

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No.2013-001415

The State

Respondent,

v.

Fritz Allen Timmons

Appellant.

REPLY BRIEF OF APPELLANT

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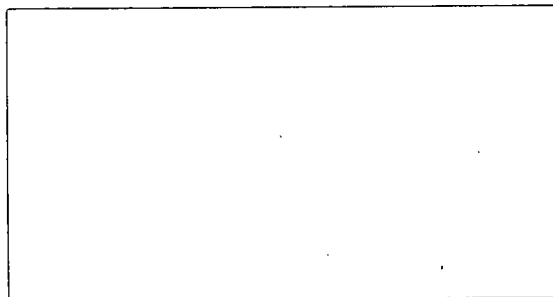


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WAS THERE ABUSE OF DISCRETION IN THE LOWER COURTS?

With the following facts on Record, there is no doubt that an **HONORABLE JUDGE** would reasonably make the same order under the same circumstances.

(1) (A) The Particular Requirements not met in Affidavit nor Search Warrant

(1) Item Sought - Affidavit - “**1827 Tabernacle Church Rd McBee**” (R.p 32). With the Appellant’s Address as the item to be sought, therefore why was the canines seized

(2) Item Sought - Search Warrant - “Abandoned or Neglected Animals”, §47-1-10,(1), "Animal" means a living vertebrate creature except a homo sapien (R. p 33). Was the Respondent searching for Abandoned animals or for neglected animals? Also with wild life on property and surrounding woods that belong to the State, why was these animals not also seized?

(3) Place to be Searched - Affidavit - “Property and Dwelling” (R.p 32).

With the Appellants property with no apparent boundaries, what did the “property” consist of, (A) the residency and immediate surrounding area, (B) the residency, immediate surrounding area and surrounding woods, (C) to the actual property lines that include boulder of a church completely along one side and the complete rear side of the church’s property line. Of which the actual property lines are not visibly marked. (D) the residency, immediate surrounding area and surrounding woods, and the rest of the woods that includes hundreds of acres and approximately ten miles of state maintained road front. With multiple acres, and property described in the

above said therefore did authorities know if any other residencies existed on property and accessed by another means other then the Appellant residency's driveway?

- (4) Place to be Searched - Search Warrant - "1827 Tabernackle Church Rd McBee" (R. p 33). Same as the above said description of property.
 - (5) Reason for Affiants Belief - Affidavit - "Malnourished and Dead Animals outside and evidence of worse animals outside. No Food or Water for Animals." (R. p 32). Was the Affiant describing road kill and/or wild life in the surrounding woods, a dream he may have had or even a Christmas wish list? Affidavit does not claim as to viewing of, when anything has occurred, where supposedly anything had been, or if any criminal activity was involved.
- (2) (A)(1) Statement from Court Order of March 5, 2013, "Officers testified there was half a bag of dog food on the property" (R. p 2), Specifically a 1/2 to 3/4 50 lb bag of "Purina Puppy Chow, Healthy Morsels" inside the Appellant's Residency and seized without being on warrant or return, and with adlib by the Respondent's Counsel, has now mysteriously appeared "outside".
- (2) Statement from Court Order of March 5, 2013, "Defendant testified he has purchased 100 pounds of food for the animals the day of but prior to the search warrant being executed"(R. p 2),
 - (3) Photos of food and water bowls at time of search and seizer. (R. p 43-47),
 - (4) Animal Control Officer Danielle Bowe testified under oath "professionally

or privately, known dogs to become hungry enough to eat other canines”, thereby brings up the question as to what profession and if testifying as an Expert Witness?

- (B) Affidavit -Reason for Affidavit’s Belief, “No Food or Water for Animals” (R. p 32)
- (3) (A) Veterinarian Exam - “no significant findings” (R. p 40),
(B) Animal Control Officer Danielle Bowe testified under oath “Canine “Hanna” tested positive for hookworms and has tumors” (R. p 10), The correct statement was “has tumors and ulcers”
- (4) (A)(1) UNITED STATES CONSTITUTION
 - (2) South Carolina Constitution
 - (3) South Carolina Codes of Law
 - (4) South Carolina Court Rules
 - (5) Substantial Evidence
- (B)(1) Irrelevant and incompatible Case Laws, “**PLATYPUS**” Defense. as described in the following

At the Magistrates Level of which if Title 18 U.S. Code §241 and Title 18 U.S. Code §242 had not been violated by the Court, then, as a man of any common reasoning would believe, the charges would have been dismissed and items (dogs) would have been returned unaltered.

The warrant, on its face, is vague enough to lead a reasonable police officer to believe it’s invalid, evidence found pursuant to it will be inadmissible. With the Warrant and Affidavit not meeting Particular Requirements and without the said E-mail used as

Probable Cause, ipso facto, An abuse of discretion has been committed that is clearly against reason and evidence along with legal error. ("An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *Id.* (quoting *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)). "that fundamental fairness essential to the very concept of justice." *Lisenba v. California.*, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941). , "no warrant shall be issued but upon probable cause...." The probable cause standard has been defined by the Court as "...facts and circumstances within their knowledge, and of which they had reasonably trustworthy information ... sufficient in themselves to warrant a man of reasonable caution in the belief...." *Brinegar v. United States*, 338, U.S. 160 (1949), "facts or circumstances presented to him under oath or affirmation" support that conclusion. *Nathanson v. United States*, 290 U.S. 41 (1933), *Conner v. City of Forest Acres*, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005); *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991), *Wilton v. Seven Falls Co.*, 515 US 277 (1995), *General Electric Co. v. Joiner*, 522 US 136 (1997), S.C. Code §17-16-140).

Without Chesterfield County Deputy Jay Lewis and Without Chesterfield County Animal Control Jim McGonigal testifying under oath the preliminary hearing of March 5, 2013 (violating §22-3-710 and Rule 603, SCRE and Rule 13, SCRMC). Without the Disclosure of the said E-mail, thereby violating Rule 5(c), SCRCrimP and if not for Torte purposed or by constitutional intrusion then also violates Rule 802, SCRE.

With only ACO Jim McGonigal present and making statements and not testifying under oath at the hearing of March 18, 2013, thereby violating §22-3-710 and Rule 603, SCRE while the request for the said E-mail being denied again, therefore violating Rule

5(c), SCRCrimP again. Also with County Ordinance Summons Tickets 1884-1888, 1898, 1899, 1903-1905 (R. pp. 11-15, 20-21, 25-27) for violating §47-1-70, 1889-1892, 1906-1909 (R. pp. 16-19, 28-31) for violating 415.60 (The charges of Rabies fall under the Fruit of the Poisonous Tree doctrine) and 1900-1902 (R. pp. 22-24) for violating §47-1-40, of which none are County Ordinance (§19-3-10, §56-7-80(A)). Therefore, the Appellant was charged with only fraudulent charges and construed by illegal and unconstitutional means. Also the county uniform ordinance summons was not written at time of said occurrence with ticket numbers 1993 through and including 1997 as to being written for Pamela Conley in an almost identical case (Case No. 2013CP1300231) that is currently stalled since Order filed Oct 10, 2013 in Chesterfield County Court System. With only 21 summons written for 31 dogs, with 3 different charges and found guilty and not guilty on same charges, therefore what dogs was the charges for and which ones was not, why was the dogs that had no charges also taken by Chesterfield County Animal Service and Chesterfield County Sheriff Office. Also why was there only five Veterinarian Exams presented (from elderly dogs and two recovering from a Parvo and/or Circovirus outbreak, of which the carcasses that was unearth and found by Animal Services, died from several months earlier) and not for **ALL** dogs Along with the no contested finding of caucuses and no photos presented in the hearing due to this, the photos appeared in the Magistrates record, "Photographs pose a danger of unfair prejudice when they have 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *Id.* (quoting *State v. Holder*, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009)). "Like probative value, unfair prejudice should be evaluated in the practical context of the issues at stake in the trial of the case." *Id.*; see *State v. Wilson*,

345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001), "[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are . . . not necessary to substantiate material facts or conditions." *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010). "[A] court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates." *State v. Collins*, 398 S.C. 197, 727 S.E.2d 751, 754 (Ct. App. 2012), Rule 403, SCRE states that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." A trial court has particularly wide discretion in ruling on Rule 403 objections. *See State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "The probative value of the photos must be balanced against 'the danger of unfair prejudice.'" *Collins*, 398 S.C. at ___, 727 S.E.2d at 757. "Prejudice that is 'unfair' is distinguished from the legitimate impact all evidence has on the outcome of a case." *Id.* "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest [a] decision on an improper basis." *Id.* (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)).

With Chesterfield County Animal Control adopting the dogs out **PIOR TO** the Appeal time limit, ipso facto, violating §22-3-310 stating "no sale shall be made under any such execution until after the time for appeal has expired".

DOES THE APPELLANT HAVE THE OBLIGATION TO CORRECT THE RECORD

With the Respond's claim that it is the Appellants Obligation to correct the Magistrates Record, Therefore the most accurate Record for the magistrate would be as follows:

"In January, the Appellant found unknown truck tire tracks and litter in Appellant's yard.

On Monday March 4,2013, the Appellant fed and water the Appellant's dogs and proceeded to work at 9:15 am. After which and after traveling approximately 35 miles and 1/10 of a mile onto property of which only a small fraction of residency and none of yard (immediate property surrounding residency prior to surrounding woods) are visible from roadway, Chesterfield County Animal Control (CCAC) (with Danielle Bowe as Director of both the Chesterfield County Animal Control and Chesterfield County Animal Shelter (CCAS)) conducted a search and seizer assuming the residency was abandoned (probably from several previous trespassing of property), and without a warrant, without probable cause, and without checking the dogs for positive ID for the purpose of gaining purebred dogs for quick profit by donations, Possibly received by the Animal Shelter. CCAC search included the searching of the Appellant's residency (causing damage), barn, and the immediate surroundings of the residency while confiscating 25 mature (including 3 elderly and 2 recovering from illness and 10 adolescent) along with 6 one week old puppies, a half 50# bag of puppy food, and a large pet carrier in which the puppies and mother was housed. CCAC failed to search surrounding woods of which the

graves of the carcasses was located and also failed to confiscate all other animals including wildlife in surrounding woods. CCAC also travel an additional 15 miles into Darlington County and interrogated an ex-residency of the Appellant's residency of which has not been on the Appellant's property in over four years, as to the finances, intelligence and residency of the Appellant. The CCAC had also threatened the ex-residency with charges. After work, the Appellant purchased 100 lbs of Adult dog food and 12 cans of food (for the recovering ill dogs) at 5:37 pm and proceeded to a local restaurant to eat. While at the restaurant a Chesterfield County Deputy informed the Appellant that the search was conducted and he'd seen dogs eating dogs, the Appellant replied "**THAT'S BULLSHIT**, there was nothing wrong when I left this morning.". The Deputy then informed the Appellant to contact Deputy Jay Lewis and departed. The Appellant contacted Deputy Jay Lewis and was informed to meet with him the next day (March 5, 2013) at the Chesterfield County Sherriff's Department. The Appellant then proceeded to the residency to discover the damage done and the missing items without no warrant or seized items list left.

On March 5, 2013, prior to the interrogation, Chesterfield County Animal Control made up a quick Affidavit and Warrant to present to the Appellant without the item list.

Unknown date, The list of which was made up by Danielle Bowe and sent to Deputy Jay Lewis and **modified** by **Judge John A Davis** without the date and time (**3/7/2013 6:07 AM**) although the Return time and date states "**3-5-13 at 14:14** o'clock PM" and also states "**I left a copy** of the warrant with Fritz Timmons Name of the searched or "**at the place of search**" with Together with a receipt for the items seized." and signed by Judge John A Davis dated **March 5, 2013**. Without made in the presence

of anyone and also states “ **I swear** that this **inventory is a true and detailed** account of **all the property taken by me** on the warrant.” and also signed by Deputy Jay Lewis.

On March 5, 2013, the interrogation, that included Animal Control/Animal Shelter Director Danielle Bowe, Animal Control Officer Jim McGonigal, Deputy Jay Lewis, and Deputy Briana Davis was held at the Chesterfield County Sherriff's Department in which the Appellant was asked by CCACO Jim McGonigal if was able to afford veterinarian care the dogs. The Appellant asked if he was inferring to only the 2 recovering dogs or ALL of them, Jim McGonigal stated “**ALL OF THEM**” which would include all the healthy and the two that was already under special care of which the veterinarian would not be able to do no more then the Appellant due to previous experience with identical health issues with other canines **that was taken to the veterinarian**, with the cash purchase of 2 vehicles, the Appellant answer was no. Jim McGonigal then asked the Appellant if he was going to turn over custody of the dogs to the county, the Appellant responded “I'm willing to turn over some of the younger dogs” and Jim McGonigal responded “**ALL THE DOGS**”. The Appellant's response was “NO”. The Appellant was shown photos of canine carcasses of which the Appellant did not recognize and informed them that they was probably strays running through the yard. The Appellant was then given the Search Warrant and Affidavit without the Return List of Items seized. After the interrogation Danielle Bowe, Jim McGonigal, Jay Lewis, and the Appellant proceeded to the Magistrate's Office.

A preliminary hearing was held in front of Judge John A Davis . The Appellant motioned to have charges dropped and dogs returned for no probable cause (same judge issued it). Motion was denied due to being a preliminary hearing according to Judge John

A Davis . Jay Lewis left hearing about half way through and did not testify. Jim McGonigal was not under oath and made the statement “I used an anonymous E-mail as Probable cause to get the Search Warrant” and also stated as to being for more then 30 dogs (which was an impossibility) without any statements in regard to E-mail for visitation of which was translated by John A Davis on record as to “anonymous E-mail was used by Chesterfield County Animal Control to visit the defendant’s property” and proved by the records own statement “The defendant cited state stature 17-13-141 claiming an anonymous E-mail sent to Chesterfield County Animal Control was not the basis for obtaining a search warrant” (thus showing ex party) of which the stature 17-13-141 was a clerical error and was meant to be 56-7-80 (wrote down wrong code due to similarities of requirements while viewing) and a half a bag of dog food on premises (along with photos, does not coincide with Search Warrant). Danielle Bowe testified (not an expert witness) as to the canine “Hanna” as to having tumors and ulcers (not supported by Veterinarian Exam) and described water bowl in non used pens as overgrown with a green algae-like substance and not drinkable. The Appellant did not deny as to finding of dead animals cause of the number of stray animals in yard and buried animals has been dug up by wildlife and dragged into yard on previous occasions. The Chesterfield County Animal Control was given temporary custody of the dogs. AOC Jim McGonigal stated directly to the Appellant **“You wont be able to get out of this on a technicality”**

Order of March 5, 2013 states “IT IS ORDERED under Chesterfield County Ordinance 11-12-14 Section 10(B) that all animals at 1827 Tabernacle Church Road shall be taken into custody of Chesterfield County until the duration of a criminal case against him.”. [Chesterfield County Ordinance 11-12-14 Section 10(B) actually states

“Additionally, the court may order a person charged with any violation of this chapter to provide necessary food, water, shelter, and care for any animal that are the basis of the charge without the removal of the animal from their existing location and until the charges against the person are adjudicated. Until a final disposition is rendered, any ACO or any law enforcement officer may be authorized by the court to make regular visits to the place where the animal is being kept to ascertain if the animal is receiving necessary food, water, shelter, and care. Nothing in this section prevent any ACO or law enforcement officer from applying for a warrant under this section to seize any animal being held by the person charged pending adjudication of the charges if it is determined the animal are not receiving the necessary food, water, shelter, or care. “] Requested a copy of the anonymous E-mail and was denied.

On March 5, 2013, The Appellant traveled to the Chesterfield County Animal Shelter and gave a list of Appellant’s canines that matched exactly to list of that which was confiscated by Chesterfield County Animal Control on March 4, 2013, including sex, color, number of and location of each. The Appellant was shown a carcass of which the Appellant did not recognize and informed Jim McGonigal that it was probably a stray running through the yard. The carcass looked hairless or frozen when wet. After returning home and inspecting the yard and grave area, the Appellant discovered the dug up grave of the carcass’s along with taking photos of food and water bowls of which was said to have been “no food or water“. Appellant also took photos of litter and damage done by the search.

On March 6, 2013, AOC Jim McGonigal met the Appellant at McBee Police Station and served summon tickets 1884 through and including 1892 and informed that

due to being too busy to write out the rest of the summon tickets, the Appellant will receive them later. Due to the motion as to the unlawful Search Warrant, Jim McGonigal stated **“I will have the Search Warrant amended”** and **“will deliver rest of the tickets later, too much filling out to do all at one time”** Also summon tickets **1893 through and including 1897** was served to Pamela Conley.

On **March 6, 2013, @ 1:43 pm**, WCCB aired a new brief that stated “Authorities say they removed 31 dogs from a Chesterfield County home after an anonymous tipster called it in. Animal Control officers say they found dozens of Daschunds in various stages of poor health, reporting there was **no food or water** and feces was throughout the **abandoned trailer housing** the animals in McBee. Some of the animals were reported to have **tumors, ulcers and other forms medical problems**. The owner is said to be already fighting to get them back.”. The broadcast aired included photos taken by Chesterfield County Animal Control from the interior and exterior of the Appellants residency.

On March 6, 2013, Summon tickets **1892 - 1897** for Pam Conley was filed.

On March 7, 2013 **@ 6:07 am**, Danielle Bowe sent a list of dogs seized and without listing a bag of food nor a pet carrier that housed a mother dog and puppies on March 4, 2013. The list was sent to Jay Lewis for the Warrant return (that clearly states **“I left a copy of the warrant with _____ Name of person searched or “at the place of search” with Together with a receipt for the items seized”** that was signed and filed on March 5, 2013.

On March 8, Summon ticket **1884 - 1891 and 1898 - 1909** for Appellant was filed.

On **March 8, 2013, Customized Pet Rescue** posted “These dogs are coming from

a hoarding situation. Please share this info, as **all the dogs will be available after the 20th**. This is in the South Carolina area. If we all pass this along, they may have homes waiting for them by then. Thank you!!<http://www.foxcharlotte.com/news/sc-news/31-Dogs-Removed-From-Chesterfield-Home-195631411.html>". **Dachshunds Crossposting** posted "<http://www.foxcharlotte.com/news/sc-news/31-Dogs-Removed-From-Chesterfield-Home-195631411.html> Horrible situation - 31 dachshunds were seized from a hoarder in horrible condition being held at the shelter there - **they cannot be released as the court date is on the 20th**. We need to be ready and network to save them for when they are released after that date. Here is the shelter info - but DO NOT CALL them as of yet as nothing can be done until then on their end. We need to network rescues for this and it will probably be expensive (a guess on my part) as hoarding creates horrible medical conditions for the dogs. Please network with emphasis on South Carolina area - Director of Animal Services (again - dogs not released until after court date on 20th) Danielle Bowe 467 Goodale Road Chesterfield , SC 29709 Phone: 843-623-3585 Fax: 843-623-3540 Email: animalservices@shtc.net Office Hours: Monday - Friday 8:30AM - 5:00PM" Replies to this posting was "[Connie Jo Edie-weidlinger](#) Please let us know when they start collecting funds for these Angels!!!

March 8, 2013 at 3:48pm · Like

Katie Wehner The multi-group NC doxie rescue yahoo list is already on this..... & i have reached out to an all-breed contact of mine who is likely to be in a better position to coord the effort to save them. Crossposting wont do much more at this point..... **we need to wait for the court date** & then have a central contact to direct to effort.

March 8, 2013 at 3:50pm · Like · 1

Teresa L. Gustafson So sad! It's shared on my rescue page, and other rescues will share it from there. With luck, **by the time the 20th comes along, they may all have homes waiting for them!** Let's pray for this to happen. I've seen a few miracles in the past week already!

March 8, 2013 at 3:58pm · Like”

On March 11, ACO Jim McGonigal delivered summons tickets 1898 through and including 1909.

On March 12, local newspaper “The Link” published article as to seized dogs reported to them by Danielle Bowe.

March 18, 2013, at the beginning of hearing of which only ACO Jim McGonigal and the Appellant was in attendance, the Appellant motioned for the charges to be dropped and dogs returned due to lack of probable cause and unconstitutional Search and seizer, and without said anonymous E-mail the Appellant believe that the said E-mail was based on possible torte by Judge Paul M. Burch for being contacted, due to a notice, by Darlington County Clerk of Courts Office for failing to render a decision in another case from May 25, 2011. With the denial of motion and an Unconstitutional Search Warrant by the same judge, the Appellant knew that it was futile to provide all evidence and arguments due to already being bias and unjust court.”

Therefore Appellants Obligation must also correct the record of the Circuit Court.

On Approximately March 20, 2013, All seized canines was released to Rescues Prior to the Appeal Deadline

March 25, 2013, the Appellant filed an Appeal (on only form available) With the Clerk of Court of Chesterfield County.

March 28, 2013, Judge John A Davis filed 2 separate RETURN OF THE CRIMINAL APPEAL with one of which was dated March 26, 2013 and signed and 2nd of the two was neither. Photos of canine carcasses was also added that was not presented at hearing.

April 9, 2013, Appellant obtain copies of Record from Chesterfield County Clerk of Court Office, Filed subpoena for Judge John A Davis, Jim McGonigal and Jim McGonigal for All canines seized for inspection by the court at Chesterfield County Sherriff Department.

April 11, 2013, Appellant obtain copies of Warrant Return from Chesterfield County Magistrate Office via fax.

April 24, 2013, subpoena was served upon Judge John A Davis, Jim McGonigal and Jim McGonigal for All canines seized for inspection by the court.

Therefore, the Appellant must also have the Obligation to correct the Circuit Record

May 8, 2013, Appeal hearing held with Judge J. Michael Baxley presiding. Appeal denied, Baxley stating "Court fins Probable Cause Sufficient". Appellant not permitted to state full case nor call subpoenaed witnesses as to testify under oath as to evidence due to not under oath during Magistrates Hearing.

Therefore Appellants Obligation must also correct the Error and Adlib by the respondents Counsels

As to the Statement of Fact,

On page 5, as to the stated bench trial of which respondent claims Danielle Bowe testified, was a preliminary hearing on March 5, 2013 and refurring to a search and seizer

on March 4 not March 5. In regards to the ½ bag of dog food of which was inside residency and reported as “on property” (R p. 2) by ACO Jim McGonigal, the word “outside” has been adlibbed by respondent’s counsel. Nowhere on Record is there any statement as to “Receiving no response at the front door of the home on property officers proceeded toward the back door to make contact with the occupant” (to make contact with a occupant in an assumed abandoned trailer, therefore conducting a search). As to “officers entered the home”, was without probable cause to do so due to Appellant being the sole person inside of residency in over four years.

Therefore, A Magistrate Court not being a TRUE COURT OF RECORD, neither the Magistrate Court Appeal to the Circuit Court nor continuing as an Appeal to the Court of Appeals should be restricted to the Sole Record of the Magistrates Court.

WAS THE CHARGES, HEARINGS, AND APPEALS CRIMINAL AND/OR
CIVIL ?

The Respondent claims as to the inappropriate appeal from the Magistrate hearing of March 18, 2013 and that of the Circuit hearing of May 8, 2013.

With the unconstitutionality of the Search and Seizer aside.

With the use of County Ordinance Summons Tickets used to charged Appellant with violations of South Carolina Codes §47-1-40 and §47-1-70 without checking for positive identity of dogs (§47-1-70c, Dachshunds are a hunting breed) along with

unknown 415.60, of which is not Chesterfield County Ordinance, thus violating §19-3-10 and §56-7-80A, Thereby contradicting **ATTORNEY GENERAL'S OPINION** "The **uniform summons cannot be used for the enforcement of laws other than county and municipal ordinances** and whether or not the state laws can be incorporated by ordinance in order to use the summons would depend on the content of the ordinance and penalty provisions of the state statutes in question. 1994 Op Atty Gen, No. 94-67, p. 143."

Therefore, the Appellant was charged with only fraudulent and unlawful charges. Also, Chesterfield County Animal Control, Jim McGonigal, of which filed the charges has the authority of that of a **constable** (§56-7-80(A),§5-7-32). With the Search and Seizer on March 4, 2013, Summons Tickets 1884-1892 was presented to Appellant on March 6, 2013, Summons Tickets 1893-1897 presented to Pamela Conley, and Summons Tickets 1898-1909 presented to Appellant on March 11, 2013. With Judge John A Davis having to ask Chesterfield County Animal Control Jim McGonigal as to charges being Criminal or Civil along with with Judge J. Michael Baxley having to ask Counsel for the Respondent as to charges being Criminal or Civil, ipso facto, charges as being "Criminal Charges" was based solely upon the decision of Chesterfield County Animal Control Jim McGonigal of which violated the above said. Therefore, there are **no actual or lawful charges**, thus **CIVIL**.

With Code **§18-1-100** stating "When a party shall give, in good faith, notice of appeal from a judgment or order and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings **the court** may permit an **amendment** on such terms as **may be just**", Therefore, The only available form "CIVIL" should have been amended to read "CRIMINAL" if necessary.

DOES THE COURT ABIDE IN ACCORDENCE TO STATE CODES OR
INCOMPATIBLE LAW CASES

Without the Supposedly anonymous E-mail, with the statement “I used the anonymous E-mail to get the search warrant” by Jim McGonigal and manifested as “to visit the defendant’s property” by Judge John A Davis, Therefore no reasonable basis for suspecting criminal activity. The anonymous E-mail must also have creditability of which it would not, thus the burden of proof as to not being torte or fabricated by Animal Control especially with Animal Control stating to media outlet as to “anonymous tipster called it in” and “abandoned trailer house” , ipso facto, has a high probable cause as to being total fabrication.

The respondents claims as to a “Back Door Policy” permits an Officer to conduct a search if a residence does not answer “The Front Door” of which a man of common reasoning would believe that if a residency does not answer the front door then the residency would also not answer the back door without reasoning that would prevent that residency from answering the front door and would answer the back door. Therefore if no Reasoning (Probable Cause) for a residency to answer the Back Door, ipso facto, the officer has conducted a search without a warrant. Only if there is acceptable reasoning to believe that the residency would answer the back door would not be considered a search. Acceptable reasoning would only include audio (music that would prevent hearing of front door, voices indicating residency is out of audio range of front door, ect.) or view of residency in plain view of front door. With the above said, there is no implied or

expressed consent to conduct a search nor violate the residency's expectation of privacy. The Respondents claims that the plain view of officers is based upon United States v. Raines, , 243 F.3d 419, 421(8th Cir. 2001) of which also states "attempting to serve civil process", "Deputy Davison followed **Page County procedure**" and "Deputy Davison acted in **good faith**" and is not the Procedure of Chesterfield County nor that of South Carolina and was on Official Business by the court. With the Appellants residency completely surrounded by woods, Therefore, what is the **expectation of privacy**? The Respondents claims that United States v. Garcia, 997 F,2d 1273, 1279 (9th Cir.1993) also applies although the stated case also states "conducted undercover surveillance of an apartment complex" and "they drove onto the driveway and parked their van. Cars were parked in the parking area in such a way that the officers could **not see the front** of Apartment B, the **walkway leading to its front door**, or the shrubbery along the south side of the walkway", Therefore, the case laws used by the Respondent are in fact invalid and improperly used in relationship to this case. Only Cases of similar circumstances must be applied if used and not used out of context that would distort the Justice of the case. Also Case Law only Apply when no Laws can be Applied. Case Laws cases must be so similar to case as to not to twist the facts that justice cannot be provided.

A Court Case, weather it to be a Civil, Criminal, or Appeal, also regardless as to the level of the Court, magistrate, Circuit, Appeals, or Supreme, and regardless of the number of case references The fact remains that case references are "**ONLY SUGGESTIVE**" where as **CONSTITUTIONAL RIGHTS** are "**ABSOLUTE**". **CONSTITUTIONAL RIGHTS** will **ALWAYS SUPERCEDE** any **State Code, Rule, or Regulation**.

Without Law, Fact, nor Substantial Evidence, the Respondents whole arguments based solely on Case Law of which has taken statements out of context, with incompatible cases and incompatible facts, thereby the Respondent has created a **PLATYPUS Defense** without lawfully issued charges nor evidence in support of charges, Constitutional Rights violations by Chesterfield County Animal Control and Chesterfield County Sherriff Department along with Magistrate Judge and Circuit Court Judge along with no Federal or South Carolina laws for defense of the Respondents, Therefore, the Court must reverse the Decision of the Lower Courts.

ARE APPEAL REMEDIES APPROPRIATE

The Respondent claims that the Appellant Failed to seek Appropriate Remedies on Appeal.(§18-1-140)

At the Magistrates level, of which, if the Constitutional Rights of the Appellant had not been violated (§16-5-10,§22-3-710 , §22-3-790, RULE 13(d),SCRMC, Rule 603, SCRE. Rule 802, SCRE, Rule 5, SCRCrimP., 18 U.S. Code §241, 18 U.S. Code §242) by the Court, then, as a man of any common reasoning would believe, the charges would have been dropped and the seized canines would have been returned **Unaltered** .(§18-1-140).

At the Circuit level, Also if Constitutional Rights and Court Rules (18 U.S. Code §241,18 U.S. Code §242) had not been violated, and under Code §22-3-310 that prevent seized items to be sold/released prior to the appeal deadline, therefore, a man of any common reasoning would believe, the charges would have been dropped and the seized

canines would have been returned **Unaltered**. Although in this case, the seized items (A) a large pet carrier (that housed a mother dog and 6 one week old puppies) that was not listed on the Warrant Return and currently unknown location of, (B) Partial bag of dog food also was not listed on the Warrant Return probably used. (C) All seized canines had been spaded or neutered thus causing the destruction of past 15 years of selective breeding of (including the cost of maintaining of) along with the impossibility of any future breeding of, thereby, no offspring to continue the specific genetic lines. All of the Canines has also been RELEASED PRIOR to the APPEAL DEADLINE.

With the above said and as dogs not being an inanimate objects and the alteration of said dogs demands the alteration of Remedy on Appeal. Therefore, the \$2,000,000 per dog is not for Fourth Amendment Rights violations (42 U.S. Code §1983) as Assumed by the respondent,

Also with the Bias gestures and Comments by Judge J. Michael Baxley due to photos of canine corpses that appeared in the Record (Rule 403, SCRE) and not from the hearing (§16-13-10(3)) with the constant interruption by Judge J. Michael Baxley (Rule 501, SCACR) and the premature termination of the hearing, thus prohibiting the Appellant from present the case fully of which would have included the above said that was missing including Testimony **under oath** as to the evidence by the subpoenaed ACO Jim McGonigal and Judge John A Davis as well as to the subpoenaed canines as substantial evidence for the inspection by the court due to the failure of the Chesterfield County Animal Control to provide Exam reports of All canines.

The Respondent also argues that the remedies are inappropriate for constitutional violations (42 U.S. Code §1983). Although this is true if the remedies was based on that

of which they are not due to the remedies are based on the Appellant Court Role to Return the Appellants position to the point as if the seizer had not occurred (§18-1-140). Ipso facto, and due to the impossibility of both un-neutering and un-spading of siezed canines and causing the destruction of past 15 years of selective breeding of (including the cost of maintaining of) along with the impossibility of any future breeding of, thereby, no offspring to continue the specific genetic lines of which would also be considered as restitution of.

There are no State or Federal Code that prevent State Employees (individuals) from being charged and prosecuted for violations of State Code by the Appellant nor by the Court on Behalf of the Appellant., otherwise we are sanctioning law enforcement incompetence.

As to the Remedy for the Fourth Amendment Rights Violations, 42 U.S. Code §1983 permits Civil actions for deprivation of Rights of which would consist of a Civil suit against County Agencies (Chesterfield County Sherriff's Department, Chesterfield County Animal Control, and Chesterfield County Animal Shelter) of which Sherriff Sam Parker would be the supervising personnel of the Sherriff Department of which has control over ,with Danielle Bowe as Director of both, the Animal Control and Shelter (§8-13-725). Also due to immunity against lawsuit's the Appellant must wait till After the appeal process to File a Civil Suit against the involved judges.

Therefore, Remedies sought are only restitution under §18-1-140 without any Civil remedies of that under 42 U.S. Code §1983 and should be granted by this court.

September 5, 2014

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No.2013-001415

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SEP 10 2014
SC Court of Appeals

The State

Respondent,

v.

Fritz Allen Timmons

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final REPLY BRIEF OF APPELLANT complies with Rule 211(b), SCACR.

September 5, 2014



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