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SC Court of Appeals

THE COURT: Is Scott related to who? - *yes*

MR. FALK: One of the victims. The victim. One of the jurors --

THE COURT: Okay. Okay. Juror related to victim. Okay. - I'm sorry. I'm -- sometimes I'm hard of hearing. Okay. Go ahead.

MR. FALK: And possibly, this should -- could have been better stated, but failure of trial counsel to seek the charge on the lesser-included offenses in this case. I mean, he set that up as ineffective assistance of appellate counsel in the original claim, but I think that's best stated as ineffective assistance of trial counsel.

THE COURT: Okay.

MR. FALK: And then our concern about Adonis Coker. And then our concern about the conflict of interest.

THE COURT: Right. Right. Okay. *So those are the three grounds that you say are non-specious and meritorious and should I proceed on?*

MR. FALK: *Yes, your Honor.* Yes, sir, your Honor.

THE COURT: Thank you so much, Mr. Falk. All right. Would you call your first witness.

App. 443, l. 19 - 446, l. 10. (emphasis added).

Petitioner James A. Gardner was then called as a witness. Petitioner testified he became concerned with trial counsel Fleming's representation when he learned Fleming was "a friend of my stepson." App. 448, l. 24 - 449, l. 8. Petitioner said he was "cleaning my stepson's room out, and I ran upon Mr. Fleming's picture. I know they was friends, you know, and I ask him about it. And he [Fleming] told me he didn't know Adonis [the stepson]." The stepson's mother, Mary Etta Montouth, was one of the attempted murder victims in this case. App. 449, l. 3 - 450, l. 15.

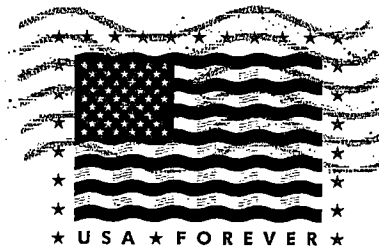
Petitioner said he wrote Fleming a letter, "and I told him I don't know what you and Mr. Alex Murdaugh [the solicitor], is trying to pull on me, but I don't want you as my lawyer, you know, I want my money back." App. 450, ll. 9 - 20. Petitioner related that the judge refused to

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