudicial to the Appellant ultimately depriving the Appellant of fairness to² have the entirety of the footage determined or weighed by an impartial jury. see SCRE Rule 103(a)(2), "The appealing party has the burden of making a sufficient record for the appellate court to determine whether the exclusion of evidence was prejudicial."

¹ "one of eight" (-add)

² add "not", read as "to not have"

In Accordance to SCRE 106, see discussion §2.8(A), State v. Peay, 321 S.C. 405, 468 S.E. 2d 669 (Ct. App. 1996), "its not an error to not disclose the full video surveillance absent request." For the Appellant made the proper request timely Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, L.E. 2d 215, full disclosure is exculpatory material. see Also, State v. Bell, 302 S.C. 18, 393 S.E. 2d 364 (1990) (to reverse a case based upon erroneous exclusion of evidence, error and prejudice must be shown).

The Appellant submits that the suppressed angles of what the surveillance cameras really observed and the non-disclosure of the content had undermined the confidence of the outcome of the trial's verdict because the burden was initially on the state to prove beyond an reasonable doubt. Looking at the principles to these ends to get to the truth must not be violated when the Appellant requested for exculpatory and impeaching evidence. By not disclosing to the defense this footage in questions amounts to an due process violation.

The Appellant asserts that the substantial circumstantial evidence that was proffered by the State were unreasonably tending to prove the guilt of the Appellant because the state did not have in evidence the said knife that the camera displayed. The video footage was the state's case because aside from the inadmissibility of the surveillance footage the state's contentions would be barred to introduce a(n) viable theory to negate the Appellant's defense of duress and self-preservation.

The Appellant admits that was his first time during the course of the trial proceeding actually watching the video surveillance who, then, informed his trial counsel that there are more angles that ought to have been sought to bring out the whole matter pointing out relevancy and Not the effect it would have on the jury.

The observation of the camera once disclose when have an 5 year span [to be] discarded, would have shown that the prison officials came to cell 1110A of the Appellant and his cellmate² engaged in a knife fight while their conduct were laughs at the ongoing encounter as if to encourage the unnecessary wantonness infliction of

¹ read as, "until, [to be] discarded"

² read as, "who were engaged"

pair between the Appellant and cell-mate. It would have shown that the Appellant escaped the cell and the prison officials backed up while not being touched. It would have showed that the officers drawn their chemical munitions to spray the Appellant. Outside of a(n) riot situation the canisters the two prison officials had possessed are prohibited as to why when the Appellant was in his cell prison officials did not administer the munitions.

Nevertheless, the Appellant asserts the cameras would have shown that the Appellant did not intend to use the knife in his hand because before reaching for the canister the Appellant made an gesture turning the sharp point of the ice-pic inward which was then pointing at the Appellant to prevent striking Lieutenant Laiky. The above facts were not established at trial absent the surveillance video footages of the eight cameras to which prejudice the Appellant of a fair trial proceeding that the Appellant had chose to exercise his Sixth Amendment rights therein.

The evidence was not sufficient to withstand the directed verdict that were proper due to the trial court were unaware of Appellant's living conditions prior to trial, (see 6:19-cv-626-DCW-KFM; 6:19-cv-750-DCW-KFM; 6:19-cv-751-DCW-KFM) outside the control of the Appellant, who in turn put on notice former Public Defender E Thompson Kinney, the former counsel of Appellant before being relieved by Court Order for several reasons discussed further below. Mainly, though former Counsel Mr Kinney was substituted for refusing to take information that was relevant to oppose the trial verdict and the fact that prison officials was denying the Appellant protective custody until the trial was over is probative to the sufficiency of evidence that the directed verdict was unreasonably ruled upon.

In respect to the procedural protections from the outset of the summoned Magistrate Court to gain personal Jurisdiction over the Appellant were due to former Counsel Mr. Kinney 20/20 hindsight in waiving two (2) faulty arrest warrants that

were not sufficient process for service. The Two Arrest Warrants: 2018 AS110100194, 2018 AS110100195, were waived by Counsel Kinney at the preliminary hearing. The Appellant Herriott did not give Counsel Kinney the consent to proceed in this manner because proper service (unless waived) is a prerequisite to the courts exercising Personal Jurisdiction over the defendant. (see Attach) Accord 1 S.C. Litigation Forms And Analysis §10:13. SC ADC 12-608.8. Arrest Warrants to say that service of process is insufficient means, that, although the summons is not defective it was not served in the manner required by law. see § 36-2-803(A)(2) Joined with a defense of lack of Personal Jurisdiction, since proper service (unless waived) is a prerequisite to the courts exercising Personal Jurisdiction over the defendant.

The Appellant contends that as a result of this error even though Counsel Kinney was substituted this procedure deprived Appellant Herriott of his due process that the Magistrate Court, thus gained jurisdiction binding over to general sessions court. Pursuant to S.C. CONST. Art. I §11, specifically states, "No person shall be held to answer for any crime the jurisdiction over which is not within the Magistrate Court..." For the Magistrate Court asked Counsel Kinney do he objects to the arrest warrants' made an decision without never meeting with the Appellant prior to nor asking the Appellant before the decision was made constitutes questions of overreaching by surrogate. see Florida v. Nixon, 543 U.S. 175, 187 (2004), "certain decisions regarding the waiver of basic trial rights cannot be made for the defendant by surrogate." This outlook in view, the Appellant asserts have real content in waiving personal jurisdiction of the Appellant. is solely up to the defendant. For the Sixth Amendment is brought into proper perspective when the role of the Counsel is for advice for the defense.

The invalid warrants was challenged in the Motion to Quash Indictments that (see attach) stem from the arrest warrants that prevents that Magistrate Court to act if the procedure was not permitted. This, then, calls for the Appellate Court to decide in finality to dissent. The Preliminary Hearing Transcript was not preserved due to the Appellant mailing interferences. see 6:19

¹ add "he, then"

² add "The decision" read as The decision should be and is....

-cu- 750-DCN-KFM for the Appellant is the Plaintiff in Action and did write to have the preim transcript, but was not afforded the privilege when he was entitled to by law.

The Appellant properly raised the ground in the general sessions court but was not adjudicated upon. The hearing consisted of the indictments and Brady Material. The Appellant has standing due to the process of the Arrest Warrants in Magistrate Court was challenged and the Appellant informed Counsel Kinsey who responded to the Appellant saying to Appellant Herriott "that his claims are moot." For the arrest warrant were not certify and the documents were not legal binding and, therefore illegal and invalid. This, then, rendered an unfair procedure that was in place to protect the Appellant to ensure fairness. The interest sought to have the Appellant case adjudicated by proper service and not through the intent of illegally obtaining personal jurisdiction who was protected within the zone of interests in which meant to be regulated by the above-named Statutory or constitutional guarantee in question.

Lastly, taking the weight of all these facts that has been introduce through either objections and motions before the Circuit Court, the Appellant asserts that trial counsel Mr. Timothy Griffith had abandoned his defense of duress because the trial judge did not instruct the jury of jury instructions of duress nor of the right of self-preservation that was a part of the record in part or in whole and/or could reasonably could be drawn from logical interferences whereas Mr. Griffith omissions led to Trial Court ruling contrary to the 'withstanding of Trial Verdict.

Conclusion

add "insufficiency"

The Appellant Herriott ask that his sentence be vacated upon the merits of the Supplemental Brief once adjudicated judicially upon. The Appellant Herriott ask that these issues that were raised be considered, weighed, and fairly decided upon.

WHEREFORE, the Appellant ask that this Honorable Court grant relief according to the Appellant's request and to have sought for this Supplemental Brief to be reviewed, and ruled upon.

Respectfully Submitted,

K. Herriott
Kevin E. Herriott, # 313862
Pro Se Litigant.

Certificate of Service

I, Kevin E. Herriott, pro se, do hereby, certify that on this ___ day of September, 2019, has served the foregoing "Supplemental Brief" upon Clerk's Office at S.C. Court of Appeals, Box 11629, 1015 Sumter Street, Columbia, SC 29211, by depositing a(n) true copy of the same in the U.S. Mail, Pre-Paid Postage.

Date September 01, 2019

cc || FILED

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LEGAL MAIL ONLY

EXHIBIT D

THE STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF GENERAL SESSION
FOR THE THIRD CIRCUIT

Kevin E. Herrriott, # 313862
Defendant.

Case No. (s):

2018A3110100194; 2018A3110100195;
2018DIR 310018

Motion to Quash Indictment(s)

&
Directed Verdict SCRPC
RULE 12(b)
(1), (3), (4),
(5)

v.
The State of South Carolina

This motion to Quash Indictment(s) & ^{The moves} movant¹ to An Directed Verdict Pursuant to Rule 12(b)(1)(3) ^{which} comes before this Court because the defendant has sought to 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} South Carolina Code Annotations §14-7-1140.

The defendant above-named challenge whether the trial court has the Power to hear a case and/or whether the indictment is sufficient. The defendant questions the Propriety of the accusation, the manner in which it has been Presented, and the source from which it Proceeds. Accord Gentry v. State 363 S.C. 93, 610 S.E. 2d. 494 (2005). When a defendant timely moves to quash indictment(s) on grounds such as those furthered explain above, the Circuit court must determine whether the defendant's constitutional (right to have the criminal allegations against him weighed by a Properly constituted grand jury has been violated.

The named defendant asserts that he was Presented a(n) Presentment Summary^{of} indictment(s) that list, 2018A3110100194; 2018A3110100195; 2018DIR 310018 absent the affidavits not explaining what the defendant is call upon to answer. In, Gentry, an indictment is a(n) "notice document," albeit

one required by our state constitution and statutes. ^{see} South Carolina Constitution Article 1 §11; No Person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the Land or naval forces or in the militia when in actual service in time of war or Public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including Procedure, as the General Assembly may provide.

However,

On the first week of September, 2018 The defendant asserts that Counsel of record, E. Thomson Kinney, Esquire, of the Clarendon Lee County Public Defender Office did, in fact, at the very outset of the Preliminary Hearing waived two arrest warrants: 2018 AB 110100194; 2018 AB 110100195 in which were not sufficient [] Process nor service for issuing that gave the Magistrate Court [] to exercise Personal Jurisdiction over the defendant. The defendant objects; due to Proper service (unless waived) is a prerequisite to the Court's exercising Personal Jurisdiction over the defendant. Accord 1 S.C. Litig. Forms & Analysis § 10:13. SC ADC 12-602.8. Arrest Warrants To say that service of Process is insufficient means that, although the summons is not defective, it was not served in the manner required by Law see § 36-2-803(A)(2) joined with a defense of lack of Personal Jurisdiction. Since Proper service (unless waived) is a prerequisite to the Court's exercising Personal Jurisdiction over the defendant. Pursuant to § 37-1-203(1) Jurisdiction & Service of Process. In addition, to any other method provided by statute, personal jurisdiction may be acquired in a civil action or proceeding instituted in a court by the service of Process in the manner provided by this section. In accordance to Rule 12(b)(4)(5) S.C. R R P Rule 12. For the arrest warrants were not certified to be serviced, ^{the defendant} yet was brought to court to answer to its tribunal lacking Jurisdiction.

Page 2 of 5

↓ read as a service of process nor issuing that gave the ...
for

LEGAL

HERRIOTT-313862

For the arrest warrants were not certified being faulty on its face which allowed the Magistrate Court to entertain jurisdiction to rule in the manner finding Probable Cause on accounts of erroneous Perjured testimony by the state when Counsel Kinney ineffectively did not object. By the agent's testimony allowed another warrant to be heard that was neither Proper service nor Presented until after the hearing several weeks later; Warrant No. 2018DIR310018. All charges or offense(s) were binded over without due Process that's accorded every criminal defendant. S.C. CONST Art. 1 § 3 The Privileges and immunities of citizens of this state and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

S.C. CONST Art. V § 11, The Circuit shall be a general trial Court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. On January 07, 2019 ^{assembly the} I was held to answer from allegations Counsel E Thomson Kinney asked the judge to have [me] evaluated for a(n) competency assessment to see whether [I] am or not able to stand trial. I did not request for the evaluation and do not agree with the course of action sought. Nevertheless, on the said indictment(s) stated, "that the grand jury convened on August 31, ^{2nd} 2018", but the date(s) are outside the terms of Court in which the grand jury convened. The date(s) on the said indictments are outside the scope and the intent of the Legislature. The date(s) on the said indictment is not within S.C. Code Ann. § 14-5-640.2) Lee County. For no court was held in the month of August, 2018. ^{see} S.C. Code Ann. § 17-19-10. No person shall be held to answer for an alleged crime or offense in any court unless upon indictment by a grand jury, except in the following cases:

- 1) when a Prosecution by information is expressly authorized by statute;
- 2) in a Proceedings(s) before a Police Court or Magistrate; and
- 3) in Proceedings before courts Martial.

The defendant do not waive Presentment in writing nor verbally as in verbatim. The defendant received his initial Rule 5 SCRCrimP and ^{The state} has failed to produce evidence to both support the affidavit and indictment(s). This required "notice document" is a component of the due Process. "One who demands and is refused the right to be tried for a 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" in violation of S.C. CONST Art. 1 § 3. Pursuant to Evans v. State, 363 S.C. 495, 611 S.E.2d 510. ^{see Also,} Section 1 of The Fourteenth (14) Amendment to the Constitution of the United States is as follows:

"All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the Privileges or Immunities of citizens of the United States; nor shall any state deprive any Person of life, liberty or Property without due Process of law; nor deny to any Person within its jurisdiction the equal Protection of the Laws."

Nonetheless, being that the convened date(s) on the said Presentment ^{indictment} form were outside the statute and scope of the legislature's intent resulted in making the indictment(s) not legal binding documents. And in any Proceedings that derived from it is, too, invalid also illegal. Pursuant to Main v. Thomason, 342 S.C. 79, 92, 535 S.E. 2d 918, 925 (2000) "The Established Test for vagueness is whether the statute Provides "fair notice to those to whom the law applies." Accord Johnson v. Collins Entertainment Co. Inc. 349 S.C. 613, 564 S.E.2d 653 (2002) A statute is not unconstitutionally vague if a Person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of the conduct the statute makes criminal.

Moreover, turning to South Carolina Jurisprudence, The Supreme Court has held that subject-matter jurisdiction is the Power of a Court to hear and determine cases of the general class to which the Proceedings in question belong. Pierce v. State, 338 S.C. 139, 526 S.E.2d 222 (2000); and that issues related to subject-matter jurisdiction may be raised at any time. Accord 5 S.C. S.M. Abatement, Revival, and Survival of Actions. The subject-matter jurisdiction of a court derives

LEGAL

From either the constitution or the laws of the state and it cannot be conferred by consent.

① American Agric. Chem. Co. v. Thomas, 206 S.C. 355, 34 S.E. 2d 592 (1945)

Lack of subject-matter jurisdiction cannot be waived. Therefore, a party may object to the court's lack of subject-matter jurisdiction at any time.²

② Id., 34 S.E. 2d 592

Under the Rules of Civil Procedure, a defense of lack of jurisdiction over the subject matter of a case is asserted in a Rule 12 (b) (1) motion.³

③ S.C.R.C.P. Rule 12(b)(1)

As was true under earlier law, this defense may not be waived and can be asserted at any time.⁴

④ S.C.R.C.P. Rule 12(b)(3).

In this case, counsel E. Thompson Kinney stated, "that my point in argument is moot being that I was ^{already} indicted." This motion is being entered, before, the twelve (12) jurors and two (2) alternate jurors ~~are~~ sworn. The defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Curtis 356 S.C. 622, 591 S.E. 2d 600 (2004). The defendant ask that

this Court take notice based upon the aforementioned. However, in order for the circuit court to gain subject-matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives Presentment, or the offense(s) is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E. 2d 717, 719 (2003) citing Brown v. State 343 S.C. 342, 540 S.E. 2d 846 (2001).

WHEREFORE, this motion is to be sought, reviewed, and ruled before this Court.

Respectfully Submitted,

CERTIFICATE OF SERVICE

I, Kevin E. Herrriott, do hereby certify that on this 11 day of January, ~~2018~~ (2019) I had served a(n) motion to Quash Indictments and Directed Verdict upon all Parties to this action by depositing a true copy of the same in the United States Mail:

Cheryl R. Lucas, Notary
Commission Expires
12/25/15
LEGAL -
HERRIOTT-313862

c.c.: E. Thompson Kinney, Esquire Page 5 of 5

Wherefore based on the above mentioned, this motion is to be sought reviewed and ruled before this Court.

Respectfully Submitted,

CERTIFICATE OF SERVICE

I, Kevin E. Herrriott, do hereby certify that on this 11 day of January 2019 I had served a(n) motion to Quash Indictments, Directed Verdict, Leave To Withdraw And/or Substitution of Counsel upon all parties to this action by depositing a true copy of the same in the United States Mail:

The Lee County Courthouse,
123 South Main Street
Bishopville, SC 29010

Date:
February 14, 2019 sent

Cheyl R. Field
Notary
Commission Expires
Jan 27, 2025

cc: E. Thompson Kinney, Estate

IMPORTANT INFORMATION

No Jury trials at the summer term of the Court of General Sessions unless a majority of the ~~Lee~~ ^{Council Bar Ass. deems advisable and so notifies the Judge of the Circuit}

LEE COUNTY TERMS OF COURT:

S.C. Code Ann. § 14-5-640 Section (2)
First Monday after the first Monday for a week

June 4, 2018 through June 8, 2018 - Second Monday in June
July 9, 2018 through July 13, 2018
August 2018 - None Scheduled
September 4, 2018 through September 7, 2018 - ^{General Sessions}
October 2018 - None Scheduled
November 2018 - None Scheduled
December 3, 2018 through December 7, 2018

When you attend your Initial Appearance, as listed on your bond paperwork, you will be given a Second Appearance notice. Please be advised that this office will not call you concerning your court appearances. **It is your responsibility to keep up with your court dates.** If you are unsure of your appearance dates, it is suggested you simply attend on the above dates at 8:30 AM. If you are not in court when required the Solicitor's office may issue a bench warrant for your arrest, per our Administrative Judge these failure to appear bench warrants **will not** be lifted.

Also, keep in mind when you come to court you must be dressed appropriately; no shorts, cut-off jeans, no flip-flops or open toed shoes, no slacks or trousers with holes, no tank tops, no halter tops, no see-through blouses or tops that expose a bare midriff are permitted. T-shirts must not contain vulgar, profane or inflammatory slogans or pictures. Also, please leave all cell phones in your vehicle; they are not permitted in the court room. Do not ask this office to hold your phone either because we will not. Do not bring babies and/or young children to court with you. They are not allowed in the courtroom. Bailiffs will be required to enforce these rules; not being allowed to enter the courtroom due to one of the above items **will not** excuse you from court, the Judge will proceed in your absence.

DO NOT DISCARD THIS INFORMATION.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

INDICTMENT FOR

Assault / Assault & Battery of a High & Aggravated Nature

At a Court of General Sessions, convened on August 30, 2018 the Grand Jurors of
LEE County present upon their oath:

COUNT ONE

That Kevin Herriott did in Lee County on or about May 10, 2018, violate Section 16-3-600(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully injure another person, to wit: Edward Luckey and great bodily injury to Edward Luckey resulted or the act was accomplished by means likely to produce death or great bodily injury.

COUNT TWO

ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

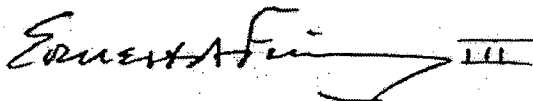
That Kevin Herriott did, along with co-defendants in Lee County on or about May 10, 2018, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Edward Luckey with intent to deprive him of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT THREE

That in Lee County, South Carolina, on or about May 10, 2018, the Defendant, Kevin Herriott, while incarcerated at Lee Correctional Institution, unlawfully did carry a deadly weapon, to wit: large home made edged weapon, usually used to inflict personal injury; all in violation of Section 24-13-440, Code of Laws of South Carolina (1976, as amended)

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

Solicitor



WITNESSES

Thomas E Horne Jr S C Dept Of
Corrections

DOCKET NO. 2018-GS-31-0120

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

September TERM 2018

THE STATE

vs.

KEVIN HERRIOTT

ARREST WARRANT NUMBER

2018DIR310018 2018A3110100195
2018A3110100194

Indictment for

Assault / Assault & Battery of a High & Aggravated
Nature
Attempted Armed Robbery
Carrying a weapon by an Inmate

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

True Bill

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Paul H. Williams
Foreperson of Petit Jury

Date: *8/30/2018*

Voluntary Written Statement of Sgt. Edward Lucky

32-2018-088

ATTACHMENT: 4

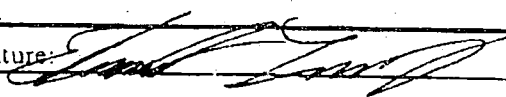
18-05-021

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution/Center: Lee CI				Date of Report: 05/10/18	
Reporting Official (Full Name): Edward Lucky				Time of Report: 12:56	
Employee ID #: 032648				Date of Incident: 05/10/18	
Location of Incident: F3 Unit				Time of Incident: 12:20am	
Inmate(s)/Resident:	SCDC #	Age:	Sex:	Race:	Employee(s)/Witnesses Involved:
1.					1.
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

I Sgt Lucky was called to the F3 Unit. To bring down the MK9 to Lt Bethea. When I got there Lt Bethea was standing at cell 1110. That cell house inmate Herriott, Kevin 313862. Inmate Herriott was trying to stab his cell mate. Lt Bethea opened the cell door to get his cell mate out. When Lt Bethea opened the door inmate Herriott ran out with a home made knife about 8in long. I Sgt Lucky give inmate several directives to drop the knife. Inmate Herriott came toward me with the knife. I Sgt Lucky went to back up and get away from inmate Herriott thats when i fell to the ground. That is when my knee made a popping sound. I Sgt Lucky informed Lt Bethea of this. Inmate will be Charged with 801assault and or battery of an SCDC Employee. 811 possession of a weapon. 809 threatening inflict harm or assault on employee

Signature: 	Title: Sgt
Evidence:	
Disposition of Evidence:	

Supervisor's Comments: <i>Refer to DHE</i>	STG Related - Refer to STG Committee <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown
Printed Name: <i>M. Bethea</i>	This incident is DRUG related <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown
Signature: <i>M. Bethea</i> Title: <i>Lt</i> Date Time: <i>5/10/18 12:20am</i>	Responsible Authority Action Taken <input type="checkbox"/> Informal Resolution <input type="checkbox"/> Administrative Resolution <input type="checkbox"/> Refer to Disciplinary Hearing
Major/Responsible Authority:	
Printed Name:	
Signature: Title: Date Time:	



South Carolina Department of Corrections
Police Services

Page 1 of 1
Case No: 32-2018-088

VOLUNTARY STATEMENT

I, Edward Luck, ID Number 032648, do hereby voluntarily provide this statement to Agent J. Aarne, who has identified him/herself as an Agent with the South Carolina Department of Corrections Police Services.

I sat lucky was trying to get an inmate out of his cell. When the other inmate come after me with a homemade knife about 8 in long. When I fell down the inmate tried to get my gas from me.

I have read this statement consisting of 1 pages, or have had it read to me. It is true and correct to the best of my knowledge. I have provided this statement freely and voluntarily without threats, coercion, or promises. I have been advised that I will be provided a copy of this statement.

Signature: [Signature] Witness: [Signature]
Date: 5-18-18 Time: 8:15AM Witness: _____

Inmate: Kevin Harriott, 7 years left in his
cell # 521

18 05 - 029

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Page / of /

Institution: Center Lee CI					Date of Report: 5/10/18
Reporting Official (Full Name): Sgt. S. Coaxum					Time of Report: approx. 600am
Employee ID #: 053405					Date of Incident: 5/10/18
Location of Incident: F3					Time of Incident: approx. 1220am
Inmate(s)/Resident	SCDC #	Age	Sex	Race	Employee(s)/Witnesses Involved:
1. Kevin Harriott	313862	39	M	B	1. Lt. Bethea
2.					2. Sgt. Lucky
3.					3. Ofc. Coe
4.					4. Nurse Jackson
5.					5.

On the above date and approximate time:

I Sgt. Coaxum was assisting Lt. Bethea and Ofc. Coe in F3. I was directed by Lt. Bethea to administer chemical munition to the facial area of inmate Kevin Harriott #313862 who ran out of his cell with a homemade knife towards Sgt. Lucky.

MK-9 4719
Start-652
End-521

Signature: *David S. Coaxum* Title: Sgt.

Evidence:

Disposition of Evidence:

Supervisor's Comments: *Information Purpose*

Printed Name: *Lt. Bethea*

Signature: *Lt. Bethea* Title: *Lt.* Date/Time: *5/10/18 8:30 am*

Major/Responsible Authority:

Printed Name:

Signature: Title: Date/Time:

STG Related - Refer to STG Committee

Yes No Unknown

This incident is DRUG related

Yes No Unknown

Responsible Authority

Action Taken

Informal Resolution

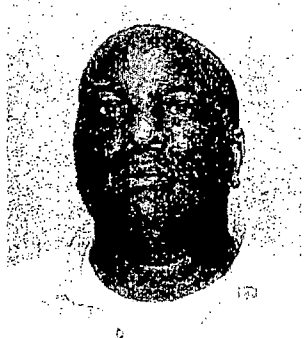
Administrative Resolution

Refer to Disciplinary Hearing

Nathan Tunstall (C059526)

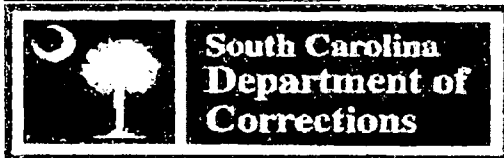
From: Quintina Stuckey (C039957)
Sent: Thursday, May 10, 2018 8:36 AM
To: Colie Rushton (RushtCo); Robert Murray (MurrayR); Joseph Stines (C060315); Joel Anderson (C021853); Michael McCall (McCalDa); Michael Brown-II; Nathan Tunstall (C059526)
Subject: Inmate on Staff Assault at Lee CI.

According Lt. Bethea (Lee CI) reported inmate Kevin Herriott 313862 charged towards Sgt. Edward Lucky with a homemade knife in F3 Unit. The incident took place when inmate Herriott and his roommate was fighting. Inmate Herriott was trying to stab his roommate. Inmate Herriott was trying to retrieve Sgt. Lucky gas when Sgt Lucky was trying to break up the fight. Sgt. Lucky has no injuries but was sent home. Inmate Herriott was placed in RHU. No further information.



Name: LUCKY, EDWARD L
Title: CORRECTIONAL OFFICER II
Sex: MALE
Race: BLACK
Location: LEE CORRECTIONAL INST
Work Area: SECURITY
Budget Unit: LEE CORRECTIONAL INSTITUTION
Program: SECURITY PROGRAM2
Termination Date:
Telephone Number: (803) 896-2500
Email: Lucky.Edward@doc.sc.gov

Quintina Rembert
SC Dept. Of Corrections
Sergeant- EAC
Emergency Action Center
803-896-2258
Stuckey.quintina@doc.sc.gov



TO: 32-2018-088
FROM: THOMAS HORNE JR
RE: POSSESSION OF A WEAPON BY INMATE (OTHER THAN FIREARM)
HERRIOTT, KEVIN (INMATE), 00313862, (S)
LUCKY, EDWARD L (EMPLOYEE), 032648, (V)
LOCATION: LEE
INCIDENT DATE: 05/10/2018

Introduction

On May 10, 2018, the South Carolina Department of Corrections (SCDC) Police Services (POL) received an email notification (**Attachment 1**) from Sergeant (Sgt.) Quintina Rembert (EMPL ID 039957) at the Emergency Action Center (EAC) of an inmate on staff assault at Lee Correctional Institution (LeeCI). According to Incident Reports (**Attachment 2**), Inmate Kevin Harriott (SCDC ID 313862) was trying to stab his roommate. Lieutenant (Lt.) Mark Bethea (EMPL ID 053170) opened the cell and inmate Harriott ran out towards Sgt. Edward Lucky (EMPL ID 032648) with a homemade edged weapon (shank) in hand and was stopped by being sprayed with chemical munitions. Region II Assistant Chief Shawn Tunstall assigned Agent Thomas Horne to investigate the possession of a weapon and assault.

Summary

On May 16, 2018, Agent Horne reviewed video of the incident (**Attachment 3**) with Corporal (Cpl.) Tracey Henry (EMPL ID 044345) at LeeCI. The video showed Sgt. Lucky, Lt. Bethea, Correctional Officer (CO) Saidah Coaxum (EMPL ID 053405), and several officers at Inmate Harriott's cell door. Harriott was let out of the cell and had a shank in his hand. Harriott and the officers walk towards the officer's station and Harriott charges after Sgt. Lucky. Sgt. Lucky exits through the door and falls to the floor. Harriott stands over Sgt. Lucky, with the shank in his hand, and attempts to take Sgt. Lucky's chemical munition. CO Coaxum then administered chemical munitions to Harriott's facial area. Harriott then stops trying to take Sgt. Lucky's chemical munitions and runs out of the unit.

On May 18, 2018, Agent Horne interviewed Sgt. Lucky at LeeCI and obtained a

voluntary written statement (**Attachment 4**). Sgt. Lucky provided the following information: He was trying to get an inmate out of his cell. The inmate came after him with a homemade knife approximately 8 inches long. He fell to the floor and the inmate attempted to take his gas.

On June 4, 2018, Agent Horne interviewed Inmate Herriott at LeeCI. Herriott was read and acknowledged his Miranda Rights and provided a voluntary written statement (**Attachment 5**). Herriott provided the following information: On May 10, 2018, he intercepted a text message on his roommate's phone. The message was a threat that read "I'ma roll on your roommate LOL. Like I'ma tell him I'ma roll on him". He did not know how serious the threat was until the roommate tried to play it off on a guy that knew he was his roommate. He grabbed his knife and demanded the roommate give up his phone so he could text his mother to get her to call the institution. His mother called LeeCI and Headquarters letting them know that he stabbed his roommate. He did not stab his roommate, his roommate was restraining him. Three officers and a nurse came to the cell door. They opened the door, he flipped out and chased Sgt. Lucky who fell. He then reached for Sgt. Lucky's canister of gas (MK-9) twice. He was then sprayed with gas and was escorted up front.

On June 11, 2018, Agent Horne spoke with Lee County Assistant Solicitor John Gentry about the case. Mr. Gentry advised to charge Herriott with Attempted Armed Robbery for attempting to take Sgt. Lucky's chemical munitions while armed with the shank.

On June 14, 2018, Agent Horne obtained arrest warrants (**Attachment 6**) on Herriott from the Lee County Magistrate's Office for Attempted Armed Robbery and Inmate in Possession of a Weapon.

This investigative report will be submitted to the proper authority for review and any necessary action.

AGENT'S SIGNATURE: 

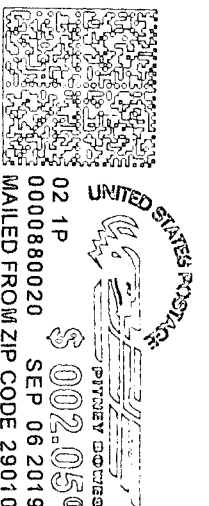
Heath E. Herrick, # 313862
FD - Cell # 77 - RHM
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