

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

Cordell Maddox, Jr., Circuit Court Judge

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**Case No. 2018-001099**

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Gavin V. Jones, ..... Appellant.

V.

State of South Carolina, ..... Respondent.

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FINAL BRIEF OF APPELLANT

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### **Statement of Issue on Appeal**

This matter comes before the Court pursuant to a "Petition for" a Writ of Mandamus filed March 14, 2012. In its return and motion to dismiss, the respondent requested that the petition be summarily dismissed. A motion hearing was held on February 20, 2014, before the Honorable J. Cordell Maddox, Jr. The applicant was present at the hearing. Rodney W. Richey, Esquire was relieved as counsel. Judge Maddox provided the respondent with a printout of 14-9-410, before the hearing, stepping out of his role as judge. (See Exhibit D for clarification). The hearing started at 10:34 AM and ended at 10:45 AM. Four years later an order of dismissal was signed on February 6, 2018 by Judge Cordell Maddox. A 59(E) was filed by the appellant and denied on April 26, 2018. As a result, this appeal follows to the Honorable Court.

## TABLE OF AUTHORITIES

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### CASE LAW

Anderson v. State, 527 S.E. 2d 298 (S.C. App. 200)  
Beach v. Lady, 262 S.W. 2d 837 (Ky. 1953)  
Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E. 2d 605 (2003)  
Evans v. Gunter, 294 S.C. 525, 366 S.E. 2d 44 (1988)  
Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005)  
State v. Durden, 264 S.C. 86, 212 S.E. 2d 587 (1975)  
State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972)  
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State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953)  
State v. Duncan, 264 S.E. 2d 421 (S.C. 1980)

### STATUTES

#### **S.C. Code Annotated (S.C.C.A.)**

§ 14-9-90  
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§ 16-9-10  
§ 16-17-735  
§ 17-19-10  
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§ 17-27-80

## RULES OF COURT

### **S.C. Rules of Civil Procedure (SCRCP)**

Rule 60 (b) (3)

Rule 71.1

### **S.C. Appellate Court Rules (SCACR)**

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## CONSTITUTION

### **S.C. Constitution**

Article I, § 3

Article I, § 11

Article V, § 4

### **U.S. Constitution**

Amendment V

Amendment XIV, § 1

## OTHER RESOURCES

Black's Law Dictionary, Pocket Edition 2d (2001)

### QUESTIONS PRESENTED

(1) Did the lower court err by not ruling that the solicitor's office have a ministerial duty to follow the lawful procedure for obtaining indictments in S.C. Code of Law 14-9-210?

(2) Did the lower court err by not ruling that the solicitor's office have a ministerial duty to follow S.C. laws when obtaining a lawful indictment?

(3) Did the lower court err by ruling that an illegally obtained indictment can give notice and exercise Subject-Matter-Jurisdiction over his person and case?

(4) Does the trial court have Subject-Matter-Jurisdiction over a case that was obtained by violating S.C. Code of Laws 16-9-10 A2 (Perjury and Subornation of Perjury)?

To save the court time, the appellant will argue all these questions together.

### FACTS

(1) There was no General Sessions Court on January 5, 1999, for the Grand Jury to convene upon the oath.

(2) By order of Chief Justice Ernest A Finney, the General Court session started on January 11, 1999.

(3) False information was presented on the appellant's indictment as to where, when and what court indicted him.

## ARGUMENT

This is not complicated. The State is making this complicated by trying to twist the law to fit the facts that they presented. On December 1, 1998, Chief Justice Finney canceled the term of the General Sessions Court. (See Exhibit "A1"). On December 10, 1998, an order was signed by Judge H. Dean Hall by request of Solicitor George M. Duckworth requesting that the Anderson County Grand Jury convene for the next six (6) month term of General Sessions Court for the year 1999, to dispose of a number of pending cases. Regardless of what the order requested, there was no General Sessions Court on any of the dates listed on the order which started with January 5, 1999. General Sessions Court did not start until January 11, 1999, so how did the Grand Jury convene upon their Oath at a Court of General Sessions on January 5, 1999, when there was no General Sessions Court. The Clerk of Court wrote a letter explaining that "At the beginning of a new year, the first gathering is an organizational meeting where we draw names and seat the New Grand Jury according to state law." (See Exhibit "C").

It is the Solicitor's and the Court's jobs to see that the S.C. Code of Laws governing the indictment procedures are followed. There is NO discretion. Any procedure outside this process voids the indictment. For the sake of arguendo, what if I worked all week cleaning a property as a part-time job and when I was paid, I was handed a hundred dollar bill. Being tired, dirty and hungry, I went to the grocery store to get food and other things that I needed before going home. When I got to the counter and gave the cashier the hundred dollar bill, she ran it under a blue light and then made a phone call to the manager. He informed me that the bill was counterfeit. No amount of pleading would make the manager accept the phony money. He stated, "It's as close to the real thing as I have ever seen, but it is still counterfeit." The procedure to make the bill legally was not followed. I humbly explain that the same principle applies as the indictment used in this case. The Solicitor had a ministerial duty

to follow the indictment procedures outlined in the S.C. Code of Law. By not doing his job in accordance with those rules, he violated my procedural due process rights.

Before I go on and explain this case with facts and conclusions of law, I would like to present the following thought; what is the point of having a Grand Jury if the Solicitor decides on his own who is indicted rather than letting the Grand Jury decide? And, if this Court allows this, then what is next? Laws were made so that the stronger might not in all things have their way. The purpose of law is to prevent such treatment as having a man unjustly seized by the State, charged and convicted for violating a state criminal law, and then ordering him to be confined for the rest of his natural life. The Constitution requires that a man be tried in accordance with the guarantees of all provisions of the Bill of Rights such as those set forth in the Fourteenth Amendment.

Judge Finney's order canceled all general sessions terms in Anderson County prior to the beginning of his "January 11, 1999," term; (See Exhibits). Accordingly, appellant submits that Judge Hall and Solicitor Duckworth's order for a January 5, 1999, term of general sessions in Anderson County convene a grand jury to present the appellant's indictment was prohibited by Chief Justice Finney's order and the S.C. Constitution. (See S.C. Const. Art. V, Sec 4).

Having clearly shown that Judge Hall and Solicitor Duckworth could not have ordered a January 5 1999 term of general sessions in violation of S.C. Constitutional requirements, the appellant now directs this Court's review of whether an "unconstitutional grand jury proceeding" could have deprived the Circuit Court of its subject matter jurisdiction over the appellant's case. To resolve this question, one must first interpret the holding by the U.S. Supreme Court in U.S. v. Cotton, 122 S. Ct. 1781 (2002), which guided this Court's holding in State v. Gentry, 610 S. E. 2d 494 (2005). In both Cotton and Gentry, the Courts held that the term "subject matter jurisdiction" means the Court's statutory and constitutional power to adjudicate a case. Indeed,

under the S.C. Constitution, Article V, §11, the general sessions court has subject matter (criminal) jurisdiction to hear and determine this class of case. Cotton, infra, Gentry, infra.

Notwithstanding, the issue raised in the appellant's motion is not a challenge to the court's subject matter jurisdiction to hear and determine criminal cases, appellant concedes that authority is granted by the S.C. Constitution. Instead, the appellant is contending in his motion that the State (Respondent) has failed to comply with constitutional and statutory laws/jurisdictional in nature, specifying the manner and means for lawful presentment of his indictment by a legally convened grand jury for the circuit court to act under its power, or criminal jurisdiction, to adjudicate his criminal case.

Accordingly, in South Carolina, the lawful return of indictments for circuit court's power (jurisdiction) to adjudicate criminal cases is determined by the Constitution, the statutory laws of the State, and is fundamental. (See Anderson v. Anderson, 382 S.E 2d 897 (1989). An assessment of these laws shows that "no person may be held to answer for any crime ... unless on a presentment of indictment by a grand jury. (S.C. Const. Art. 1, §11). Further, the grand jury as lawfully drawn for service upon general sessions court... shall meet with the court "at each of its terms" (to deliberate and return indictments). (S.C. Const. §14-9-170). The grand jury of each court... shall consist of eighteen (18) members, twelve (12) of whom must agree (on a True Bill) before a case can be presented for trial by the circuit court. (S.C. Const. Art. V, §22).

The S.C. Statutory Law also mandates that the County Solicitor shall prepare and, through the presiding judge of general sessions court, submit to the grand jury, "while in attendance upon general sessions court" (in accordance with §14-9-17-), bill of indictment (for grand jury's presentment). No indictment may be true billed by grand jury when circuit court lacks jurisdiction (or is not in a term), since grand jury's

jurisdiction is coextensive with criminal jurisdiction of the circuit court in which it is convened and for which it is to make inquiry (on whether or not to "True Bill" or "No Bill" indictments). (See State v. McClure, 289 S.E. 2d 158 (1982); State v. Wheeler, 193 S.E. 2d 515 (1972).

Jones asserts and argues, inter alia that although subject matter contained in the charging instrument upon which he was tried and convicted appears to be correct, he was nevertheless tried and convicted without a **PROPER** and/or lawfully **VALID INDICTMENT**, in violation of his right to due process of law pursuant to U.S. Const. Amend(s) V & XIV., 1 and S.C. Const., {fn.1}. That is to say, Jones was tried and convicted with an indictment, consequently void of power; a nullity, and technically, non-existent in violation of S.C.C.A., 17-19-10 INFRA. (See State v. Funderburk, 259 S.C. 256 191 S.E. 2d 520 (1972) (Where the defendant was tried and convicted upon indictment which was a nullity, it follows that he was convicted in violation of this section).

Moreover, Jones asserts and argues, that the indictment returned January 5, 1999, by the Anderson County Grand Jury, upon which he stands convicted, first of all, was **not** "lawfully issued" as defined by statutory criminal law. And secondly, the **Ex Parte procedure** upon which said indictment was obtained was **fraudulent**, and presented by "**Sham Legal Process**" as defined by the same criminal statute, S.C.C.A. 16-17-735, ET SEQ. Consequently, in violation of

additional procedure/criminal statutes as will be shown, infra. S.C.C.A., 16-17-735 states in pertinent part:

(B) It is unlawful for a person falsely to assert authority of state law in connection with a sham legal process. A person violating the provision of this subsection is guilty of a misdemeanor.

(E) (3) "For purposes of this section: **Sham Legal Process** means the **ISSUANCE**, Display, **DELIVERY**, Distribution, **RELIANCE** on a lawful authority, or other use of an **INSTRUMENT** that is **NOT LAWFULLY ISSUED**, whether or not the instrument is produced for inspection or actually exists, which purport to:

(b) assert **JURISDICTION** or **AUTHORITY OVER** or determine or **ADJUDICATE THE LEGAL, EQUITABLE STATUS**, rights, duties, powers or privileges **OF A PERSON** or property; or

(c) require or authorize the search, seizure, **INDICTMENT, ARREST, TRIAL** or **SENTENCING OF A PERSON** or property. (Emphasis added).

Facts stated above and other violation of law, which will be proven herein, in all fairness, would render Jones' indictment fatally defective or a nullity altogether! See Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005)...(A)n indictment or "notice document" issued by a grand jury which is established or constituted illegally is deemed a nullity. An indictment, which is a nullity, would be insufficient as a matter of law, to give the required notice to a defendant.

It is fundamentally well established that a citizen accused of felonious, or otherwise infamous crimes, may only be tried upon indictments returned ["True Bill"] by a grand jury. Essentially, this

mandate originates from the U.S. and S.C. Constitutions, and state statute S.C.C.A. 17-19-10, which states:

*No person shall be held to answer in any court for an alleged crime of offense unless upon indictment by a grand jury, except in the following cases:*

(1). *Prosecution by information is expressly authorized by statute;*

- (2). *In proceedings before a police court or magistrate; and*
- (3). *In proceedings before court martial.*

Logically therefore, it stands to reason that any such indictment(s), in order to be valid, must be obtained through **LAWFUL PROCESS**. In other words, without a **PROPERLY** obtained indictment, the court - in this case, the Court of General Sessions - is deprived the power to try the accused; it simply does not have, '**In Personam Jurisdiction**', as distinguished from '**Subject Matter Jurisdiction**', See U.S. Const., Amend V S.C. Const., Art. I 11... [Fn. 2]

Published for our learning and understanding, Black's Law Dictionary, in which, are defined several types of jurisdiction as follows:

- Jurisdiction**--1. A government's general power to exercise authority...
2. A court's power to decide a case.

**In Personam Jurisdiction**—A court's power to bring a person to its

adjudicative process; **jurisdiction over a defendant's personal rights**; and **Subject Matter Jurisdiction**—jurisdiction **over the nature** of the case and the type of relief sought. (Emphasis added)

[T]he burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury **or its proceedings** is predicated. Ex. **EVANS v. STATE**, 363 S.C. 495, 611 S.E. 2d 510 (2005).

Now therefore, Jones would carry his burden in proving the facts supporting his challenge and the distinct jurisdictional differences to which one may argue and make reference... See State v. Funderburk, 191 S.E. 2d 520 (1972).

IN the amendment filed by petitioner in 2013 to this Mandamus; petitioner contends that the Anderson County Solicitor had a ministerial duty to provide petitioner any documents pertaining to any irregular process in the indictment procedure. Also, petitioner requested a hearing to determine whether the Court which tried him could use a void instrument to convey any jurisdiction over him in a Court of Law. Anderson v. State, 527 S.E. 2d 398 (SC App 2000). Subject Matter Jurisdiction, may be raised at any time if it deals with irregularities in how the document was presented. If the laws of procedure are not followed in obtaining an indictment it becomes a void instrument and can not convey jurisdiction of any kind over any citizens. Gentry is not applicable when dealing with an indictment if it was not lawfully presented. Gentry deals with the substance of an indictment not the presentment.

Now that I have spoken as a layman about the matter at hand, let me further explain. If the Court would look at Tr. Pg 9 Ln 2-16 of the Mandamus Hearing, the Court is speaking frankly about an indictment procedure used outside of the procedure outlined in S.C. Code of Laws.

The appellant asked the Court a question at the Mandamus Hearing. (Ln. 19) The Court responded "Yeah?"

Mr. Jones asked (Ln. 20) "Has 14-9-210 been repealed?" Mr. Jones is curious because the judge has just basically said, 'We do what we want' when obtaining an indictment.

The Court answers on (Ln. 22) "I have no idea, to be honest. And to be honest with you, I don't know. What does it say?"

The appellant then reads 14-9-210 to the Court. On Ln. 10-25 the Judge describes a process totally outside S.C. Code of Laws 14-9-210 after admitting that the law is still active.

I humbly speak before this Court of Appeals panel. I don't know the reason why some Solicitors have been given unlimited control over the indictment process. I believe that for judicial economy some courts ignore certain S.C. Code of Laws. Does that make it right? Does it make it right to violate my 14<sup>th</sup> Amendment due process rights? Is it okay now to lie on indictments? The Grand Jury did not meet at the Court of General Sessions as described by law. Where did they meet in the court of record? You gave an oath that you met January 5, 1999, at the Court of General Sessions. Did the Grand Jury meet on that day? I beseech the integrity of this Judicial Council with the utmost respect. This is why you are here; why appeals are necessary. If the Solicitor's office and the lower Court will produce false information on a document required by the laws of this state, in other words commit perjury, fraud, or use sham legal process, how can this Court look the other way? The indictment used in this case is a void document. A void document can not give notice or convey any jurisdiction over me. On Tr. Pg. 7, Ln. 8-13, the Court said there is no requirement that the Grand Jury meet during a General Session term.

Appellant would ask this Court if a man is indicted during a Common Pleas term, can he also be tried for murder in a Court of Common Pleas? Of Course the answer would be **No**, just like it would be **No** if it was asked of the Family Court.

The elephant in the room is not that the state is right in their argument or that I am wrong in mine. Rather, it's how does this Court minimize what the S.C. Solicitors have abused all for the cause of judicial economy. So, I ask this Court if they would give

this weighty matter their sincerest consideration. I say this with the utmost respect and ask that the Court not kick this can down the road.

The next section of this brief will show how this void document became void. Essentially, one that is illegal.

## DISCUSSION ON FACTS & AND THE CUMULATIVE ERRORS

### LAW

#### I. Fraud upon the Court

A. For reasons of jurisprudence and fairness in keeping with due process protections, the policy makers of our court system recognized matters pertaining to fraud upon the courts of this state. Exercising their keen foresight, they saw fit by the Rules of Civil Procedure (SCRCP) to create and implement provisions to set aside and /or vacate judgments due to fraud upon the court. [fn.3]

In general, extrinsic fraud upon the court can be defined as "... [A] fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner, its impartial task of adjudging cases that are presented for adjudication." See *Evans v. Gunter*, 294 S.C. 525, 366 S.E. 2d 44, 46 (1988) (Quoting H. Lightwey, J. Flanagan, S.C. Civil Procedure, 408 (2<sup>nd</sup> Ed. 1985))

B. Solicitor Duckworth was able to perpetrate "extrinsic" fraud upon the court in two ways: First, by giving the ex parte grand jury process an appearance of being legally and properly conducted; and secondly, the false indictment information operated in such a manner as to improperly mislead Jones and the trial court wherein the criminal matter was ultimately heard, causing both to falsely believe that the ex parte grand jury process whereby the indictment was obtained, was conducted and supervised by the proper court, in compliance with statutory law when it was not. Consequently, this unlawful action deprived Jones the opportunity to make an informed, contemporaneous objection as required by S.C. Code of Law, §§ 17-19-90 [fn.4] because there were no apparent defects in the indictment or the proceedings. See *State v. Richardson*, 149 S.C. 121, 146, S.E. 676 (1928). "This section applies only where the defect appears on the face of the indictment."

C. In fact, because grand jury proceedings, wherein jurors receive and deliberate probable cause evidence and process indictments, are secretly held as ex parte hearings, the very reliance of those proceedings to be held in a lawful and ethical manner can only be presumed. Neither defendant nor his attorney are allowed in attendance to ensure this, therefore, are not made privy to what goes on within. Accordingly, this type of "extrinsic" fraud causes further harm to Jones and the integrity of our judicial process because it is conducted behind the scenes, quite possibly without a presiding judge, which would obviously allow the Solicitor unchecked influence over grand jurors.

## II. Sham Legal Process

A. It must first be noted that the "True Bill" indictment returned against Jones charging him with the murder within its body, prints in pertinent part that:

*"At a Court of General Sessions, convened on January 5, 1999, the Grand Jurors of Anderson County present upon their oath. . . ."*

The body of the Grand Jury's sworn presentment also bears the signature of the Anderson County Solicitor, George Duckworth. Moreover, a "True Bill" stamp is affixed to the face, {title page} of the indictment bearing the signature of the grand jury foreman. See Exhibits \_\_\_\_ (Indictment). **E-1**

Secondly, the statutory and /or court sanctioned calendar schedule for the Tenth Judicial Circuit terms, published by the S.C. Supreme Court/ Administration, irrefutably demonstrates that **NO** Court of General Sessions had been scheduled or open on January 5, 1999, as printed in Jones' indictment. (See Exhibits **I-1** \_\_\_\_ (Court Order & Calendar with Indictments)).

Therefore, prima facie evidence shown therein conclusively proves that, contrary to the information printed by Solicitor Duckworth in Jones' indictment, the Anderson

County Grand Jury **DID NOT** convene at a Court of General Sessions, in violation of procedural, statutory law because none were open on January 5, 1999. S.C. Code of Law, SS 14-9-210 states in pertinent part:

*"The county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days... The grand jury shall act thereon and report its actions to the presiding judge of the court of general sessions... All cases in which bills of indictment are so found shall stand for trial..."*

Demonstrated therefore, is the fact that false information is contained within the state's sworn indictment returned against Jones not only in violation of statutory laws such as S.C. Code of Laws, § 16-17-735 & 16-9-10, "Sham Legal Process" and "Perjury", but also, in violation of Jones' due process rights protected by the U.S. and S.C. Constitutions. [fn.1]

B. Further noted, is the fact that pursuant to S.C. Code of Laws § 14-9-210, supra, Ms. White, acting on behalf of the selected county solicitor, Mr. George Duckworth, was the one responsible for the presentation, processing, and presentment of Jones' indictment to the grand jury at a qualified Court of General Sessions. Presumably, it is this ex parte proceeding whereby criminal jurisdiction is legally established, and therefore, concomitant with trial court to which Jones was bound over. "The jurisdiction of a grand jury is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry." Id. Funderburk, supra.

The facts, therefore, are clear and cannot be disputed; false court term information is contained in Jones' state/federal required indictment, which was

knowingly presented somewhere other than a Court of General Sessions as required by law. Solicitor Duckworth knowingly perpetrated these acts possibly in collusion with the clerk's office, whose responsibility it is to properly convene ex parte grand jury proceedings.

C. This illegally obtained indictment was then transferred to the trial court, supposedly conferring jurisdiction to it. But, instead thereof, it rendered both, the ex parte grand jury proceeding and the criminal court whereupon the matter was tried; as "sham legal process" by acting on the illegally obtained indictment, again, in violation of S.C. Code of Law, SS 16-17-735, supra. "[T]he court must strike down the indictment when a defendant demonstrates the grand jury which indicted him is a nullity. . . . "Evans, supra. Finally, wherever, and by whatever means, the grand jurors did convene with Solicitor Duckworth for process, presentment, and issuance of Jones' indictment as "True Bill", it was an illegal assembly as a matter of law, pursuant to S.C. Code of Law SS 14-9-210. And as such, the indictment itself **was not** a "lawfully issued", state required indictment, causing the document itself to become a nullity to S.C. Code of Law, SS 16-17-735(E) (4), which states:

(E) (4) "Lawfully issued" means adopted, Issued or rendered IN ACCORDANCE with the applicable statutes, rules, regulations, and ordinances of the United States, a state, an agency, or a political subdivision of a state.

### III. Perjury and Subordination

A. Jones asserts and argues that the facts and evidence presented herein demonstrate, that by subscribing his name to Jones' State indictment, Solicitor Duckworth violated his oath of office, committing perjury, because he signed the indictment used to convict Jones knowing it contained false court term information and was obtained by an unlawful process.

B. Furthermore, Solicitor Duckworth consequently committed subordination of perjury, in that he caused grand jurors to present upon their oath the same false court term information contained within Jones' indictment; unwittingly participating in the sham legal process from which the indictment was obtained.

By his conduct a prima facie case is shown against Solicitor Duckworth in violating a criminal statute, to suborn the Anderson County grand jurors to unwittingly commit perjury, S.C. Code of Law, SS 16-9-10, "Perjury against Public Justice". [fn.5]. More importantly, our Supreme Court in Chewning, infra, held that, "[T]he subordination of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud." Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). Accordingly, Jones has demonstrated further harm done to his case and the judicial process thereupon.

#### IV. Prosecutorial Misconduct

A. Fundamentally, it should be understood that Solicitor Duckworth, while acting on behalf of the People, was required to know and abide by the laws and rules of this State, having special responsibilities to see that justice was done, pursuant to SCACR, Rule 407, Rules of Professional Conduct, Rule 3.8 (comments). "... he [prosecutor] must see that no conviction take place except in strict conformity with the law, and that the accused is not deprived of any constitutional right or privilege." (Insert in original) State v. King, 222 S.C. 108, 71 S.E.2d 798 (1952); see also State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000); and State v. Durden, 264 S.C. 86, 212 S.E.2d 581 (1975).

Obviously, Solicitor Duckworth knew he was participating in an ex parte grand jury proceeding which was not being held at a Court of General Sessions in accordance with law, and in violation of several other state procedural and criminal statutes. Consequently, his behavior must be viewed as "willful" and "deliberate". Therefore, his actions were indicative of gross misconduct, which contributed to Jones being deprived of fair and impartial criminal proceedings, beginning with this critical stage of the adversarial process. SCACR, Rule 407, Rules 8.4(b) & (d) state:

**Rule 8.4** – It is professional misconduct for a lawyer to:

(b) ... commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(d) ... engage in dishonesty, fraud, deceit, or misrepresentation;

B. It may further be shown that similar problems have existed in both the recent and distant past regarding questionable and/or unlawful ex parte grand jury indictment proceedings. This has not been a new or unique problem. For example, the Solicitor's offices in Spartanburg and Greenville counties in South Carolina have been under investigation and shown in the news regarding their "assembly-line style" practice of processing indictments, wherein, only a few scant seconds were allowed to review and/or consider evidence before returning indictments as "True Bill". In fact, these proceedings have even been referred to as "rubber stamp" sessions. (See Exhibits m-1)

Further noteworthy is the fact, that in Kentucky, whose statutory laws governing ex parte grand jury proceedings are very similar to ours here in South Carolina, their courts have experienced the very same problems of grand juries being convened unlawfully and in violation of statutory terms of court. "An indictment returned by grand jury when no court was in session was void." See U.S.C.A. Const. Amend. 14, SS 1; and "Failure of defendant to move to have indictment set aside, because returned when no court was in session, was immaterial, since the indictment being void, there could be no waiver." Beach v. Lady, 262 S.W.2d 837 (Ky. 1953).

## CONCLUSION

In the order of dismissal the lower court has demonstrated nothing that shows that laws and rules governing presentment of a lawful indictment were followed.

On the contrary, Jones has presented attachments and law that clearly show that the indictment used in the present case is no better than a blank sheet of paper.

In South Carolina, there is **NO** jurisdiction that may be obtained with a blank sheet of paper. A void indictment is no better than a blank sheet of paper. The 14<sup>th</sup> Amendment, due process clause, protects Jones from being indicted with a void document. Jones was entitled to be brought to trial with a lawfully obtained indictment. Solicitor Duckworth had a ministerial duty to see that the indictment used in this case was lawfully presented. The State has failed to show how a document, in which statutory law has been ignored, that has false information printed on it, is lawful. The petitioner in this case was brought to trial illegally, because the document used in this case was a void document.

For the State to use the defense that the "Court noted during the hearing that there is no requirement that a term of General Sessions Court be convened for the Grand Jury to meet"; is a misrepresentation of fact and law; 14-9-210 has not been repealed. In as much, the Grand Jury gave an oath that they convened at a Court of General Sessions on January 5, 1999.

"No local rule of court, administration order, policy, or other procedure can take precedent over statutory law, which is always controlling. See, S.C. Constitution Article I, Section 14 and State v. Cottingham, 77 S.E.2d 897, 224 S.C. 181 (1953) (Statute overrides rules of court in conflict.); State v. Duncan, 264 S.E.2d 421 (S.C. 1980) (Circuit Court rule promulgated by individual and void).

In so far as the issue of whether or not a local rule, order, policy, or procedure was utilized for process and return of Jones' indictment is irrelevant because by State law, it would still have to be in agreement with the provisions of section 14-9-210, for it to be constitutional, as well as provisions of section 14-9-90, 14-5-210, 14-5-910, and 14-5-920. Moreover, Article V, Section 4 of our Constitution provides in pertinent part:

*"The Supreme Court shall make rules governing the administration of all courts in this state. **SUBJECT TO THE STATUTORY LAW** The Supreme Court shall make rules governing the practice and procedures in all such courts."* (Emphasis added)

Truly it would be a gross miscarriage of justice for the Court to arbitrarily ignore all the evidence that has been brought to light that clearly show that the indictment procedure in this case was wholly flawed. Will we say that it is okay to print false information on documents (**Indictments**) required by the laws of this state. The Statutory Laws are safe guards that protect citizens; it keeps the powers that be honest. When Statutory Laws are ignored lines are blurred and conspiracies develop to cover misconduct that put integrity in the back seat.

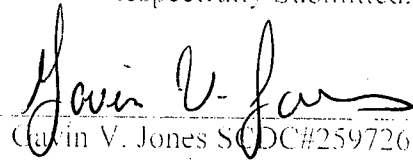
As a layman I don't have all the answers, I have to depend on the Court to stand in a position of integrity. I read Rule 407 of Profession Conduct and Rule 3.8. The (Prosecutor) must see that no conviction takes place except in strict conformity with the law and that the accused is not deprived of any constitutional right or privilege.

This is the job of the prosecutor and the Court. Further, the appellant can never be given notice with a void document (which is the same as a blank sheet of paper) that was used as an indictment.

There seem to always be avenues that would allow for what the state would call mistakes in law to be overlooked. But I say to this to this Court on bending knee that this is not a mistake. This was a deliberate violation of a man's procedure due process a "Practice". The state overlooks one of the most crucial points in what they have done. There is no accountability when they ignore statutory procedures, if the solicitor tells the Grand Jury Forman just stamp these indictments No Bill. and these indictments True Bill. who would know? If the solicitor himself steps in and talks with the Grand Jury about certain cases. who would know?

Appellate humbly asks that this Court's decision for relief. will show that this Court does not tolerate short cuts that violate a man or woman's 14<sup>th</sup> Amendment Due Process rights and the guideline for any Court of Appeals Judge is the law not a practice adopted by state solicitors and courts.

Respectfully Submitted.

  
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