

**STATE GRAND JURY OF SOUTH CAROLINA**  
VENUE IN BEAUFORT COUNTY

<b>STATE OF SOUTH CAROLINA</b>	)	Indictment Number: 2010-GS-47-005
	)	
	)	
VS.	)	<b>NOTICE OF MOTION AND MOTION TO QUASH INDICTMENT OBTAINED THROUGH PERJURED TESTIMONY</b>
	)	
<b>GREGORY LAMAR MIDDLETON</b>	)	
Defendant	)	
	)	
	)	
<hr style="width:100%; border: 0.5px solid black;"/>	)	

**THE DEFENDANT, GREGORY L. MIDDLETON**, by and through the undersigned counsel, moves this Court for an Order quashing the above-referenced indictment as far as it pertains to Mr. Middleton. Such relief is requested because the indictment of Mr. Middleton was based upon false and or perjured testimony. The basis for this Motion appears below but the undersigned counsel requests the opportunity to provide further support for this Motion at a hearing.

A clear tenant of American jurisprudence is that a party may not present false testimony to a tribunal. *Mooney v. Holohan*, 294 US 103 (1935). In *Mooney*, the Court refuted the argument of the state attorney general that due process is satisfied when the “state has contrived a conviction...through deliberate deception of court and jury by the presentation of testimony known to be perjured.” *Mooney*, at 112. The Court held that “[s]uch a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.” *Id*, at 112. While this applies to all parties, the standard applied to the prosecution in a criminal matter is even more heightened; for “while he may strike hard blows, he is not at liberty to strike foul ones. It is as

much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one” *Berger v. United States*, 295 US 78, 88-89 (1935).

Further, although an extreme remedy, the judiciary possesses the inherent supervisory authority to remedy prosecutorial misconduct through the outright dismissal of criminal proceedings. *State v. Frye*, 897 SW2d 324, 330 (TX Crim App. 1995). Such a remedy is particularly appropriate where the defendant can demonstrate prejudice from the misconduct for which no other sanction suffices. *US v Derrick*, 163 F3d 799, 806 (4<sup>th</sup> Cir. 1998)<sup>1</sup>. A court considering dismissal should also look at the deliberate nature of the misconduct involved. *US v. Samango*, 607 F2d 877, 882 (9<sup>th</sup> Cir. 1979) (“Dismissal of an indictment is required only in flagrant cases in which the grand jury has been overreached or deceived in some significant way, as where perjured testimony has knowingly been presented . . .”)(Internal citations omitted).

Due Process is violated when a: “defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached.” *US v. Basurto*, 497 US 781, 785 (9<sup>th</sup> Cir. 1974). If a prosecutor learns that perjury has been committed by a witness presented to the grand jury, he “is under a duty to immediately inform the court and opposing counsel- and, if the perjury may be material, also the grand jury- in order that appropriate action may be taken.” *Basurto*, 785-786. A failure to do so does not comport with the “fastidious regard for the honor of the

---

<sup>1</sup>The court noted other ways to remedy misconduct such as “order[ing] the prosecutor to show cause why he should not be disciplined,” “asking the Department of Justice to initiate a disciplinary proceeding against him,” or “publically chastis[ing] the prosecutor by identifying him in its opinion.” *Derrick*, at 807, n. 6.(Internal citations omitted).

administration of justice.” *Basurto*, 787 (internal citations omitted).

In the case at bar, the only witness to implicate Mr. Middleton was Tyecha Coaxum. She gave testimony before the State Wide Grand Jury indicating that she observed Mr. Middleton driving a black car. She testified she saw his face before his car pulled out of a gas station at the corner of Hampton Street and Robertson Street moments before her car and his black car turned onto Gerideau Street and the shooting occurred.

This testimony is false. Surveillance footage from this gas station does not show any black car at all during a twenty minute window overlapping the time of the shooting. The government was in possession of this surveillance footage well before Ms. Coaxum provided her grand jury testimony.

Therefore, the government is obligated to see that due process is served and that “appropriate action” is taken. Should the government fail to take the “appropriate action” before this Motion is heard, then this Court should Order that this case be dismissed by quashing of the indictment.

**AND I SO MOVE**

/s/James A. Brown, Jr.  
James A. Brown, Jr.  
Attorney for the Defendant

February 28, 2011  
Beaufort, South Carolina

Law Offices of Jim Brown, P.A.  
1600 Burnside Street, Suite 100  
P.O. Box 592  
Beaufort, SC 29901-0592  
(843) 470-0003

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was e-mailed to all counsel of record in this proceeding this 1<sup>th</sup> day of March, 2011.

/s/Zoraida Cary, Paralegal