

The State Of South Carolina  
In The Court of Appeals

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SC Court of Appeals

Appeal From The Court of General Session 13th Judicial Circuit  
Court of Common Pleas Motions Hearing

Alex Kinlaw, Jr., Law Judge  
Case No. 2017CP2305529

South Carolina ex rel, W. Walter Wilkins, Solicitor, 13th  
Judicial Circuit

VS.

2006 Ford F-350 (vin - 1FTWW31P86ED61140) Property  
AND  
David Green Jr., and Tonja Flythe-Harkless, Appellant

Pro Se: David Green David Dreen  
20 Mc Gee Street  
Greenville, S.C. 29601

I.

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New Evidence which was held back from me until after hearing on July 19, 2018

(1) was the stop video minus Deputy Cannon's Body cam footage. I tried to video before hearing but none was given.

(2) Transcript Page 4 and Line 23-25 and 1-15

State that Mr. Green was arrested for a parole warrant from Maryland but new evidence of Dispatch report show that Maryland warrant warned Dep. Cannon to do not arrest twice. The <sup>video</sup> transcript also states that Mr. Green was not arrest for a warrant. Looking at the video footage the Deputy was not close enough to see the expired tag when he blue lighted me.

Therefore the stop was not for a expired tag but a lane violation that I already address in Arguments "Language of 56-5-1900". With all the new evidence the stop was illegal and the arrest stated at hearing ~~is~~ was not true. With the illegal stop this whole case should be thrown out and all property return to owners.

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## Statement of Issues

A-1

- (1) 5<sup>th</sup> amendment states no person shall be deprived of life liberty, nor property without due process of law
- (2) 6<sup>th</sup> amendment states I have a right to a speed trial/hearing in this case
- (3) 6<sup>th</sup> amendment states I am to have compulsory process for obtaining witnesses in my favor
- (4) 6<sup>th</sup> amendment states I have a right to have the assistance of counsel for my defence
- (5) 8<sup>th</sup> amendment states no excessive fines imposed
- (6) 8<sup>th</sup> amendment states nor be inflicted with/by cruel and unusual punishment
- (7) 14<sup>th</sup> amendment No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States
- (8) 14<sup>th</sup> amendment states nor shall they deprive any person of life liberty, or property, with out due process of the law
- (9) 14<sup>th</sup> amendment states nor shall be deny to any person within it's jurisdiction the equal protection of the laws
- (10) 1<sup>st</sup> amendment states prohibiting free exercise thereof

- (11) 4<sup>th</sup> amendment states The right of the People against unreasonable searches and seizures
- (12) The Solicitor's negligence pre se for failing to initiate forfeiture proceeding within a reasonable time as provided by § 39-15-1195 (C), 44-53-520 (A), 44-53-530, and 39-15-1195 (A)
- (13) Defendant(s) did not possess a right to a jury trial which under sections 44-53-520, 44-53-530, and 44-53-530 (A). Summon said a Non Jury Trial
- (14) A innocent owner shall not be forfeited. IF such owner was not a consenting party to, prior to, or had no knowledge of the concealment, containment, or transportation of a controlled substance. Subsection (4)(A) and 44-53-586
- (15) The defendant(s) was not made aware / known of their right in the forfeiture hearing. Mr. Green could have been intitled to counsel appointed for him in the hearing for the forfeiture. Rule 608 / GAL rule 17 SCRCF
- (16) The first hearing Judge did not act as a neutral and detatch Judge. (6th)
- (17) The fact Mr. Green had not been indicted before the forfeiture hearing

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Statement of the Case

B-1

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(1) Notification of Seizure filed with/by Sheriff's Office dated July 11, 2017

(2) Mrs. Flythe-Harkless called the Sheriff's Office and left a message about coming to get the paper work, mail, etc. out of the truck on 8-21-17 (no returned call back from left message)

(3) On the beginning of the August 2017 Mrs. Flythe-Harkless called and spoke to a Supervisor Sgt. Scott Matheny A-4 when she was told that the truck was being used as evidence and she would have to wait until trial was over before she could get her truck back, but that she could come get her belongings out of the truck (told to call ahead of time)

(4) In July after Mr. Green was arrested Mrs. Flythe-Harkless called the Greenville County Clerks office and was told to call Deputy Al Cannon at 864-895-0178 which she did call that day and left a message July 2017 (no returned call back from message)

(5) On 10-27-2017 Mrs. Flythe-Harkless spoke to Sgt. Scott Matheny A-4 and was told she would not be able to get her truck back

(6) On 11-12-17 Mrs. Flythe-Harkless sent a copy of the title to the Ford F-350 Solicitor Jonathan M. Gregory (which he asked for when she talked to him a few days earlier)

- (7) Exact date unknown but it was between 11-12-17 and 11-28-17 Mrs. Flythe-Harkless called Solicitor Gregory and was told that there was nothing he could do because the paper work was already put in and he could not stop it
- (8) On 11-28-17 Mrs. Flythe-Harkless call the Solicitor's Office about if there had been a court date set for the truck (message was left "Carrie Cott")
- (9) On or about the month January 2018 Solicitor Gregory Filed a motion asking a Judge "Female Judge name unknown" to declare Forfeiture on the truck because no one had come forward (Judge said no)
- (10) On April 4, 2018 a Greenville News reporter met with 13<sup>th</sup> Circuit Solicitor Walt Wilkins about the case the next day his office sent a summons to the owner by mail (Mrs. Flythe-Harkless)
- (11) On August 25, 2017 Solicitor Gregory Filed a Summons / Complaint Forfeiture (Non-Jury Trial Demanded on Summons)
- (12) On the August 25 date of Complaint / Summons was only Filed to Mr. David Green "interested party" not the owner Mrs. Flythe-Harkless
- (13) On 10-26-2017 was the date Mr. Green was informed of the motion Complaint / Summons (which was delivered by Lucas Marchant)
- (14) On March 26, 2018 a amended complaint / Summons was Filed
- (15) On April 12, 2018 a second amendment complaint / Summons was Filed

(16) On 7-11-17 Mr. Green told Deputy Al Cannon "the arresting Deputy" that the vehicle "Ford F-350" was his mother which a motor vehicle check was done (owner, insurance, and registered to Mrs. Flythe-Harkless) with her mailing address of 7 Sycamore Street Apt. 2 Westminster, MD. 21157 also wrote on Impoundment and Inventory

(17) On ~~10~~<sup>10</sup>-28-2017 Mr. Green wrote Solicitor Gregory to make him aware that the truck was not his property but his mother's.

(18) On April 20, 2018 a Ms. Kathryn brought the last complaint/Summons. She also brought me paper work on 4-9-2018 which was for the March 26, 2018 complaint/Summons "Amended motion"

(19) On July 19, 2018 a hearing was finally held the forfeiture hearing in front of Judge Alex Kinlaw, Jr.

## Argument

C-1

(1) The Sheriff's Office nor the Solicitor fail to maintained due process of the law because of many factor. They fail to complete and file matter in a timely manner. The Solicitor knew who the owner was and had knowledge that Mrs. Tonja Flythe-Harkless was the one trying to get her Ford F-350 back, but he tried to have to vehicle forfeited as being abandon. The fact that the owner Mrs Flythe-Harkless nor Mr. David Green was at the first <sup>earing</sup> held. The fact that the Solicitor failed to show or prove that Mrs. Flythe-Harkless knew any thing about any one having to vehicle or that because her son had been locked up over 9 years ago for a drug crime that It was going to happen over on 7-11-17. They fail ~~not~~ <sup>not</sup> to deprived the owner of property, because the officer Dep. Al Cannon stated "that he was advise that the vehicle was paid for" then he decided to seize the vehicle and only the vehicle (money was not seized from Mr. David Green). All is a violation of the owner's and Mr. Green (5<sup>th</sup>).

(2) The Sheriff's Office fail to hold/file the paper work in a timely manner, so that the Solicitor also failed to have a hearing on the case on a timely manner (6<sup>th</sup>)

(3) The State, etc. fail to let Mrs. Flythe-Harkless and Mr. David Green to have compulsory process for obtaining witnesses in their favor due to Mr. Green being detained on a illegal bond and being in Greenville County Detention Center with limited access to his witnesses and evidence. Them both not being aware of the correct court hearing dates (the clerk wrote Mr. Green and told him it should be in April of 2018 but it was in July 2018). (6<sup>th</sup>)

- (4) The interested party Mr. Green was being detained and had been detained and could in no way afford assistance of a Lawyer for the hearing, Mr. Green had been detained for over a year. Due to being detained Mr. Green had no access to a law library (until 3-xx-18) and the interested party plus owner had a good knowledge of the law. (6th)
- (5) The fact of the owner Mrs Flythe-Harkless ~~had~~<sup>hadn't</sup> a knowledge of any crimes that was supposedly committed with her truck nor has any evidence of Mr. Green having knowledge of any drugs nor has Mr. Green been found guilty of any crime/crimes. Therefore there is no fines imposed which would also make the taking of Mrs. Flythe-Harkless excessive. (8th)
- (6) The fact that the owner Mrs. Flythe-Harkless property been taken due to someone else "supposily" had broke the law and her having no knowledge of what "supposily" happen did inflict cruel and unusual punishment. Even the Judge's decision to forfeit on the vehicle after he repeatedly asked the same question "as to if you knew Mr. Green had her truck" which render the answer of NO many times. (8th)
- (7) The fact that Mrs. Flythe-Harkless is a innocent owner who was not charged in/of any criminal case or indictment as to her know anything about drugs or that Mr. Green had used her vehicle, the state should not enforce any law which abridge her privileges or her immunities as a citizen of the United States as a innocent owner. (14th)

(8) The Fact that the owner Mrs. Flythe-Harkless and interested party Mr. Green WAS deprive of property (owner<sup>of</sup> the truck and Mr. Green Clothes phone in side) with out the sheriff department, Solicitor's Office, and the courts not using the whole due process of the law to forfeit on any of property. Time limit of filing, Time limit of a hearing in a timely manner, Not filing the correct paper work before the first hearing which Judge said NO to the forfeiture. Do to the Solicitor Gregory credibility issue in the trying to claim the property as abandon when the truck and the things inside the truck was claim. Even to go as far as he had a copy sent to him of the Ford F-350 trucks " which he asked to be sent to him. He was also sent (2) two letters from Mr. Green <sup>the week</sup> ~~between~~ October 2017 and December 2017. The Sheriff's Office, the in Vehicle Impoundment records, the Deputy's Incident report, the tags, the insurance paperwork and etc. knew exactly who the Ford F-350 belong to from 7-11-17. The Solicitor lacked to do the correct and full filing while all the evidence of owner's name and address was there. (14th)

(9) The Fact that equal protection of the laws was not afforded to the owner or the interested party. Neither one of them knew any thing about a hearing that happen before the 7-19-18 hearing. They was not notified by any one. Mr. Green was / has been in the same place "Greenville County Detention Center from 7-11-17 until this day now of 3-16-19. (14th)

(10) The Fact the owner equal protection of the law is not up held as a innocent with no knowledge of the vehicle had been taken or that any one would have used it to do a crime. (14th)

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C-4

- (11) The Solicitor negligence per se for failing to initiate forfeiture proceeding within a reasonable manner/time as provided by § 39-15-1195 (c) 44-53-520 (A), and 44-53-530, plus 39-15-1195 (A)
- (12) A innocent owner shall not be forfeited. IF such owner was not a consenting party to, or privy to, or had <sup>no</sup> knowledge of the concealment, containment, or transportation of a controlled substance. Subsection (4)(A), 44-53-5
- (13) Defendant did not possess a right to a jury trial which under sections 44-53-520, 44-53-5~~20~~<sup>30</sup>, and 44-53-530 (A). Summons said a Non Jury Trial
- (14) The defendant's was not made known to/of their ~~if~~ right in the forfeiture hearing. That Mr. Green could be in titled to had counsel appointed for him in the hearing. Rule 608 / GAL rule. 17, SCRCR
- (15) The: the hearing of the forfeiture Judge not acting as a neutral and detatch Judge of/ from the forfeiture, because once she "Judge" had made a decision that they Solicitor's Office could not forfeit the Ford F-350 she should not have acted as a help to the Solicitor's Office by tell them what needed to be done to fix the Solicitor's Office lack of doing the filing of the names "Owner's name on the Complaint/Summons". (6<sup>th</sup>)
- (16) The fact that Mr. Green had not been indicted before the forfeiture hearing (7-19-18) the state has no jurisdiction over the matter / or ~~to~~ to try any case.

- 1) Ex parte Foster, 350 S.C. 238, 565 S.E.2d 290 (S.C. 2002). Hamper his ability to defend his case. (GAL is appointed)
- 2) James David Farmer vs. Florence County Sheriff's office, 701 S.E.2d 48, 390 S.C. 358 (S.C. App., 2018)
- 3) Myers vs. Real Property at 1518 Holmes Street, 411 S.E.2d 209, 306 S.C. 232 (S.C. 1991)
- 4) S.C. Law Enforcement Division vs. Michael and Lance (#22239)  
Innocent owner of property
- 5) State vs. Donovan Williams (a prior arrest or criminal record alone does not amount to reasonable suspicion that the owner knew what a person was going to do 9 years later). Also look at United States vs. Jones, 234 F.3d 234 [351 S.C. 604 (2000)]
- 6) Gossett vs. Gilliam supra Rule 17(c) S.C.R.C.P (GAL)

## Conclusion

D-1

- (1) Due to the time delay to submit the proper motion and reports correctly and in a timely manner the case should be dismissed and property returned to owner as provided by § 39-15-1195(c).
- (2) Due to the Judge of the first hearing that none of the interested party or the owner of the property knew about in which the Judge did not act as a neutral and detached Judge in the case which violated the 14th and 6th amendments The property should be return to the owner
- (3) Due to the many ~~day~~ process of the law issues through out the (1) one year and (2) two week for the hearing which violates the 14th and the 5th amendments the property in the case should be return to owner
- (4) Due to the fact that the owner is a innocent owner the property should be return to the owner Mrs. Tonja Flythe-Harkles
- (5) The Fact that the interested party Mr. David Green Jr. has not been found guilty of any crime and is innocent for all charges There fore is a violation of the 8th, 5th, and 14th amendments and due to these violations per property should by return to the owner
- (6) Due to the Solicitor never ever proving that the owner had knowledge of any crime nor criminal activity or even the use of the truck at the time and date of uses of the Ford F-350

that the property should be return to the owner Mrs. Flythe-Harkless because of the innocent own

(7) Due to the interested party Mr. Green not to have Free exercise to obtain witnesses, to be informed of the nature and cause of the accusation, to have been informed of his rights to a jury trial, and to have had the right to assistance of counsel for his defence which violates his right of the 1st, 6th, 14th, 5th amendments

(8) Due to the ruling by Justice Ruth Bader Ginsburg made on Feb. 20, 2018 (Supreme Court of the United State, Washington, D.C.) along with Justice Clarence opinion on the subject of Forfeiture violating the Due process of law "14th and 5th amendments". The ruling was that the 8th amendment excessive fine clause protects against retribitant at all levels government

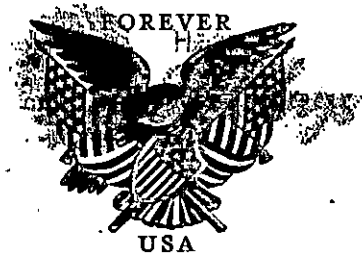
(9) House members voted / have signed as co-sponsors that abolish civil forfeiture and replaced it with criminal for forfeiture based on a felony conviction. Which in my case I have no felony conviction nor any conviction. Nor does the owner of the vehicle have any charges to be convicted of for any crime(s). House members 102 of 123 signed

David Green # 300923 -0355

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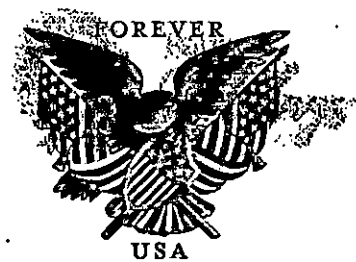
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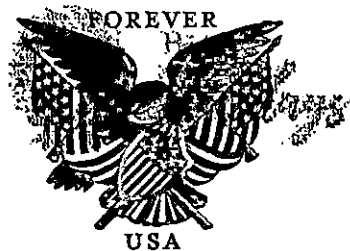
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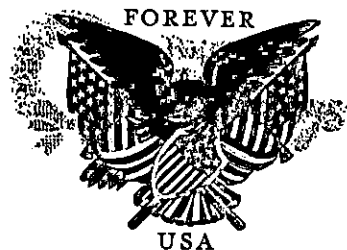
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