STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Lexington County

James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWRENCE BURGESS,

APPELLANT

APPELLATE CASE NO. 2011-194288

BRIEF OF PETITIONER

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ISSUES PRESENTED

1. Did the judge err in refusing to dismiss the charge based on the fact that a valid agreement did not exist allowing a municipal officer to make an arrest outside of the municipality?

2. Did the judge err in refusing to allow cross examination about disciplinary records of Officer Gilliam when the records constitute evidence of bias and motive to misrepresent pursuant to Rule 608(c)?

STATEMENT

In May 2006, the Lexington County Grand Jury indicted Burgess for possession with intent to distribute crack cocaine, indictment #2006-GS-32-1425. On October 9, 2007, Burgess proceeded to jury trial before the Honorable James W. Johnson, Jr. Attorney Robert T. Williams Sr. represented Burgess at trial. Attorney Kent Collins prosecuted the case on behalf of the State. The jury returned a verdict of guilty and Judge Johnson sentenced Burgess to 3 years.

A timely notice of intent to appeal was filed on October 18, 2007. The direct appeal was perfected and on April 20, 2011, the South Carolina Court of Appeals affirmed the conviction. State v. Burgess, 393 S.C. 396, 712 S.E.2d 1 (Ct.App. 2011). A petition for rehearing was filed on May 5, 2011. The petition for rehearing was denied on May 26, 2011. A petition for writ of certiorari was filed on August 26, 2011. The State filed a return on November 8, 2011. On December 20, 2012, this Court granted the petition for writ of certiorari. This brief of petitioner follows.

STATEMENT OF FACTS

When officers, executing a search warrant, pulled into the yard at 7120 Two Notch Road, in Lexington County, they observed Petitioner Burgess run behind a trailer. (R. p. 94, lines 12 – p. 95, lines 1-4). Petitioner did not live at the location. (R. p. 108, lines 5-6). Officer Gilliam, an officer with the Batesburg-Leesville Police Department, testified that there were three trailers on the property and the second trailer belonging to Jerry Richardson was the target of the search warrant. (R. p. 114, lines 9-24). Gilliam testified that as he approached Petitioner, Petitioner dropped a pill container. (R. p. 105, lines 11 – p. 106, lines 1-6). No other officers testified to seeing Petitioner drop the pill container. Another officer, Officer Laney, testified that he back tracked Petitioner's steps and found crack cocaine on the ground. (R. p. 79, lines 9 – p. 80, lines 1-25).

Officer Gilliam testified that Officer Laney found a pill container top next to the crack. (R. p. 107, lines 8-11). Officer Laney, however, testified only to finding the crack on the ground. (R. pp. 75-91). Officer Gilliam testified that the container had crack residue but the State failed to present evidence from the chemist in regard to any residue in the container. (Tr. p. 82, lines 16- p. 83, lines 1-4; Tr. pp. 115-128). Officer Gilliam searched Petitioner and found no drugs. (Tr. p. 20- p. 95, lines 1-2). Petitioner was charged for the 5.67 grams of crack cocaine found on the ground by Officer Laney. Petitioner testified at trial and denied possessing the pill container and dropping it and denied possessing or using any crack cocaine. (R. pp. 133-148).

Prior to trial Petitioner moved to dismiss for lack of jurisdiction arguing that law enforcement had not complied with S.C. Code §23-1-215. (R. pp. 2-16; R. pp. 19-64). Petitioner argued law enforcement had not complied with section (E) of the statute providing for 72 hour notification to the respective governing bodies of the political subdivisions when multi-

jurisdictional drug enforcement unit agreements were entered into and terminated. In the present case, Officer Gilliam, an officer with the Batesburg-Leesville Police Department, was acting under the guise of being a member of a multi-jurisdictional drug enforcement unit when he arrested Petitioner outside the city limits of Batesburg-Leesville. (R. p. 199). Petitioner argued that Gilliam was without authority to make the arrest outside of Batesburg-Leesville, the resident jurisdiction, because law enforcement failed to comply with the statute authorizing jurisdiction outside the resident jurisdiction.

The trial judge found that the agreement in question did not comply with S.C. Code §23-1-215 because of failure to comply with the notice requirement. (R. p. 62, lines 23 – p. 63, lines 1-25). The trial judge, however, found that the agreement qualified as a temporary transfer to a multi jurisdictional task force pursuant to S.C. Code §23-1-210 and denied the motion to dismiss.

Prior to trial the State objected to the defense cross examining Officer Gilliam about employment disciplinary records. (R. p. 66, lines 3-17). The judge sustained the objection at the time but indicated that the matter could be raised again, if needed. (R. p. 66, lines 22 – p. 67, line 1). Officer Gilliam testified on direct that he was a 13 year law enforcement officer. Based on that testimony, defense counsel moved to be allowed to cross examine the officer about why he was no longer with the NET team (Multi-Agency Narcotics Enforcement Team). (R. p. 110, lines 7-23). The judge denied the defense motion finding that the information in regard to why the officer was no longer with the NET team was irrelevant and highly prejudicial. (R. p. 111, lines 15-21). Defense counsel proffered the records and they were marked as Court's Exhibit # 1. (R. p. 215). The records reflect that Lieutenant Snelgrove of the Lexington County Multi-Agency Narcotics Enforcement Team wrote to Captain Henry Sims of the Batesburg-Leesville police Department and

asked that Officer Gilliam be removed from the NET team based on a specific instance of misconduct and violation of NET team protocol that took place on February 16, 2007. (R. p. 216).

The jury found Burgess guilty of possession with intent to distribute cocaine and the judge sentenced Burgess to 3 years.

ARGUMENTS

1. The judge erred in refusing to dismiss the charge based on the fact that a valid agreement did not exist allowing a municipal officer to make an arrest outside of the municipality.

Officer Gilliam, a municipal officer with the Batesburg-Leesville Police Department, arrested Petitioner Burgess outside of the city limits of Batesburg-Leesville. "The jurisdiction of a municipal police officer, absent statutory authority, generally does not extend beyond the territorial limits of the municipality." State v. Harris, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989). There are exceptions to this general rule. One exception is found in S.C. Code §23-1-210 providing that any municipal or county law enforcement officer may be temporarily transferred or assigned to work within a muti-jurisdictional task force if there is a written agreement between the concerned municipalities or counties. Another exception is found in S.C. Code §23-1-215 providing that where crimes occur in multiple jurisdictions, law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities if there is a written agreement between the law enforcement agencies involved. When law enforcement agencies enter into agreements pursuant to S.C. Code §23-1-215, those agencies must provide written notification to their respective governing bodies of the political subdivisions within 72 hours of the agreement's execution and termination. S.C. Code §23-1-215(E). Another exception is found in S.C. Code §§23-2-10 to -60, the Law Enforcement Assistance and Support Act, authorizing law enforcement agencies to enter into contractual agreements with other law enforcement agencies. S.C. Code §23-2-50 requires formal approval by the governing body of each jurisdiction. See State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011).

At the time of Petitioner's arrest, Officer Gilliam was working with the Lexington County Narcotics Enforcement Team [NET]. The NET was created by an agreement titled "Multijurisdictional Drug Enforcement Unit Agreement" and entered into on September 18, 2001. (R. pp. 206-211). The agreement is signed by Sheriff James R. Metts, Ed. D. of the Lexington County Sheriff's Department, Chief Wallace Oswald of the Batesburg-Leesville Police Department, and various other police chiefs from towns within Lexington County.

It is unclear upon which statutory provision the agreement in the present case is based. The agreement references S.C. Code §§ 17-13-45; 23-1-210; 23-1-215 as well as Article VIII, Section 13 of the South Carolina Constitution. (R. pp. 199-200). The trial judge noted:

> Looking at the copy of the one of July the 19th of 2005, and then at the bottom at the first page it says where section 210 provides the temporary transfer of law enforcement officers pursuant to written agreements. I said, well, it is a 210 agreement. And then you go to the second page and it says, whereas section 210 [it appears this should read 215 rather than 210] provides for agreements between multiple law enforcement jurisdictions. So, I said maybe it is a 215 agreement. And then it goes on to the constitutional provision and it even cites 17-13-45, so I guess maybe the intent was to make an agreement that comes under all of those although I don't think that you can do that.

(R. p. 64, lines 9-20).

At trial Petitioner first moved to dismiss for lack of jurisdiction arguing that law enforcement had not complied with S.C. Code §23-1-215. (R. pp. 2-16; R. pp. 19-64). As noted above, S.C. Code §23-1-215, provides authorization for officers to exercise jurisdiction outside of the resident jurisdiction when there is a written agreement between the law enforcement agencies. Pursuant to §23-1-215(E), the respective governing bodies of the political subdivisions must be notified in writing within 72 hours of the execution and termination of the agreements entered into by the respective law enforcement agencies. Petitioner argued law enforcement had not complied

with section (E) of the statute providing for 72 hour notification to the respective governing bodies of the political subdivisions when multi-jurisdictional drug enforcement unit agreements were entered into and terminated. The trial judge correctly found that the agreement in question did not comply with S.C. Code §23-1-215 because of failure to comply with the notice requirement. (R. p. 62, lines 23 – p. 63, lines 1-25).

The State then argued that the agreement was valid pursuant to S.C. Code §23-1-210. S.C. Code §23-1-210 provides for the temporary transfer of law enforcement officers to work within multi jurisdictional task forces. Pursuant to §23-1-210(B), prior to the temporary transfer, "the concerned municipalities or counties shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred or assigned."

Burgess first argued that the agreement was not a "210 agreement" because Gilliam was not temporarily transferred but rather he was involved in an investigation focused on a case and location. (R. p. 58, lines 4-23). Burgess also argued that the agreement was not a "210 agreement" because "210 agreements" must be signed by council members. (R. p. 58, lines 11-23). As noted, the agreement in question was signed by the Chief Wallace Oswald of the Batesburg-Leesville Police Department, Sheriff James Metts of the Lexington County Sheriff's Department and other participating law enforcement agencies. (R. p. 199). The agreement was not signed by a mayor or any city or county council member, as required by S.C. Code §23-1-210(B).

In ruling, the judge acknowledged that a "210 agreement" requires the concerned municipalities and counties enter into written agreements. (R. p. 63, lines 25- p. 64, lines 1-7). The judge found, however, that, " . . . [T]here is nothing in here, nothing that I am aware of that would prohibit either a county or a municipality or a town from authorizing in some way the chief of police or the sheriff to enter into such agreements." (R. p. 64, lines 3-7). The judge erred. The

statute requires written agreements between the concerned municipalities and counties and makes no provision for allowing law enforcement to enter into these agreements. Agreements between law enforcement agencies is governed by §23-1-215. The notice requirement of §23-1-215, however, was not satisfied in the present case. The agreement was not properly executed pursuant to either §23-1-210 or §23-1-215. Officer Gilliam lacked the statutory authority to arrest Burgess outside the city limits of Batesburg-Leesville because the agreement did not comply with either applicable statute.

The South Carolina Court of Appeals found that the agreement was valid pursuant to §23-1-210. State v. Burgess, 393 S.C. 396, 712 S.E.2d 1, 5 (Ct.App. 2011). The Court of Appeals found that the "concerned municipalities and county entered into a written agreement to create multi jurisdictional law enforcement authority." Burgess, 393 S.C. at 402, 712 S.E.2d at 4. The Court of Appeals wrote, "The Batesburg/Leesville police chief informed the town council of the agreement *before its execution*, and the council gave him the authority to enter into it." Burgess, 393 S.C. at 402, 712 S.E.2d at 4. The Court of Appeals erred. The only evidence of council giving the police chief the authority to enter into the multi-jurisdictional agreement, on behalf of the city, comes from the testimony of one individual council member. (R. p. 40, lines 17-24). The State asked Marguerite Crapps, the Batesburg/Leesville mayor pro tem, "Was Batesburg/Leesville City council on board with the Chief of Police, enter into this agreement on the behalf of town council of Batesburg/Leesville?" (R. p. 40, lines 17-19). Ms. Crapps responded, "Yes." (R. p. 40, line 20). The State then asked, "So, you are fully aware you had the advice, Chief Wallace, the advice and consent to enter into this agreement of town council?" (R. p. 40, lines 21-23). Ms. Crapps responded, "Yes." The State presented no written verification that the Batesburg/Leesville town council authorized the Chief of Police to enter into the agreement of behalf of the council. As for

the County of Lexington, the State introduced minutes from county council meetings where the multijurisdictional task force is mentioned (State's Exhibit #1 – R. pp. 194-198), but there is no mention of the County authorizing Sheriff Metts to enter into the agreement on behalf of the County. Both the Batesburg/Leesville town council and the Lexington County Council may have believed that the agreements were entered pursuant to S.C. Code §23-1-215, as an agreement between law enforcement agencies rather than §23-1-210, an agreement between the concerned municipalities and county.

The police chief entering into the agreement is simply not authorized by section 23-1-210. The agreement in question was signed by Chief Wallace Oswald of the Batesburg-Leesville Police Department and Lexington County Sheriff James Metts. The agreement in the present case was between law enforcement agencies as provided in S.C. Code §23-1-215. The trial judge, however, correctly found that that the agreement pursuant to which Gilliam was acting did not comply with S.C. Code §23-1-215 because of failure to comply with the notice requirement. (R. p. 62, lines 23 – p. 63, lines 1-25). In declaring the agreement a "210 agreement" the trial judge attempted to make the agreement something it is not. The judge was in effect attempting to place a square agreement into a round statutory hole. Officer Gilliam lacked jurisdiction to arrest Petitioner outside the city limits of Batesburg-Leesville because a valid agreement was not in effect at the time of the arrest.

In both the final brief of respondent and the return to the petition for writ of certiorari, the State argues that the NET agreement is valid pursuant to S.C. Code §23-1-215 because the respective governing bodies, Batesburg-Leesville Town Council and Lexington County Council had actual notice of the NET agreement. (Return pp. 10-12). The trial judge correctly ruled that the NET agreement in question did not comply with S.C. Code §23-1-215 because of failure to comply with the notice requirement. (R. p. 62, lines 23 – p. 63, lines 1-25). The State did not appeal this

ruling. Any challenge to the trial judge's ruling in regard to S.C. Code §23-1-215 is not preserved for appellate review. The Court of Appeals did not address whether the NET agreement is valid pursuant to S.C. Code §23-1-215 because the Court of Appeals found the NET agreement valid pursuant to S.C. Code §23-1-210. State v. Burgess, 393 S.C. 396, 712 S.E.2d 1, 5 (Ct.App. 2011).

Assuming the issue in regard to S.C. Code §23-1-215 is preserved for review, first, the applicability of the code section to the present facts is questionable. S.C. Code §23-1-215 provides, "In the event of a crime or crimes that have occurred where multiple jurisdictions, either county or municipal, are involved . . ." There is no evidence that the crime alleged, possession with intent to distribute crack cocaine, occurred in multiple jurisdictions. Second, actual notice does not meet the written timely notification requirement of S.C. Code §23-1-215.

S.C. Code §23-1-215(E) provides, "The respective governing bodies of the political subdivision, wherein each of the law enforcement agencies entering into the agreement authorized in subsection (A) is located, must be notified by its agency of the agreement's execution and termination. The notification must be in writing and accomplished within seventy-two hours of the agreement's execution and within seventy-two hours of the agreement's termination." In ruling that the NET agreement failed to comply with S.C. Code §23-1-215(E) the trial judge stated:

> And the only two code sections, quite honestly that I was looking at, 23-1-210 and 23-1-215. 215 specifically authorizes such agreements to be entered into by the law enforcement agencies that are involved. The State has argued that essentially, Judge, pay attention to subsections (A), (B), (C) and (D) but disregard subsection (E) which is the written notification within 72 hours. And I think there is a huge difference between this and return of a search warrant. This is changing jurisdiction which is about important as you can get under the criminal justice field and I don't think it can be ignored. I don't write the things, I don't look to see whether I agree with them or disagree with them and I am sure some folks would think that is a mere technicality that does not have to be complied with. I disagree and if this is a 215 agreement there has been

> absolutely no evidence that the last sentence, notification must be in writing and accomplished within 72 hours of the agreements termination has been complied with. So, it does not pass on that.

(R. p. 63, lines 5-25).

During the hearing, Batesburg/Leesville mayor pro tem verified that while council had copies of the NET agreement, no written notification was provided. (R. p. 42, line 22 – p. 43, lines 1-11). While actual notice is sufficient to satisfy the notice requirement for sentence enhancement pursuant to the recidivist statute, the statute in question in the present case deals with territorial jurisdiction and whether the statute authorizes a municipal officer to arrest outside of the city limits. The trial judge correctly noted the importance of territorial jurisdiction. (R. p. 63, lines 12-16). In State v. Boswell, 391 S.C. 592, 602, 707 S.E.2d 265 270 (2011), a case discussed below and addressing the validity of a multi-jurisdictional agreement in light of the requirements of S.C. Code §23-20-50, this Court wrote, "Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority." The actual notice holdings of James v. State, 372 S.C. 287, 641 S.E.2d 899 (2007) and State v. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000) dealing with notice for purposes of the recidivist statute are inapplicable to statutes dealing with territorial jurisdiction and requiring "a more stringent approach."

The written NET agreement was not between the town of Batesburg-Leesville and the County of Lexington, as required by §23-1-210. The testimony in the present case from the single town council member as to the police chief's authority to enter into the multi-jurisdictional agreement does not constitute a written agreement between concerned municipalities and the county as required by section 23-1-210. Municipal Officer Gilliam was not authorized to arrest Petitioner

outside the city limits because there was not a valid agreement in place to authorize the arrest outside of the city limits.

The Court of Appeals distinguished State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011), finding that S.C. Code section 23-20-50, the code section involved in the Boswell case, did not apply to the agreement in the present case. In Boswell this Court found that S.C. Code section 23-20-50 (the Law Enforcement Assistance and Support Act) [the Act] required governing bodies to formally approve a pre-existing multi-jurisdictional agreement if the agreement is to retain validity. This Court found that the agreement in Boswell was invalid because it had not been formally approved. The agreement had only been sent to, rather than voted on, by county council. As a result of the invalid agreement, the Lexington County officers were not authorized to arrest Boswell in Calhoun County. The Court found that the trial judge erred in refusing to suppress Boswell's confessions as the product of the unlawful arrest.

While the agreement in the present case does not reference §23-20-50, the same analysis used by this Court in Boswell should apply in interpreting §23-1-210. The multi-jurisdictional agreement at issue in Boswell, incorporates the text of S.C. Code §§ 23-1-210 and 17-13-45. In Boswell, the Court noted the significance of territorial jurisdiction and took a more stringent approach in finding that multi-jurisdictional agreements must be formally approved by the governing bodies. As this case involves territorial jurisdiction, this Court should take a more stringent approach and correctly find that the police chief was without authority to enter into the agreement pursuant to § 23-1-210. The purported multi-jurisdictional agreement in the present case is invalid because the police chief who signed the multi-jurisdictional drug enforcement unit agreement, lacked the authority to enter into the agreement under section 23-1-210.

Arguably the Boswell case requires formal approval of multi jurisdictional task force agreements drafted pursuant to §23-1-210 . As in Boswell, the agreement at issue in the present case references both S.C. Code §§ 23-1-210 and 17-13-45. The agreement in the present case also references S.C. Code § 23-1-215. The agreement in Boswell was entered into on April 16, 1999, prior to promulgation of S. C. code § 23-20-50. In State v. Boswell, 707 S.E.2d 265, 270 (S.C. 2011) the South Carolina Supreme court wrote:

> In 2000, the Legislature promulgated section 23-20-50 to require County approval of multi-jurisdictional agreements. This section states:
>
> A) An agreement entered into pursuant to this chapter on behalf of a law enforcement chief executive officer. A state law enforcement authority must provide a copy of the agreement to the Governor and the Executive Director of the State Budget and Control Board no later than one business day after executing the agreement. An agreement entered into with a local law enforcement authority pursuant to this chapter must be approved by the governing body of each jurisdiction. *For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction.*
>
> (B) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of South Carolina as the law enforcement agency contracting for the services.
>
> S.C.Code Ann. § 23–20–50(A), (B) (2007) (emphasis added).

Unlike Boswell, the agreement in the present case was signed in September of 2001, after the promulgation of section 23-20-50 requiring approval of multi-jurisdictional agreements. The holding in Boswell, requiring approval of multi-jurisdictional agreements by the governing body of each jurisdiction should apply to agreements, regardless of whether the agreements were entered prior to or after the promulgation of section 23-20-50. Reference to other code sections

such as section 23-1-210 within the agreements does not circumvent the approval requirement because the agreement in Boswell also referenced section 23-1-210. The clear legislative intent of section 23-20-50 is to require approval of all multi-jurisdictional agreements by the governing bodies of each jurisdiction.

> S.C. Code section 23–1–210, (1981) (amended 2007) provides in part:
>
> (A) Any municipal or county law enforcement officer may be transferred or assigned on a temporary basis to work in law enforcement within **multijurisdictional task forces** established for the mutual aid and benefit of the participating jurisdictions, or in any other municipality or county in this State under the conditions set forth in this section, and when so transferred or assigned shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred or assigned.
>
> (B) Prior to any transfer or assignment as authorized in subsection (A), the concerned municipalities or counties shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred or assigned. The bond for any officer transferred or assigned shall include coverage for his activity in the municipality or county to which he is transferred or assigned in the same manner and to the same extent provided by bonds of regularly employed officers of that municipality or county.
>
> (C) Agreements made pursuant to subsection (B) shall provide that temporary transfers or assignments shall in no manner affect or reduce the compensation, pension, or retirement rights of transferred or assigned officers and such officers shall continue to be paid by the county or municipality where they are permanently employed, with the sending county or municipality being reimbursed for their services by the county or municipality to which they are transferred or assigned.

The 2007 amendment specifically included the phrase "within multi jurisdictional task forces established for the mutual aid and benefit of the participating jurisdictions, or . . ." The 2007, amendment was enacted after the promulgation of section 23-20-50, dealing with multi-

jurisdictional agreements. The specific inclusion of multi-jurisdictional task force language in the amendment to section 23-1-210 evidences the intent to require approval of multi-jurisdictional agreements by the governing body of each jurisdiction, as provided in section 23-20-50.

As in Boswell, Burgess argued that the arresting officers were acting outside their territorial jurisdiction. Burgess clearly challenged the Batesburg-Leesville police officer's authority to arrest outside of the city limits when the multi-jurisdictional agreement that purported to authorize the arrest did not comply with the statutes authorizing multi-jurisdictional agreements. The judge understood that Burgess was moving to dismiss the charge based on the unlawful arrest. The agreements in both the present case and in Boswell referenced section 23-1-210. While the agreement in the present case does not reference §23-20-50, the approval requirement found in Boswell should apply in the present case. The multi-jurisdictional agreement in the present case, signed by the police chief of Batesburg-Leesville and the sheriff of Lexington County, was not approved by the governing bodies of the town and the county, as was found to be required by Boswell.

The testimony in the present case from the town council member as to the police chief's authority to enter into the multi-jurisdictional agreement does not constitute "approval" as required by section 23-20-50. The South Carolina Supreme Court in Boswell wrote, "In contrast to the State's interpretation, we construe subsection A [of section 23-20-50] as requiring governing bodies to formally approve a pre-existing agreement if it is to retain its validity. Taking into account the significance of territorial jurisdiction, we believe a more stringent approach needs to be followed in order to confer this type of authority." State v. Boswell, 707 S.E.2d 265, 270 (S.C. 2011). The Court found that the agreement was invalid because it had not been formally approved by county

council. The agreement had been sent to, but not voted on, by county council. Pursuant to Boswell, the agreement in the present case required formal approval. Notice or even consent does not constitute formal approval pursuant to section 23-20-50. The multi-jurisdictional agreement was not formally approved by either the town council of Batesburg-Leesville or Lexington County council. Based on Boswell, this Court erred in refusing to find that the arrest was unlawful.

The multi jurisdictional drug enforcement agreement in the present case does not meet the requirements of S.C. code §23-1-210. The statute requires written agreements between the concerned municipalities and counties and makes no provision for allowing law enforcement to enter into these agreements. The NET agreement at issue is an agreement between law enforcement agencies and invalid pursuant to §23-1-210. The NET agreement is invalid pursuant to S.C. Code §23-1-215 because of failure to comply with the notice requirement. Additionally, Boswell requires approval of §23-1-210 agreements and this agreement was not approved in the manner required by Boswell.

2. The judge erred in refusing to allow cross examination about disciplinary records of Officer Gilliam when the records constitute evidence of bias and motive to misrepresent pursuant to Rule 608(c).

At trial, Gilliam testified that he had been in law enforcement for a little over thirteen years and had been attached to the Lexington County narcotics enforcement team. (R. p. 92, lines 8-25). Burgess sought to question Gilliam about why he no longer worked for the NET. (R. p. 110, lines 7-23). The trial judge refused to allow the questioning. (R. p. 111, lines 15-21). Burgess proffered Gilliam's disciplinary records and they were admitted as Court's exhibit #1. (R. pp. 215). The records reflect that in a letter dated March 14, 2007, Lieutenant Snelgrove of the Lexington County Multi-Agency Narcotics Enforcement Team wrote to Captain Henry Sims of the Batesburg-Leesville police Department and asked that Officer Gilliam be removed from the NET team. While the letter references three separate incidents, removal from the NET team was based on a specific instance of misconduct and violation of NET team protocol that took place on February 16, 2007. (R. pp. 218 - 219). The judge erred in refusing to allow Burgess to question Gilliam about why he was no longer with the NET.

Gilliam's credibility as a witness was a key issue at trial. Officer Gilliam was the only witness to testify that Burgess dropped a pill container that, according to Gilliam but not tested by the chemist, contained cocaine residue. The 5.67 grams of crack cocaine for which Burgess was charged were found on the ground by Officer Laney. Neither officer witnessed Burgess in actual possession of the crack cocaine on the ground.

Burgess should have been allowed to cross examine Gilliam about the disciplinary records because the records constitute evidence of bias and motive to misrepresent. SCRE Rule 608(c) provides that, "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness

either by examination of the witness or by evidence otherwise adduced." In State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001), this Court wrote:

> Under Rule 608(c), "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." This subsection of Rule 608 preserves South Carolina precedent holding that generally, "anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony." State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976)(citing 98 C.J.S. Witnesses § 460).

During cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness. State v. Starnes, 340 S.C. 312, 325, 531 S.E.2d 907, 914 (2000).

In State v. McEachern, 399 S.C. 125, 140-141, 731 S.E.2d 604, 612 (Ct.App. 2012) the South Carolina Court of Appeals wrote:

> "Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct.App.2004) (quoting U.S. v. Abel, 469 U.S. 45, 52, 105 S.Ct. 465, 469, 83 L.Ed.2d 450 (1984)).

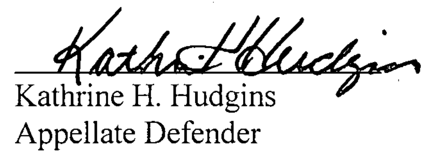
The records portray Gilliam as an overzealous narcotics officer who was willing to use unreliable confidential informants in order to make an arrest and who violated protocols of the NET concerning the use of confidential informants. (R. p. 218). Burgess had the right to cross examine Gilliam to show that as an overzealous officer he had a bias and motive to misrepresent in order to obtain an arrest. The jury, in determining the credibility of Gilliam's testimony, had a right to know about Gilliam's disciplinary problems and removal from the NET because the information had a legitimate tendency to throw light on the accuracy, truthfulness and sincerity of Gilliam's testimony.

The Court of Appeals wrote, "Although the judge did not use the language of Baker and Jones in his ruling, we interpret the ruling as a finding that the records did not have a legitimate tendency to show bias on the part of the officer." State v. Burgess, S.C. , 712 S.E.2d 1, 5 (Ct.App. 2011) (App. pp. 7). (App. p. 9). The Court of Appeals erred. Burgess was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness. See Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

CONCLUSION

Burgess's sentence and conviction should be reversed. Based on argument one, the case should be dismissed. Alternatively, based on arguments two and three the case should be remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 24th day of April, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

James W. Johnson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

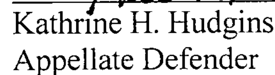
LAWRENCE BURGESS,

APPELLANT

APPELLATE CASE NO. 2011-194288

CERTIFICATE OF SERVICE

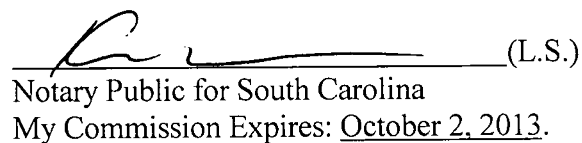
I certify that a true copy of the brief of petitioner, in this case has been served on Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and also served upon Mr. Lawrence Burgess #324580 Lower Savannah Pre-Release Center 361 Wire Road Aiken, SC 29801 this 24th day of April, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day
of April, 2013.



_______________________(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.