

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Carman T. Mullen, Circuit Court Judge

Case # 2017-00-1017

Lynne Van House

Petitioner

v.

Colleton County

Respondent

**PETITION FOR A WRIT OF CERTIORARI**

Lynne Van House

19897 Augusta Hwy.

Round O, SC 29474

(843) 835-8038

Petitioner, Self-Represented

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**QUESTIONS FOR REVIEW**

**Did Officers of the Court ERR when they searched Petitioner’s legally posted real property *without* permission, a warrant, her presence, or any prior notices of alleged violation?**

**Did Officers of the Court ERR when evidence obtained in that warrantless search was used to secure a *seizure* warrant for Petitioner’s valuable personal property animals?**

**Did the Respondent’s Officers of the Court, and the Petitioner’s Attorney, ERR when they violated the Court Order to *retain* the evidence animals until the next court date?**

## APPENDIX FOR THIS PETITION

### CITATIONS OF LAW:

*(Animal Enterprise Terrorism Act, Pub. L, 109-374, 18 U.S.C. St.43 (2006) pg. 14*

*(Arnold v. Yarborough, 316 S.E. 2d 416, 281 S.C. 570 (1984) pg. 12*

*(Brady v. Maryland, 373 U.S. at 87 (1963) pg. 9*

*(Cooper v. Aaron, 358, U.S. 1, 17 (1958) pg. 8*

*(Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971) pg. 6*

*(Countryman v. Breen, 241 App Div. 392, affd. 268 N.Y.(1935) pg. 12*

*(Fessler v. Weiss, 348, Ill. App. 21, 107 N.E. 2d 795 (1952) pg. 11*

*(Flaim v. Med. Coll. Of Ohio, 418 F.3d 629, 638 (6<sup>th</sup> Circuit (2005) pg. 7*

*(Gaillard v. Smart 6 COW 385, 388 (1956) pg. 12*

*(Gorham v. Gale 7 COW 739, 744 (1985) pg. 12*

*(Hall v. Benefit Assn. of Railroad Employees, 64 S.C. 80, 161 S.E. 867, 295 S.E. 393 (1932) pg. 10*

*(Hayes v. Eagle-Picher Industries, Inc.513, F 2d. (1975) pg. 13*

*(Jackson v. Bartlett, 8 Johns, 361 NY) pg. 12*

*(Johnson v. United States,333 U.S. 10, 333 U.S. 13, 14 (1948) pg. 6*

*(King Construction Co. v. Mary Ellen Coal Corp. 194 Ky. 435 239 S.W. 799 (1922) pg. 11*

*(Lanier v. State, 486 P. 2d 983, 988 (1971) pg. 10*

*(Leslie v. Van Vranken, 24 AD 2d, 658 NY app. Div.1965) pg. 12*

*(Louisville Kennel Club Inc. v. Louisville/Jefferson County Metro Government No.2(2007/cv 00230-Doc. 7W.D. KY (2009) pg.7*

*(Mazzella v. American Home Construction Co. 12 AD 2d 910 (1961) pg. 12*

*(Montgomery v. Goldstein, 109 Or. 497, 220P. 565, 567 ((1923) pg. 10*

*(State v. Hughes, 22 AZ, App 19, 522 p 2d 780 (1974) pg. 11*

*(Shelton v. Bressant, 439, S.E. 2d 833 (1993) pg. 12-13*

*(Stokes v. Spartanburg Reg'l Med. Cntr.368 515, 522, 629 E. 2d 675, 679, Ct. App.(2006) pg. 9*

*(Spisto v. Thompson, 39 AD 2d, 598(1972) pg. 12*

*(Trupiano v. United States, 334 U.S. 699, 700 (1948) pg. 5*

*(United States v. Adams, 422 F 2d575 10<sup>th</sup> Circuit (1970) pg. 11*

*(United States v. Agurs, No. 75-491 (d) 112-114 (1976) pg. 9*

*(United States v. Cravero, 530 F.2d 666, 5<sup>th</sup> Circuit (1976) pg. 11*

*(Waeschle v. Dragovic, 576 F. 3d.539, 544,6<sup>th</sup> Circuit (2009) pg. 7*

**SC CODES REFERENCED:**

*Colleton County Ordinance (6-04-50) (A) (D) (G) pg. 5*

*(SC 16-5-10) pg. 9*

*(SC 16-11-510) pg. 6*

*(SC 16-11-600) pg. 5*

(SC 17-13-140, 141) pg. 6

(SC 47-3-940, 950) pg. 10

(SC 47-4-20) (7) pg. 6

(SCACR Rule 401) pg. 9

**CONSTITUTIONAL ARTICLES AND AMENDMENTS CITED:**

(SC Const. Art. 1, Sects. 3, 10) pg. 5

(SC Const. Art. 1, Sects. 13, 14) pgs. 6 & 7

(US Const. Amend. 4) pg. 5

(US Const. Amend. 5) pg. 6

(US Const. Amend, 6) pg. 7

**USB FLASH DRIVE OF ALL MAGISTRATE COURT HEARINGS**

May 31, 2016, June 21, 2016, July 12, 2016, July 20, 2016, (AM & PM) July 27, 2016, August 15, 2016. (Clerk refused to do a transcript for Petitioner)

## STATEMENT OF THE CASE

I. ON FRIDAY, **MAY 13, 2016**. OFFICERS OF THE COURT *FAILED* TO OBTAIN A SEARCH WARRANT OR PERMISSION TO ENTER, *PRIOR* TO INITIAL ENTRY ONTO PETITIONER'S POSTED, PRIVATE, GATED, AND SECLUDED PROPERTY.

II. ON MONDAY, **MAY 16, 2016**, OFFICERS OF THE COURT OBTAINED A SEARCH WARRANT *BASED* ON INVENTORY COUNTS OBTAINED IN THE INITIAL *WARRANTLESS* ENTRY, AND IMMEDIATELY SEIZED *ALL* THE ANIMALS ON THE PROPERTY.

III. ON **MAY 31, 2016**, PETITIONER'S COUNSEL WAS *INEFFECTIVE* IN HIS DUTY *AS HIRED* TO ATTEMPT RETRIEVAL AND RETURN OF THE ANIMALS TO PETITIONER, AND *FAILED* TO RETAIN THE EVIDENCE ANIMALS UNTIL THE NEXT COURT DATE, AS COURT ORDERED.

IV. ON **JUNE 1, 2016**, PETITIONER'S COUNSEL AND RESPONDANT OFFICERS *DEFIED* THE COURT'S ORDER FOR ANIMAL CONTROL TO TEMPORARILY *RETAIN* THE ANIMALS INTACT.

V. ON **JUNE 14, 2016**, BECAUSE PETITIONER'S COUNSEL HAD *FAILED* TO

TIMELY REQUEST A HEARING ABOUT RETURN OF THE ANIMALS TO HER, SHE WAS FORCED TO DO IT HERSELF; *FIRE*D HIM BECAUSE OF THE *CONFLICT OF INTEREST*, AND HAS BEEN *PRO SE* SINCE, THRU LACK OF FINANCES.

VI. ON JUNE 28, 2016, *CURRENT* RESPONDENT'S COUNSEL POSTMARKED A LETTER TO THE COURT *ADMITTING* THAT MOST OF THE ANIMALS WERE NO LONGER AVAILABLE TO THE COURT AS EVIDENCE. *(R.pp.81)*

VII. ON JULY 20, 2016, THE INITIAL *RESPONDENT'S* COUNSEL INTRODUCED, AND THE COURT SIGNED, AN "AGREEMENT" THAT WAS *PROMLUGATED* ON THE *FACTS* THAT:

1) PETITIONER'S FORMER COUNSEL HAD *FAILED* TO DEMAND RETENTION OF THE ANIMALS AS EVIDENCE, 2) HAD PERSONALLY, IN CONJUNCTION WITH OTHER OFFICERS OF THE COURT INVOLVED, *SURRENDERED* THEM WEEKS BEFORE, AND THAT 3) THEY HAD ALREADY BEEN "DISPOSED OF."

VIII. ON JULY 20, 2016, FORMAL *MOTIONS OF DISCOVERY* FOR ALL EXCULPATORY MEDIA EVIDENCE *(R.pp.63-66)* WERE *DISMISSED*, AND THE LIVE

EVIDENCE ANIMALS WERE CERTIFIED AS NO LONGER AVAILABLE, *IN LIGHT OF THE ABOVE "AGREEMENT."* BECAUSE THE *ANIMALS* WERE "GONE," PETITIONER WAS *TOLD* SHE NO LONGER HAD ANYTHING TO "FIGHT FOR," AND "DIDN'T NEED ANY OF THAT."

VIII. ON **SEPTEMBER 21, 2016** ANOTHER MOTION OF DISCOVERY FOR EXCULPATORY EVIDENCE WAS INTRODUCED AS PART OF PETITIONER'S *APPEAL* FOR RESTITUTION TO CIRCUIT COURT.

IX. ON **NOVEMBER 28, 2016**, A MOTION REFERENCING *BOTH* THE *APPEAL* MOTION FOR DISCOVERY ABOVE AND A DEMAND TO PRODUCE EVIDENCE WAS INTRODUCED, BUT *WERE NOT ADDRESSED. (R. pp. 89)*

X. THE ACTUAL *VALUE* OF THE ANIMALS SEIZED OR OF THEIR FUTURE PROGENY'S VALUE AS *INCOME* TO PETITIONER, *WAS NOT ADDRESSED.*

## ARGUMENTS

**AS TO THE FIRST QUESTION:** on the *initial* search of her property: On May 13, 2016, the Officers *failed* to follow **(R.pp.323-326) (CC Sects. 6-04-50 (A) (D) and (G) local animal ordinances** regarding the requirements for legal investigations in a non-emergency situation, **(R. pp. 363) photo of posted driveway entry** and *failed* to observe privacy and property seizure rights, guaranteed by **(US Const. Amend 4), (SC Const. Art 1 Sects 3, 10)** and **(SC 16-11-600) (R. pp. 91) The 1<sup>ST</sup> offense tickets** (later dropped) court date lists a “When Written” date of May 13, 2016. Petitioner alleges that this act was *unconstitutional* because it failed to allow her a *meaningful right to contest* the closely following seizure, detention, and terms of release of her animals *prior* to the final action of deprivation.

**(R. pp. 421) the seizure warrant** alleges that the dogs “were not being taken care of,” *and* this is another *clear* indication that the Officers had *already* looked at and *counted* them *earlier, without* a warrant, as stated above.

**(R. pp. 277) Trupiano v. United States, 334 U.S. 699, 700 (1948)** “The

Agents engaged in this raid without securing a search warrant...we cannot agree that the seizure of the contraband property was made in conformity with the requirements of the fourth amendment." *(R. pp. 208) ( Johnson v. United States, 333 U.S. 10, 333 U.S. 13, 14 (1948) "Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the amendment to a nullity, and leave the people's homes secure only in the discretion of police officers." (Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971) "searches conducted outside the judicial process, without prior approval by Judge or Magistrate, are per se unreasonable under the Fourth Amendment... A search must be with a warrant, and describe the specific place to be searched and things to be seized, so as to prevent a general exploratory rummaging in a person's belongings."*

**AS TO THE SECOND QUESTION:** The Officers *failed* to follow legal search warrant requirements *prior to seizing the (SC 16-11-510) and (SC 47-4-20) (7) personal property breeding livestock*, including obtaining a *correct* address,

indicating *specific* places to be searched, and *specific* things to be seized, violating (SC 17-13-140, 141) (US Const. Amend 5) and (SC Const. Art 1 Sects 13, 14), particularly regarding the right of *Due Process of Law*, the use of "Fruit of the Poisonous Tree" evidence, and taking property without compensation. Also violated were (US Const. Amend 6) and (SC Const. Art. 1 Sect.14) the rights to *face her accuser* and *evaluate the evidence* they claimed to have, (inasmuch as they did *not* respond to legal Motions of Discovery) *nor* sufficient time during normal business hours to attempt to retain counsel *before* the animals were seized. (R. pp. 243-244) (Louisville Kennel Club Inc. v. Louisville/Jefferson County Metro Government No.2(2007/cv 00230-Doc. 7W.D. KY (2009) "Owners (of the dogs) had a protected property interest at stake" (Flaim v. Med. Coll. Of Ohio, 418 F.3d 629, 638 (6<sup>th</sup> Circuit (2005) "Due Process requires notice of the charges and a meaningful opportunity to contest the evidence" (R. pp. 242) (Waeschle v. Dragovic, 576 F. 3d.539, 544,6<sup>th</sup> Circuit (2009) " In order to establish a procedural due process claim, a plaintiff mast show that 1) he had a life, liberty, or *property* interest protected by the due process clause, 2) he was *deprived* of this protected interest, and 3) the State did not afford him adequate procedural rights *prior* to depriving him of the property interest."

By this standard, Petitioner clearly had a valid claim.

**(R. pp. 407-414) this chart** listed by breed, (compiled from the Respondent's *initial* Vet exams of all the dogs *just after* seizure) shows that *none* of the animals were malnourished, underweight, or becoming ill; Weights were all within breed standards, and vital signs were normal. There was *NO legitimate* reason to have seized them, *despite* their **(SC Const. Art. 7 Sect 16) and (SC Sect. 16-7-150)** *scurrilous* claims on the TV News and newspaper accounts.

**(Cooper v. Aaron, 358, U.S. 1, 17 (1958))** "whoever, by virtue of public position, takes away or denies equal protection of the laws...violates the constitutional prohibition, and *as he acts in the name and for the State, ...his act is of the State.*"

**AS TO THE THIRD QUESTION, AND THE FACT THAT HER ANIMALS WERE SURRENDERED TO THE COUNTY AGAINST COURT ORDER:** Petitioner's former attorney (hired to *defend* her right to *keep* her animals) was antagonistic in his portrayal of the Petitioner in Court **(Mag. Ct. Audio May 31, 2016.)** She was described in derogatory and inflammatory terms,

as *unable* to care for the animals in her possession—*instead* of the nationally known, capable *life-long* breeder and seller of healthy, rare colored and patterned, pedigreed animals, *that she was*.

(SC Sect. 16-5-10) Petitioner's attorney, in *conjunction* with other Officers of the Court involved, *defied* the (R. pp. 6) Court Order of retention on *the next day*, June 1, 2016, and surrendered them all to the County, (SCACR Rule 401) *instead* of demanding continued care of them locally, as the Order required. This surrender action was not *discovered* by *either* the Court or Petitioner until the next full Court session, on July 20, 2016. (Mag. Ct. Audio July 20, 2016) and (R. pp. 219) (*Brady v. Maryland*, 373 U.S. at 87 (2006)) "The prosecution must turn over evidence favorable to the defense under the Due Process Clause... suppression of material evidence justifies a new trial irrespective of the good faith or bad faith of the prosecution." (R. pp. 195) (*United States v. Agurs*, No. 75-491 (d) 112-114 (1976)) "The prosecution's duty to disclose (under Brady) does not require a request." The spoliation and suppression of the *living evidence* animals (*and* photos of them taken at the time of seizure) accomplished by *surrender and dispersal*, was done *with the full knowledge* of the Defense and the County, but *not* the Court or the Petitioner. " (R. pp. 272-274) (*Stokes v. Spartanburg Reg'l Med. Cntr.* 368 S.E.2d 515, 522, 629 E. 2d 675, 679, Ct. App.(2006)) "(W)e find that the trial court erred in failing to

charge the jury on "Spoliation of evidence" and that this error was prejudicial." (R. pp. 81) (sect.47-3-940, 950) Petitioner's *service dog* was taken with the others and "disposed of" as well. (*Lanier v. State, 486 P. 2d 981, 988 (1971)*) "Appellant alleges that his trial counsel did not consult him regarding this action (of waiving State and Federal Constitutional rights)...We wish it clearly understood that the standard here put forth depends on the *considered choice of the petitioner*, not a choice made by counsel."

Petitioner's former Counsel acted, in conjunction with other involved Officers of the Court, *as a General attorney, instead of as her Special attorney*, hired to *retrieve* her extremely valuable breeding animals before they were altered, and removed from her care or use. (R. pp. 259) (*Montgomery v. Goldstein, 109 Or. 497, 220P. 565, 567 ((1923)*) "An attorney at law is a *special agent*, limited in duty and authority to the vigilant *defense* of the rights of his client...because the attorney serves as a *special agent*, the scope of his authority is confined to *only* those actions necessary to accomplish the *specific purpose for which he is employed.*" (R. pp. 227-278) (*Hall v. Benefit Assn. of Railroad Employees, 64 S.C. 80, 161 S.E. 867, 295 S.E. 393 (1932)*) "Attorneys as such,

*without express authority, have no right to compromise or settle their client's rights." ...It is the well settled law of this state that the authority of an attorney of record is limited by the pleadings...and that any settlement that goes beyond these matters must be expressly agreed to by the client."*

*(R. pp. 289) (United States v. Cravero, 530 F.2d 666, 5<sup>th</sup> Circuit (1976) (R. pp. 281) (United States v. Adams, 422 F 2d575 10<sup>th</sup> Circuit (1970) (R. pp. 269) (State v. Hughes, 22 AZ, App 19, 522 p 2d 780 (1974) "Counsel's implied authority to make admissions and stipulations affecting his client's rights and interests must comply with the general limitation that the attorney's actions to settle claims is limited to the claims presented, and are based on implied authority related to procedure and remedies only, and not disrupt substantive rights or the cause of action."*

*(R. pp. 233) (King Construction Co. v. Mary Ellen Coal Corp. 194 Ky. 435 239 S.W. 799 (1922) "...It is a universal rule that a client is not bound by acts of his attorney without ratification, where the attorney has a personal interest in the subject matter involved, or there is a conflict of interest between the attorney and the*

*client*" (R. pp. 202) (*Fessler v. Weiss*, 348, Ill. App. 21, 107 N.E. 2d 795 (1952)

"Only after express authority by consent of his client may the attorney compromise his client's course of action" (*Gorham v. Gale* 7 COW 739, 744 (1985) (*Gaillard v. Smart* 6 COW 385, 388 (1956) "...equally rooted in the law is the principle that, without a grant of authority from the client, an attorney cannot compromise or settle a claim."

(*Jackson v. Bartlett, & Johns*, 361 NY) "...settlements negotiated by attorneys without authority from their clients have not been binding" See: (*Countryman v. Breen*, 241 App Div. 392, affd. 268 N.Y.(1935) (*Spisto V. Thompson*, 39 AD 2d, 598(1972) (*Leslie v. Van Vranken*, 24 AD 2d, 658 NY app. Div.1965) (*Mazzella v. American Home Construction Co.* 12 AD 2d 910 (1961)

(*Arnold v. Yarborough*, 316 S.E. 2d 416, 281 S.C. 570(1984) "The principal of law relied on by Yarborough applies only where the witness not called to testify is within the particular control against whom the principal is invoked." There is little question, based on his covert actions, and failures to respond appropriately in her defense, that Petitioner's attorney was NOT "acting on (her) behalf" to do what he was hired for, and that he was "committing fraud" by dint of his defying

the Court Order and *hiding* his actions from the Court and Petitioner (*Shelton v. Bressant, 439, S.E. 2d 833 (1993)* "Shelton and his attorney appeared in open court and advised the presiding judge that the case had been settled...Moreover the transcript of the agreement makes manifest that it was *Shelton himself*, not his attorney, who agreed to it's terms."

*Petitioner, however, was not in court, did not know what he did, and was never contacted for verification of the surrender before the animals were dispersed beyond her ability to retrieve, or to have them produced, as evidence.*

*(R. pp. 231) (Hayes v. Eagle-Picher Industries, Inc. 513, F 2d. (1975) "So long as the client unequivocally repudiates an unauthorized agreement immediately upon learning of it, there will be no ratification." However, this surrender had already been "taken into effect" much earlier, without her knowledge, and was the basis for the "agreement" later signed in Magistrate Court, denying all of Petitioners' Motions. Petitioner's protests in open Court were not addressed because of the animals being "already gone." (Mag. Ct. Audio-July 20, 2016) Petitioner lost her 55 year life's work, her career, her supplemental income for her retirement, and her excellent reputation, all in the space of about 5 hours.*

## ARGUMENT IN SUPPORT OF PETITION

Petitioner pleads under *Rule 242, SCACR* that a Writ of Certiorari be granted, inasmuch as at every level of these Court proceedings, the basic lawless acts that began this entire process were *not addressed*, although Petitioner repeatedly raised the Question of the purposeful and coordinated *initial warrantless raid* that she alleges was the *first* Question of Law that should have been considered; and that the other questions raised followed it. (*Animal Enterprise Terrorism Act, Pub. L, 109-374, 18 U.S.C. St. 43*) limits animal rights activists and so-called "rescue groups," (as were *engaged* by and under the control of the County Officers of the Court in this case) and *prohibits any* person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise." The statute covers *any* act that either "damages or causes the *loss* of any real or personal property" or "places a person in reasonable fear" of injury. Certainly, Petitioner would have preferred to just be let alone. Since she was *not*, and the financial loss and collateral damage stemming from these initial acts were so great, she asks that the actions of these several Officers of the Court of Colleton County be scrutinized for their various

roles in these proceedings, that the laws, codes, statutes, and rules that were alleged broken be carefully considered in view of the evidence presented here, and that the Affirmation of the Appeals Court be **Reversed**, and an **Order for reasonable restitution to Petitioner** be granted.

Signed September 17, 2019

s/s Lynne Van House

Lynne Van House, Petitioner, *Pro Se*

19897 Augusta Hwy.

Round O, SC 29474

(843) 835-8038

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Carman T. Mullen, Circuit Court Judge

Case # 2017-00-1017

Lynne Van House

Petitioner

v.

Colleton County

Respondent

I certify that a petition for re-hearing was made and finally ruled on by the Court of Appeals.

Signed: September 17, 2019

s/s Lynne Van House

Lynne Van House

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Petitioner, Self-Represented

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Carman T. Mullen, Circuit Court Judge

Case # 2017-00-1017

Lynne Van House

Petitioner

v.

Colleton County

Respondent

CERTIFICATE OF COUNSEL

This is to certify that the Petitioner, Lynne Van House, is acting as Self-Represented, Pro Se in the above-titled case.

Signed: September 7, 2019

s/s Lynne Van House

Lynne Van House

19897 Augusta Hwy.

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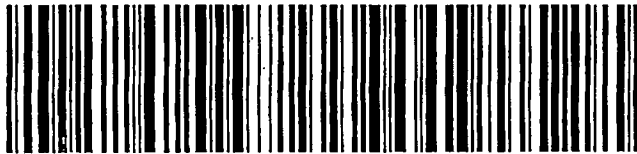
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