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SC Court of Appeals

STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Greenville County

Letitia H. Verdin Circuit Court Judge

THE STATE

Respondent

v

Robert Watkins

Appellant

Initial Brief of Prose Appellant  
Appellate Case NO 2020-001421

Robert Watkins 243803  
Unit 3 cell 223 A  
Tyger River Corr. Inst  
200 Prison Road  
Enoree SC 29335

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Statement of Issues on Appeal  
(12) (115)

Did Judge Letitia H. Verdin abuse her discretion in denying Watkins Motion for a New trial on grounds that the trial Judge constructively amended the indictment 2002-GS-23-1063 deprived Watkins of his substantial Due process of right to be tried only on charges presented in the indictment returned by a grand jury? Violation USCA 5, 14th S.C. Const article 133, Article 1311.

Did Judge Letitia H. Verdin abuse her discretion in denying Watkins Motion for a New trial on grounds that the trial Judge constructively amended the indictment 2002-GS-23-1063 created a fatal Variance?

Did Judge Letitia H. Verdin abuse her discretion in denying Watkins Motion for a new trial on grounds that he was convicted of an uncharged offense?

Did Judge Letitia H. Verdin abuse her discretion in denying Watkins Motion for a New trial on ground that Judge R. Patterson constructively amended indictment 2002-GS-23-1063 in his charge to the jury that broaden the bases of conviction to include predicate offense not alleged in the indictment. U.S. v. Randall, 171 F.3d, 210 (4th Cir 1999) impermissible

(B)(2) Statement of Issues on Appeal

Amendment because government broaden bases of conviction to include predicated offense not alleged in indictment, and there was not true bill of Indictment or waiver of presentment before the jury was sworn nor was outline put on Notice of such charge to the jury.

USCA 5<sup>th</sup>, 14<sup>th</sup>, SC const article 1 Section 3.

U.S. v. Cotton, 535 U.S. 629 (2002)?

Did Judge Letitia H. Venable abuse her discretion in denying Watkins Motion for a New trial on grounds that the trial Court lacked subject matter jurisdiction to convict Watkins based on Judge Patterson Charge to the jury. Id in exhibit #2 trial transcript page 509 line 21 through page 511 line 13, when there was no true bill of Indictment returned by the Grand jurors of Greenville County prior to the jury being sworn. SC const article 1 § 11. SC const article V § 11.?

Did Judge Letitia H. Venable abuse her discretion in denying Watkins Motion for a New trial on ground the indictment is void pursuant to SC 1976 Code Ann § 14-9-260, because it was obtained by an illegal convened grand jury, at the County courts at a Court of general session outside the terms of Court of general sessions of the county where the crime allegedly occurred?

(C) Statement of the Case

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Watkins was convicted of Armed Robbery and Possession of a Weapon after a jury trial before Judge Victor Ryle Jr. on October 23-25<sup>th</sup> 2002 in Greenville County. He was sentenced to 30 years for armed Robbery and five years for the weapon charge. Watkins appealed his conviction and it was dismissed by the Court of Appeals pursuant to Anders v California 386 U.S. 23 (1967). See State v Watkins, op. No. 2004-UP-406 (filed June 22, 2004) Watkins filed an application for Post Conviction Relief on Oct 22, 2004 and a hearing was held April 8, 2005, before the Honorable Larry R. Patterson. On January 17, 2006 Judge Patterson issued an order denying and dismissing the application for Post Conviction Relief. The S.C. Supreme Court granted Watkins Petition for a Writ of Certiorari and reversed Judge Patterson's order. See Watkins v State, op. No. 2008-mw-001 (filed January 14<sup>th</sup>, 2008). Case remanded for trial and after several pretrial hearings before Judge Patterson the case was retried before Judge Patterson on September 22-24 2008. The jury found Watkins guilty and Judge Patterson sentenced Watkins to SCOL for a period of 25 years for armed robbery and 5 years to run consecutive for the Gun charge. Watkins appealed that conviction, the S.C. Court of Appeals reversed the conviction see State v Watkins, op. No. 2011-UP-091 (S.C. Ct App filed March 8, 2011). The state filed a petition for a rehearing which was denied on April 21, 2011, the state filed a petition for a writ of Certiorari which was

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(c)(2) Statement of the case

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granted, in oral argument held before S.C. Supreme Court,  
S.C. Supreme Court issue an order reversing the decision  
of S.C. Court of appeals, affirming Watkins' conviction.

See opinion No. 27334 Heard October 16, 2013

Filed December 4, 2013. The remittitur was sent

December 20, 2013, back down to the lower  
trial court. Watkins filed an independent

Motion, *Prose*, to vacate the conviction and  
sentence of September 24, 2008 under Indictment  
2002-6573-1063 on September 29, 2020. Judge

Lehtia A. Verdes denied that Motion.

Watkins Appeals of her denial is as  
follows:

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(D) STANDARD of REVIEW

In criminal cases, the appellate court sits to review error of law only. State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct App. 2005) (citing State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); State v. Woods, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct App. 2004); State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct App. 2004); State v. Abdullah, 357 S.C. 344, 345, 592 S.E.2d 344, 347 (Ct App. 2004)). An abuse of discretion arises from error of law or a factual conclusion that is without evidentiary support. State v. Irick, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001) (citing Lee v. Swans, 318 S.C. 283, 487 S.E.2d 344, 346 (1995)); accord State v. Sweet, 374 S.C. 1, 5, 647 S.E.2d 202, 204-205 (2007); State v. Adkins, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct App. 2003).

Judge Leitia H. Verdin's judgment in the denying Wittkies Motion, is without a conclusion of law, and is not based upon a conclusion that is supported by evidentiary support.

## (E) Argument

Judge Letitia H. Verdin abused her discretion in denying Watkins Independent Motion to vacate the September 24, 2008 conviction and sentence, on grounds the indictment is void and the court lacked subject matter jurisdiction to convict and sentence him on a void indictment and violation of Due process and equal protection of SC const article 1 section 3 USCA 5<sup>th</sup> 19<sup>th</sup>.

Appellant argues that on February 19, 2002 the grand jurors of Greenville County returned an Bill of Indictment # 2002-GS-23-1063 for armed Robbery and Possession of a wpn during the commission of a violent crime (Id in Record on appeal page 2, and exhibit

# (1) attached and enclosed) In reference to the armed Robbery, the indictment alleged that Robert Max Watkins did in Greenville County, on or about the 19<sup>th</sup> day of December 2001, while armed with a deadly weapon, or while alleging either by actions or words, or both, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon did by use of force, threats or intimidation, take and carry away the property of another, to wit, U.S. Currency from Chuckie Cheese. This is in violation of § 16-1-330 of the South Carolina Code of laws

(1976) as amended. Id in Record on appeal exhibit # 1, attached and enclosed. The 13<sup>th</sup> Judicial Circuit Solicitor's Office of Greenville County pursuant to S.C. 1976 Code of Law § 1-7-330 scheduled Indictment # 2002-GS-23-1063 on the General Session Court docket of Greenville County for trial before the Honorable Judge Larry R. Patterson.

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on September 22<sup>nd</sup>, 2008 on the same day of trial  
Judge Patterson held an arraignment on  
Indictment # 2002-6223-1063. In putting appellant  
Watkins on Notice of the charges, in which he is informed  
of the facts, and the nature and scope of the accusation,  
and so that he may plea plead an acquittal  
or conviction thereon, and plead Double Jeopardy.  
State v Bentry 363 S.C. 93; 610 S.E.2d 494.  
U.S.C.A. 5<sup>th</sup> 1<sup>st</sup> 4<sup>th</sup> S.C. Const. article 1 section 3

Judge Patterson (court) in, putting Appellant  
Watkins on Notice, in which Watkins was to defend  
himself against; told Appellant Watkins, during the  
arraignment, Watkins in this Indictment you  
are charged within Greenville County, on the 19<sup>th</sup>  
day of December of 2001, while armed with a deadly  
weapon, either by action, words, or both, you - - or using  
a representation of a deadly weapon, or an object  
which a person presented during the commission of a  
robbery, reasonably believed to be a deadly weapon,  
that you used force, threats, or intimidation to take  
away, the property, U.S. currency, from Chuck-E-Cheese  
in violation of section 816-11-330 of the South Carolina  
Code of Laws, Appellant Watkins plead not guilty to  
the charges that Judge Patterson charged him.

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See ROA page 234. Wiggins Plead not  
guilty because chuck & cheese is not a person,  
but a company and during trial solicitor Lucas Marchant  
through state witness Marcus Scarabino, introduced  
into evidence that chuck & cheese is a company.

See Id in ROA page 234 exhibit #2 trial transcript  
page 47 line 8 through page 49 line 1 and page 165  
line 20 attached and enclosed

After hearing the testimony introduced into  
evidence by assist. Solicitor Lucas Marchant, through  
state witness Marcus Scarabino, Jimmy Skelton,  
Jeannie Pineda Id in R.O.A. 2-21, Exhibit #2, trial  
transcript page 164 line 20 through p 194 line 3,  
page 194 line 5 through page 214 line 20, page  
226 line 7 through page 258 line 17 Assistant  
Solicitor Lucas Marchant (state) proved a  
different offense or charge, than that charged  
in Indictment # 2002-65-23-1063. Id in ROA  
Exhibit #1, then that returned by the grand  
jury for Greenville County on February 19, 2002. Judge  
Patterson (Court) based on the evidence introduced  
into evidence by the state created a Fatal Variance  
that deprived Appellant Wiggins of a fair notice  
and fair trial and exposed him to the risk of double

Jeopardy in which is grounds for reversing a conviction  
Violation U.S.C.A. 5<sup>th</sup> 4<sup>th</sup> S.C. const. article 1 section 3

The Court, Judge Patterson in his charge to the jury  
would alter the indictment # 2002-65-23-1063

as follows: Now ladies and gentlemen  
in this case the defendant, Robert Max Watkins is  
charged with Armed Robbery, which he has plead  
not guilty to. The allegations are that he, in

Greenville County, on or about the 19<sup>th</sup> day  
of December of 2001, while armed with a deadly  
weapon, either by action, or words, or both and  
representing the use of that weapon, that he by  
force threats, or intimidation took property that  
belonged to Chuck & Cheese in violation of the laws  
of this state namely United States currency. They  
allege that was armed robbery. The state must  
prove each and every element that they've alleged  
beyond a reasonable doubt see Id in R.O.A. page 4, 5,  
6, Exhibit # 2 trial transcript page 509 line 21 through  
page 510 line 7.

Judge Patterson constructively amendment to  
Indictment # 2002-65-23-1063 in his charge to the jury  
Broaden the scope of the Indictment # 2002-65-23-1063  
in which Judge Patterson further charged the jury that  
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now in this case in order to prove this offense the state must prove beyond a reasonable doubt that the defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within that person reach, his inspection, his or her observation or control, so that that person could, if not overcome with violence or prevented by fear, keep possession of that property. The state must also prove beyond a reasonable doubt that the defendant carried the property away intending to permanently deprive the owner of that property and keep the property for his own use, now taking and carrying away of the property must have been done with violence, by putting the owner of the property in fear of violence and must be proven beyond a reasonable doubt, finally the state must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon during the robbery, a deadly weapon is any article instrument or substance which is likely to cause death or great bodily harm whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case and you have to be - you are the sole finders of facts and circumstances under our law examples of deadly weapons are

a pistol, shotgun, knife and things of that nature. Id in  
R.O.A. page 5, 6, 7; exhibit #2 trial transcript page  
510 line 13 through page 511 line 13

Indictment #2002-6523-1063 Id in R.O.A. Exhibit #11  
do not allege or charge Appellate Watkins with what  
Judge Larry R. Patterson charged the jury with Id R.O.A. page  
516, 7; exhibit #2 trial transcript page 509 line 21  
through page 511 line 13. A sufficient indictment must

must do more than merely recite the elements  
of the offense charged. The indictment must also  
contain sufficient factual allegations to permit the  
accused Mr. Watkins to know whether he may plead  
an acquittal or conviction thereon. Fairness and  
due process requires that a criminal defendant receive  
sufficient notice of the charge against him to prepare  
a defense. State v. Baker, 411 S.C. 583, 796 S.E.2d 860

Judge Patterson constructive amendment to Indictment  
#2002-6523-1063 Id in R.O.A. Exhibit #1, and Exhibit #2  
trial transcript page 509 line 24 through page 511  
line 16. Deprived Mr. Watkins of his substantial  
right to be tried only on charges presented in the  
indictment returned by a grand jury. USCA 5#14;  
S.C. Article 1 section 3. A constructive amendment  
also known as a fatal variance happens when

assistant Solicitor Lucas Marchant (State) through his presentation of evidence through state witnesses Marcus Scarabino, Jimmy Skelton, Jeannie Pineda Id. R.O.A. p 5-21; Exhibit #2 trial transcript page 164 through page 194 line 3, p 194 line 5 through page 214 line 20, and page 226 line 7 through page 258 line 7, and the Judge Patterson instruction to the jury broaden the bases for conviction beyond those charge in the Indictment # 2002-GS-23-1063 Id. in R.O.A. Exhibit #1, R.O.A. page 7, 8. - A constructive amendment changes the charge while evidence remains the same, a variance changes the evidence while the charge remains the same. Specially a constructive amendment of an Indictment which violates the rule prohibiting the broadening of an indictment through amendment except by the grand jury, occurs when the charging terms of the Indictment are left unaltered but the evidence offered at trial proves facts materially different from those alleged in the Indictment. In reference to Indictment # 2002-GS-23-1063, Id. in R.O.A. Exhibit #1 The state offered into evidence through state witnesses Marcus Scarabino, Jimmy Skelton and Jeannie Pineda Id. in R.O.A. p 2-21; Exhibit #2 trial transcript page 194 line 3 through page 258 line 17 evidence that proves facts materially different from:

Those alleged in the Indictment <sup>#</sup> 2002-GS-23-1063 Id in R.O.A. Exhibit #1, Violation of the 5<sup>th</sup>/14<sup>th</sup> Amendment

Grand jury clause no person is named in Indictment # 2002-GS-23-1063, unless the grand jury conspired

Chuckie-chese as a person. And no where in the indictment 2002-GS-23-1063 Id in R.O.A. Exhibit #1 is Appellate Mr Watkins charged with the material fact that while armed with a deadly weapon, either by action or words, or both, and representing the use of that weapon, that he by force, threats or intimidation, took property that belonged to Chuck-e-cheese as charged by Judge Patterson to the jury. Id in R.O.A. page 9, 10 R.O.A. Exhibit #2 trial transcript page 509 line 21

through page 510 line 5. Judge Patterson charged to the jury Id in R.O.A. Exhibit #2 trial transcript page 509 line 21 through page 511 line 13, charged a different offense than that alleged in the Indictment Id in R.O.A. Exhibit #1, resulting in Mr. Watkins being convicted of an uncharged offense, in which he was never provided notice of; violating his due process and equal protection rights of the Grand Jury clause of the S.C. const. article 1 section 3 and USCA 5<sup>th</sup>/14<sup>th</sup> and S.C. const article 1 section 11, in which at the time the jury was sworn, there was no true bill of indictment

charging Appellant Watkins with what Patterson charged the jury with Id in R.O.A. Exhibit #2 trial transcript page 509 line 21 through page 511 line 16 in which the petit jury found Mr Watkins guilty of on September 24, 2008. in reference to Indictment #2002-GS 237463 Id in R.O.A. Exhibit #3 Sentencing Sheet and commitment order see also R.O.A. p 2-21, Exhibit #2 trial transcript page 522 line 19 through page 523 line 3. Absent a True bill of indictment charging the jury with what Judge Patterson charged the jury, when the jury was sworn, acts to deprive the Court of General Sessions of its jurisdiction to convict Watkins for an uncharged offense in which no probable cause has been established. U.S.C.A. 5th 14th S.C. Const article 1 section 3, S.C. Const. article 1 section 11.

Id. R.O.A. page 10, 11

The Executive branch of the state Government of the State of South Carolina Greenville County 13th Judicial Circuit Solicitor's office prepares the charging document, informed Indictments which it alleges a citizen has violated the laws of this State in reference to a felony or an offense that exceeds a fine of two hundred dollars or exceeds 30 days imprisonment, a person/citizen may be held to answer unless on a presentment or indictment of a grand jury of the

County in which the crime has allegedly been committed. Due process clause of the 5<sup>th</sup>, 14<sup>th</sup> Amendment requires that probable cause be established by a grand jury of the county where the crime has been committed in which a grand jury of that county will return a true bill of indictment. S.C Const article 1 section 11. Judge Patterson offering, constructive amendment that broaden the charging terms of Indictment # 2002-GS-23-7063 is unconstitutional violation of S.C Const article 1 section 8 separation of powers. He acted as the Executive branch in his charge to the jury Id in exhibit # 2 trial transcript page 509 lines 21 through page 511 line 16 as well as the grand jury displaying a Judicial Bias and prejudice against Mr Watkins in which his impartiality might reasonably be questioned denying Mr Watkins of his due process and equal Protection of right to a fair trial, and to be convicted of an Indictment returned by a legal constituted grand jury. Mr Watkins was not found guilty of Indictment # 2002-GS-23-7063, But found guilty of an uncharged offense. violation of S.C Const Article 1 section 11 and S.C Const article 1 section 3 and USCA 5<sup>th</sup> 14<sup>th</sup> of the Due Process clause in which Watkins was never put on Notice of the charge Judge Patterson charged the jury with violation of S.C Const article 1 section 8 Separation of Powers, in which was not returned by a

grand jury of Greenville County, in which the petit jury found him guilty of.

### Lack of Subject Matter Jurisdiction

The trial Court lacked subject matter jurisdiction to convict Mr Watkins upon the charge in which Judge Patterson charged the jury with Id in ROA p 21, exhibit # 2 trial transcript page 509 line 21 through page 511 line 16. Although the state used Indictment # 2002-65 23-7063 to invest the General Session Court with its criminal trial court jurisdiction pursuant to S.C Const article 5 section 11, Id in ROA Exhibit # 1,

General Session Court was divested of its subject matter jurisdiction to convict Mr Watkins under Indictment 2002-65-23-7063 when Judge Patterson constructively amended Indictment 2002-65-23-7063 in his charge to the jury that broaden the bases of conviction to include predicate offense not alleged in the indictment. Id in ROA p 21, Exhibit # 2 trial transcript page 509 line 21 through page 511 line 16.

copy U.S v Randall, 171 F3d 295, 210 (4th Cir 1999) Impermissible amendment because government broaden bases of conviction to include, predicated offense not alleged in the Indictment, and there was not true bill of indictment or waiver of presentment before the jury was sworn, nor was Mr Watkins put on Notice of such charge to the jury. Id in ROA exhibit # 2 trial transcript

page 509 line 21 through page 511 line 13. in which he was found guilty of violation of U.S.A. 5<sup>th</sup> 14<sup>th</sup> S.C. Const. article 1 section 3. U.S. v Cotton, 535 U.S. 629 (2002) (subject matter jurisdiction claim preserved though not raised at trial. Lack of subject matter jurisdiction can be raised at any time Brown v State 343 S.C. 342, 540 S.E.2d 846 848-44 (2001). The trial court lacked subject matter jurisdiction to convict me based on Judge Larry Patterson charge to the jury Id in ROA p 2-21, Exhibit #2 trial transcript page 509 line 21 through page 511 line 13, when there was no true bill of indictment return by the Grand jurors of Greenville County prior to the jury being sworn. Id in ROA Exhibit 2 trial transcript page 509 line 21 through page 511 line 16. Once the trial judge charged the jury with that charge. The court was divested of its jurisdiction over Indictment 2007-GS-23-163 to convict and sentence Mr Watkins for an uncharged offense. Absent an True bill of Indictment stating sufficiently the cause of action in which a citizen is being charged with or a waiver of presentment, The General Sessions Court cannot obtain its criminal jurisdiction under S.C. Const article V § 11 unless on True bill of Indictment showing a statutory violation of a criminal offense has been alleged and committed based on

probable cause determination of a grand jury of the county where the crime has been committed or such waiver of presentment. S.C. Const. article 1 section 11. Absent a finding of an indictment or waiver of presentment stating statutory criminal offense, the court of General Sessions would lack jurisdiction to entertain a criminal prosecution under S.C. Const. article 1 § 11. The indictment is the cause of action in which a trial court receives its authority to try and convict and sentence a citizen. I disagree with Gentry that indictment has nothing to do with the General Session Court jurisdiction, when the subject matter is based on the nature of the offense alleged in the indictment to determine if the General Session or Circuit Court has jurisdiction over the subject matter alleged in the indictment, to try, convict and sentence an accused defendant. The indictment is the cause of action or contains the cause of action in which the accused is brought before the court to be put on notice, to enter a plea of guilty or not guilty and to proceed to trial. No indictment stating a cause of action the circuit court under S.C. Const. article 1 § 11 has not been invested with its criminal jurisdiction. If the indictment or waiver of presentment does not determine if the circuit courts have subject matter jurisdiction, then what is the circuit court

exercising its criminal jurisdiction over to try and convict and sentence an accused? The ruling in State v Gentry, 610 S.E.2d 494, that in Indictment has nothing to do with the subject matter jurisdiction of the circuit court pursuant to S.C. Const article V § 11 is wrong. It is shocking to the Universal Sense of Justice, of the state of South Carolina.

Greenville County Circuit Solicitor's Office can use Indictment 2002-GS 23-1063 to give the 13<sup>th</sup> Judicial Circuit Court of General Sessions of Greenville County personal gun subject matter jurisdiction pursuant to S.C. Const. Article I section 6 and, Article V section 11. to hold Mr. Watkins to answer for and deprive him of his Due process and equal Protection of right to liberty and life, then present evidence that proves a different charge, in which the trial judge heard and in his charge to the jury impermissibly, constructively broaden the Bases of Conviction to include predicate offense not alleged in the Indictment 2002-GS 23-1063. Id in RoA p 2-21 Exhibit #2 trial transcript page 509 line 21 through page 511 line 16 resulting in Mr Watkins being convicted of an uncharged offense. Probable cause was not never established for this offense charged to the jury, How can Mr. Watkins on the same day of his arraignment exercise his compulsory process in obtaining witnesses in his favor to impeach the states witnesses, to study the rules of evidence

a criminal procedure so he can make the proper objections and preserve them for review by the S.C. Court of Appeals? How can Mr Watkins prepare a defense for a charge that he was not put on Notice of Id in ROA p 2-21, Exhibit #2 trial transcript page 509 line 21 through page 511 line 13. When he didnt become aware of the charge until the trial Judge Larry R Patterson charged the jury after all the evidence had been introduced and the state closed its case. Id in ROA p 2-21, Exhibit #2 trial transcript page 509 line 21 through page 511 line 13.

★ Indictment # 2002-BS-23-1063 is void and the Court of General Sessions Greenville County lacked subject matter jurisdiction to convict and sentence Appellant on an indictment, that was obtained by a county court grand jury pursuant to S.C. 1976 Code of law § 14-9-210 as Id ROA p 18-21, Exhibit #3 at a court of General Sessions Greenville County on February 19, 2002 which was outside the terms of Court of General Sessions Greenville County, but during the terms of Court of Pickens county pursuant to S.C. 1976 Code of law § 14-5-796 (1)(c) (2) Id ROA p 18-21, Exhibit # 4. Back on October 16 2001 Judge John C. Few issued an order for the illegal convening of the county grand jurors for Greenville to convene at a Court of General Sessions on February 19<sup>th</sup> 2002 see Id in ROA p 18-21, Exhibit # 5 in which was outside the terms of Court of General Sessions Greenville County pursuant to S.C.

1976 Code of law § 14-5-290 (a) but during the terms of Court of General Sessions Pickens County on February 14 2002, Indictment 2002-GS-23-1063 through presiding Judge John C. Few, presented to the county grand jurors of Greenville at a Court of General Sessions Indictment 2002-GS-23-1063 in which on February 19<sup>th</sup>, 2002 The grand jury foremen presented to Judge Few the Grand jury findings in a presentment in which Judge John C. Few accepted and signed off on and gave to the clerk of Court of General Sessions Court for filing

Id. R.O.P. 18-21<sup>st</sup>; Exhibit #6 the presentment Indictment 2002-GS-23-1063 was indicted in Indictments 2002-GS-23-248 through 1701.

§ 14-9-210 is abolished pursuant to SC 1976 Code of law § 22-3-510. The grand jury of Greenville County that convened on February 14, 2002 pursuant to Judge John C. Few October 16<sup>th</sup> 2001 order Id. R.O.P. Exhibit 5, convened the grand jury of Greenville County that has been abolished and which was illegal at a Court of General Sessions Greenville County where the crime has allegedly occurred but during the terms of Court of Pickens County Court of General Sessions. The General Sessions Court of Greenville County lacked personal and subject matter jurisdiction to try and convict and sentence pro-se litigant Robert M. Watkins using an Indictment that were issued by a county

a county Grand jury pursuant to S.C. 1976 Code of Law § 14-9-210 which has been abolished, pursuant to S.C. 1976 Code of Law § 22-3-570, that convene and was impaneled at a Court of General Sessions during the terms of Court of General Sessions Pickens County on February 19, 2002 pursuant to S.C. 1976 Code of Law § 14-5-290 (2) outside the terms of Court of General Sessions Greenville County pursuant to S.C. 1976 Code of Law § 14-5-290 (1)(a) in which where the crime had allegedly been committed, in which pursuant to S.C. 1976 Code of Law § 22-3-570, S.C. 1976 Code of Law § 14-9-210 is void, in reference to Indictment 2002-GS-23-1063. The procedure in which Indictment 2002-GS-23-1063 was returned true bill is void making Indictment 2002-GS-23-1063 void and the trial, conviction and sentence is void. Plus no indictment may be true billed by a grand jury where circuit courts lacks jurisdiction, since grand jury jurisdiction is co-extensive with criminal jurisdiction of court in which it is impaneled and for which it is to make inquiry State v. McClure, 289 S.E. 2d 158 277 S.C. 432. General Sessions court for Greenville County was not in session on February 19, 2002 in which the Circuit Judge John C. Few on October 16, 2001 issued the order for the county Grand Jury to convene on February 19, 2002 and in B.O.P. exhibit #5 outside

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The terms of Court of General Sessions Greenville County.

Therefore pursuant to State v Funderburk, 191 S.C. 2d 520  
The court being without jurisdiction, the indictment  
2002-GS-23-1063 is a nullity that was returned outside  
the terms of Court of General Sessions Greenville  
County. Judge John Few October 16<sup>th</sup> 2008 order  
to convene the County grand jury at a court of  
General Sessions Greenville County, outside the  
terms of Court of Greenville County, in violation of  
S.C. Const. article III § 34 Special legislation.

It is clear that Indictment 2002-GS-23-1063 is void  
because it was (1) returned by a County grand  
jury at a court of General Sessions during the terms of  
Court of Pickens County, in which (2) S.C. 1976 Code of  
Law § 22-3-510 abolished the practices of County Courts  
concerns of fines that exceed a fine of \$200 and a term  
of imprisonment that exceeds 30 days, under § 14-9-210  
(title 14 chapter 9 period) The convening of the county  
grand jury for Greenville at a court of General Sessions Greenville  
County, during the terms of Court of Pickens County is  
illegal and void. The Circuit Court judge of Greenville  
County and the Circuit Solicitor's office of Greenville County  
are known that Indictment 2002-GS-23-1063 is void.

Yet because pursuant to S.C. 1976 Code of Law § 1-7-330  
the circuit Solicitors have unconstitutionally been  
invested with the exclusive control over the General  
Sessions Court docket in violation of S.C. Const  
article 7 section 8 separation of Powers. The 13th  
Judicial Circuit Solicitors Office of Greenville County  
uses its unconstitutional power under S.C. 1976  
Code of Law § 1-7-330, to schedule Indictment  
2002-65-23-1063 on the General Sessions Court  
docket before a Circuit Court Judge on September 22nd  
2008 to try and convict Appellant Watkins using an  
void Indictment obtained illegally under S.C. 1976 Code of Law  
§ 14-9-210

The judge Letitia H. Verdin ruling is not supported by  
law or facts, and is not in accordance with the  
laws of this state. Judge Verdin did not according  
the constitutional laws and supporting facts that  
witness presented in his independent Motion stating  
why she denied witness Independent Motion, But most  
importantly, the state did not make a return.

Therefore pursuant to SCACR 240(c), the judge Letitia  
H. Verdin should have deemed that the Solicitors office  
on behalf of the state of South Carolina Greenville County consented  
to the relief witness sought in his Motion

## In conclusion

Based on Appellant Watkins above listed facts and argument (evidence) a whole, Judge Letitia H. Verdin abused her discretion accordingly, based on the following law, in denying Appellant Watkins Motion for a New Trial;

It is a rule of universal observance in administering the criminal law that a defendant must be convicted if convicted at all of the particular offense charged in the bill of Indictment. State v Gunn 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) quoting State v Cady, 180 S.C. 417, 423, 186 S.E.2d 165, 167 (1984) while a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the state presents evidence which convicts under a different theory than that alleged. Thomason v State, 892 S.W.2d 8, 11 (Tex Crim App 1994) see Id in Bailey v State 392 S.C. 422, 709 S.E.2d 677. see charged in the indictment By the Grand Jury Id in exhibit # (1) attached now see the evidence introduced into evidence by the Prosecution through State witness Marcus Scanabino Id in P.O.A. Exhibit # 2 trial transcript page 164 line 20 through page 194 line 3 and State witness p. 1st 28 of 28.

Jimmy Skelton Id in R.O.A. Exhibit #2 trial transcript page 194 line 5 through page 214 line 24, and state witness Jeannie Pineda Id in R.O.A. Exhibit #2 trial transcript page 226 line 7 through page 258 line 17. attached and enclosed. Proving a defendant theory then that proved in the indictment. violation of defendant due process of rights pursuant to In re Winship 397 U.S. 358 (1970) which requires the prosecution to prove beyond a reasonable doubt the facts and elements Id in the Bill of Indictment returned by the Grand Jury Id in R.O.A. Exhibit #1. attached and enclosed

Indictment 2002-6523-1063 is an charging instrument in which to put a defendant on notice of the charged offense he must prepare to defend against; see Id in R.O.A. exhibit #1 attached and enclosed. on September 22 2008 the trial court Judge Larry R. Patterson constructively amended Indictment 2002-6523-1063 Id in R.O.A. exhibit #1) in his charge to the jury; Id in R.O.A. Exhibit #2 trial transcript page 509 line 21 through page 511 line 13 attached and enclosed Applicant due Process of right under S.C. Const article 1 section 3 and U.S.C.A. 5th 14th to be tried and convicted if convicted only upon the Bill of Indictment returned by the grand jury. In re Winship 397 U.S. 358. (1970); Bailey v State

392 S.C. 422, 709 S.E.2d 671. Judge Larry Klatterson charge to the jury was a constructive amendment to Indictment 2006GS73-1063 Tel in RSA Exhibit #1) which broaden the scope of the indictment for a conviction, violation of Applicant's 5<sup>th</sup> 14<sup>th</sup> Amendment rights (1) to be tried and convicted upon it convicted, only upon the indictment returned by the grand jury. (2) violation of Applicant due process of rights to be put on such notice of the charge that the trial judge charged the jury with so that Applicant can properly defend himself against. Tel in RSA Exhibit #2 trial transcript page 509 line 21 through pg 511 line 13 resulting in Applicant Watkins being convicted of an uncharged offense. U.S.C.A. 5<sup>th</sup> 14. See *United States v. Camasca* (4<sup>th</sup> Cir.) 908 F.3d 41, *Stirone v. United States* 361 U.S. 212, 80 S.Ct. 270 *Tamre-winshe*, 397 U.S. 358 (1970) *Bailey v. State* 392 S.C. 422, 709 S.E.2d 671; *Russell v. U.S.* 369 U.S. 749, 82 S.Ct. 1038 also judge charge to the jury violated Applicant rights under SC Const article 1 § 12 and U.S.C.A. 5<sup>th</sup> 14<sup>th</sup> under the double jeopardy clause. Applicant Watkins was convicted of an uncharged offense in violation of SC Const article 1 section 11, and U.S.C.A. 5<sup>th</sup> 14<sup>th</sup>. Based on the foregoing facts and law

Judge Letitia H. Verdin abused her discretion in denying Applicant's Watkins Motion for a New trial.

Therefore Watkins request that this court reverse the September 24 2008 Conviction under Indubread 2002-65-13-1063 and grant Watkins a New trial.

STATE OF SOUTH CAROLINA  
Court of Appeals

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MAR 19 2021

SC Court of Appeals

Appeal from Greenville County  
Letitia H Verdin Circuit Court Judge

The State

Respondent

v

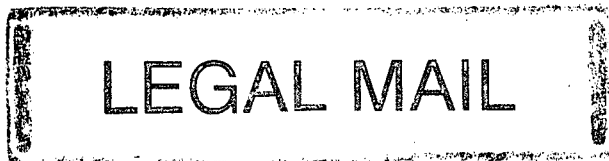
Robert Watkins

Appellant

Proof of Service

Dear V. Claire Allen, due to the covid-19 ipandemic,  
I am requesting that you provide the state of South Carolina  
attorney generals office, a copy of my Designation of matter  
to be included into the Record of Appeal, my initial Brief  
of Appellant, The Record of Appeal, I believe a order was  
issue by the SC Supreme Court, pertaining to being allow  
to file only one copy with the SC Court of Appeals due  
to covid-19 pandemic, and the SC court of Appeals  
clerk of court will provide copies to all other parties  
of concern.

Robert Watkins 243803  
Unit 3 CW 223 B  
TYRCI  
200 Prison Rd  
Greenville SC 29335



Robert Watkins  
Applicant  
v  
The State of South Carolina  
Greenville County  
Respondent

In the S.C. Court of Appeals  
Appellate Case 2020-001421

3/17/2021

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MAR 19 2021

Dear V. Claire Allen

SC Court of Appeals

Enclosed you will find my  
initial Brief with supporting documents. Please  
file with the SC Court of Appeals  
Under Appellate Case 2020-001421  
and provide copy to S.C. Attorney General's  
Office and send me a file copy for my records

Thank You

Robert Watkins 243803

Q3 221 B

P. c. I

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Pelzer SC 29661

Robert M. Watkins 293903 Q3 MB  
Perry Correctional Institution  
435 Oaklawn Road  
Pelzer SC, 29669

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SC Court of Appeals

TO: The S.C. Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

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