

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON) CASE NO.: 00-GS-32-688
 00-GS-32-689

James C. Williams, #282929)
)
 Petitioner,)
)
 vs.)
)
 The State of South Carolina)
)
 Respondent.)

MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE

"REQUEST EVIDENTIARY HEARING"

2012 JUL 23 PM 4:35
 FILED
 CLERK OF COURT
 LEXINGTON COUNTY
 SOUTH CAROLINA

PLEASE TAKE NOTICE that the Petitioner, James C. Williams, #282929, through is undersigned PRO SE, will move before the Presiding Judge, Eleventh Judicial Circuit, Lexington County Courthouse, Lexington, South Carolina, at such place and time as the Court may appoint for an Order pursuant to Rules 29(e), SCR.Crim.P. and Rule 60 (B)(3), SCRCP Motion fo After-Newly Discovered Evidence and Fraud upon the Court. The grounds for this Motion are as follows:

MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE PURSUANT TO RULE 29(e),
SCR.CRIM.P

Ground A. Respondent has failed to commence this action as required by Brady or Rule 5

SUPPORTING FACTS ARGUMENT

The Petitioner discovered on April 15, 2012 that Solicitor's withheld exculpatory evidence from the Petitioner. As a resuly, the State failure to inform the Petitioner of a SLED Report that would have exonerate Mr. Williams. The Testimony from a SLED Agent will prove beyond a reasonable doubt that the Petitioner is actual innocence, but this [New Evidence] proves that victim accidentally shot herself on September 15, 1999.

The Petitioner humbly contends what the occurred between when Jury was impaneled at 12:08 p.m. on March 18, 1999, then why it took three days to persuade Mr. Williams unto a plea of guilty? When his attention was go to trial. In those three days the defense counsel failed to discuss the plea with his client. Therefore, the Petitioner was tricked in a plea of guilty by the Solicitor because the Solicitor knew there was no probable cause to convict Mr. Williams of this allege crime, the Solicitor Office was aware of this incident being a accidental shooting because the SLED Report will prove beyond a reasonable doubt that shooting was accidental. Furthermore, a Petitioner can't be tricked into or force to enter a guilty plea it has to agree to it by his own choice.

Specifically, the Police or Prosecutor can't coerce the defendant to enter a "plea of guilty" or "no contest." As a result, pleading guilty comes at a cost, though. A defendant gives up a lot of important right, like a jury trial and confronting witnesses. It also means conviction and punishment. Guilty pleas are serious business; they must be entered into voluntary or else they're invalid. A defendant can't be tricked into or force to enter a guilty plea; it has to agree to it by his own choice and free will. Obviously, the Solicitor's manipulated, mentally and/or psychologically coerce and/or force him into a plea. Such a heavy weight of shifting the burden of persuasion and the taking away of one's presumption of innocence by the indictment(s) of South Carolina have been unjustly and unconstitutionally used against Defendant in the State of South Carolina to mentally and/or psychologically coerce and/or force them into plea bargains and at their trials, for far too long.

Specifically, the Solicitor's played on the Petitioner's emotion by threaten the defendant with his children to be put on the stand to testified against him if he did not plead guilty to the allege charges. However, in this case, he-

has also learned of additional new evidence by SLED Agent which tends to exonerate Mr. Williams. Scientific analysis has shown that gun accidental discharge while the red skirt gotten caught up in the broken trigger guard then gun accidentally discharged while the gun was in victim hand.

In addition, the Newly-Discovered evidence included Testimony from SLED Agent and Solicitor withheld exculpatory evidence, the Solicitor failed to present [red skirt] into evidence. The alleged SLED Report exonerating Mr. Williams from this alleged crime and the alleged SLED Report implicating his wife accidental shot herself.

On January 10, 2012—U.S. Supreme Court Tosses murder conviction for Brady violation by New Orleans DA. The U.S. Supreme Court has overturned a murder conviction obtained by New Orleans prosecutors because the defense didn't receive important exculpatory evidence before the trial. Further, Chief Justice John G. Roberts, Jr., wrote the four-page majority opinion (PDF) finding the conviction must be overturned because the undisclosed evidence was material under standard set by Brady v. Maryland. The lone dissent by Chief Justice John G. Roberts Jr.. At issue is whether the failure to turn over the materials violated Smith's right under Brady v. Maryland, because the information was material to guilt. However, the Court have ruled that if the piece of discovery is in the possession of the police, the DA must go get it and hand it over. This includes the entire police file. As a result, there is a new case from the United States Supreme Court on this issues. Jean Smith, Petitioner v. Burl Cain, Warden, No. 10-8145, 2012 WL 43512 (January 10, 2012). In this matter, the Court ruled that even the hand written notes inside the police file of the investigation officer must be handed over to the defendant. This case is similar to Mr. Williams case because the Solicitor failed to turned over the SLED Report and other exculpatory evidence. As a result, if the Defendant was made aware of the exculpatory evidence he would not have plead to these charges and there would have had a different outcome.

GROUND B. DID THE DEPUTY SOLICITORS AND DEFENSE COUNSEL COMMITTED FRAUD UPON THE COURT?

SUPPORTING FACTS ARGUMENT

The Petitioner contends it is well established that the Deputy Solicitor's, Defense Counsel and Law Enforcement Officers did not have any "technical or scientific," as well as information upon which Officers use false evidence, including false testimony, to secure a conviction, Mr. Williams due process rights was violated. See Phillips v. Woodford, 257 F.3d 956 (9th Cir. 2001); Wilson v. Lawrence County, 250 F.3d 945 (9th Cir. 2001).

Accordingly, the Deputy Solicitor's indicted Mr. Williams, for the principal of murder. In this case, the victim accidental shot herself. The facts set forth in this case constitute the facts material to issue of fraud upon the Court. Specifically, the Deputy Solicitor, allege on page 39 line 4 thru. 11 that the Defendant had a sawed-off-shotgun. Further, SLED came to Lieber April of 2012, the SLED Agent told the Petitioner that the shooting was accidental. The State's failure to disclose portions of a SLED Report dealing statement given by SLED Agent. Thus, the Deputy Solicitor perjury herself before the Court because Deputy Solicitor manipulated the Court to believe that the Defendant kill **Kathy Aretha Williams** on September 15, 1999. Here facts and evidence will establish that the Deputy Solicitor also conspired with several other State Judicial personnel in order to commit fraud upon the Court. Defense Counsel committed fraud upon the Court because Defense Counsel committed perjury upon the Court, the Defense Counsel ask the Court for a continuance because he was sick. On page 28, line 17 thru. 20:

The Court: All Right. Jurors, those of you who have been selected, I'm going to ask you to do this. We're actually going to -- because of some scheduling problems, we have a - we have a sick lawyer.

The Court given the Defense Counsel instruction to bring back a Doctor's statement to the Court. Page 30 line 19 thru.23:

The Court: Okay. Thank You. All right. Counsel, what we'll do is just let the jury call back. Mr.Gorski, if you could, how about be sure and get us a Doctor's statement back as soon as we can so that we can know what kind of position we'll be in. Okay?

Inasmuch, the Defendant defense counsel failed to present a Doctor's statement to the Court. Obviously, defense counsel was not sick because he never present the Court with a Doctor's Statement. Furthermore, the Deputy Solicitor and Defense Counsel both conspired together psychologically coerce the Petitioner into a plea of guilty. As a result, both of them committed fraud upon the Court.

Thus, by the aforementioned it can be factually stated that Law Enforcement committed fraud upon the Court. In this case, there was probable cause to arrest Mr.Williams because the SLED Report will prove beyond a reasonable doubt that the Petitioner did not kill his wife on September 15,1999. Therefore, the Law Enforcement Officer states the children who were present in the apartment. on page 38 line 16 thru. 22:

Ms.Carroll: The victim and the argued a little bit about him that point the Defendant left the apartment, went down to his car, armed himself with a shotgun, took one shotgun shell, loaded the gun and went back into into the apartment. He went straight back-

to the victim's bedroom and motioned her to come into the bedroom with him.

As stated above, the children statement states their father did not had a gun when he entered the apartment or went back to his car and retrieve a shotgun and came back into the house with the gun. The statement of the children will prove beyond a reasonable doubt that the Deputy Solitictor's and Law Enforcement Officer committed "fraud upon the court" and "perjury and subornation of perjury," states in pertinent part:

A (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, or report, or form required by the law of this State.

In Schaff v. Snyder, 190 F3d 513 (7th Cir.1999), thus, a Solicitor's knowing use of perjured testimony violates due process clause. Also, see Hughes v. Johnson, 191 F3d 607 (5th Cir.1999), a defendant's right to due process is violated when, upon a request for exculpatory evidence, the Deputy Solicitor conceals evidence that is both favorable to the defendant and material to the defendant's guilty or punishment. If officers use false evidence, including false testimony, to secure a conviction, the defendant's due process rights are violated.

In State v. Adams, 277 S.C. 115, 283 S.E. 2d 582 (1981) our Supreme Court emaciated the "Practical Eye Test." It is perspicuous that the "Deputy Solicitor" and "Defense Counsel" psychologically coerce and/or force him into a plea. Due to this psychologically coerce the Defendant's Fifth, Sixth and Fourteenth Amendment Rights of the United States Constitution and his Rights of Due Process were violated and such-

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also aids to deprive the Defendant of Equal protection of the laws against unjust prosecution.

Specifies the necessary elements of a properly-filed petition for fraud upon the court. It states, in pertinent part:

1. **Who is an "Officer of the Court"?**

A judge is an officer of the Court, as well as are all attorneys. A State judge is a state judicial officer, paid by the state to act impartially and lawfully. A Federal Judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. Therefore, the State and Federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court. People v. Zajic, 88 Ill.App.3d 477, 410 N.E. 2d 626 (1980).

2. **What is "fraud on the court"?**

Whenever any officer of the court commits fraud upon the court." In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "fraud upon the court" is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.

... It is where the Court or a member is corrupted or influence or influence is attempted or where the judge has not performed his judicial function--thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officer of the court so that the judicial machinery can not perform in the usual manner its-

impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 685 (1968); 7 Moore's Federal Practice 2d ed., p.512¶ 60,23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

3. What effect does an act of "fraud upon the court" have upon the court proceeding?

"Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois Law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The People of the State Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Slevers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters...")

In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App.475 (1894), affirmed 162 Ill.App.599 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App.86 N.E.2d 975, 983-4 (1949); Thomas Stagel v. The American Home Security Corporation, 362 Ill. 350; N.E.798 (1935).

Under Illinois and Federal Law, when any officer of the court has committed "fraud upon the court," the orders and judgment of that court are void, of no legal force or effect.

Calling the compromised evidence "a situation that strikes at the very heart of our democracy and justice system." "All Petitioner know is that the-

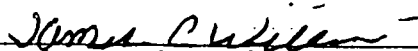
evidence was compromised." Therefore, the Police, Deputy Solicitor and defense counsel for instigating what he called "a fraud upon the court."

This information exonerating the Petitioner was not available at trial because the Deputy Solicitor and defense counsel psychologically coerce and/or force him into a plea. However, in this case, the plea were made after the all white jury was sworn in, so the plea were not foreseeable and thus this conclusion is a due process violation. (See attach documents) that would prove beyond a reasonable doubt that the Deputy Solicitor and Law Enforcement did committed fraud upon the court. On page 39 line 4 thru.11, Deputy Solicitor stated that the Defendant had a sawed-off-shotgun. As a result, Exhibit [A] will corroborate that shotgun was not a sawed-off-shotgun; on page 38 line 16 thru. 22, Deputy Solicitor stated in open court that the children statement states their father left the apartment, went down to his car, armed himself with a shotgun, the Exhibit [C] will corroborate that the Petitioner never left the apartment or came into the apartment with a shotgun. As a matter of record, there was no deal made by Deputy Solicitor because the Petitioner still plea guilty to murder as a matter of law this case should be [Vacated].

CONCLUSION

For all the reasons stated herein above, it is respectfully requested that this Honorable Court grant the Petitioner's motion to vacate the conviction and sentence and grant an Evidentiary Hearing.

Respectfully submitted,


James C. Williams, #282929
Lieber C.I. SA-31
P.O. Box 205
Ridgeville, SC 29472-0205

July 20, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT
) CASE NO.: 00-GS-32-688

James C. Williams, #282929)
)
Petitioner,)
)
)
)
v.)
)
The State of South Carolina)
)
Respondent.)
)
_____)

CERTIFICATE OF SERVICE

BETH A. CARPENTER
CLERK OF COURT
LEXINGTON, SC

2012 JUL 23 PM 4:35

FILED

The undersigned hereby certifies that he cause the Motion for After-
Newly Discovered Evidence filed in the above-captioned case, to be served
via United States Mail, first-class, postage-paid, on the parties listed
below on July 20, 2012.

Alan Wilson, Attorney General
S.C. Attorney General Office
P.O.Box 11549
Columbia, South Carolina 29211-1549

James C. Williams
James C. Williams, #282929

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

V E R I F I C A T I O N

PERSONALLY appeared before me, James C. Williams, #292929, who being first duly sworn, deposes and says: That he is the Petitioner in the foregoing Motion for After-Newly Discovered Evidence and Motion for Appointment of Counsel, that he has read the foregoing Motion, and that those matters to be upon information and belief and, as to those, he believe them to be true.

James C. Williams
James C. Williams, #292929

SWORN TO BEFORE ME THIS

18th day of July, 2012

Sylvia Jones (L.S.)
Notary Public for South Carolina

My Commission Expires: 1/24/2018

BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

2012 JUL 23 PM 4:35

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT
) CASE NO.: 00-GS-32-588
00-GS-32-589

James C. Williams, #282929)
)
) Petitioner,)
)
)

v.

The State of South Carolina)
)
) Respondent.)
)
)

REQUEST FOR APPOINTMENT COUNSEL

BETTY A. CARHOGG
CLERK OF COURT
LEXINGTON, SC

2017 JUL 23 PM 4:35

FILED

Pursuant to 28 U.S.C.A. 1915 (e)(1), Petitioner moves for an **Order Appointing Counsel** to represent him in this case. For the reason hereafter set forth, the State Court are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law. Pursuant to Rule 608 of the SCRPC Appointment of Lawyer for Indigents. In support of this request, Petitioner states:

1. Petitioner cannot afford to hire a lawyer, he is poor enough to qualify for public assistance, a free lawyer, waiver of court fee, etc.
2. Under Gideon v. Wainwright, (372 U.S.335) The 1963 U.S. Supreme Court decision that gave criminal defendant in State felony trials the right to Counsel. Gideon v. Wainwright and Argersinger v. Hamlin clearly show that the Supreme Court regards the right to counsel as "fundamental and essential to a fair trial." The Gideon case held that the Sixth and Fourteenth Amendments extend the right to counsel to all indigents tried for serious crimes in state courts. The Argersinger case extended this right to any state proceeding in which a convicted defendant is imprisoned. The Justice concluded that when an indigent accused is confronted by the government's prosecutorial "machinery,"-

the defendant must have "the guiding hand of counsel" to balance the scales of the adversary system.

3. The issues in this case are complex. A lawyer would help Defendant to apply the law properly in this criminal matter.

4. This case will likely involve substantial investigation and discovery. Also, the law library is limited access.

5. The Defendant's has a Constitutional Rights to Counsel in a criminal matter. As such, Defendant has a fundamental right to be represented by counsel of his own choice.

6. The Defendant has a **Sixth Amendment Rights** to legal counsel.

7. **WHEREFORE**, Petitioner requests that the Court appoint counsel to represent him in this legal matter.

Respectfully submitted this 20, day of July, 2012


James C. Williams, #282929

SWORN TO BEFORE ME THIS

19th, day of July, 2012

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 1/24/2018

Exhibit (B)

- STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PERSONALLY APPEARED BEFORE ME: KEVIN WILLIAMS

, Page - 2 -

Williams: Yeah.

McIntosh: What were they arguing about?

Williams: Cause James, cause James was having (inaudible)

McIntosh: Was that what he wanted? That you could tell?

Williams: Um hmm

McIntosh: Before that night, did you ever see a gun in the house?

Williams: No.

McIntosh: Did you ever see a gun in your dad's car?

Williams: No.

McIntosh: Have you ever known your dad to have a gun?

Williams: Yes.

McIntosh: What kind?

Williams: A 38.

McIntosh: A 38? Do you know where he kept that? When ah, when you heard the shot that night, where were you?

Williams: In the front room watching TV.

McIntosh: You were in the front room watching TV? Okay and what did you do when you heard that?

Williams: I ran out.

McIntosh: You ran out of the house? When you ran out of the house, where did you go?

Williams: To my cousin's house.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PERSONALLY APPEARED BEFORE ME: ANSONETTE ABRAMS

Page - 5 -

McIntosh: When he ran out that night, did you see the gun?

Abrams: No, Sir.

McIntosh: But, now did you see him when he went out the door?

Abrams: Um hmm

McIntosh: He ran right by you?

Abrams: Yes. (Inaudible)

McIntosh: When you were standing at the door to your room he ran out?

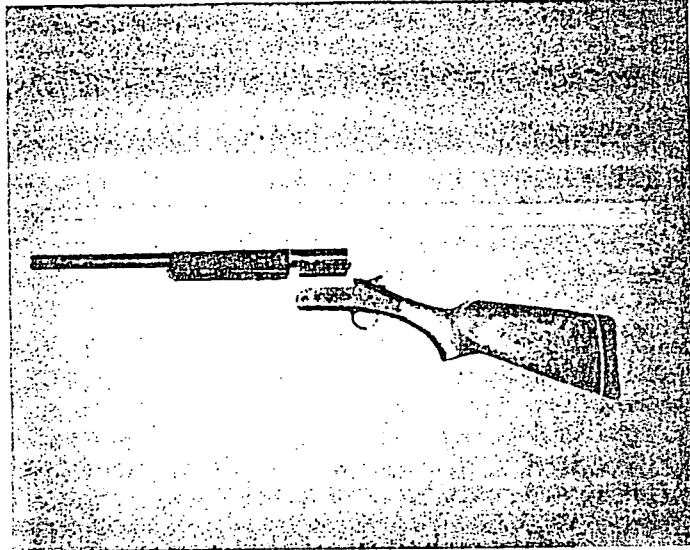
Abrams: Um hmm

McIntosh: And you did not see the gun?

Abrams: No, Sir.

McIntosh: Okay. (Inaudible) bring Kevin in please.

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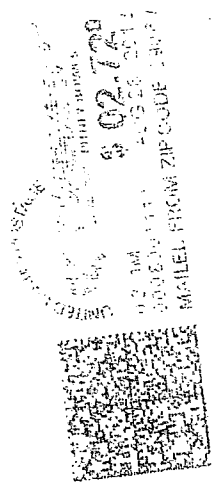


ITEM 7 SHOTGUN W/BARREL REMOVED
AS RECEIVED. NOTE BROKEN TRIGGER
GUARD. 36" SCALE P 30

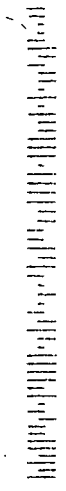
James C Williams #282929
Kershaw Corr Inst P.B.60
4848 Goldmine Hwy
Kershaw SC 29067

RECEIVED

MAUC 2 8 2008
KERSHAW
SOUTH CAROLINA



Hon. Daniel Shearouse Clerk
S.C. SUPREME COURT
Post Office Box 11330
Columbia South Carolina
29211 + 1330



DAVID M. MAULDIN
ASSISTANT PUBLIC DEFENDER
407 1/2 W. MAIN ST
LEXINGTON COUNTY COURT
LEXINGTON SC 29072

MARCH 7, 2013

DEAR ATTORNEY MAULDIN;

PLEASE BE ADVISED THAT IN THE EVENT THAT JUDGE KEESLEY DOES NOT GRANT RELIEF IN THIS MATTER. I WOULD LIKE TO HAVE HIS HONOR TO RULE ON THE FOLLOWING GROUNDS FOR RELIEF SO THAT THEY WILL BE PRESERVE FOR FURTHER APPELLATE REVIEW IF NECESSARY.

1. DID THE SOLICITOR COMMIT FRAUD ON THE COURT?
2. DID GUILTY PLEA COMPLY WITH BOYKIN V ALABAMA?
3. WAS PETITIONER'S RIGHTS VIOLATED PURSUANT TO BRADY?
4. DID TRIAL JUDGE ERROR WHEN HE INFORMED APPELLANT HE HAD A RIGHT TO APPEAL TO THE SUPREME COURT?
5. DOES THE GUNSHOT RESIDUE, SLED AND CORONER'S REPORT SUBSTANTIATE PETITIONER'S INNOCENCE?

AS I AM INNOCENT THE ISSUES ARE OF GROSS IMPORTANCE.

THANK YOU
S/James Williams

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) IN THE COURT OF GENERAL SESSIONS
) ELEVENTH JUDICIAL CIRCUIT

JAMES C. WILLIAMS #282929)
PETITIONER

CASE NO: 00-65-32-688
00-65-32-689

VS

THE STATE OF SOUTH CAROLINA
RESPONDENT

) PETITIONER'S AMENDMENT
) TO MOTION FOR AFTER-NEWLY
) DISCOVERED EVIDENCE
) "REQUEST FOR EVIDENTIARY HEARING"

PLEASE TAKE NOTICE THAT THE PETITIONER AT BAR JAMES C WILLIAMS THROUGH UNDERSIGNED APP- OINTEI) COUNSEL ANI) PRO-SE MOVES BEFORE THE PRESIDING JUDGE ELEVENTH JUDICIAL CIRCUIT LEXINGTON COUNTY COURTHOUSE TO AMEND) HIS PENDING MOTION FOR AFTER-NEWLY DISCOVERED EVIDENCE TO INCLUDE THE FOLLOWING GROUNDS FOR RELIEF TO BE HEARD) ANI) RULED) UPON AT THE HEARING ON THIS MOTION BEFORE THIS HONORABLE COURT, ANI) INCORPORATE ANY ISSUES ANI) /OR GROUNDS IN THE ORIGINAL MOTION.

ISSUE PRESENTED

WHETHER PETITIONER'S GUILTY PLEA COMPLIED) WITH THE MANDATES SET FORTH IN BOYKIN VS ALABAMA ?

PETITIONER'S GUILTY PLEA FAILED) TO COMPLY WITH THE MANDATES OF BOYKIN VS ALABAMA.

ARGUMENT

Petitioner's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), this Court held that the "essence" of Boykin, was to make the requirements of Rule 11 of the Federal Rules of Criminal Procedure applicable to the states. In State v. Patterson, 278 S.C. 319, 295 S.E.2d 264 (1982), this Court held that for there to be a valid waiver under the due process clause of the three constitutional rights listed in Boykin, the record must clearly establish it.

In Boykin, *supra*, the U.S. Supreme Court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

The record in this case indicates the trial court failed to do so.

DUE PROCESS OF LAW REQUIRES THAT BEFORE A GUILTY PLEA CAN BE ENTERED VOLUNTARILY AND INTELLIGENTLY, A DEFENDANT MUST BE ADVISED OF HIS COMPULSORY SELF-INCRIMINATION THE RIGHT TO TRIAL BY JURY AND THE RIGHT TO CONFRONT ONE'S ACCUSER, THE PERMISSIVE RANGE OF SENTENCING, THE MAXIMUM PENALTY INCLUDING IMPRISONMENT FINE AND TERM OF SUPERVISED RELEASE AND OTHER "SENTENCING FACTORS."

BOYKIN AND RULE 11 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE ARE APPLICABLE TO STATE COURT GUILTY PLEAS VIA THE DUE PROCESS CLAUSE.

IN THE CASE AT BARR THE TRIAL JUDGE DID NOT ADVISE OR INFORM PETITIONER THAT HE WOULD BE SUBJECTED TO SERVICE OF 85% OF HIS SENTENCE AND DID NOT ADVISE PETITIONER THAT THIS WOULD BE A NO-PAROLE OFFENSE OR THAT HE WOULD HAVE TO SERVE A PERIOD OF MANY MORE YEARS ON SUPERVISED RELIEF UPON RELEASE FROM HIS 30 YEAR SENTENCE IF IN FACT HE SURVIVED IN PRISON 30 YEARS OR LIVED TOWARDS THE 30 YEAR DURATION.

A VALID WAIVER OF THESE RIGHTS CANNOT BE PRESUMED FROM A SILENT RECORD AS THE PLEA TRANSCRIPT (SEE LINES 1-25 OF TRANSCRIPT PAGES 31-41)

IN STATE V PATTERSON 295 SE2D 264 (1982) THE S. C. SUPREME COURT ALSO HELD THAT FOR THERE TO BE A VALID WAIVER UNDER THE DUE PROCESS CLAUSE OF THE THREE CONSTITUTIONAL RIGHTS LISTED IN

BOYKIN THE RECORD MUST CLEARLY ESTABLISH IT. IN STATE VS ARMSTRONG 211 SE2D 889 (1975) OUR S.C. SUPREME COURT HELD THAT THE "ESSENCE" OF BOYKIN WAS TO MAKE RULE 11 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE APPLICABLE TO THE STATES. IN BOYKIN SUPRA THE U.S. SUPREME COURT HELD THAT TRIAL COURTS WERE MANDATED TO USE UTMOST SOLICITUDE WHEN CANVASSING A GUILTY PLEA TO INSURE THAT THE PLEA WAS GIVEN FREELY AND VOLUNTARILY WITH FULL KNOWLEDGE OF THE CIRCUMSTANCES SURROUNDING THE PLEA AND THE ATTENDANT WAIVER OF RIGHT OCCURRING WITH THE GUILTY PLEA. AS THE PETITIONER AT BAR IS ALSO ACTUALLY INNOCENT DENIAL OF APPLICATION OF BOYKIN IS EXCESSIVELY AND GROSSLY PREJUDICIAL, AND

THE RECORD IN THIS CASE INDICATES THE TRIAL COURT FAILED TO DO SO.

FURTHERMORE, STATE VS ARMSTRONG 211 SE2D 889 ESTABLISHES THE JUDGE IS CHARGED WITH THE RESPONSIBILITY OF APPRISING THE ACCUSED WITH THE DIRECT CONSEQUENCES, THAT IS THE DIRECT AND IMMEDIATE RESULTS OF A GUILTY PLEA. COURT MUST GIVE DEFENDANT ADEQUATE WARNING OF THE CONSEQUENCES OF THE PLEA AND THE WARNING SHOULD INCLUDE EXPLANATION OF DEFENDANT'S WAIVER OF CONSTITUTIONAL RIGHTS AND A REALISTIC PICTURE OF ALL SENTENCING POSSIBILITIES.

ISSUE PRESENTED

WHETHER PETITIONER'S RIGHTS WERE VIOLATED PURSUANT TO BRADY VS MARYLAND?

PETITIONER'S RIGHTS WERE VIOLATED PURSUANT TO THE HOLDINGS OF THE U.S. SUPREME COURT IN BRADY VS MARYLAND. THE ATTACHED SLEI ANALYSIS REPORTS THAT CONTAIN EXCULPATORY EVIDENCE WAS CONCEALED FROM PETITIONER. PETITIONER WAS ABLE TO OBTAIN THIS EVIDENCE ON APRIL 16 2012. THE PROSECUTION CLEARLY WITHHELD THIS EVIDENCE AND IF I WOULD HAVE HAD ACCESS TO THESE MATERIALS I WOULD HAVE NEVER PLEADED GUILTY.

ON JANUARY 10 2012 - THE U.S. SUPREME COURT OVERTURNED A MURDER CONVICTION FOR BRADY VIOLATION BY NEW ORLEANS DA. CHIEF JUSTICE JOHN G. ROBERTS JR WROTE A FOUR-PAGE MAJORITY OPINION FINDING THE CONVICTION MUST BE OVERTURNED BECAUSE THE EVIDENCE WAS MATERIAL UNDER THE STANDARDS SET BY BRADY VS MARYLAND.

THE LONE DISSENT BY CHIEF JUSTICE JOHN G. ROBERTS JR AT ISSUE IS WHETHER THE FAILURE TO TURN OVER THE MATERIALS VIOLATED SMITH'S RIGHT UNDER BRADY VS MARYLAND BECAUSE THE INFORMATION WAS MATERIAL TO GUILT. HOWEVER THE COURT HAS RULED THAT IF THE PIECE OF DISCOVERY IS IN POSSESSION OF THE POLICE, THE DA MUST GET IT AND HAND IT OVER. THIS INCLUDES THE ENTIRE POLICE FILE.

AS A RESULT, THERE IS NEW CASE LAW FROM THE U.S SUPREME COURT ON THIS ISSUE. JEAN SMITH, PETITIONER VS BURL CAIN WARDEN NO. 10-8145, 2012 WL 43512 (JANUARY 2012). IN THIS MATTER THE COURT RULED THAT EVEN THE HAND WRITTEN NOTES INSIDE THE POLICE FILES OF THE INVESTIGATING OFFICER MUST BE HANDLED OVER TO THE DEFENDANT. THIS CASE IS IDENTICAL TO THE CASE AT BAR BECAUSE THE SOLICITOR FAILED TO TURN OVER THE SLEI REPORT AND OTHER EX-CULPATORY EVIDENCE. AS A RESULT, IF THE DEFENDANT WAS MADE AWARE OF THE EXCULPATORY EVIDENCE HE WOULD NOT HAVE PLEADED GUILTY TO THESE CHARGES AND THERE WOULD HAVE BEEN A DIFFERENT OUTCOME.

I SWEAR UNDER PENALTY OF PERJURY THAT THE MERITS IN THIS AMENDMENT ARE TRUE AND CORRECT.

SWORN TO BEFORE ME THIS
7 DAY OF NOVEMBER 2012

Catherine A. Carrigan

NOTARY PUBLIC FOR SOUTH CAROLINA

St James Williams

MY COMMISSION EXPIRES My Commission Expires December 22, 2016 JAMES WILLIAMS

STATE OF SOUTH CAROLINA	}	IN THE COURT OF GENERAL
COUNTY OF <u>LEXINGTON</u>		SESSIONS
	}	ELEVENTH JUDICIAL CIRCUIT
		CASE NO: 00-05-32-688
JAMES C. WILLIAMS	}	00-05-32-689
PETITIONER		PETITIONERS AMENDMENT
vs	}	TO MOTION FOR AFTER-NEWLY
		DISCOVERED EVIDENCE
THE STATE OF SOUTH CAROLINA	}	REQUEST FOR EVIDENTIARY HEARING
<u>RESPONDENT</u>		

PROOF OF SERVICE

THIS IS TO CERTIFY THAT I DID ON THIS 7TH DAY OF MARCH 2013 SERVE A COPY OF THIS ABOVE CITED AMENDMENT ON THE FOLLOWING PARTIES BY MAILING A COPY IN THE U.S. MAIL POSTAGE PREPAID

HONORABLE WILLIAM KEESLEY
CHIEF JUDGE FOR ADMINISTRATIVE
PURPOSES

LEXINGTON COUNTY SOLICITOR

DAVID M. MAULDIN
ASSISTANT PUBLIC DEFENDER
407 1/2 W MAIN ST
LEXINGTON SC 29072

CLERK OF COURT FOR LEXINGTON
COUNTY

SI James Williams

1 (WHEREUPON, THE PROCEEDINGS CONCLUDED AND RESUMED ON
2 MARCH 21, 2002.)

3 THE COURT: THANK YOU. PLEASE HAVE A SEAT.

4 THE CLERK: INDICTMENT 2000-GS-32-689, THE STATE
5 VERSUS JAMES CHESTER WILLIAMS, INDICTED FOR MURDER. THE
6 DEFENDANT IS PUT TO THE BAR AND ARRAIGNED AND UPON HIS
7 ARRAIGNMENT PLEADS GUILTY AS CHARGED. IT IS SIGNED AND
8 PROPERLY ATTESTED TO, TRUE BILLED, AND REPRESENTED BY MR.
9 GORSKI.

10 THE COURT: MR. GORSKI, YOU REPRESENT MR. WILLIAMS?

11 MR. GORSKI: YES, YOUR HONOR, I DO.

12 THE COURT: HAVE YOU ADVISED HIM OF HIS RIGHTS IN
13 THIS MATTER?

14 MR. GORSKI: I HAVE.

15 THE COURT: DO YOU FEEL LIKE HE UNDERSTANDS HIS
16 RIGHTS?

17 MR. GORSKI: HE UNDERSTANDS HIS RIGHTS, YOUR HONOR.

18 THE COURT: ALL RIGHT. IS HE UNDER OATH, MADAM
19 CLERK?

20 THE CLERK: RAISE YOUR RIGHT HAND.

21 JAMES CHESTER WILLIAMS, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 EXAMINATION BY THE COURT

24 Q. THANK YOU. MR. WILLIAMS, I UNDERSTAND THAT YOU WISH
25 TO PLEAD GUILTY TO A CHARGE OF MURDER. IS THAT CORRECT?

1 A. YES, SIR.

2 Q. DO YOU UNDERSTAND THAT ON A CONVICTION OF MURDER
3 THAT YOU COULD GET AS MUCH AS A LIFE SENTENCE BUT AT LEAST 30
4 YEARS?

5 A. YES, SIR.

6 Q. DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. AND ON THIS CHARGE DO YOU UNDERSTAND WHAT THE STATE
9 ALLEGES THAT YOU'VE DONE TO HAVE BEEN CHARGED WITH MURDER?

10 A. YES, SIR.

11 Q. OKAY. IN FACT, DO YOU UNDERSTAND THEY ALLEGE THAT
12 ON SEPTEMBER 15, 1999, THAT YOU SHOT ONE KATHY ARETHA
13 WILLIAMS AND THAT SHE DIED AS A RESULT OF SHOOTING? DO YOU
14 UNDERSTAND THAT THAT'S WHAT THEY CHARGE YOU WITH DOING?

15 A. YES, SIR.

16 Q. OKAY. NOW, DO YOU UNDERSTAND THAT YOU DON'T HAVE TO
17 PLEAD GUILTY? YOU HAVE A RIGHT TO PLEAD NOT GUILTY. IF YOU
18 PLED NOT GUILTY, YOU WOULD HAVE A JURY TRIAL. DO YOU
19 UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND, IN FACT, YOU UNDERSTAND THAT THERE IS A JURY
22 WAITING RIGHT NOW AND YOU WOULD BE AVAILABLE -- YOU WOULD BE
23 ABLE TO HAVE YOUR JURY TRIAL STARTING IN JUST A LITTLE WHILE?
24 DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 HAVE TO PROVE ANYTHING. YOU'RE NOT REQUIRED TO PROVE A THING
2 AND, OF COURSE, WE WILL TELL THE JURY THAT, TOO. DO YOU
3 UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. AND THAT THEN MEANS THAT YOU CAN TESTIFY IF YOU WANT
6 TO, BUT YOU WOULDN'T HAVE TO. IT'S UP TO YOU. YOU COULD
7 CALL WITNESSES IF YOU WANTED TO, BUT AGAIN YOU WOULDN'T HAVE
8 TO. THAT WOULD BE UP TO YOU. DO YOU UNDERSTAND THAT?

9 A. YES, SIR.

10 Q. NOW, REGARDLESS OF WHICH YOU DID, ONCE ALL -- ALL
11 THAT WAS OVER WITH, THEN YOUR LAWYER WOULD HAVE A CHANCE TO
12 SPEAK TO THE JURY AGAIN ON YOUR BEHALF AT THE END AND GIVE
13 WHAT'S CALLED A CLOSING STATEMENT. DO YOU UNDERSTAND THAT?

14 A. YES, SIR.

15 Q. AND THEN FOLLOWING THAT, THE STATE WOULD HAVE A
16 CHANCE TO MAKE A CLOSING STATEMENT. I WOULD TELL THE JURY
17 THE LAW AND THEN THEY WOULD GO OUT AND COME BACK WITH A
18 VERDICT. DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. NOW, YOU UNDERSTAND THAT DURING ALL THIS THERE ARE
21 FROM TIME TO TIME VARIOUS MOTIONS THAT CAN BE MADE ON YOUR
22 BEHALF, AND YOUR LAWYER WOULD BE ABLE TO MAKE THOSE. DO YOU
23 UNDERSTAND?

24 A. YES, SIR.

25 Q. AND IF THE JURY WERE TO FIND YOU GUILTY, YOU WOULD.

1 Q. DO YOU?

2 A. YES, SIR.

3 Q. OKAY. AND DO YOU UNDERSTAND THAT -- LET ME GO
4 THROUGH THE TRIAL PROCESS NOW, AND I'M SURE YOUR LAWYER HAS
5 BEEN OVER THIS WITH YOU, BUT I'LL GO THROUGH IT WITH YOU SO
6 THAT IT'S ON THE RECORD. YOU UNDERSTAND THAT, OF COURSE,
7 WE'VE BEEN THROUGH PART OF IT WHERE THERE'S BEEN -- THERE'S
8 BEEN JURY SELECTION. THE JURY HAS BEEN SELECTED, AND AS YOU
9 KNOW, YOU WERE ABLE TO TAKE PART IN THAT AND EVEN TO STRIKE
10 SOME JURORS.

11 A. YES, SIR.

12 Q. DO YOU UNDERSTAND THAT WHAT WOULD HAPPEN NOW WOULD
13 BE THAT BOTH YOUR LAWYER WOULD HAVE A RIGHT TO MAKE WHAT'S
14 CALLED AN OPENING STATEMENT TO THE JURY IN WHICH HE WOULD
15 SPEAK TO THE JURY ON YOUR BEHALF? THE STATE WOULD ALSO. AND
16 THEN ONCE THAT'S DONE, THEN ALL THE EVIDENCE WOULD START.
17 THE STATE WOULD HAVE TO PUT UP WITNESSES AND THEY WOULD HAVE
18 TO TESTIFY IN OPEN COURT, AND YOUR LAWYER WOULD HAVE A RIGHT
19 TO QUESTION THOSE WITNESSES. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. AND YOU UNDERSTAND THE REASON THEY DO THAT IS
22 BECAUSE THEY HAVE THE BURDEN OF PROOF. THEY MUST PROVE YOU
23 GUILTY BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT? X

24 A. YES, SIR.

25 Q. AND YOU UNDERSTAND THAT THAT MEANS THAT YOU DON'T

GUILTY PLEA

1 YOU PLEAD GUILTY?

2 A. NO, SIR.

3 Q. ALL RIGHT. NOW, THERE'S -- EXCEPT FOR ANY
4 AGREEMENT, ANYTHING THAT MAY HAVE BEEN WORKED OUT BETWEEN
5 YOUR LAWYER AND THE STATE -- AND I DON'T KNOW ABOUT THAT.
6 I'LL FIND OUT IF THERE HAS BEEN. EXCEPT FOR ANYTHING THAT
7 MIGHT HAVE BEEN WORKED OUT WITH THAT, HAS ANYBODY PROMISED
8 YOU ANYTHING TO GET YOU TO PLEAD GUILTY?

9 A. NO, SIR.

10 Q. OKAY. DO YOU ADMIT THAT YOU'RE GUILTY OF THIS
11 CHARGE?

12 A. YES, SIR.

13 Q. ALL RIGHT. NOW, AT THIS TIME ARE YOU UNDER THE
14 INFLUENCE OF ANY DRUGS OR ALCOHOL OR MEDICATION OF ANY KIND?

15 A. NO, SIR.

16 Q. NOW, IS THERE ANY MEDICINE THAT YOU'RE SUPPOSED TO
17 BE TAKING THAT YOU'RE NOT TAKING?

18 A. NO, SIR.

19 Q. OKAY. ARE YOU SATISFIED WITH YOUR LAWYER?

20 A. YES, SIR.

21 Q. HAVE YOU HAD HIS ADVICE IN THIS MATTER?

22 A. YES, SIR.

23 Q. DO YOU FEEL LIKE HE'S DONE EVERYTHING YOU WANTED HIM
24 TO DO?

25 A. YES, SIR.

1 HAVE A RIGHT TO APPEAL TO THE STATE SUPREME COURT. DO YOU
2 UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. ALL RIGHT. AND DO YOU UNDERSTAND BASICALLY THEN
5 WHAT YOUR RIGHTS ARE IN THE JURY TRIAL?

6 A. YES, SIR.

7 Q. DO YOU HAVE ANY QUESTIONS ABOUT THAT AT ALL?

8 A. NO, SIR.

9 Q. AND YOU'VE BEEN OVER ALL THAT WITH YOUR LAWYER.

10 A. YES, SIR.

11 Q. AND YOU UNDERSTAND THAT -- THAT IF YOU PLEAD GUILTY
12 YOU'RE GOING TO GIVE ALL THAT UP. DO YOU UNDERSTAND?

13 A. YES, SIR.

14 Q. AND, OF COURSE, THAT MEANS IF YOU HAD ANY DEFENSES
15 THAT YOU WANTED TO BRING UP OR ANY MOTIONS OR ANY CLAIMS OF
16 YOUR OWN OR ANY COMPLAINTS ABOUT THE WAY YOU WERE TREATED,
17 YOU WOULD GIVE ALL THAT UP. DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. AND UNDERSTANDING THAT THEN, DO YOU STILL WANT TO
20 PLEAD GUILTY?

21 A. YES, SIR.

22 Q. ALL RIGHT. NOW, MR. WILLIAMS, ARE YOU PLEADING
23 GUILTY OF YOUR OWN FREE WILL?

24 A. YES, SIR.

25 Q. OKAY. HAS ANYBODY THREATENED YOU IN ANY WAY TO MAKE

1 Q. ALL RIGHT. AND UNDERSTANDING EVERYTHING THAT I'VE
2 ASKED, DO YOU STILL WANT TO PLEAD GUILTY?

3 A. YES, SIR.

4 Q. OKAY. AND LET ME ALSO NOTE -- DO YOU UNDERSTAND
5 THAT WHEN ALL OF THIS IS OVER WITH THAT IF YOU'RE -- THAT IF
6 YOU FEEL LIKE THERE'S BEEN ANY PROBLEM WITH IT OR ANYTHING
7 WAS DONE WRONG YOU HAVE A RIGHT TO APPEAL -- EVEN THE PLEA
8 YOU HAVE A RIGHT TO APPEAL TO THE SUPREME COURT. DO YOU
9 UNDERSTAND THAT?

10 A. YES, SIR.

11 Q. AND YOU HAVE TEN DAYS TO FILE THAT. DO YOU
12 UNDERSTAND THAT?

13 A. REPEAT THAT AGAIN NOW.

14 Q. YOU WOULD HAVE TEN DAYS -- IF YOU WANTED TO FILE AN
15 APPEAL, YOU WOULD HAVE TEN DAYS TO FILE THE APPEAL WITH THE
16 SUPREME COURT. YOU'D HAVE TO NOTIFY YOUR LAWYER AND GIVE HIM
17 TIME TO DO THAT. DO YOU UNDERSTAND THAT?

18 A. YES, SIR.

19 Q. OKAY. UNDERSTANDING ALL OF THAT THEN, DO YOU STILL
20 WANT TO PLEAD GUILTY?

21 A. YES, SIR.

22 THE COURT: ALL RIGHT. MADAM SOLICITOR?

23 MS. CARROLL: MAY IT PLEASE THE COURT? ON THE NIGHT
24 OF SEPTEMBER 15TH OF 1999 THE LEXINGTON COUNTY SHERIFF'S
25 DEPARTMENT RESPONDED TO AN APARTMENT IN RIVER OAKS APARTMENTS

GUILTY PLEA

RAW next door
KIDS

1 IN LEXINGTON COUNTY. WHEN THEY ARRIVED, THEY FOUND THE BODY
 2 OF KATHY WILLIAMS WHO WAS 41 YEARS OLD WHO HAD BEEN OBVIOUSLY
 3 SHOT IN THE NECK AREA. THEY ALSO FOUND THREE OF HER CHILDREN
 4 WHO WERE FRANTICALLY RUNNING AROUND THE APARTMENT TRYING TO
 5 GET HELP FOR THEIR MOTHER.

6 LAW ENFORCEMENT QUESTIONED THE CHILDREN WHO WERE
 7 PRESENT IN THE APARTMENT WHEN THEIR MOTHER WAS SHOT. AT THAT
 8 TIME THEY WERE AGES 8, 13, AND 15. THE CHILDREN WERE ABLE TO
 9 TELL LAW ENFORCEMENT THAT THAT EVENING THEIR FATHER OR
 10 STEPFATHER, THE DEFENDANT, CAME OVER TO SPEAK TO THE MOTHER
 11 SUPPOSEDLY TO BRING SOME MONEY SO THE YOUNGEST CHILD COULD
 12 PLAY FOOTBALL. AT THAT POINT THE DEFENDANT AND THE VICTIM
 13 HAD BEEN SEPARATED. SHE HAD MOVED OUT OF THE MARITAL HOME
 14 INTO THESE APARTMENTS IN RIVER OAKS. HE WAS NOT LIVING
 15 THERE.

10
CIES
Admission

16 THE VICTIM AND THE DEFENDANT ARGUED A LITTLE BIT
 17 ABOUT HIM COMING OVER ALL THE TIME. AT THAT POINT THE
 18 DEFENDANT LEFT THE APARTMENT, WENT DOWN TO HIS CAR, ARMED
 19 HIMSELF WITH A SHOTGUN, TOOK ONE SHOTGUN SHELL, LOADED THE
 20 GUN AND WENT BACK INTO THE APARTMENT. HE WENT STRAIGHT BACK
 21 TO THE VICTIM'S BEDROOM AND MOTIONED HER TO COME INTO THE
 22 BEDROOM WITH HIM.

23 THE CHILDREN HEARD SOME MORE ARGUING. TWO OF THE
 24 CHILDREN HEAR THE VICTIM SAYING IN A VERY STRONGER VOICE,
 25 "WHAT ARE YOU GOING TO DO? SHOOT ME?" AND THEN IMMEDIATELY

1 AFTERWARDS THEY HEARD A GUNSHOT FIRED. THE DEFENDANT RUNS
2 OUT OF THE APARTMENT, LEAVING MS. WILLIAMS ALONE ON THE FLOOR
3 TO DIE.

4 LAW ENFORCEMENT GETS A TIP AS TO WHERE THE DEFENDANT
5 MAY BE LOCATED. HE HAD SOME FAMILY MEMBERS, I BELIEVE, IN
6 BARNWELL COUNTY. THE NEXT MORNING THEY'RE ABLE TO GO OUT
7 THERE. I BELIEVE THEY WERE ACTUALLY CONTACTED BY HIS FAMILY
8 MEMBERS. WHEN THEY WENT TO THE BROTHER'S HOUSE, THEY FOUND
9 THE DEFENDANT IN THAT HOME. THEY FOUND THE CAR HE WAS
10 DRIVING HIDDEN BEHIND ANOTHER HOME IN THE AREA AS WELL AS A
11 SAWED-OFF SHOTGUN HIDDEN IN AN OLD REFRIGERATOR BEHIND THE
12 TRAILER AND A BOX OF SHOTGUN SHELLS. OUT OF THE BOX OF
13 AMMUNITION ONE SHOTGUN SHELL WAS MISSING. THAT WAS SENT TO
14 S.L.E.D., AND FORENSIC WERE -- THEY WERE ABLE TO DETERMINE
15 THAT THE DEFENDANT'S PALM PRINT WAS ON THE BOX OF AMMUNITION. *

16 THE AUTOPSY WAS PERFORMED ON MS. WILLIAMS. DR.
17 CARTER DETERMINED THAT SHE DIED FROM A GUNSHOT WOUND TO THE
18 NECK AREA. HE APPROXIMATES THAT THE GUN WAS LESS THAN SIX
19 INCHES FROM HER NECK WHEN IT WAS DISCHARGED, AND BASICALLY IT
20 SEVERED HER SPINAL CORD. SO SHE HAD ABSOLUTELY NO CHANCE OF
21 SURVIVING AFTER SHE WAS SHOT.

22 GUNSHOT RESIDUE TESTS WERE PERFORMED ON BOTH THE
23 DEFENDANT AND THE VICTIM. IT OBVIOUSLY CAME UP NEGATIVE ON
24 THE DEFENDANT DUE TO THE LACK OF -- OR THE GREAT PERIOD OF
25 TIME THAT LAPSED BETWEEN THE SHOOTING AND TAKING THE TEST. I

GUILTY PLEA

1 BELIEVE IT WAS OVER AT LEAST 18 HOURS OR A LITTLE BIT LESS
2 WHEN THEY ACTUALLY DID THAT TEST ON HIM. BUT THE EXPERT FROM
3 S.L.E.D. WOULD HAVE TESTIFIED THAT THE GUNSHOT RESIDUE TEST
4 THAT WAS DONE ON THE VICTIM WOULD HAVE BEEN CONSISTENT WITH
5 THE VICTIM'S HANDS BEING UP IN THE SURRENDER POSITION. IT
6 WAS NOT ON THE GUN AT ANY TIME.

7 THE DEFENDANT DOES HAVE A PRIOR RECORD OF C.D.V. IN
8 THIS CASE FROM 1999 FROM WHEN HE WAS CHARGED AND THE VICTIM
9 WAS, IN FACT, THE SAME VICTIM AS THIS CASE. HE ALSO HAS A
10 GRAND LARCENY CHARGE THAT HE PLED TO IN 1994. WE ALSO HAD
11 PLANNED ON CALLING WITNESSES FROM THE DEFENDANT'S WORKPLACE
12 WHO HAD INDICATED THAT FOR AT LEAST WEEKS BEFORE THIS CRIME
13 HE HAD THREATENED TO KILL HIS WIFE, KATHY WILLIAMS, AS WELL
14 AS KILLING HIMSELF AND WE HAD INTENDED TO CALL THEM AS
15 WITNESSES IF THIS CASE HAD, IN FACT, GONE TO TRIAL.

16 IN EXCHANGE FOR THE DEFENDANT'S PLEA TODAY, WE ARE
17 DISMISSING THE CHARGE OF POSSESSION OF A WEAPON DURING THE
18 COMMISSION OF A VIOLENT OFFENSE, AND WE ARE RECOMMENDING A
19 30-YEAR SENTENCE.

20 THE COURT: OKAY. DID ANY OF THE VICTIMS HAVE
21 ANYTHING TO SAY?

22 MS. CARROLL: NO, YOUR HONOR.

23 THE COURT: OKAY. ALL RIGHT. I'LL ACCEPT THE PLEA
24 AND FIND THE DEFENDANT GUILTY AS PLED. COUNSEL?

25 MR. GORSKI: YOUR HONOR, WE DON'T HAVE ANYTHING TO

1 ADD TO THAT. WE WOULD ASK THE COURT TO ACCEPT THE STATE'S
2 RECOMMENDATION.

3 THE COURT: OKAY. MR. WILLIAMS, DID YOU HAVE
4 ANYTHING YOU WANTED TO SAY?

5 MR. WILLIAMS: I JUST WANT TO APOLOGIZE TO MY KIDS,
6 YOU KNOW, AND WHAT HAPPENED TO THEIR MOTHER BECAUSE, YOU
7 KNOW, I LOVE THEM BOTH -- THEIR MOTHER JUST AS MUCH AS I LOVE
8 THEM, AND I'M BASICALLY ASKING THEM TO FORGIVE ME FOR IT.
9 BUT, YOU KNOW, WHETHER THEY DO IT OR NOT, YOU KNOW, I DON'T
10 KNOW, BUT I WANTED TO LET THEM KNOW THAT I STILL LOVE THEM.

11 THE COURT: OKAY. THANK YOU, SIR. ALL RIGHT.
12 COUNSEL, I WILL -- BASED ON THE PLEA AND THE -- AND THE
13 ENTIRE RECORD OF THE PLEA, I'LL ORDER THE DEFENDANT COMMITTED
14 TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 30 YEARS.
15 WE'LL GIVE HIM CREDIT FOR TIME SERVED FROM SEPTEMBER 16 OF
16 1999. THANK YOU.

17 MS. CARROLL: THANK YOU, YOUR HONOR.

18 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED. ALL
19 EXHIBITS WERE RETURNED TO THE POLICE OFFICERS DUE TO THE
20 GUILTY PLEA, AND A RECORD OF THEIR DESCRIPTION IS NOT
21 AVAILABLE.)

22

23

24

25

I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 18TH AND 21ST DAYS OF MARCH, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MAY 1, 2002

Daphne Helms

 DAPHNE D. HELMS, COURT REPORTER

ISSUE PRESENTED

DID THE TRIAL JUDGE ERROR WHEN HE INFORMED THE APPELLANT HE HAD THE RIGHT TO APPEAL TO THE SUPREME COURT?

(SEE ATTACHED) ARGUMENTS PG 48-49)

ARGUMENT

The trial judge informed appellant on more than one occasion that he had the right to appeal to the Supreme Court. That had to the tendency to lead appellant to believe that an appellate court could vacate his guilty plea if it found it unfair in some way — that undermined the finality of the guilty plea — and made it an impermissible conditional plea.

Relevant facts

Appellant was estranged from his wife. An argument occurred between them at the River Oaks Apartments in Lexington County where his wife resided. Appellant, according to the solicitor, shot the decedent with a shotgun during the argument. R. 37, l. 23 – 40, l. 19.

While explaining his rights to appellant, the judge informed him that if he was found guilty after a jury trial, he could appeal to the state Supreme Court. R. 34, l. 25 – 35, l. 3. Similarly, when explaining appellant's rights following his guilty plea, the judge stated: "Do you understand that when all of this is over with, that if you're — if you feel like there's been any problem with it or anything was done wrong you have a right to appeal — even the plea, you have a right to appeal to the Supreme Court. Do you understand that?" Appellant answered that he understood. R. 37, ll. 4-10.

The trial judge then told appellant that he would have to notify his lawyers following the plea that he wanted to appeal because that appeal had to be filed within ten days. R. 37, ll. 11-21.

Discussion

In State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990), this Court held that a trial judge cannot accept a conditional guilty plea. This Court noted that guilty pleas are

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County grand jury for the offense of murder. He appeared on May 21, 2002 before the Honorable Marc H. Westbrook, and a jury. William F. Gorski represented appellant. The solicitors were Tracey Carroll and Samuel R. Hubbard, III. R. 1.

After a jury was impaneled, appellant entered a plea of guilty to the crime of murder. R. 31, ll. 4-9. Judge Westbrook then sentenced appellant to thirty years imprisonment. R. 41, ll. 11-16.

This appeal follows.

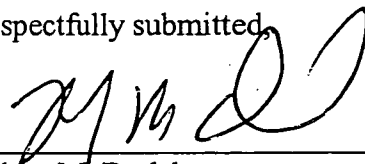
unconditional admissions of guilt, and preserving an issue for an appeal is impermissible. See State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982).

Absent a timely objection during a guilty plea proceeding, the unknowing or involuntary nature of the guilty plea cannot be raised on appeal. State v. McKinney, 278 S.C. 107, 292 S.E.2d 598 (1982). Any issue, including that the sentence imposed constituted cruel and unusual punishment must be presented to the judge or it is procedurally barred. State v. Owen, 275 S.C. 586, 274 S.E.2d 510, 513 (1981); State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388, 391 (1995).

The judge told appellant he could appeal following sentencing. The judge essentially emphasized that an appeal from a guilty plea was conducted in the same manner as an appeal from a jury verdict. That was misleading since it left appellant with the impression that this Court or the Supreme would review his sentence — even in the absence of an objection — and alter it if the Court found fault with the sentence or the guilty plea.

In reality, all non-jurisdictional defects were waived. Appellant here was properly indicted, and there was not anything appellant could appeal under these circumstances. However, he was left with the impression an appeal could produce some relief for him. Why else would you appeal? Appellant's guilty plea should be vacated as a conditional plea. State v. O'Leary, *supra*.

Respectfully submitted,



Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of November, 2002.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Marc H. Westbrook, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES C. WILLIAMS,

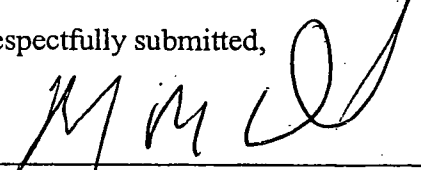
APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for James C. Williams states:

1. He is Assistant Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Marc H. Westbrook, which was held on March 18 and 21st, 2002, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for James C. Williams .

Respectfully submitted,


Robert M. Dudek
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

TABLE OF AUTHORITIES

Cases

State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) 6

State v. McKinney, 278 S.C. 107, 292 S.E.2d 598 (1982)..... 5, 6

State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186 (1990)..... 5

State v. Owen, 275 S.C. 586, 274 S.E.2d 510 (1981) 6

State v. Truesdale, 278 S.C. 368, 296 S.E.2d 528 (1982) 5

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by informing appellant he could appeal the results of his guilty plea in the same manner as a guilty verdict from a jury, since this erroneously informed appellant an appellate court could vacate the plea in the absence of an objection, undermined the finality of the plea, and made it an impermissible conditional plea?

ISSUE PRESENTED

DOES THE GUNSHOT RESIDUE SLEI) AND THE CORONERS REPORTS SUBSTANTIATE PETITIONERS INNOCENSE?

THE GUNSHOT RESIDUE SLEI) AND CORONERS REPORT SUBSTANTIATE PETITIONERS INNOCENSE. THESE EXHIBITS ARE CONSISTENT WITH A RIGHT HANDED PERSON SUCH AS MRS WILLIAMS GRABBING THE SHOTGUN WITH HER LEFT HAND AND ATTEMPTING TO THEN PLACE HER RIGHT HAND ON THE TRIGGER GUARD AREA (WHICH WAS BROKEN) WHEN THE GUN WAS AIMED AND CLOSE TO HER UPPER CHEST AND NECK AREA, THEN ACCIDENTALLY DISCHARGED).

THESE EXHIBITS FURTHER SUPPORT THAT PETITIONER COULD NOT HAVE BEEN CLOSE TO MRS WILLIAMS WHEN THE WEAPON DISCHARGED AS NO BLOOD OR DNA PARTICLES OR GUNSHOT RESIDUE WAS FOUND ON HIS CLOTHES OR HIS BODY AREAS OR PARTS.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

JIM H. HODGES
GOVERNOR



ROBERT M. STEWART
CHIEF

Evidence Processing Department
April 24, 2000
SLED Lab No: L99-12571
Your Case No: 9955578
Incident Date: 9-15-99
(S) James Williams
(V) Kathy Williams

Det. O. McIntosh
Lexington County Sheriff's Office
521 Gibson Road
Lexington, SC 29072

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

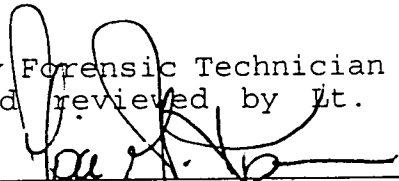
ITEM(S) SUBMITTED

10. One (1) pair of black socks
11. Pair of dark blue work pants
12. One (1) dark blue work shirt
13. Pair of underwear
14. Pair of white tennis shoes

RESULTS OF EXAMINATION(S)

10. No blood detected.
11. Samples collected and sent to the DNA Department for blood identification.
- 12-14 No blood detected.

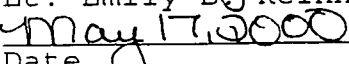
These examinations were conducted by Forensic Technician Lisa G. Kiser in the Evidence Processing Department and reviewed by Lt. Emily B. Reinhart, Supervisor.



Lisa G. Kiser
Forensic Technician



Lt. Emily B. Reinhart



Date

dlg



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

JAMES H. HODGES
GOVERNOR



ROBERT M. STEWART
CHIEF

Trace Department
October 18, 1999
SLED Lab No: L99-12571
Your Case No: 9955578
Incident Date: 9-15-99
(S) James Williams
(V) Kathy A. Williams

Sr. Dep. Coroner Edward V. Hite
Lexington County Coroner's Office
117 Duffie Drive
Lexington, SC 29072

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEM(S) SUBMITTED

2. One (1) GSR Kit from Kathy Williams
3. One (1) GSR Kit from James Williams
10. One (1) pair of black socks
11. One (1) pair of blue work pants
12. One (1) blue button down work shirt
13. One (1) pair of white underwear
14. One (1) pair of white tennis shoes
15. One (1) gray t-shirt

RESULTS OF EXAMINATION(S)

2. In the samples submitted in the kit labeled "Kathy A. Williams", gunshot residue was found on the left palm. Round lead particles were found on the palm and back of the right hand. Round lead particles are one of the components of gunshot residue. The results for the back of the left hand were inconclusive.
3. In the samples submitted in the kit labeled "James C. Williams", no analysis performed. The samples were collected beyond the six (6) hour time frame in which probative evidence would be found.
- 10-14 No holes or physical effects indicative of gunpowder residue were found.
15. The area around the hole in the upper chest region of the gray t-shirt was examined for the presence of lead and a pattern of gunpowder residue. Residue and physical characteristics around the hole are consistent with a contact shot.

