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Statement of Issues on Direct Appeal

1. Did the trial judge abuse her discretion by denying Appellant's motion for a directed verdict predicated on the State's failure to prove, either by direct or substantial circumstantial evidence, the indictments against the Appellant? More specifically, the trial judge based her ruling denying Appellant's motion for directed verdict, not on evidence offered and/or presented for the indictments which it was considered, but upon extraneous evidence from an improperly joindered indictment that also happened to be highly prejudicial to the indictments at issue, and consequently to the Appellant as well. The prejudicial improperly joined indictment is an unrelated charge for resisting arrest which arose from an seperate chain of circumstances unprovable by the same facts, evidence, and/or with the same witness testimony. The resisting arrest indictment arises from an unlawful arrest of the Appellant on the morning following the incident giving rise to indictments which are the subject of this appeal. Particulars in the prosecution included indication of the location of said incident, (it (location) being within 5 mi. radius to previous nights incident) thus tainting the mind of the jury. Nonetheless, the jurist is held to a higher standard and obligation in the way of discretion. As a result, the trial is expected to be an examination of the facts as they are submitted to prove the elements of the indictment they are proffered. The questions beg themselves: "Can the trial judge realistically be expected and/or relied upon to assign the facts to their intended purpose disregarding prejudicial information?;" "Can the trial court be allowed to entertain substantially prejudicial facts;" and "Does the Record support and suggest sound discretion on part of the trial court?"

2. Did the trial judge abuse her discretion by denying Appellant's motion for a mistrial after the assistant solicitor argued facts not in evidence during her closing argument, specifically that appellant admitted during his testimony that scales found in the car were his and that these scales were found "in the same bag as the drugs" per officer's testimony, when in fact, there was no evidence in the record to support the assistant solicitor's claims, and where appellant was prejudiced because the evidence presented was purely circumstantial and the state relied on constructive possession i.e. "link to an intermissable item" to convict Appellant.

3. Whereas the trial ~~Jamison~~ judge failed to record her "verbal" overruling of the Appellant's objection to Assistant Solicitor's arguing facts not in evidence and subsequent motion for mistrial based thereupon, does not the continuance of the trial and ultimate submission of the indictments to the jury following a "renewal of all motions" constitute a denial of all motions

AND OBJECTIONS? IS NOT THAT "RAISED TO", ARGUED, AND "RULED UPON" AS PROVIDED IN THE PLAIN LANGUAGE OF THE LAW?

4. PRESERVATION NOTWITHSTANDING, DOES NOT THE EVIDENCE OF UNETHICAL ATTORNEY CONDUCT, IN THE FORM OF MALICIOUS ANTAGONISTIC REPRESENTATION BY APPELLANT'S "COURT-APPOINTED" TRIAL COUNSEL, PRESENT AN "EXCEPTIONAL CIRCUMSTANCE"? COUPLED WITH THE DISPOSITIVE ISSUE BEING APPARENT OF RECORD AND THE REAL THREAT THAT APPELLANT WOULD REMAIN INCARCERATED BEYOND THE "LEAM-SENTENCE", DOES NOT THE CIRCUMSTANCES HERE JUSTIFY THE APPLICATION OF THE EXCEPTION TO THE PRESERVATION RULE IN THE INTEREST OF JUDICIAL ECONOMY?

5. DOES THE CONCESSION OF JUDICIAL ERROR BY THE TRIAL COURT HERSELF, AND UNDOUBTEDLY BY THE STATE, TO THE IMPROPER SUBMISSION OF IMPROPERLY JOINDERED PREJUDICIAL INDICTMENT THAT HAD ALSO BEEN DISMISSED ON DIRECTED VERDICT CONSTITUTE REVERSIBLE ERROR? DOES ACKNOWLEDGEMENT OF SAID ERROR BY TRIAL COURT RENDER THIS ISSUE PRESERVED? IF NOT, DOES THIS INESTIMABLE PCR ISSUE NOT PASS MUSTER AS AN "EXCEPTIONAL CIRCUMSTANCE" FOR THE PURPOSE OF "JUDICIAL ECONOMY"?

6. DOES INDICTMENTS "TRUE-BILLED" AND FILED WITH THE CLERK OF COURT (4) FOUR DAYS PRIOR (DECEMBER 3, 2020) TO THE DATE THE INDICTMENT ALLEGES THE GRAND JURY TO HAVE CONVENED (DECEMBER 7, 2020) RENDER THE "GRAND JURY NOT THE GRAND JURY" AND THE "INDICTMENT NOT AN INDICTMENT" THUS DEPRIVING THE TRIAL COURT OF SUBJECT MATTER JURISDICTION?

Statement of the Case on Direct Appeal

An Aligen County grand jury indicted Appellant on December 7, 2020 for Possession with intent to distribute cocaine, Possession with intent to distribute heroin, Trafficking Methamphetamine, Failure to Stop For A Blue Light, and Resisting Arrest. R. 231-236. Appellant's case was called to trial on July 22, 2021 before the Honorable Jocelyn Newman and a Jury. R. 1. Solicitor Bill Weeks and Assistant Solicitor Ashley Hannack represented the state. R. 1. Suzanne Hayes and Barry Thompson represented Appellant. R. 1.

On Thursday July 22, 2021, Appellant's trial counsel moved for directed verdict for insufficient evidence to prove charged indictment (R. 117, ll. 24, 25 - R. 118, ll. 1-3), which was denied (R. 118, l. 4). Appellant's trial counsel immediately followed with a specific motion for directed verdict on the charge of resisting arrest (R. 118, ll. 5-25. - R. 119, l. 1.), which was likewise denied (R. 119 ll. 13-17).

The following and final day of trial, Friday July 23, 2021, at the conclusion of the Appellant's case in defense and upon motion of Appellant's trial counsel (R. 160 ll. - R. 162, l. 23), the trial judge directed a verdict for resisting arrest (R. 160, l. 24). Appellant's trial counsel immediately followed with a motion for directed verdict pursuant to SCRCRP Rule 19 (R. 162, l. 25 - R. 163 ll. 1-2), which was denied (R. 163, l. 3). The trial court then erroneously submitted all indictments to the jury for deliberation (R. 217, ll. 19-21; and R. 218, ll. 9-5) including the prejudicially misworded indictment for resisting arrest which the trial judge herself had dismissed on directed verdict just previous to the start of initial closing arguments by the State. The trial judge acknowledged this error, albeit usurping and assuming the role of this Honorable Appellate Court in finding that it was "harmless," and preserved it "on the record" (R. 223, ll. 20-25 - R. 224, l. 1). The Jury subsequently acquitted Appellant of failure to stop for a blue light. However, in inconsistent verdicts, the jury found Appellant guilty of possession with intent to distribute cocaine, possession with intent to distribute heroin, and trafficking methamphetamine. (R. 220, l. 9 - 221, l. 16). He was sentenced 30 years to be served concurrently for each count (R. 228, ll. 19-24). This Appeal Follows. 3

Statement of the Facts

On the night of February 26, 2020, Sergeant Brandon Knight with the Aiken County County Sheriff's Office was stationed on Interstate 20 Eastbound at the mile 25 marker. R.41, L.24 - R.42, L.9. He was parked perpendicular to the roadway. R.42, Ll.14-15. Sometime before midnight, Knight observed a white Dodge Durango "cross (his) view." R.42, Ll.10-13; R.49, Ll.7-12. The tint on the windows was so dark Knight could not "see a silhouette of anybody in the vehicle." R.42, Ll.10-13. Suspecting that the window tint was darker than permitted by law, Knight pulled out behind the vehicle with intent of stopping the car. The Durango switched lanes from the fast lane to the slow lane "without signaling" and "reduced speed drastically." R.43, Ll.1-5. Knight turned on his blue lights after he "ran the tag." R.43, Ll.6-8. The Durango did not stop. Knight activated his sirens. The vehicle did not stop. R.43, Ll.11-14.

The Durango exited the interstate at exit 29 into Wire Rd. R.43, Ll.15-19. The unknown driver gave no indication he was going to stop. R.43, Ll.20-23. Knight advised dispatch and the Highway Patrol that the vehicle was not stopping. R.43, L.25 - 44, L.5. A trooper with the Highway Patrol was parked at Exit 29 and temporarily "took over the pursuit." R.44, Ll.1-8. Sergeant Frances Palmer also responded. Palmer also was certified to use the Pursuit Intervention Technique (PIT). R.67, Ll.13-15. Palmer explained that when using the technique, the front of his car, which is equipped with a specialized bumper, "pushes the rear of the subject vehicle into a controlled spin, ending most pursuits." R.44, Ll.13-14; R.68, Ll.1-6. Palmer ultimately did not perform the "PIT maneuver" during the chase because the "conditions" were never safe to do so. R.50, L.22-51, L.22-51, L.5; R.71, L.21-72, L.20.

Law enforcement pursued the vehicle for thirty miles reaching speeds up to ninety miles per hour. R.50, L.9-10; R.51, L.9; R.73, Ll.18-21; R.78, Ll.1-8. During the pursuit, the officers did not know who was driving the car or how many people were inside. R.45, Ll.19-22. Eventually, the Durango pulled off into a "plowed cornfield" in a rural part of Aiken County

STATEMENT OF THE FACTS CONT'D

R.46,ll.9-10; R.47,ll.12-24; R.74,ll.6-9. THE FIELD WAS "SATURATED" WITH WATER BECAUSE THERE HAD BEEN "A LOT OF RAIN" R.79,ll.10-16. SEVERAL LAW ENFORCEMENT VEHICLES, INCLUDING SERGEANT KNIGHT'S, GOT STUCK IN THE FIELD AFTER THEY ATTEMPTED TO FOLLOW THE DURANGO. R.47, ll.16-19. ONCE HIS CAR BECAME STUCK, KNIGHT RAN TO THE DURANGO, WHICH HAD STOPPED NEAR THE BACK RIGHT CORNER OF THE FIELD. THE DRIVER'S DOOR OF THE DURANGO WAS OPEN AND NO ONE WAS INSIDE. R.47,l.20-48,l.7. THE DRIVER HAD FLED. KNIGHT OBSERVED SHOES ON THE GROUND AND FOOTPRINTS LEADING TO THE WOOD LINE. R.49,ll.22-23. HE CLAIMED "THE VEHICLE WAS SO FULL OF STUFF" ON THE FRONT AND REAR PASSENGER SEATS THAT NO ONE ELSE COULD HAVE FIT IN THE CAR BESIDES THE DRIVER. R.49,ll.18-21.

KNIGHT CALLED THE "AIKEN COUNTY TRACKING TEAM TO COME TO THE SCENE." R.49,ll. 24-25. THE TRACKING TEAM USED BLOOD HOUNDS TO TRY TO LOCATE THE DRIVER OF THE DURANGO, BUT WAS UNSUCCESSFUL. R.50,ll.1-6. WHILE THE TRACKING TEAM LOOKED FOR THE DRIVER, KNIGHT SEARCHED THE DURANGO IN THE CORNFIELD. THE VEHICLE WAS NEVER PROCESSED AND NO PHOTOGRAPHS WERE TAKEN. KNIGHT CLAIMED HE FOUND "A BAG" ON THE FRONT PASSENGER SEAT WITH THE NARCOTICS INSIDE. R.51,ll.12-20 (emphasis added). HE FURTHER CLAIMED HE FOUND SCALES" IN THE FRONT PASSENGER SEAT OF THE VEHICLE WITH THE NARCOTICS." AND ZIPLOCK BAGS" IN THE VEHICLE ALONG WITH THE NARCOTICS." R.53,ll.9-20; R.54,ll.19-21. KNIGHT WAS NOT MORE SPECIFIC AS TO WHERE THE DRUGS, SCALES, AND PLASTIC BAGS WERE LOCATED IN THE CAR. HE ALSO DID NOT DESCRIBE THE BAG IN WHICH THE DRUGS WERE ALLEGEDLY FOUND. SIGNIFICANTLY, LATER DURING CROSS-EXAMINATION, KNIGHT CLAIMED HE FOUND THE DRUGS "IN THE PASSENGER SEAT IN THE BACK" CONTRADICTING HIS EARLIER TESTIMONY. R.102,ll.12-19 (emphasis added).

THE DRUGS WERE LATER IDENTIFIED AS 49.1 GRAMS OF METHAMPHETAMINE, 1.56 GRAMS OF COCAINE, AND 1.49 GRAMS OF HEROIN. R.110,l.14-115,l.16.

APPELLANT DID NOT DISPUTE THE DURANGO WAS HIS CAR. IT WAS REGISTERED TO APPELLANT AND THERE WAS MAIL ADDRESSED TO APPELLANT INSIDE AS WELL AS TWO PRESCRIPTION DRUG

Bottles with Appellant's name on them. R.51, ll. 17-20; R.53, ll. 9-11; R.54, ll. 9-15; R.56, ll. 7-11

After the tracking team failed to locate the driver, Sergeants Knight, Palmer, and Blackwater roamed the area searching for the suspect. They searched the woods and walked along the entire length of Anderson Road on the other side of the wood line. R.57, ll. 10-23. They cleared all the buildings on that road, but also did not locate the driver. R.75, ll. 26-23. The search was called off at 1:30 A.M.

~ Conclusion of Narrative of Relevant Facts ~

~ Narrative of Facts Relevant to Resisting Arrest ~

Sometime between 5:00 A.M. and 5:30 A.M. the morning of February 27, 2020, Colt Woody, a peanut and corn farmer who lived on Anderson Road, woke to find a man, later identified as Appellant, sitting on the steps of his carport. R.81, l. 8-83, l. 16; R.97, ll. 4-16. Woody called the police. R.83, ll. 21-24. A patrol officer with the Aiken County Sheriff's Office, along with a deputy (Driscoll, Joseph) from the same agency, responded to the home and found Appellant sitting on the steps. R.90, ll. 1-5. Appellant's hand and arms where inside his shirt. His face was also tucked inside his shirt. He was wet and dirty and appeared to be cold. R.90, l. 6 - 91, l. 6. The officer claimed Appellant refused to show his hands when ordered. Appellant merely raised and waved his fingers through the neck hole of his shirt. R.91, ll. 7-21. Consequently, the officers (Czekaj-Ferrell & Driscol) who responded, forced Appellant to the ground and tased him twice allegedly in an effort to gain control of his hands and arms. R.91, l. 22 - 95, l. 24.

Law enforcement ultimately charged Appellant with resisting arrest. The underlying offense was supposedly disorderly conduct. R.98, l. 12 - 99, l. 3. The trial judge directed a verdict for resisting arrest after finding Appellant's conduct did not constitute disorderly conduct and therefore there was no lawful arrest to resist. R.160, l. 11 - 162,

STATEMENT OF THE FACTS CONT'D.

L.24.

APPELLANT TESTIFIED IN HIS DEFENSE. HE EXPLAINED THAT HE WAS IN THE PROCESS OF MOVING AND MOST OF HIS PERSONAL BELONGINGS WERE IN HIS VEHICLE. AS A RESULT. R. 128, LL. 2-9. BEFORE LEAVING TOWN, APPELLANT STOPPED AT HIS NEPHEW'S HOUSE TO SEE IF HIS NEPHEW WANTED TO RIDE WITH HIM TO HIS NEW PLACE. R. 129, LL. 3-8. APPELLANT'S NEPHEW, WHILE AN ADULT, LIVED WITH HIS MOTHER. WHEN APPELLANT ARRIVED AT HIS NEPHEW'S MOBILE HOME, HE NEEDED TO USE THE BATHROOM. HOWEVER, BECAUSE OF THE LATENESS OF THE HOUR, APPELLANT DID NOT WANT TO GO INSIDE AND DISTURB HIS NEPHEW'S MOTHER. R. 129, L. 9 - 130, L. 5. CONSEQUENTLY, AFTER PARKING HIS VEHICLE IN THE DRIVEWAY, APPELLANT WALKED SEVERAL FEET AWAY FROM HIS VEHICLE TO URINATE OUTSIDE. R. 130, L. 9 - 131, L. 1. WHILE HE WAS RELIEVING HIMSELF, THE APPELLANT NOTICED HEAD LIGHTS BEAM MOVING AGAINST THE TREE-LINE AND THE APPELLANT TURNED AROUND. HE SAW HIS VEHICLE BACKING OUT OF THE DRIVEWAY. R. 131, LL. 1-10. APPELLANT ASSUMED AT THE TIME THIS HIS NEPHEW WAS PLAYING A JOKE ON HIM. R. 131, LL. 11-23.

APPELLANT WAITED ABOUT TEN OR FIFTEEN MINUTES FOR HIS NEPHEW TO RETURN WITH CAR, BUT HE NEVER DID. R. 132, L. 19 - 133, L. 1. APPELLANT THEN WALKED TO THE MAIN ROAD. R. 133, LL. 13-22. HE HAD HIS TABLET WITH HIM. HE HAD BEEN USING IT EARLIER TO REMOTELY CONTROL THE VOLUME OF THE MUSIC IN HIS VEHICLE WHEN IT WAS TURN. R. 130, LL. 21-24. THE APPELLANT WAS ATTEMPTING TO USE GOOGLE "TRACK MY DEVICE" APP. TO LOCATE HIS REGISTERED DEVICE, WHICH WAS STILL IN HIS VEHICLE, BUT WAS UNABLE TO ACCESS AND/OR LOG ONTO WIFI. R. 133, L. 23 - 135, L. 21. ONCE OUT ONTO THE MAIN ROAD NEAR HIS NEPHEW'S HOUSE, APPELLANT WAS APPROACHED BY A PASSING MOTORIST WHOM HAPPENED TO BE A WHITE FEMALE. SAID FEMALE

"RENDERED AID" TO THE APPELLANT IN THE FORM OF ENABLING & AVAILING HER PHONE'S MOBILE "HOTSPOT" (i.e. Wi-Fi SIGNAL) TO APPELLANT. HE WAS THEN ABLE TO INITIATE AND COMPLETE THE "TRACK MY DEVICE" OPERATION AND GIVE PINPOINT THE REAL TIME LOCATION OF HIS PHONE AND THUS THE VEHICLE. R.135, ll. 23-136, ll. 1-17. THE OBLIGING-PASSING MOTORIST ALSO "RENDERED AID" IN THE FORM OF A RIDE TO THE LOCATION FROM WHICH THE "TRACKED" PHONE TRANSMITTED ITS SIGNAL. THE MOTORIST, UPON COMING TO REALISATION OF THE LENGTH AND TIME OF SAID ENDEAVOR, RENEGED, OBLIGING TO DROP THE APPEAL CLOSER TO, YET CONSIDERABLY FAR FROM THE INDICATED LOCATION OF THE PHONE/TRUCK. R.135, l. 22-137, l. 24. APPELLANT WALKED FOR HOURS, BUT WAS NEVER ABLE TO FIND HIS CAR. R.138, l. 4-140, l. 2. HE EVENTUALLY SAW A HOUSE THAT HAD A LIGHT ON UNDER THE CARPORT. HE APPROACHED THE HOUSE TO OBTAIN HELP FROM THE HOMEOWNERS. NO ONE ANSWERED THE DOOR WHEN HE KNOCKED, SO APPELLANT SAT DOWN TO WAIT. HE WAS "BALLED UP" BECAUSE IT WAS VERY COLD OUTSIDE. R.140, l. 3-141, l. 11. APPELLANT TESTIFIED THAT HE INITIALLY DIDN'T "COOPERATE" WITH THE POLICE BECAUSE THEY WERE TREATING HIM LIKE A CRIMINAL WHEN HE WAS IN FACT A VICTIM. R.143, ll. 12-25

APPELLANT VEHEMENTLY DENIED THE DRUGS FOUND IN THE VEHICLE WERE HIS. THE DRUGS WERE NOT IN HIS VEHICLE WHEN HE ARRIVED AT HIS NEPHEW'S HOUSE. R.143, ll. 2-8. HE SAID THE POLICE NEVER QUESTIONED HIM AND INDICATED "ZERO INVESTIGATION". R.144, ll. 1-6.

ALSO WORTH NOTING IS, AFTER RAISING THE ISSUE OF "PRIOR BAD ACTS" AND HER INTENT AND/OR ~~INTENT~~ REQUEST TO USE CERTAIN PRIOR CONVICTIONS TO IMPEACH APPELLANT'S TESTIMONY, THE ASSISTANT SOLICITOR AND ELECTED SOLICITOR PROSECUTING THE INDICTS WERE PRECLUDED BY ORDER OF THE TRIAL FROM USING ANY OF THE THREE QUALIFYING CONVICTIONS TO IMPEACH APPELLANT'S TESTIMONY. R.123, ll. 13-125, l. 17. YET, ON CROSS-EXAMINATION, ELECTED SOLICITOR JOHN WILLIAM WEEKS RHETORICALLY ASKED APPELLANT

STATEMENT OF THE FACTS CONT'D...

WHETHER OR NOT HE DENIED BEING "THE SAME JONATHAN LUKOW WHO WAS CONVICTED IN 2011 FOR GIVING FALSE INFORMATION TO THE POLICE?" R.159, LL.11-13.

("SEE ALSO") R.223, LL.11-17 TRIAL COUNSEL, "YES, YOUR HONOR. AT THIS TIME, THE DEFENSE WILL RENEW ALL PREVIOUS MOTIONS AND OBJECTIONS AND WE MOVE FOR A NEW TRIAL ON THE BASIS THAT THE JURY LACKED ENOUGH EVIDENCE TO NECESSARILY FIND THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT."; THE COURT, "ALL RIGHT, THAT IS RESPECTFULLY DENIED. ALL MY PREVIOUS RULINGS REMAIN THE SAME." ALSO, THE COURT, "I JUST WANTED TO ACKNOWLEDGE THAT, CLEARLY, THERE WAS A SMALL ERROR ON BEHALF OF THE COURT IN SENDING THE INDICTMENTS TO THE JURY ROOM AND NOT PULLING OUT THE INDICTMENT FOR RESISTING ARREST. IT APPEARS TO HAVE BEEN A HARMLESS ERROR ANYWAY AS HE WAS ACQUITTED OF THAT CHARGE. BUT I DID WANT TO PUT THAT ON THE RECORD BECAUSE, CLEARLY, THE CLERK READ A VERDICT FOR THAT CHARGE." R.223, L.20 - 224, L.1

STANDARD OF REVIEW

"...COURT "ABUSES ITS DISCRETION" ONLY WHERE IT HAS ACTED ARBITRARILY OR IRRATIONALLY, HAS FAILED TO CONSIDER JUDICIALLY RECOGNIZED FACTORS CONSTRAINING ITS EXERCISE OF DISCRETION, OR WHEN IT HAS RELIED ON ERRONEOUS FACTUAL OR LEGAL PREMISES." U.S. V. WELSH, (U.S.C.T. APP.) 879 F.3d 530 (2018). "AN 'ABUSE OF DISCRETION' OCCURS WHEN THE TRIAL COURT'S ORDER IS CONTROLLED BY AN ERROR OF LAW OR WHEN THERE IS NO EVIDENTIARY SUPPORT FOR THE TRIAL COURT'S FACTUAL CONCLUSIONS." STOKES-CRAVEN HOLDING CORP. V ROBINSON, 416 S.C. 517, 787 S.E. 2d 485 (2016). "A MOTION FOR DIRECTED VERDICT SHOULD BE GRANTED WHERE EVIDENCE MERELY RAISES A SUSPICION OF GUILT, OR IS SUCH AS TO PERMIT THE JURY TO SPECULATE AS TO THE ACCUSED'S GUILT." STATE V. BROWN, 267 S.C. 311, 227 S.E. 2d 674 (1976). "SIMPLE OWNERSHIP OF A VEHICLE IS NOT SUFFICIENT TO ESTABLISH CONSTRUCTIVE POSSESSION OF AN ITEM IN THE VEHICLE" BROWN, 3 F.3d at 683. "AN IMPORTANT ELEMENT OF A FAIR TRIAL IS THAT A JURY (OR JUDGE) CONSIDER ONLY RELEVANT AND COMPETENT EVIDENCE BEARING ON THE ISSUE OF GUILT OR INNOCENCE." BRUTON V. U.S., 391 U.S. 123, 131 n.6, 88 S.Ct. 1620, 20 L. Ed. 2d 476 (1968) (PARENTHETICAL ADDED). "WHETHER CHARGES ARE PROPERLY JOINED IN AN INDICTMENT ARE A QUESTION OF LAW..." U.S. V. CARNELL, 433 F. 3d 378, 384-85 (4TH CIR. 2005). JOINDER OF UNRELATED OFFENSES "CREATES THE POSSIBILITY THAT A DEFENDANT WILL BE CONVICTED BASED ON CONSIDERATIONS OTHER THAN THE FACTS OF THE CHARGED OFFENSE." i.d. 433 F.3d at 385 (4TH CIR. 2005). "THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS THE PERSON WHO COMMITTED THE CHARGED CRIME OR CRIMES." STATE V. LYNCH, (S.C.C.T. APP. 2015) 412 S.C. 156. "A NEW TRIAL WILL NOT BE GRANTED UNLESS PROSECUTOR'S COMMENTS SO INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS." STATE V. HUGGINS, 325 S.C. 103, 107, 481 S.E. 2d 114, 116 (1997). "WHEN MAKING THIS DETERMINATION, WE MUST "REVIEW THE ALLEGED IMPROPRIETY OF ARGUMENT IN THE CONTEXT OF THE ENTIRE RECORD." STATE V. LIBERTE, (S.C.C.T. APP.) 336 S.C. 648, 521 S.E. 2d 744 (QUOTING STATE V. LINDER, 276 S.C. 304, 312, 278 S.E. 2d 335, 339 (1981)). "A SOLICITOR'S CLOSING ARGUMENT MUST NOT APPEAL TO THE PERSONAL BIASES OF THE JURORS NOR BE CALCULATED TO AROUSE THE JURORS' PASSIONS OR PREJUDICES, AND IT'S CONTENT SHOULD STAY WITHIN THE RECORD AND REASONABLE INFERENCES TO IT." STATE V. MAZIRIVE, 419 S.C. 282, 296, 797 S.E. 2d 730, 737 (C.T. APP. 2016) (QUOTING HUMPHRIES V. STATE,

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351 S.C. 362, 373, 570 S.E. 2d 160, 166. "SOLICITOR CANNOT RELY, IN HIS CLOSING ARGUMENTS, ON STATEMENTS NOT IN EVIDENCE." STATE V. BOTTOMS, 260 S.C. 187, 195, S.E. 2d 1116 (1973). "AN ORDER THAT IS NOT DIRECTLY APPEALABLE WILL NONETHELESS BE CONSIDERED IF THERE IS AN APPEALABLE ISSUE BEFORE THE COURT AND A RULING ON APPEAL WILL AVOID UNNECESSARY LITIGATION." OSBORNE V. ALLSTATE INS. CO. (S.C. APP.) 319 S.C. 479, 462 S.E. 2d 291 (1995). "NEVERTHELESS, AN EXCEPTION TO THE GENERAL RULE OF ISSUE PRESERVATION EXISTS AUTHORIZING THE APPELLATE COURT TO CONSIDER AN UNPRESERVED ISSUE IN THE INTEREST OF JUDICIAL ECONOMY UNDER APPROPRIATE CIRCUMSTANCES." STATE V. BONNER, COURT OF APPEALS 400 S.C. 561, 735 S.E. 2d 525. TWO EXCEPTIONAL CIRCUMSTANCES EXISTED ① "STATE HAS CONSIDERED IN ITS BRIEF IN ORAL ARGUMENTS THAT TRIAL COURT COMMITTED ERROR" AND ② "A REAL THREAT THAT DEFENDANT WILL REMAIN INCARCERATED BEYOND THE LEGAL SENTENCE DUE TO THE ADDITIONAL TIME IT WILL TAKE TO PURSUE PCR": STATE V. JOHNSTON, 333 S.C. 459, 464, 510 S.E. 2d 423, 425; Id. @ 464 510 S.E. 2d @ 425; "OUR COURTS HAVE, AT TIMES, CONSIDERED AN ISSUE IN THE INTEREST OF JUDICIAL ECONOMY" STATE V. VICK, 384 S.C. 202, 682 S.E. 2d @ 282 (CT. APP. 2009); "A COURT MAKES A REVERSIBLE ERROR DETERMINATION ON THE BASIS OF FOUR (4) FACTORS: 1) THE DEGREE TO WHICH THE COMMENTS COULD HAVE MISLED THE JURY; 2) WHETHER THE COMMENTS WERE ISOLATED OR EXTENSIVE; 3) THE STRENGTH OF PROOF ABSENT THE INAPPROPRIATE COMMENTS; AND 4) WHETHER THE COMMENTS WERE DELIBERATELY MADE TO DIVERT THE JURY'S ATTENTION." U.S. V. MITCHELL, 1 F.3d 235, 241 4TH CIR. (1992); "ON APPEAL, AN APPELLATE COURT WILL REVIEW THE ALLEGED IMPROPRIETY OF THE SOLICITOR'S ARGUMENT IN THE CONTEXT OF THE ENTIRE RECORD, INCLUDING WHETHER THE TRIAL JUDGE'S INSTRUCTION ADEQUATELY CURED THE IMPROPER ARGUMENT" STATE V. MAZIQUE, 419 S.C. @ 296, 797 S.E. 2d @ 731; "IN ORDER FOR AN ISSUE TO PRESERVED FOR APPELLATE REVIEW, A PARTY MUST MAKE A CONTEMPORANEOUS OBJECTION THAT IS RULED ON BY THE TRIAL COURT." STATE V. SWEET, 374 S.C. 1, 5, 647 S.E. 2d 202, 205 (2007); "HOWEVER (ISSUE PRESERVATION) IS NOT A GOTCHA GAME AIMED AT ENSNARING

Standard of Review:

Appellate or Harmless Litigants. "(Honorable Jean Toal) Atl. Coast Builders & Contractors, LLC v. Lewis, 398 SC. 323, 329, 730 S.E. 2d 282, 285 (2012): "An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the court and a ruling on appeal will avoid unnecessary litigation" Osborne v. Allstate Ins. Co. (S.C. App. 1995) 319 S.C. 479, 462 S.E. 2d 291; "Submission of any charge to the jury shall constitute a denial of any motion for directed verdict previously made by the defendant and not ruled upon" Rule 19. (c) SCRCrimP: "The fundamental requirement of due process is to be heard at a meaningful time in a meaningful manner." Matthews v. Eldridge, US va. 1976 96 S.Ct. 893, 424 U.S. 319, 47 L. Ed. 2d 18; "It is required that the jury render its verdict free from outside influences of whatever kind and nature" State v. Cameron, 311 S.C. 204, 207, 428 S.E. 2d 10, 12 (Ct. App. 1993); "Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict" State v. Kelly, 331 S.C. 132, 502 S.E. 2d 99 (1998); "Trial court should remove alternates and inquire into that juror's participation; conduct voir dire as is necessary of remaining jury panel to ascertain prejudice and if practicable, tailor instructions requiring jury to disregard the alternates input; require jury to begin deliberations anew; declare mistrial if taint on remaining jurors may not be remedied with curative instruction" State v. Audret, 333 S.C. 307, 509 S.E. 2d 811 (1999): "An indispensable element of a fair trial is that a jury consider only relevant and competent evidence bearing on the issue of guilt or innocence" Bruton v. United States, 391 U.S. 123, 131 n. 6, 88 S.Ct. 1620, 20 L. Ed. 2d 476 (1968) "Conviction for possession of heroin requires proof of possession - either actual or constructive, coupled with knowledge of its presence" State v. Hudson, 277 S.C. 200, 202, 284 S.E. 2d 773, 774-75 (1981)

Arguments

The trial court erred and abused her discretion by denying Appellant Motion for a directed verdict predicated on the State's failure to prove, either by direct or substantial circumstantial evidence, the indictments against the Appellant. The state failed to prove the identity of the assailant in the indictment. The trial court based her rulings on facts that arose from an improperly joined indictment that, in fact, was dismissed by the trial court herself in a seperate directed verdict. There exists absolutely no evidence that the Appellant was the driver of the vehicle that allegedly contained the illegal drugs at the heart of this case. The fact that the defendant was in the general area the following morning as his truck was found the previous night is neither probative nor dispositive of any element need to sustain a finding of probable cause let alone reasonable doubt. The inconsistency of the jury's verdict of not guilty for the joined offense of "Failure to stop for Blue Lights" suggests that, but for the consideration of improperly joined indictments and the prejudicial evidence thus contained therein, the trial court nor jury could arrive reasonably at the conclusion that the State met it's burden to survive directed verdict and/or establish the identity of the operator of the vehicle and therefore the identity of person exercising dominion and control over the drugs at that given time.

The trial court abuse her discretion by denying Appellants Motion for a mistrial after the Assistant Solicitor repeatedly and emphatically argued facts not contained on the trial record. The Assistant Solicitor, on four distinct occasions, stated in no uncertain terms the Appellant/Defendant claimed ownership of digital scales that were alleged to be recovered from the vehicle at issue and also that those digital scale were in fact "in the same bag" as the illegal drugs at issue this creating a "link to an impermissible item" as is required where there exists a total lack of direct evidence and scant circumstantial evidence as is the case here. Asst. Sol. Ashley Hannack in her closing arguments stated: "And, importantantly, in that bag in the front passenger seat, is scales. He Appellant answered Solicitor Weeks on cross-examination,

IT'S POSSIBLE I LEFT MY SCALES IN MY TRUCK. THOSE DON'T MEASURE OUT HAMBURGER MEAT OR CHICKEN." (R.173, LL. 20-24). SHE CONTINUED, "BUT WHEN YOU'RE THINKING ABOUT POSSESSION WITH INTENT TO DISTRIBUTE OR TRAFFICKING, YOU DON'T JUST HAVE TO CONSIDER WEIGHT. YOU CAN CONSIDER HOW THE DRUGS WERE PACKAGED AND YOU CAN CONSIDER WHAT ELSE WAS WITH THEM. IN THIS CASE, THESE DRUGS WERE FOUND IN A BOOKBAG IN THE DEFENDANT'S CAR IN THE PASSENGER SEAT. BUT THAT BOOKBAG DIDN'T JUST HAVE DRUGS IN IT. THAT BOOKBAG HAD THESE SCALES THAT ARE COMMONLY USED TO WEIGH DRUGS, TO WEIGH DRUGS, TO MEASURE OUT HOW MUCH YOUR GOING TO SELL." (R. 184, LL. 14-22). SHE LATER EXCLAIMED, "AND THE OTHER THING THAT WAS IN THAT BAG WITH THOSE SCALES WITH DRUGS IS..." (R.185, LL. 3-4) AND "BUT WHAT ARE YOU GOING TO DO AFTER YOU MEASURE OUT YOUR COCAINE OR YOUR HEROIN OR YOUR METHAMPHETAMINE THAT'S IN YOUR STOCK, IN YOUR INVENTORY, YOU'RE GOING TO MEASURE IT OUT ON THAT SCALE..." (R.185, LL. 7-10). SOLICITOR HAMMACK, AFTER INFESTING THE MINDS OF THE JURY WITH COMPLETE FICTIONAL RECITATIONS OF NON-EXISTENT TESTIMONY, ADDED INSULT TO INJURY BY SUGGESTING THAT THE JURY DRAW INFERENCES FROM INACCURATE INFORMATION IN HER RHETORICAL QUESTION, "EVERYTHING ELSE IN THE CAR IS HIS, BUT NOT THIS. THESE SCALES ARE HIS THAT HE LEFT IN HIS TRUCK, THAT WERE FOUND IN THE SAME BAG AS HIS DRUGS. SO THE SCALES ARE HIS, BUT THE DRUGS AREN'T?" (R.187, LL. 2-5)

COUNSEL FOR THE DEFENSE ULTIMATELY INTERRUPTED THE ASST. SOLICITOR AND INFORMED THE JUDGE THAT HE HAD AN OBJECTION AND A MATTER OF LAW THAT NEEDED TO BE ADDRESSED OUTSIDE THE PRESENCE OF THE JURY. (R.187, LL. 10-12). ONCE THE JURY WAS EXCUSED, COUNSEL ASSERTED THAT THE SOLICITOR WAS ARGUING FACTS NOT IN EVIDENCE. COUNSEL FOR THE DEFENSE ARGUED THAT "UNLESS THE OFFICER TESTIFIED THAT THE SCALES WERE FOUND ON THE PASSENGER SEAT WITH THE DRUGS -- BECAUSE THE ARGUMENT WAS THAT THEY WERE ACTUALLY IN A BAG WITH THE

DRUGS. UNLESS THERE'S TESTIMONY TO THAT EFFECT, THEN THE ARGUMENT THAT THE SCALES WERE "ACTUALLY" IN A BAG WITH THE DRUGS "NOT THAT THE SCALES WERE PHYSICALLY RIGHT THERE WITH THE DRUGS, I WOULD TELL YOU THAT AS A JUROR, I DON'T KNOW THAT I WOULD BE ABLE TO OVERCOME ANYTHING LIKE THAT. I DON'T THINK THERE'S ANY JURY INSTRUCTION TO FIX THAT, AND I WOULD ASK FOR A MISTRIAL." (R. 189, LL. 16-24).

THE ASST. SOLICITOR SEEING HER CLEVER "FUDGING" OF THE FACTS, AND TESTIFYING STATEMENTS OF TRIAL WITNESSES, HAD BEEN EXPOSED AND BROUGHT TO THE ATTENTION OF THE COURT, ATTEMPTED TO SALVAGE HER PROSECUTION BY LYING DIRECTLY TO THE TRIAL COURT STATING THAT IT WAS HER "RECOLLECTION" THAT STATES WITNESS SERGEANT KNIGHT TESTIFIED THERE WAS A BOOKBAG ON THE PASSENGER SEAT THAT CONTAINED BOTH THE SCALES AND THE DRUGS. (R. 188, LL. 13-17; R. 189, LL. 5-8). SHE ALSO MAINTAINED THAT THE APPELLANT ADMITTED THAT THE SCALES WERE HIS. SPECIFICALLY, SOLICITOR HANNACK ASSERTED, "MR. WEEKS (THE SOLICITOR) ASKED HIM (THE APPELLANT) A TWO-PART QUESTION: A) 'ARE THESE YOUR SCALES?'; AND B) 'WERE THEY IN YOUR TRUCK?'. HE (THE APPELLANT) SAID, 'YES, THEY ARE MY SCALES AND ITS POSSIBLE THEY COULD HAVE BEEN IN MY TRUCK.'" (R. 188, L. 25 - 189, L. 4). THIS ASSERTION WAS A WILLFUL, INTENTIONAL, BOLD AND BLATANT LIE OFFERED DIRECTLY TO THE TRIAL BENCH IN DEFENSE OF HER PREVIOUS WILLFUL, INTENTIONAL, BOLD AND BLATANT LIES OFFERED DIRECTLY TO THE JURY AS THE COLLOQUY BETWEEN SOLICITOR WEEKS AND THE APPELLANT TO WHICH ASST. SOLICITOR HANNACK REFER ENTAILS THE FOLLOWING DIALOGUE: "Q. 'HOW ABOUT THESE SCALES FOR MEASURING DRUGS, WERE THEY IN YOUR TRUCK, TOO?' A. 'I ASSUME THEY WERE.' Q. 'WELL, DID YOU PUT THEM THERE?' A. 'IT'S A POSSIBILITY THAT I DID.'" (R. 148, LL. 5-9). IN ADDITION, JUST PRIOR TO THAT LINE OF QUESTIONING, THE APPELLANT CLARIFIED HIS MEANING FOR HIS THE USE OF THE TERM "ASSUME". WHEN ASKED BY SOLICITOR WEEKS "Q. 'YOU SAY YOU ASSUME THEY WERE?' APPELLANT REPLIED, A. 'I MEAN, I'M TRUSTING THE WORD OF THE OFFICER WHO SAID THAT HE RETRIEVED THEM OUT OF MY TRUCK. I HAD A LOT OF STUFF IN THERE. BUT I'M GOING OFF THE FACT

THAT THE OFFICER SAID HE TOOK MY TRUCK, SO, YES, SIR.'" (R.147, LL.21-25). ASSISTANT SOLICITOR HAMMACK FURTHER ARGUED IN OPPOSITION OF THE OBJECTION/MOTION FOR MISTRIAL THAT THE JUDGE WOULD LATER INSTRUCT THE JURY THAT ARGUMENTS OF COUNSEL ARE NOT EVIDENCE AND THE JURORS MUST RELY ON THEIR OWN RECOLLECTION OF THE TESTIMONY. (R.188, LL.21-24). ALTHOUGH THE TRIAL COURT NEVER GAVE THAT INSTRUCTION, EVEN IF SHE HAD, "ARGUMENTS OF THIS KIND CAN RARELY BE HARMLESS" STATE V. THOMAS, 287 S.C. @ 413, 339 S.E. 2d at 129. THIS SENTIMENT WAS EXPRESSED BY TRIAL COUNSEL IN HIS ARGUMENT IN SUPPORT OF MISTRIAL AS CITED PREVIOUSLY IN THIS BRIEF. TRIAL COUNSEL HAD ARGUED THAT THE DISPUTE WOULD BE "EASY" TO "RESOLVE" IF THE COURT REPORTER LOOKED BACK AT THE TESTIMONY. (R.189, LL.13-15). IRONICALLY, THERE WAS AN ODD RELUCTANCE ON BEHALF OF THE TRIAL COURT TO OBLIGE A RATHER SIMPLE AND ROUTINE REQUEST. BEGRUDGINGLY, THE HON. JOCELYN J. NEWMAN SAID, "LET'S GO OFF THE RECORD BRIEFLY." (R.190, L.24) A RECESS WAS THEN TAKEN. (R.190, L.25). DURING THE BRIEF RECESS THE COURT REPORTER READ ALOUD FOR THE COURT THE FOLLOWING STATEMENT MADE BY SGT. BRANDON KNIGHT, "A) YES THESE ARE THE SCALES THAT WERE SECURED AND PLACED INTO EVIDENCE THAT WERE LOCATED IN THE FRONT PASSENGER SEAT OF THE VEHICLE WITH THE NARCOTICS.'" (R.53, LL.18-20). TO WHICH THE JUDGE SIMPLY SAID "OVERRULED. WHEN THE RECORD CONTINUED, THE JUDGE IMMEDIATELY ASKED FOR THE JURY AND, ONCE THE JURY ENTERED THE COURTROOM, THE STATE'S CLOSING ARGUMENTS RESUMED. (R.191, LL.1-6).

"A SOLICITOR'S CLOSING ARGUMENTS MUST NOT APPEAL TO THE PERSONAL BIASES OF THE JURORS NOR BE CALCULATED TO AROUSE THE JURORS' PASSIONS OR PREJUDICES, AND ITS CONTENT SHOULD STAY WITHIN THE RECORD AND REASONABLE INFERENCES TO IT." STATE V. MAZIQUE, 419 S.C. 282, 296, 797 S.E. 2d 730, 737 (CT. APP. 2016) (QUOTING HUMPHRIES V. STATE, 351 S.C. 362, 373, 570 S.E. 2d 162, 166 (2002)). "SOLICITOR CANNOT REFER, IN HIS CLOSING ARGUMENTS ON STATEMENTS NOT IN EVIDENCE." STATE V. BOTTOMS, 260 S.C. 187, 195 S.E. 2d 116 (1993). SERGEANT KNIGHT, WHO WAS THE ONLY WITNESS TO TESTIFY AS TO THE LOCATION OF THE DRUGS AND SCALES ALLEGEDLY FOUND IN THE APPELLANT'S VEHICLE, CLAIMED HE FOUND "A BAG" ON THE FRONT PASSENGER SEAT WITH THE DRUGS INSIDE. (R.51, LL.12-20). HE FURTHER CLAIMED

TO HAVE FOUND SCALES" IN THE BACK" WHEN QUESTIONED BY SOLICITOR WEEKS (R.53, LL.9-13). YET, LITERALLY SECONDS LATER STATED THAT THE SCALES WERE FOUND "IN THE FRONT PASSENGER SEAT WITH THE NARCOTICS." (R.53, LL.18-20). AGAIN, WHEN QUESTIONED ON CROSS-EXAMINATION, THE VERY SAME SERGEANT KNIGHT CONTRADICTED HIMSELF CLAIMING HE FOUND THE DRUGS "IN THE PASSENGER SEAT IN THE BACK." (R.62, LL.12-19). HOWEVER NOT ONCE DID SGT. KNIGHT SAY THE SCALES WERE IN THE SAME BAG AS THE DRUGS, WHICH IS WHAT THE ASST. SOLICITOR ARGUED DURING CLOSING. HELPFUL IN ANALYZING THE WEIGHT AND SIGNIFICANCE OF THE SCALES BEING IN THE SAME BAG AS THE DRUGS, IS GUIDANCE FOUND IN THE 7TH CIRCUIT OF THE UNITED STATES FEDERAL DISTRICT COURT WHERE WE FIND THAT "THE GOVERNMENT MUST PROVE A NEXUS BETWEEN THE DEFENDANT AND THE RELEVANT ITEM TO SEPERATE THE TRUE POSSESSORS FROM MERE BYSTANDERS" Morris, 576 F.3d @ 666 (Citing U.S. v. Richardson, 208 F.3d 626, 632 (7TH CIR. 2000)) ALSO "... A SUBSTANTIAL CONNECTION TO THE (PREMISES) IS NOT THE SAME A SUBSTANTIAL CONNECTION TO THE (CONTRABAND)" U.S. v. Salas, 51 F. Supp. 3d 902 (2004). ASST. SOLICITOR HAMMACK UNDERSTANDING THIS CRUCIAL ELEMENT AND THE LACK THEREOF ATTEMPTS TO CLEVERLY MANIPULATE WORDS AND FABRICATE TESTIMONY TO FACILITATE THE UNSUSPECTANT JURORS TO ARRIVE AT THE DIFFICULT TO OVERCOME YET IMPROVIDENTLY AND IMPROPERLY POSED QUESTION SHE SO EMPHATICALLY ASKED "So THE SCALES ARE HIS, BUT THE DRUGS AREN'T?" (R.187, LL.4-5). MOREOVER, FOR WHATEVER REASON, NO PHOTOGRAPHS WERE TAKEN DURING THE SEARCH OF APPELLANT'S VEHICLE TO SHOW WHERE THE ITEMS WERE LOCATED IN THE VEHICLE, WHICH WOULD HAVE RESOLVE ANY DISCREPANCIES.

FURTHERMORE, APPELLANT NEVER TESTIFIED THAT THE SCALES WERE EVEN HIS AS THE ASST. SOLICITOR ARGUED. INSTEAD THE RECORD SHOWS THAT WHEN QUESTIONED BY THE STATE, APPELLANT SAID HE "ASSUMED" THE SCALES WERE IN THE VEHICLE SINCE SGT. KNIGHT TESTIFIED THEY WERE AND THAT IT'S A POSSIBILITY HE (THE APPELLANT) PUT THE SCALES IN THE VEHICLE. (R.148, LL.5-9)

WHEN THE 4 PRONGED REVERSIBLE ERROR DETERMINATION OF Mitchell IS APPLIED TO THE FACTS OF THIS CASE, WE FIND IT RIPE FOR REVERSAL. Mitchell HOLDS THAT, "A COURT MAKES A REVERSIBLE ERROR DETERMINATION ON THE BASIS OF FOUR (4) FACTORS: 1) THE DEGREE TO WHICH THE COMMENTS COULD HAVE MISLED THE JURY; 2) WHETHER THE COMMENTS WERE ISOLATED OR EXTENSIVE; 3) THE STRENGTH OF PROOF ABSENT THE INAPPROPRIATE COMMENTS; AND 4) WHETHER THE COMMENTS WERE DELIBERATELY MADE TO DIVERT THE JURY'S ATTENTION" U.S. V. Mitchell, 1 F.3d 235, 241 4TH CIR. (1997). FACTORS 1 & 2 HAVE BEEN EVIDENCED BY THE PRIOR ARGUMENTS IN THIS BRIEF AND BY A SIMPLE REVIEW OF THE RECORD. AS THE STATE RELIED SOLELY UPON SCANT CIRCUMSTANTIAL EVIDENCE AND CONSTRUCTIVE POSSESSION THEORY AND THE JURY'S ACQUITTAL OF APPELLANT ON THE FAILURE TO STOP FOR

BLUE LIGHTS DEMONSTRATING THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE APPELLANT WAS THE DRIVER OF THE VEHICLE THAT NIGHT, THE 3RD FACTOR OF Mitchell IS SATISFIED IN THAT THE EVIDENCE TENDING TO PROVE GUILT WAS "FAR FROM OVERWHELMING. IT WAS, IN FACT, NON-EXISTENT AND BARELY APPROACHES THE DIGNITY OF A GUESS. THE REPETITIVENESS OF THE IMPROPER ARGUMENT COUPLED WITH THE IMMEDIATE DISHONESTY TO THE TRIAL JUDGE IN HER ARGUMENT OPPOSING THE OBJECTION/MOTION FOR MISTRIAL AND THE OVERALL MANIPULATIVE CONSPIRITAL NATURE OF THE ENTIRE PROSECUTIONS, REEKS OF NOT ONLY DELIBERATE DIVERSION OF THE JURY'S ATTENTION, BUT MALICIOUS INTENT TO OBTAIN A TAINTED CONVICTION AT WHATEVER COST.

ADDITIONALLY, THE TRIAL COURT FAILED TO INSTRUCT THE JURY DURING HER CHARGE ON THE LAW THAT THE CLOSING ARGUMENTS OF COUNSEL ARE NOT EVIDENCE. CONSEQUENTLY, THE JUDGE'S INSTRUCTION COULD NOT HAVE POSSIBLY CURED THE IMPROPER ARGUMENT MADE BY THE SOLICITOR IN CLOSING. See Marcine, 419 S.C. at 296, 797 S.E.2d at 737 "ON APPEAL, AN APPELLATE COURT WILL REVIEW THE ALLEGED IMPROPRIETY OF THE SOLICITOR'S ARGUMENT IN THE CONTEXT OF THE ENTIRE RECORD, INCLUDING WHETHER THE TRIAL JUDGE'S INSTRUCTION ADEQUATELY CURED THE IMPROPER ARGUMENT." WHILE THE JUDGE TOLD THE JURY DURING HER OPENING REMARKS THAT "WHAT THE ATTORNEYS TELL YOU DURING THEIR OPENING STATEMENTS IS NOT EVIDENCE IN THIS CASE," SHE DID NOT SIMILARLY INSTRUCT THE JURY DURING HER CHARGE ON THE LAW THAT THE ARGUMENTS OF COUNSEL DURING TRIAL, OR MORE SPECIFICALLY CLOSING, ARE NOT EVIDENCE. (See R. 29, ll. 12-17)

RESPECTFULLY, AS A MATTER OF LAW AND FACT, BECAUSE APPELLANT WAS DENIED DUE PROCESS OF LAW AS A RESULT OF THE ASSISTANT SOLICITOR'S IMPROPER CLOSING ARGUMENT, IN WHICH SHE CLEARLY ARTICULATED FACTS NOT IN EVIDENCE IN ORDER TO OBTAIN A CONVICTION IN THIS PURELY CIRCUMSTANTIAL EVIDENCE CASE, THIS COURT SHOULD REVERSE APPELLANT'S CONVICTIONS AND SENTENCE AND REMAND FOR A NEW TRIAL.

"AN ORDER FOR AN ISSUE TO BE PRESERVED FOR APPELLATE REVIEW, A PARTY MUST MAKE A "CONTEMPORANEOUS OBJECTION" THAT IS RULED UPON BY THE TRIAL COURT." State v. Sweet, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007). "ALTHOUGH BETTER PRACTICE IS FOR TRIAL JUDGE TO ARTICULATE RELEVANT FINDINGS OF FACT AND CONCLUSION OF LAW IN AN ORDER GRANTING SUMMARY JUDGMENT, SUCH FINDINGS AND CONCLUSIONS ARE NOT REQUIRED FOR APPELLATE REVIEW." Weddon v. DLI Properties LLC (S.C. 2014) 401 S.C. 517, 753 S.E.2d 428. "AN ORDER THAT IS NOT DIRECTLY APPEALABLE WILL NONETHELESS BE CONSIDERED IF THERE IS AN APPEALABLE ISSUE BEFORE THE COURT AND A RULING ON APPEAL WILL AVOID UNNECESSARY LITIGATION."

OSBORNE V. ALLSTATE INS. CO. (S.C. APP. 1995) 319 S.C. 479, 462 S.E. 2d 291, RULE 19(c) SCRCrimP "DIRECTED VERDICT" "SUBMISSION OF ANY CHARGE TO THE JURY SHALL CONSTITUTE A DENIAL OF ANY MOTION FOR DIRECTED VERDICT PREVIOUSLY MADE BY THE DEFENDANT AND NOT RULED UPON." AS THE RECORD WILL REFLECT, THE ISSUE OF ASSISTANT SOLICITOR ASHLEY HAMMACK ARGUING FACTS INCONSISTENT OR NOT CONTAINED WITHIN THE TRIAL RECORD WAS PROPERLY RAISED BY COUNSEL FOR DEFENSE (R. 187, LL. 10-12; R. 187, L. 18 - 188, L. 11). THE ISSUE WAS THOROUGHLY ARGUED ON THE RECORD BY BOTH THE DEFENSE AND THE STATE. (R. 187 L. 18 - R. 190 L. 23). THE ISSUE WAS RULED UPON BY THE TRIAL COURT VERBALLY WHEN THE TRIAL JUDGE ORDLY WENT "OFF THE RECORD" (R. 190, L. 24) ALSO BY ALLOWING THE PROCEEDING TO CONTINUE AFTER THE MOVEMENT FOR MISTRIAL (R. 191, L. 1), THE SUBMISSION OF THE CASE TO THE JURY (R. 217, LL. 19-21), AND AGAIN IN THE DENIAL OF RENEWED MOTIONS AND OBJECTIONS (R. 223, LL. 11-17). THE TRIAL JUDGE NEVER PROVIDED REASONING FOR HER CLEARLY ERRONEOUS RULINGS. BUT, THE ISSUE IS NEVERTHELESS PRESERVED IN THE SENSE THAT ALL ELEMENTS FOR MEANINGFUL REVIEW OF THE CONTESTED ISSUE ARE APPARENT OF RECORD.

PRESERVATION NOTWITHSTANDING, THE SUBSTANTIAL EVIDENCE OF UNETHICAL ATTORNEY CONDUCT IN THE FORM OF MALICIOUS ANTAGONISTIC REPRESENTATION BY APPELLANT'S COURT-APPOINTED TRIAL COUNSEL COUPLED WITH THE DISPOSITIVE ISSUE BEING APPARENT OF RECORD AND THE REAL THREAT THAT THE APPELLANT WOULD REMAIN INCARCERATED BEYOND THE "LEGAL SENTENCE", PRESENTS AN "EXCEPTIONAL CIRCUMSTANCES" FOR THE PURPOSE OF APPLICATION OF THE EXCEPTION TO THE PRESERVATION RULE IN THE INTEREST OF "JUDICIAL ECONOMY" PURSUANT TO STATE V. PRINCE HOLDING, "NEVERTHELESS, AN EXCEPTION TO THE GENERAL RULE OF ISSUE PRESERVATION EXISTS ALLOWING THE APPELLATE COURT TO CONSIDER AN UNPRESERVED ISSUE IN THE INTEREST OF JUDICIAL ECONOMY UNDER APPROPRIATE CIRCUMSTANCES." id 400 S.C. 541, 735 S.E. 2d 525. UNCONSTITUTIONAL AND PROHIBITED COLLUSION BETWEEN APPELLANT COURT-APPOINTED TRIAL COUNSEL AND STATE'S WITNESS, AND POSSIBLY THE SOLICITOR PROSECUTION THEMSELVES, RESULTING IN AN EGREGIOUS INTENTIONALLY MALIGNED REPRESENTATION ARE SET FORTH IN AN ONGOING INVESTIGATION INTO THE ALLEGED MISCONDUCT OF APPELLANT'S TRIAL COUNSEL. THIS INVESTIGATION, CONDUCTED BY THE SUPREME COURT OF SOUTH CAROLINA OFFICE OF DISCIPLINARY COUNSEL, CONTAINS SUBSTANTIAL CORROBORATIVE EVIDENCE OF INAPPROPRIATE AND UNETHICAL INTERACTIONS BETWEEN DEFENSE COUNSEL, STATE ACTORS, AND THE LIKE. SAID DOCUMENTS ARE CONTAINED IN "IN THE MATTER OF HAYES, ESQUIRE" CASE FILE NO. 21-DE-1-0908. THE "FUNDAMENTAL REQUIREMENT OF DUE PROCESS" IS THE OPPORTUNITY TO BE HEARD AT A MEANINGFUL TIME IN A MEANINGFUL MANNER "MATHEWS V. ELDRIDGE, US VA. 1976, 96 S.Ct. 893, 424 U.S. 319, 47 L. Ed. 2d 18 "EXPANSIONARY ACTION OF REMANDING DEFENDANT'S APPLICATION FOR PCR WAS WARRANTED, EVEN THOUGH DEFENDANT FAILED TO PRESERVE FOR APPEAL ISSUE OF PCR COURT'S FAILURE TO MAKE SPECIFIC FINDINGS OF FACTS AND CONCLUSIONS OF LAW BY

FILING MOTION TO ALTER OR AMEND; STRENGTH OF STATE'S DNA CASE (IN SIMMONS) EVIDENCE AGAINST DEFENDANT WAS MISREPRESENTED TO JURY IN MURDER TRIAL, WHICH COULD HAVE VIOLATED DEFENDANT'S DUE PROCESS RIGHTS, AND PREEMPTIVE RULING ON MERITS BY SUPREME COURT WOULD BE UNFAIR TO STATE." SIMMONS V STATE, (S.C. 2016) 416 S.C. 584, 788 S.E. 2d 220. "OUR COURTS HAVE, AT TIMES, CONSIDERED AN ISSUE IN THE INTERESTED OF JUDICIAL ECONOMY." STONEY V. LLC, 384 S.C., 202, 682 S.E. 2d @ 282." "ISSUE PRESERVATION IS NOT A "CATCH-22" ART. CONST BUILDERS & CONTRACT.

THE CONFESSION OF JUDICIAL ERROR BY THE TRIAL JUDGE AND THE STATE AS WELL, TO THE IMPROPER SUBMISSION OF IMPROPERLY WORDED, HIGHLY PREJUDICIAL INDICTMENTS; EXHIBITS; AND ALL MATTERS OF EVIDENCE PERTAINING TO SAID INDICTMENT, TO THE JURY FOR DELIBERATION ALTHOUGH THE HIGH PREJUDICIAL INDICTMENT HAD BEEN DISMISSED PURSUANT TO DIRECTED VERDICT. (R. 223 L. 20 - R. 224, L. 1; AND R. 162, L. 24) THE PREJUDICIAL FACTS CONTAINED IN ACQUITTED INDICTMENT CONSIST OF DEFENDANT BEING IN THE GENERAL VICINITY OF THE PRIOR NIGHTS INCIDENT INVOLVING APPELLANT VEHICLE; APPELLANT BE UNSHOD AT TIME OF ARREST; AND APPELLANT APPEARANCE AT THE TIME OF HIS ARREST WHICH WAS DESCRIBED AS "DIRTY" AND "WET" (R. 91, LL. 1-6) THESE ARTICLES OF EVIDENCE THAT SERVE TO "COMPLETE THE PICTURE" OF THE STATE'S VERSION OF EVENTS THAT THE APPELLANT "WAS DRIVING HIS CAR WITH ILLEGAL DRUGS IN IT WHEN THE POLICE GOT BEHIND HIM AND TRIED TO STOP HIM, AND HE RAN.... HE DUMPED HIS CAR IN A FIELD AND HE RAN ON FOOT IN SOCK FEET AS OUT HIS SHOES THAT HE LEFT ON THE FLOOR. AND HE RAN UNTIL HE FOUND A CORNER TO HIDE IN JUST ON THE OTHER SIDE OF THE WOODS AND HE GOT CAUGHT WHERE THEY FOUND HIM." (R. 193, LL. 14-20). THE ARGUMENT MADE BY THE STATE CANNOT BE SUPPORTED WITHOUT THE TESTIMONY OF DEPUTY AGNIESZKA FERRELL AND THE CIRCUMSTANCES & EXHIBITS ARISING FROM THE PRESENTATION AND ATTEMPTED PROSECUTION OF THE "RESISTING ARREST" INDICTMENT THAT THE APPELLANT HAD BEEN ACQUITTED FOR PRIOR TO SUBMISSION OF THE UNRELATED DRUG INDICTMENTS TO THE JURY FOR DELIBERATION. JUST AS THIS COURT'S ORDER FOR EXHIBITS TO THE CIRCUIT COURT, REQUEST AND REQUIRES ONLY STATE'S EXHIBIT NO. 1 AND STATE'S EXHIBIT NO. 12 WHICH ARE DESIGNATED "KNIGHT AND PALMER'S" DASH CAM FOOTAGE (RESPECTIVELY), IT LIKEWISE DOES NOT REQUIRE STATE'S EXHIBIT NO. 13 (FERRELL'S BODY CAM) BECAUSE, AS THE INDICTMENT OF "RESISTING ARREST" IS NOT BEING REVIEWED BY THIS APPELLATE COURT, EVIDENCE SUBMITTED IN ITS PROSECUTION CANNOT BE CONSIDERED IN THE DETERMINATION OF GUILT OR INNOCENCE; OR FOR PURPOSES OF ESTABLISHING THE EXISTENCE OF EVIDENCE SUFFICIENT TO OVERCOME INSUFFICIENT EVIDENCE-MOTION FOR DIRECTED VERDICT. "IT IS REQUIRED THAT THE JURY RENDER ITS VERDICT FREE FROM OUTSIDE INFLUENCES OF WHATEVER KIND AND NATURE" STATE V. CAMERON, 311 S.C. 204, 207, 428 S.E. 2d 10, 12 (CT. APP. 1993). "WE SEE NO REASON TO DISTINGUISH BETWEEN IMPROPER JURY INTERVENTIONS SUCH AS THE PREMATURE DELIBERATIONS..., OR RELIGIOUS PAMPHLETS IN THE JURY ROOM DURING THE SEQUESTERED PHASE OF TRIAL" STATE V. GROVENSTEIN, S.C. SUPR. CT. 336 S.C. 347, 517 S.E. 2d 216 (1999). "UNLESS THE

MISCONDUCT AFFECTS THE JURY IMPARTIALITY, IT IS NOT SUCH MISCONDUCT AS WILL AFFECT THE VERDICT." STATE V. KELLY, 331 S.C. 132, 502 S.E. 2d 99 (1998). AUDRET MAINTAINS THAT AFTER CORRECTING THE ERROR, TRIAL COURT SHOULD INQUIRE INTO THE PARTICIPATION AND/OR INVOLVEMENT ERRANT JUROR OR DISALLOWED ITEM; "CONDUCT YOUR DUTY AS IS NECESSARY OF REMAINING JURY PANEL TO ASCERTAIN PREJUDICE, AND IF PRACTICABLE TAILOR INSTRUCTIONS REQUIRING JURY TO DISREGARD THE (SIC) IMPUT; REQUIRE JURY TO BEGIN DELIBERATION ANEW; DECLARE MISTRIAL IF IMPACT ON REMAINING JURORS MAY NOT BE REMEDIED WITH CURATIVE INSTRUCTION" STATE V. AUDRET, 333 S.C. 307, 509 S.E. 2d 811 (1999). IN THE INSTANT CASE NONE OF THESE MANDATORY PRECAUTIONARY MEASURES WERE TAKEN BY THE TRIAL COURT. IN FACT, IN AN ACT OF GRANDEUR, THE TRIAL COURT ACTS AS "JUDGE, JURY, AND EXECUTIONER" WHEN SHE USURPS THE PREROGATIVE OF THIS HONORABLE COURT OF APPEALS BY DECLARING HER OWN ERROR "HARMLESS" AND PREDICATES HER CONCLUSION ON THE FACT THE JURY RETURNED A VERDICT OF "NOT GUILTY" FOR THAT CHARGE (R.223, L. 20-R.224, L.1). IRONICALLY, THE FACT THAT THE JURY RETURNED A VERDICT ON THE RESISTING ARREST IS DIRECT AND DISPOSITIVE OF BUT ONE THING AND THAT IS THE THE PRE-INDICTMENT EVIDENCE ACCOMPANYING THE INDICTMENT WAS THOROUGHLY CONSIDERED AND DELIBERATED UPON AND AT THE SAME TIME AS INDICTMENTS THAT, AS A MATTER OF LAW, IT SHOULD NOT HAVE BEEN. (R.221, LL.8-11). JOHNSTON GUIDES US WITH 2 EXCEPTIONAL CIRCUMSTANCES, 1) ERROR ON BEHALF OF THE TRIAL COURT HAS BEEN CONCEDED; AND 2) "A "REAL THREAT" IS PRESENT THAT APPELLANT WILL REMAIN INCARCERATED BEYOND THE LEGAL SENTENCE DUE TO THE ADDITIONAL TIME IT WILL TAKE TO PURSUE POST-CONVICTION RELIEF" STATE V. JOHNSTONE, 333 S.C. 464, 510 S.E. 2d @ 425. APPELLANT MAINTAINS "ACTUAL-INNOCENCE" PURSUANT TO AN ALIBI-DEFENSE AND ASSERTS THAT HIS TIME SPENT/SERVED INCARCERATED AS A RESULT OF SAID CONVICTIONS IS IN EXCESS OF THE "LEGAL SENTENCE." "AN INCREDIBLE..." BOUIE V. U.S., 391 U.S. 123, 131 n.6, 88 S.Ct...

INDICTMENTS "TRUE-BILLED" AND FILED WITH THE CLERK OF COURT (4) DAYS PRIOR (DECEMBER 3, 2020) TO THE DATE THE INDICTMENT ON THE REVERSE SIDE FROM THE CLERK'S DATE STAMP ALLEGES THE GRAND JURY TO HAVE CONVENED (DECEMBER 7, 2020) CONSTITUTE AN IMPOSSIBILITY OF THE ACCEPTED RULES, LAWS, AND PROPERTIES OF MODERN PHYSICS. THIS ANOMALY WOULD RENDER "THE GRAND JURY NOT THE GRAND JURY" AND "THE INDICTMENT NOT AN INDICTMENT," THUS DEPRIVING THE TRIAL COURT OF SUBJECT MATTER JURISDICTION.

Conclusion

Based on the foregoing Arguments, Appellant Respectfully Request this Honorable Court Reverse/Vacate his convictions and Remand for a New Trial and also Reverse his Sentence.

Respectfully Submitted,

This 1st Day of June, 2022

Jonathan A. Lincoln
Pro. Se

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