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OCT 11 2019

S.C. SUPREME COURT

TO:HONORABLE DANIEL E. SHEAROUSE
CLERK OF COURT

FROM:CLIFTON DONELL LYLES
294075

Dear Sir,

October 8,2019

Please find enclosed one "PETITION FOR REHEARING" in compliance with Rule 221,S.C.A.C.R., to be filed with your office. I do certify by this letter that I did serve a copy on the Respondent.

Truly

Clifton Donell Lyles
294075

RECEIVED

OCT 11 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
DANIEL D. HALL, CHIEF ADMINISTRATIVE JUDGE

APPELLATE CASE No.2019-001128

Clifton Donell Lyles.....Appellant,

v.

State of South Carolina.....Respondent.

PETITION FOR REHEARING

Petitioner contends that this Honorable court should reverse it's ruling based on the following points:

1. The trial court lacked subject matter jurisdiction under Rule 4(a), S.C.R.Crim.P. to send the matter to the jury for a verdict due to it's failure to rule on both, the motion to reveal the identity of the confidential informant and the motion to suppress the search warrant.

2. The second and third pcr judges lacked subject matter jurisdiction due to the first pcr judge's failure to comply with S.C.Code Ann. §17-27-80, by failing to rule on the pending "Notice of Motion and Motion To Set Aside Order (Mistake and Excusable Neglect); and

3. The Order restricting Petitioner from future filing is unwarranted.

MEMORANDUM OF LAW

S.C.R.Crim.P., RULE 4(a) FORM OF MOTION

(a) An Application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(b). If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action. If upon such subsequent motion any order be made, it shall be void.

Under South Carolina juris prudence, the 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 anytime. Brown v. State, 343 S.C. 342, 540 S.E.2d 846(2001). The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this court. Id. The acts of a court with respect to a matter as to which it has no jurisdiction are void. state v. Funderburk, 259 S.C. 256, 191 S.E.2d 520(1972).

All rules and statutes applicable in civil proceedings are

available to the parties...The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final order.S.C.Code Ann.§17-27-80(2003). A final judgment may be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.S.C.Code Ann.§17-27-100(1985)

POINT 1

Petitioner contends that this Honorable court has failed to TAKE NOTICE that Personal and Subject Matter Jurisdiction of this case remains with the pre-trial judge and the pre-trial motions hearings, pursuant to Rule 4(a),S.C.R.Crim.P. due to the judge's failure to rule on the motion to reveal the confidential informant's identity.see Tr.Pg.75L.19-pg.77L.25(EXHIBIT A).

What makes matters worse, is that the judge's final order concerning the search warrant, was contingent upon his final ruling on the motion to reveal the identity of the confidential informant.see Tr.pg.76L.6-10(EXHIBIT A). Because he failed to make a ruling on the confidential informant hearing, the ruling made on the search warrant is not final.

This was highly prejudicial to Petitioner it-that he was denied the right to confront his accuser and see the evidence against him in the search warrant hearing due to the pretrial hearing judge's failure to comply with the rule and make a ruling on the motions.

Under Rule 4(a),S.C.R.Crim.P., which is the language of Rule 7(b)(1),S.C.R.C.P., the moving party is compelled to state with particularity the grounds of his motion because the rule is

requiring that the hearing judge RULE on the matter.see Lucey v. Meyer,401 S.C. 122,736 S.E.2d 274(S.C.App.2012)(...by requiring notice to the court and the opposing party of the basis for the motion, the rule advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly).

This duty of the trial judge to settle the motion in a pretrial hearing is procedurally required, therefore making it jurisdictional. The failure to comply with the due process of the rule prevents subject matter jurisdiction from advancing to the next stage. Therefore, the General Sessions court wrongfully advanced subject matter jurisdiction to the jury for a verdict.see State v. Funderburk,259 S.C. 256,191 S.E.2d 520(1972). The acts of a court with respect to a matter as to which it has no jurisdiction are void,Brown v. State,343 S.C. 342,540 S.E.2d 846(2001). Issues of subject matter jurisdiction may be raised at any time.Id.

POINT 2

The court has failed to take notice that subject matter jurisdiction of this matter remains with the first pcr judge due to his failure to make a final ruling on the pending "NOTICE OF MOTION AND MOTION TO SET ASIDE ORDER(MISTAKE AND/OR EXCUSABLE NEGLIGENCE), in compliance with S.C.Code Ann.§17-27-80 and Rule 52(a),S.C.R.C.P.

The statute clearly states that "All rules and statutes applicable in civil proceedings are available to the parties...The court shall make specific findings of fact, and

state expressly its conclusions of law, relating to each issue presented. This order is a final order." S.C.Code Ann. §17-27-80. This then means that any motion filed under the civil proceedings must be included in any final order of the court. see Fishburne v. State, Opinion No. 27911.

The original pcr judge recognized that fact and indicate it in his order of dismissal of petitioner's Pro Se Rule 59(e) motion, at footnotes four(4) and five(5), dated 5-25-10. see ORDER (EXHIBIT D). This was indicated in light of the knowledge that pcr counsel may have failed to meet the ten(10) day time line under the rule.

If this court finds that the pcr judge is without jurisdiction to entertain pcr counsel's motion due to his failure to comply with the ten(10) day filing deadline, which is a procedural violation, and that Petitioner is no allowed to seek correction through an Austin appeal, which this court has now relegated to addressing the loss of appellate review only, then Petitioner is without an avenue to seek correction of this highly prejudicial procedural error. This is shown through this court's order of dismissal of this very issue in Petitioner's first state Habeas Corpus action(2010-CP-46-2919), dated 7-18-16, citing Simpson v. State, 329 S.C. 43, 495 S.E.2d 429(1998).

Petitioner contends that it is in the interest of justice that this issue of "the loss usage of Rule 59(e)" be addressed so as to provide equal protection of law as required by Article 1§3 of the South Carolina Constitution and the fourteenth amendment of the United States Constitution.

POINT 3

Petitioner contends that he should not be restricted from any future filings based on the amount of pcr applications he has filed.

His first application was filed simply as required by the South Carolina appellate process. The Second application was filed at the direction of former Chief Justice Jean Toal to correct my loss of right to appeal my first pcr. see Order dismissing Notice Of Appeal dated 6-17-2010 (EXHIBIT E). The third application was filed looking to comply with this courts order dismissing the first state habeas corpus dated 7-18-16, citing simpson v. State, supra, and the second State habeas corpus action (2017-001280), dated 6-14-17, citing Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991), that this matter could be handled in the lower courts.

Petitioner contends that because the first two pcr applications were proper, and that this third application is only seeking the correction of a highly prejudicial procedural error that was not addressed in the second pcr application, that he should not be punished for seeking his one full and fair pcr process.

CONCLUSION

The rehearing should be granted

This 8th day of October, 2019

BY Peter Donald Lyle 294075
PGC SE
1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

TRIAL TRANSCRIPT PAGES 65-77
(EXHIBIT A)

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
	:
PLAINTIFF,)
	:
VERSUS)
	:
CLIFTON DONNELL LYLES,)
	:
DEFENDANT.)

VOLUME I
TRANSCRIPT OF RECORD
02-GS-46-2950

APRIL 7, 2004
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER L. COUCH, JUDGE, AND A JURY

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

FOR THE STATE:
TEASA WEAVER, ESQ., ASSISTANT SOLICITOR
LISA COLLINS, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE
JAMES SHADD III, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

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1. YOU THAT HE DID NOT TELL THE MAGISTRATE THAT THE PERSON
2. HAD BEEN SEARCHED PRIOR TO GOING IN.

3. THE COURT: HE SAID HE DIDN'T TELL THEM OTHER THAN
4. WHAT'S IN THE AFFIDAVIT.

5. MR. SHADD: OTHER THAN WHAT'S IN THE AFFIDAVIT. SO,
6. THAT'S ALL YOU CAN GO OFF OF, YOUR HONOR. SO, WE BELIEVE
7. THAT THE TOTALITY OF THE CIRCUMSTANCES, TAKING
8. EVERYTHING IN, YOUR HONOR, IT IS CLEAR, AT LEAST FROM
9. WHAT WE SEE, THAT THE MAGISTRATE DID NOT HAVE ENOUGH
10. EVIDENCE WITH REGARD TO, TO MAKE A DETACHED AND NEUTRAL
11. DECISION TO ISSUE THIS SEARCH WARRANT BASED ON WHAT WAS
12. IN THIS AFFIDAVIT.

13. THE COURT: WELL, I THINK WHAT I HAVE TO DETERMINE
14. IS WHETHER OR NOT THE AFFIDAVIT TAKEN AS A WHOLE PROVIDES
15. PROBABLE CAUSE FOR THE ISSUANCE OF A SEARCH WARRANT TO AN
16. INDEPENDENT AND DETACHED MAGISTRATE.

17. IN REVIEWING THE AFFIDAVIT, I DO NOTE THAT THE
18. CONFIDENTIAL INFORMANT, HIS STATEMENTS ALONE WAS NOT THE
19. SOLE BASIS OF THE POLICE OFFICER'S AFFIDAVIT. I DO NOTE
20. THAT THERE WAS THE MONITORING OF THE SALE DONE BY THE
21. POLICE DEPARTMENT. SO, THEY LISTENED IN ON THE SALE AS
22. IT TOOK PLACE. FURTHER, I NOTE THAT IN THE AFFIDAVIT IT
23. STATES THAT THE POLICE OFFICERS INDEPENDENTLY CONDUCTED
24. SURVEILLANCE OF THE PROPERTY AND OBSERVED ACTIVITY
25. CONSISTENT WITH DRUG SALES.

1 WHILE THAT, IN AND OF ITSELF, WOULD NOT PROVIDE AN
2 ADEQUATE BASIS FOR THE ISSUANCE OF THE SEARCH WARRANT, IT
3 CERTAINLY PROVIDES SOME CORROBORATION FOR THE OTHER FACTS
4 THAT WERE PRESENTED.

5 SO, BASED ON THE TOTALITY OF THE FACTS, I FIND THAT
6 THE SEARCH WARRANT WAS PROPERLY ISSUED. THE MOTION TO
7 SUPPRESS ON THAT BASIS IS DENIED.

8 MR. SHADD, YOUR NEXT MOTION.

9 MR. SHADD: YES SIR. WITH REGARD TO-

10 THE COURT: EXCUSE ME JUST ONE SECOND. DID WE GET A
11 COPY OF THE WARRANT MARKED AS A COURT'S EXHIBIT?

12 COURT REPORTER: YES SIR.

13 THE COURT: OKAY. I JUST WANTED TO BE SURE. I'M
14 SORRY, MR. SHADD. GO AHEAD.

15 MR. SHADD: YES SIR. WITH REGARD TO THE INFORMANT,
16 YOUR HONOR, AS YOU CAN SEE FROM MY MOTION, WE ARE
17 REQUESTING THAT YOU ORDER THE STATE TO DISCLOSE THE
18 IDENTITY OF AND THE CURRENT ADDRESS AND PHONE NUMBER OF
19 THIS ALLEGED CONFIDENTIAL INFORMANT. WE BELIEVE THAT THE
20 CRUX OF THIS CASE DEPENDS ON WHAT THIS INFORMANT SAID,
21 WHAT HE DID.

22 AS YOU HEARD FROM THE TESTIMONY OF INVESTIGATOR
23 LIGON, THEY DID USE A CONFIDENTIAL INFORMANT AND THEY
24 RELIED ON THAT CONFIDENTIAL INFORMANT'S PERFORMANCE IN
25 ORDER TO GET A SEARCH WARRANT.

1 AS A RESULT OF THAT SEARCH WARRANT, DRUGS WERE FOUND
2 AT THIS HOME, YOUR HONOR. WE BELIEVE, AND IT IS OUR
3 POSITION THAT THIS INFORMANT PLANTED THESE DRUGS, OR AT
4 LEAST PART OF THESE DRUGS. AND WHEN THEY CAME BACK OUT
5 OF THE RESIDENCE, WHEN THEY GOT BACK WITH THE OFFICERS,
6 THEY SUPPLIED THEM WITH CRACK.

7 YOUR HONOR, OUR STATE HAS SAID IN STATE VERSUS
8 HUMPHRIES AND STATE VERSUS DIAMOND THAT THE STATE
9 NORMALLY DOES NOT HAVE TO REVEAL THE IDENTIFY OF THE
10 CONFIDENTIAL INFORMANT, WITH THE EXCEPTION. AT LEAST ONE
11 OF THE EXCEPTIONS, YOUR HONOR, IS THAT PERSON IS
12 CONSIDERED A MATERIAL WITNESS OR CAN PROVIDE EXCULPATORY
13 EVIDENCE.

14 JUST AS IN STATE VERSUS JENKINS, AS I MENTIONED
15 BEFORE, YOUR HONOR, THAT CONFIDENTIAL INFORMANT WAS
16 SUPPOSED TO BE REVEALED, THE STATE RULED, BECAUSE NOT
17 ONLY BY TRYING THE WITNESSES THAT ARE HERE, YOUR HONOR,
18 BUT I FEEL THAT I SHOULD TRY THIS CONFIDENTIAL INFORMANT,
19 EVEN IF YOU DON'T ALLOW THIS PERSON TO COME IN. BECAUSE
20 I NEED TO GO INTO THIS PERSON'S CREDIBILITY AND THEIR
21 DEALINGS AT THAT RESIDENCE, THEIR DEALINGS WITH THE
22 POLICE OFFICER; ANY TYPE OF REWARD FOR THE WORK THAT THEY
23 WERE DOING. USUALLY IT'S NOT MONEY; USUALLY IT'S SOME
24 ASSISTANCE WITH REGARD TO THEIR PENDING CHARGES.

1 I BELIEVE THIS PERSON IS A MATERIAL WITNESS, YOUR
2 HONOR. HE ALSO COULD PROVIDE EXCULPATORY EVIDENCE WHICH
3 IS CRUCIAL TO OUR DEFENSE. AND STATE VERSUS HUMPHRIES
4 AND DIAMOND ARE ON POINT ON THAT, YOUR HONOR.

5 THE COURT: MS. WEAVER.

6 MS. WEAVER: YOUR HONOR, I DO REFER TO STATE V.
7 HUMPHRIES THAT THE DEFENSE MENTIONED. IN THAT CASE,
8 POLICE STATED THAT DRUGS WERE BEING BROUGHT TO A CERTAIN
9 AUTO SHOP. THEY INTERCEPTED THE PACKAGE. THEY THEN
10 DELIVERED THE PACKAGE TO WHEREVER IT WAS SUPPOSED TO BE
11 GOING. IT WAS SUSPECTED TO HAVE MARIJUANA. AND THEY
12 ACTUALLY CONFIRMED THAT BEFORE GOING TO THE DESTINATION.

13 THEY GOT A SEARCH WARRANT AND EXECUTED IT. THE
14 INFORMANT IN THIS CASE MERELY PROVIDED LAW ENFORCEMENT
15 WITH A REASONABLE SUSPICION NECESSARY TO SEIZE THE
16 PACKAGE. THE COURT MENTIONED THAT THIS INFORMANT WAS A
17 MERE TIPSTER. AND IT'S THE COURT'S DECISION TO DENY THE
18 MOTION TO REVEAL THE IDENTITY THAT WAS UPHELD.

19 THE ARGUMENT IN THIS CASE THAT THE CI NEEDED TO BE
20 NAMED, THAT HE MADE NO CLAIM, AS IN THIS CASE, THEY ARE
21 ARGUING, OR MIS-IDENTIFYING THE DEFENDANT, THERE WAS NO
22 INFORMANT, OR THE INFORMANT WAS PART OF THE DRUG
23 TRANSACTION.

24 YOUR HONOR, IN THIS CASE, THE INFORMANT TOOK NO PART
25 IN THIS ACTION. IN FACT, THE BUY TO SUPPORT THE SEARCH

1 WARRANT OCCURRED ON AUGUST 14. THE SEARCH DIDN'T OCCUR
2 UNTIL AUGUST 21. HE HAD NO PART IN THE SEARCH WARRANT.
3 THE ONLY PART THAT HE PLAYED WAS PROVIDING THE
4 INFORMATION TO ESTABLISH PROBABLE CAUSE FOR THE SEARCH
5 WARRANT. AND THE CASE LAW IS CLEAR THEY'RE NOT ENTITLED
6 TO THE IDENTITY BECAUSE IT ONLY GOES TO THE PROBABLE
7 CAUSE OF THE SEARCH WARRANT. HE HAS NOTHING TO DO WITH
8 THIS CASE. HE'S NOT A MATERIAL WITNESS IN THIS CASE. HE
9 WAS A MERE TIPSTER TO PROVIDE INFORMATION FOR THE
10 OFFICERS TO GET A SEARCH WARRANT TO SEARCH THIS
11 RESIDENCE.

12 MR. SHADD: YOUR HONOR, TURNING TO HUMPHRIES, IF I
13 MAY?

14 THE COURT: GO AHEAD.

15 MR. SHADD: YES SIR. WHEN THEY TALK ABOUT, WHEN THE
16 SUPREME COURT TALKS ABOUT WHETHER AN INFORMANT--- I'LL
17 JUST READ THE LANGUAGE. "IF AN INFORMANT IS AN ACTIVE
18 PARTICIPANT IN THE CRIMINAL TRANSACTION" - AND HERE WE'RE
19 TALKING ABOUT A CONTROLLED BUY WHICH HE ADVISED TWO OF
20 THE OFFICERS DOING THE SEARCH WARRANT IN THE FIRST PLACE
21 - "AND/OR A MATERIAL WITNESS ON THE ISSUE OF GUILT OF
22 INNOCENCE..." AND CLEARLY, YOUR HONOR, SHE'S SAYING HE WAS
23 JUST A MERE TIPSTER, BUT HE WAS NOT. HE WAS AN ACTIVE
24 PARTICIPANT IN A CONTROLLED BUY. HE DIDN'T SAY, CLIFFORD
25 DONNELL LYLES IS SELLING DRUGS. THAT'S NOT IN THE

1 AFFIDAVIT. HE'S NOT SAYING HE'S SELLING DRUGS FROM HIS
2 RESIDENCE. THEY PROVIDED IN THAT AFFIDAVIT INFORMATION
3 CONCERNING DRUGS WERE BEING SOLD FROM THAT RESIDENCE.
4 THERE WAS A CONTROLLED BUY FROM CLIFTON DONNELL LYLES
5 USING THIS CONFIDENTIAL INFORMATION.

6 AND ALSO, IT GOES ON TO READ, YOUR HONOR, DISCLOSURE
7 OF HIS IDENTITY MAY BE REQUIRED DEPENDING UPON THE FACTS
8 AND CIRCUMSTANCES. CLEARLY, YOUR HONOR, HE WAS THERE TO
9 BUY, NOT A MERE TIPSTER. THE JUDGE IN THAT CASE SAID
10 THAT BECAUSE WE HAVE ALL THE EVIDENCE IN A PRE-TRIAL
11 SITUATION, HE DECIDED THAT AT THIS TIME ALL HE SAW WAS
12 BEING A MERE TIPSTER.

13 BUT, YOU, YOUR HONOR, HAVE THE ADVANTAGE OF ACTUALLY
14 HEARING INVESTIGATOR LIGON TALK ABOUT THIS CONFIDENTIAL
15 INFORMANT AND PROVIDE INFORMATION, WHO ACTUALLY
16 PARTICIPATED WITH THE DEPARTMENT IN THIS CONTROLLED BUY
17 AND ACTUALLY CAME BACK OUT. HE DIDN'T JUST SAY CLIFTON
18 LYLES SOLD ME SOME DRUGS. HE CAME BACK AND SAID HERE'S
19 THE CRACK THAT, OR SO HE SAID, HERE'S THE CRACK THAT
20 CLIFTON LYLES SOLD ME.

21 THEY DID NOT-- THE TIME IS KEY. THE FACT THAT THEY
22 DIDN'T GO TO JUDGE BENFIELD UNTIL AFTER THE CONTROLLED
23 BUY WAS DONE, AS MS. WEAVER HAS POINTED OUT, THAT IT WAS
24 DONE THE DAY BEFORE, ON AUGUST 14---

1 THE COURT: WELL, THEY OBTAINED THE SEARCH WARRANT,
2 ACCORDING TO THE SEARCH WARRANT IT WAS AUGUST 14, BEFORE
3 THE BUY.

4 MR. SHADD: OH, YES SIR. BUT I THOUGHT I JUST HEARD
5 HER SAY---

6 THE COURT: I THINK SHE SAID THEY DIDN'T EXECUTE THE
7 WARRANT, THOUGH, FOR SEVERAL DAYS LATER. IS THAT
8 CORRECT, SOLICITOR?

9 MS. WEAVER: YES SIR.

10 MR. SHADD: YES SIR, THAT'S CORRECT. AND THEY DID
11 RELY UPON THIS CONFIDENTIAL INFORMATION TO PARTICIPATE
12 WITH THEM IN THIS CONTROLLED BUY. THIS WASN'T JUST A
13 MERE PERSON WHO JUST CAME AND SAID I KNOW DRUGS ARE SOLD
14 THERE, USE MY INFORMATION TO SEARCH IT. THEY ACTUALLY
15 INJECTED THEMSELVES IN THERE. BE SURE YOU'RE BUYING IT.
16 THIS PERSON CAN'T BE REVEALED UNTIL WE GET HIM IN COURT
17 AND HE WILL SAY THAT HE HAD BEEN THERE AND HE BOUGHT THE
18 DRUGS. THIS PERSON WILL DO WHATEVER HE NEEDS TO DO TO
19 STAY OUT OF JAIL, EVEN TO SAYING THAT CLIFTON LYLES SOLD
20 HIM DRUGS. AND RIGHT NOW ALL I HAVE IS A NICKNAME.
21 THAT'S WHY I NEED A FULL NAME. THIS PERSON HAS
22 FREQUENTED THAT RESIDENCE AND COULD HAVE BEEN THERE
23 BETWEEN THE FIFTEENTH AND THE TWENTY-FIRST.

24 THE COURT: MS. WEAVER, I'M A LITTLE CONCERNED ABOUT
25 YOUR ARGUMENT THAT THIS PERSON WAS A MERE TIPSTER BECAUSE

1 IT SEEMS LIKE TO ME THAT THIS PERSON MAY HAVE
2 PARTICIPATED A LITTLE MORE THAN SIMPLY GIVING A TIP. DO
3 YOU WANT TO ADDRESS THAT ISSUE?

4 MS. WEAVER: YES, YOUR HONOR. ALSO, I WANT TO POINT
5 OUT ANOTHER CASE, McCRAVEY VERSUS ILLINOIS AND I'LL HAND
6 YOU A COPY OF THAT, YOUR HONOR. IN THIS CASE, THE
7 INFORMANT TOLD TWO OFFICERS THAT THE DEFENDANT WAS
8 SELLING DRUGS, AND THAT PERSON COULD BE FOUND ON A
9 CERTAIN STREET. OFFICERS DROVE TO THAT STREET AND THE
10 INFORMANT POINTED OUT THE DEFENDANT AND THE INFORMANT
11 LEFT.

12 AND THE COURT IN THAT CASE RECOGNIZED THAT THE
13 OFFICERS DID NOT NEED TO DISCLOSE THE INFORMANT'S
14 IDENTITY IN APPLYING FOR AN ARREST OR SEARCH WARRANT.
15 THAT, YOU KNOW, THE MAGISTRATE WAS NOT CONCERNED WHETHER
16 OR NOT THE INFORMANT MADE THE BUY, BUT WOULD BE TRUTHFUL
17 IN WHAT HE TOLD THE MAGISTRATE.

18 AND IN THIS CASE THE ONLY REASON FOR THE
19 CONFIDENTIAL INFORMANT WAS FOR A CONTROLLED BUY TO GAIN
20 ACCESS FOR THE SEARCH WARRANT. THAT WAS THE ONLY
21 PARTICIPATION.

22 YOUR HONOR, I CAN PUT UP TESTIMONY THAT THE
23 INFORMANT WAS SEARCHED BEFORE AND AFTER THE BUY, WHICH
24 WOULD EVEN MORE CLEARLY INDICATE THAT HE DID NOT HAVE
25 TWENTY GRAMS OF CRACK COCAINE ON HIS PERSON IN ORDER TO

1 PLANT IT IN THE HOUSE. IF THAT IS THE ARGUMENT THAT HE
2 WAS BEING FRAMED, I CAN PUT UP TESTIMONY TO THAT EFFECT,
3 THAT HE WAS USED ONLY FOR THE PURPOSE OF THE BUY.

4 IF MR. LYLES WAS BEING CHARGED WITH DISTRIBUTION,
5 CERTAINLY THAT INFORMANT WOULD HAVE TO COME HERE AND
6 TESTIFY. HE WOULD BE ENTITLED TO KNOW HIS IDENTITY. BUT
7 IT IS RECOGNIZED THAT WE, THE STATE, HAVE A STRONG REASON
8 FOR PROTECTING THE IDENTIFY OF OUR CONFIDENTIAL
9 INFORMANTS, THAT WE HAVE A GOOD REASON FOR DOING THAT,
10 FOR THEIR SAFETY AND FOR KEEPING A GOOD WORKING
11 RELATIONSHIP BETWEEN INFORMANTS WORKING FOR US.

12 YOUR HONOR, IF WE WERE GOING FOR A DISTRIBUTION
13 CHARGE, HE WOULD BE ENTITLED TO KNOW THE NAME. BUT WE
14 ARE NOT. WE ONLY USED THE INFORMATION FOR THE PURPOSE OF
15 GAINING A SEARCH WARRANT. HE WAS NOT PRESENT DURING THE
16 SEARCH WARRANT. HE WAS NOT THERE IN THE RESIDENCE WHEN
17 THAT SEARCH WARRANT WAS SERVED. AND AT NO TIME AFTER WAS
18 HE PRESENT WHEN THE OFFICERS DEALT WITH THE DEFENDANT.
19 HE HAS NO KNOWLEDGE OF THE SEARCH WARRANT, OF THIS CASE.
20 HE CANNOT PROVIDE ANY OTHER INFORMATION AS FAR AS WHAT
21 OCCURRED AUGUST 21. HE IS NOT A MATERIAL WITNESS TO THIS
22 CASE, TO THIS CHARGE. IF HE HAD BEEN CHARGED WITH
23 DISTRIBUTION, HE WOULD BE A MATERIAL WITNESS, BUT HE IS
24 NOT CHARGED WITH DISTRIBUTION. WE ARE NOT CHARGING HIM

1 WITH THAT. WE ARE GOING FORWARD ON THE SEARCH WARRANT,
2 THE FACTS ESTABLISHED IN THE SEARCH WARRANT, YOUR HONOR.

3 THE COURT: ALL RIGHT. SHE'S SAYING THAT, WHILE
4 THEY USED THAT PERSON TO OBTAIN THE SEARCH WARRANT, THAT
5 AS A RESULT OF THE EXECUTION OF THE SEARCH WARRANT YOUR
6 CLIENT WAS CHARGED WITH THE CRIME THAT OCCURRED ON THAT
7 PARTICULAR DAY, WHICH I ASSUME IS POSSESSION OF AN AMOUNT
8 SUFFICIENT TO CONSTITUTE TRAFFICKING. WHAT DO YOU SAY TO
9 THAT?

10 MR. SHADD: YOUR HONOR, I AGREE WITH HER THAT THE
11 INFORMANT-- OBVIOUSLY, I AGREE THAT THE INFORMANT
12 PARTICIPATED IN THE ALLEGED DISTRIBUTION. I GUESS HE WAS
13 CHARGED, BUT HE WASN'T SERVED WITH IT. ALTHOUGH SHE
14 STATES THAT THE INFORMANT WAS NOT PARTICIPATING IN THE
15 SEARCH WARRANT, WE HAVE SOME EVIDENCE WHICH SAYS
16 OTHERWISE AND WE'LL ADDRESS THAT WHEN THE TIME COMES.

17 BUT I WOULD DIRECT YOUR ATTENTION TO STATE V.
18 DIAMOND, WHICH STILL TALKS ABOUT A PERSON WHO ACTIVELY
19 PARTICIPATES, EVIDENCE OF ENTRAPMENT, MIS-IDENTIFICATION,
20 INTENT OR KNOWLEDGE, IS AVAILABLE ONLY TO PERSONS WHO
21 ACTIVELY PARTICIPATE IN A TRANSACTION. OF COURSE, WE'RE
22 TALKING ABOUT A TRANSACTION WHICH LED UP TO THE SEARCH
23 WARRANT, WHICH LED UP TO DRUGS BEING FOUND.

24 AND THEY RELY UPON U. S. VERSUS YARBOROUGH*. THAT
25 WAS NOT REALLY THE CASE, YOUR HONOR. BUT IN THIS CASE

1 WE'RE SAYING THAT THERE WAS ENTRAPMENT ON THE PART OF
2 THIS CONFIDENTIAL INFORMANT, WORKING WITH THE POLICE.
3 THEY RELIED ON THIS INFORMANT TO GO IN AND ATTEMPT TO
4 MAKE A SALE. THE INFORMANT CAME BACK, OR ALLEGEDLY CAME
5 BACK AND SAID, YOU KNOW, YES, HE'S SELLING AND HERE'S THE
6 CRACK.

7 THEY MAY PRESENT TESTIMONY SAYING HE WAS SEARCHED,
8 BUT LIGON SAID HE WAS NOT SEARCHED AND LIGON SAID HE WAS
9 HE WAS A PART OF THE CONTROLLED BUY. THE FACT THAT HE'S
10 NOT EVEN A MERE TIPSTER WITH REGARD TO WHAT THE AMOUNT OF
11 THE DRUGS, WHATEVER THE AMOUNT OF THE DRUGS WERE THAT
12 WERE FOUND AT THE HOME, YOUR HONOR, AT THIS RESIDENCE.
13 HE IS DEFINITELY AN ACTIVE PARTICIPANT IN THE ENTIRE
14 SCHEME.

15 WE MAY OFFER EVIDENCE, YOUR HONOR, THAT IT'S WHO I
16 BELIEVE IT IS, BUT I DON'T KNOW. THAT THIS PERSON
17 ACTUALLY SHOWED UP AT THE SEARCH WARRANT, YOUR HONOR.
18 THE SEARCH WAS CONDUCTED, NOTHING WAS FOUND. THEY HAD A
19 DRUG DOG. NOTHING WAS FOUND. THEN ALL OF A SUDDEN, WHO
20 WE BELIEVE IS THIS CONFIDENTIAL INFORMANT, BUT ALL I HAVE
21 IS A NICKNAME, WHO ACTUALLY SPOKE WITH THE OFFICERS A FEW
22 MINUTES AFTER THAT. AND LO AND BEHOLD, THAT OFFICER
23 IMMEDIATELY WENT TO WHERE THE DRUGS WERE FOUND.

24 SO, I THINK THAT SHOWS KNOWLEDGE OF THE TIPSTER
25 KNOWING WHERE THESE DRUGS, OR THE INFORMANT KNOWING WHERE

1 THESE DRUGS WERE FOUND AND ACTUALLY PLAYED A PART IN THE
2 SEARCH WARRANT.

3 MS. WEAVER: WELL, YOUR HONOR, FIRST OF ALL, I'D
4 LIKE TO KNOW WHERE HE'S GETTING ALL THIS INFORMATION
5 ABOUT HIM BEING FRAMED FROM. I MEAN, SPEAKING ON BEHALF
6 OF THE CONFIDENTIAL INFORMANT, WHO HE THINKS HE KNOWS.
7 THAT I HAVE A PROBLEM WITH THE FACTS COMING FROM THAT
8 SIDE. ALL THIS ABOUT HE MAY HAVE BEEN FRAMED-- I HANDED
9 THAT CASE TO YOU FOR YOU TO REVIEW, McCRAVEY V. ILLINOIS.
10 THE COURT RECOGNIZED THE ISSUE WITH THE SEARCH WARRANT.
11 IT WAS DEALING WITH THE IDENTITY OF A CONFIDENTIAL
12 INFORMANT IN THAT SEARCH WARRANT WAS NOT A QUESTION OF
13 GUILT OR INNOCENCE, BUT A QUESTION OF PROBABLE CAUSE FOR
14 ARREST. THEY NOTED THAT THE IDENTITY DOES NOT NEED TO BE
15 REVEALED. THEY NOTED THE STATE'S POSITION AS FAR AS
16 PRESERVING THEIR IDENTITY BECAUSE IT IS A RISK FACTOR IF
17 EVERY CONFIDENTIAL INFORMANT WAS NAMED OUT OF EVERY
18 SEARCH WARRANT.

19 THE COURT: MY CONCERN AT THIS POINT IN TIME, I DO
20 WANT TO SEE THE CASE THAT YOU'RE TALKING ABOUT, SO I'M
21 GOING TO TAKE THE CASE UNDER ADVISEMENT. I DON'T KNOW
22 THE VALIDITY OR WHETHER OR NOT THE DEFENSE IS ACCURATE IN
23 STATING THAT THE INFORMANT MAY HAVE BEEN PRESENT AT THE
24 EXECUTION OF THE WARRANT AND ASSISTED IN LOCATING THE
25 DRUGS. IF THAT DID OCCUR, THEN MAY MAKE HIM MORE THAN A

1 MERE TIPSTER, IF HE'S THERE HELPING THEM EXECUTE THE
2 WARRANT. SO, I HAVE A LITTLE BIT OF CONCERN ABOUT THAT.
3 I REALIZE THAT'S AN ALLEGATION MADE BY A DEFENSE ATTORNEY
4 WHO'S TELLING ME THAT HE DOES NOT KNOW EXACTLY WHO THIS
5 PERSON IS. SO, THAT'S A LITTLE BIT...

6 WHAT I MAY DO, AS THE TRIAL GOES ON, IF THERE IS
7 EVIDENCE THAT THE CONFIDENTIAL INFORMANT WAS PRESENT WHEN
8 THE WARRANT WAS EXECUTED, THEN I MAY RECONSIDER A RULING,
9 BUT I'M NOT MAKING A RULING AT THIS POINT IN TIME. I'LL
10 SEE YOUR CASE AND TAKE A LOOK AT THAT.

11 MS. WEAVER: AND YOUR HONOR, I WOULD ALSO SAY THAT I
12 CAN CALL OFFICERS TO CONFIRM THAT THE INFORMANT WAS NOT
13 PRESENT DURING THE SERVING OF THE SEARCH WARRANT. I
14 WOULD LIKE A PROFFER ON AND I WOULD LIKE TO SEE WHO THE
15 DEFENSE HAS TO PUT UP TO SAY THAT THE INFORMANT WAS
16 PRESENT.

17 THE COURT: WELL, MAYBE WE SHOULD CONDUCT A LITTLE
18 HEARING ON THAT POINT TO FIND OUT WHETHER THE PERSON WAS
19 THERE.

20 MR. SHADD: YOUR HONOR, HOW CAN I GET MY WITNESS TO
21 SAY YES, THE CONFIDENTIAL INFORMANT WAS THERE, IF THEY
22 DON'T KNOW HE WAS THE CONFIDENTIAL INFORMANT.

23 THE COURT: I THINK I CAN---

24 MR. SHADD: IF I PROFFER THAT INFORMATION, YOUR
25 HONOR-- LIKE I SAID, ALL I HAVE IS-- OF COURSE, THE

1 OFFICER IS GOING TO AND I EXPECT THEM TO SAY THAT THE
2 CONFIDENTIAL INFORMANT---

3 THE COURT: I CAN'T CONSIDER THAT HE MAY HAVE BEEN
4 PRESENT IF YOU DON'T HAVE ANY EVIDENCE TO SAY THAT THERE
5 WAS AN INFORMANT PRESENT AND HELPING THE POLICE IN THE
6 EXECUTION OF THE SEARCH WARRANT. DO YOU FOLLOW WHAT I'M
7 SAYING?

8 MR. SHADD: I THINK I AM.

9 THE COURT: WELL, I MEAN, ... THE ONLY THING SO FAR--
10 YOU'RE ARGUING THAT HE MAY HAVE BEEN MORE OF A TIPSTER
11 BECAUSE HE WAS THERE WHEN THEY WERE EXECUTING THE WARRANT
12 AND POINTING OUT THE DRUGS. WELL, HOW DO I KNOW THAT'S
13 TRUE? I MEAN, HOW DOES THAT COME IN FRONT OF ME OR HOW
14 DO I EVEN CONSIDER THAT FACT, THAT THERE'S NO PROOF THAT
15 THAT OCCURRED?

16 MR. SHADD: WELL, YOUR HONOR, I AGREE WITH YOU
17 HOLDING THAT INTO ABEYANCE. BUT RIGHT NOW, I WOULD
18 EXPECT THESE OFFICERS IF THEY WANT TO BE TRUTHFUL TO GIVE
19 SOME INFORMATION TO PROVE THAT HE WAS THERE DURING THE
20 SEARCH WARRANT, AND WE WILL BE ABLE TO IDENTIFY THAT
21 PERSON AFTER THEIR TESTIMONY AND WE'LL BE ABLE TO PRESENT
22 THAT PERSON TO YOU IN OUR CASE.

23 THE COURT: AT THIS POINT IN TIME I WANT YOU TO
24 PRESENT THE CASE THAT YOU HAVE AND LET ME REVIEW THAT.
25 AND I'LL TAKE THIS MOTION UNDER ADVISEMENT.

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CERTIFICATE

I, THE UNDERSIGNED PHYLLIS S. BARRETT, CIRCUIT COURT
REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL HELD IN THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
GENERAL SESSIONS FOR THE SIXTEENTH JUDICIAL CIRCUIT, YORK
COUNTY, SOUTH CAROLINA ON THE 7TH AND 8TH DAYS OF APRIL,
2004.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

PHYLLIS S. BARRETT

County: York
 Date: 4/7/04

VOIR DIRE

Case No: 02.GS.46-2950

Judge: Regi Couch

Pl./State: State

State/Pl's. Accy: Leasa Weaver

Defendant: Clifton Darnell Dyle

Lisa Collins

Defense Accy: James Shadd III

Court Reporter: Thyllis Branch

Juror No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
61	Martin Gen	M	W				✓
188	Sharon Schilling	F	W			✓	
3	Shuch Allison	M	W				✓
191	Thomas Simpson	M	W			✓	
125	Thomas Mosecock	M	W		✓		
146	Michael Russ	M	W			✓	
131	Janie Chappell	F	W				✓
128	Michael Muirrell	M	W				✓
49	Ramon Espinoza	M	W		✓		
42	Jackie Kead	M	W				✓
174	Mellie Wilson	F	W				✓
66	Belinda Frankes	F	W			✓	
9	Chris Ballard	M	W		✓		
185	Nancy Mitchell	F	W				✓
14	Tiffany Billings	F	W				✓
193	Gregory Keller	M	W				✓

*For the Court column, indicate who made the motion to strike the jurors "for cause". C-Court, P-Plaintiff, D-Defense

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OCT 11 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
DANIEL D. HALL, CHIEF ADMINISTRATIVE JUDGE

APPELLATE CASE No. 2019-001128

Clifton Donell Lyles.....Appellant,

v.

State of South Carolina.....Respondent.

CERTIFICATE OF SERVICE

Petitioner(Clifton Donell Lyles), do hereby certify that I did
serve the "PETITION FOR REHEARING" on the Respondent, by
depositing one copy of the same in the U.S. mail, postage
prepaid, addressed as follows:

JANELL H. GREGORY, AAG
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 29211-1549

This 5th day of October, 2019

BY Clifton Donell Lyles 294075
PRO SE
1578 CLARENCE COKER HWY
TURBEVILLE, S.C. 29162

Sent For This Deadline

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Operations

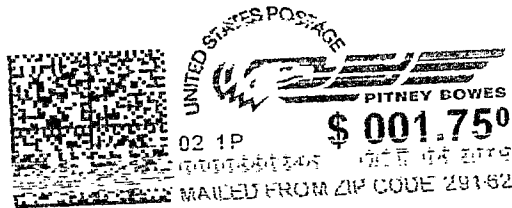
ORDER TO REPORT

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OCT 11 2019

S.C. SUPREME COURT

SCDC # 294075	Name Lyles, Clifton	Area TA-247-B
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Bring All Belongings <input type="checkbox"/> Bring State Clothing <input type="checkbox"/> Bring Nothing <input type="checkbox"/>		
Date 10-4-19	Signed C. Black	
Date	Inmate's Signature	
Date 10-6-2019	Staff Member's Signature C. Brown	



The South Carolina Supreme Court
attn: Daniel E. Shearouse