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## INTRODUCTION

This PCR action centers on the death of C.A., a girl who newly discovered evidence reveals killed herself on the one-year anniversary of her being forced to undergo a partial birth abortion. The new evidence includes a sworn affidavit from the pathologist who conducted C.A.'s autopsy and who confirmed that forensic omissions were made during the autopsy that presumably contributed to the misdiagnosis of C.A.'s suicide as a homicide. The lower court summarily dismissed Stewart's PCR action without ruling upon, or even mentioning, the new evidence Stewart provided from the pathologist. This appeal follows.

In December of 1999, C.A. was over four months pregnant when she was forced to undergo a partial birth abortion. *App. 1483-84*. This gruesome procedure—which was illegal in South Carolina at that time and was banned nationally in 2003—involved the physician inducing labor and C.A. pushing out her live baby until the child's head was fully exposed. *Id.* The physician then killed the child by stabbing the baby in the head. *Id.* C.A. had to finish pushing out her dead baby while experiencing the excruciating pain associated with normal childbirth. *Id.* At the conclusion of the procedure, C.A.'s mother forced C.A. to hold her dead baby in her arms as "punishment" for her becoming pregnant as a teenager. *Id.*

By all accounts, C.A. was devastated and inconsolable following this horrific ordeal. *App. 1484-85*. She displayed symptoms of severe psychological trauma and suicidal ideation. *Id.* At times, she would sit and stare blankly at a wall for hours. *Id.* At other times, she would cry hysterically while complaining that she couldn't stop hearing her baby crying in her head. *App. 1483*. C.A. had reoccurring nightmares about the death of her baby that persisted throughout the final year of her life. On December 6, 2000, she decided to end her torment by taking her own life—one year after the death of her child. *App. 1484*.

Dr. Russell Harley, the pathologist who conducted C.A.'s autopsy for the State, issued an official sworn statement confirming the probability that he misdiagnosed C.A.'s cause and manner of death. *App. 1593* ("It was my impression at the time of the autopsy that [C.A.'s death] was probably caused by blunt force trauma, but I could be wrong"). Dr. Harley indicated in his sworn statement that he made this admission following his review of credible new evidence that was not available at the time of the autopsy, and which raises questions of whether C.A. committed suicide. *App. 1592-94*. Dr. Harley further confirmed that procedural omissions from C.A.'s autopsy could have adversely impacted the accuracy of his autopsy conclusions. *Id.*

In addition to this new evidence, Stewart provided the lower court with an official forensic analysis report of C.A.'s autopsy from the retained pathologist, Dr. J.C. Upshaw Downs. *App 1466-74*. Dr. Downs identified several forensic evidence factors that are not consistent with Dr. Harley's autopsy conclusion that C.A. died from blunt force trauma. *Id.* These factors include the lack of blood on the scene of C.A.'s death, and the absence of a documented brain injury in the autopsy report. *App. 1469-71*. Dr. Downs also identified multiple procedural omissions from C.A.'s autopsy, including Dr. Harley's failure to evaluate the death scene. *App. 1471*.<sup>1</sup> However, Dr. Downs stated that he needed to review the files from C.A.'s autopsy to definitively determine the matters in question: (1) whether the right parietal skull fracture originally determined to have caused C.A.'s death was actually sustained after death, and (2) whether C.A. committed suicide. *App. 1467, 1470*. See *App. 1624*.

Dr. Harley indicated in his sworn statement that he had reviewed the report from Dr. Downs. *App. 1593*. Dr. Harley mentioned but expressed no disagreement with Dr. Downs'

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<sup>1</sup> Dr. Harley confirmed in his sworn statement that he did not review crucial evidence from the death scene. *App. 1592* ("It is not clear to me that the site in the woods where [C.A.] is alleged to have died was examined by SLED services").

"opinion that the skull fractures were all postmortem and heat related". *Id.* In fact, Dr. Harley indicated that this observation from Dr. Downs led Dr. Harley to confirm his conclusion the skull fracture caused C.A.'s death "could be wrong". *Id.* Dr. Harley further agreed with Dr. Downs that the lack of blood on the death scene was significant. *Id.* Dr. Harley also explicitly stated he had "no objection" to Dr. Downs conducting a forensic analysis of C.A.'s autopsy files. *App. 1593-94.*

Put simply, two pathology experts issued official statements expressing serious doubts in the accuracy of the pathological conclusions reached through C.A.'s autopsy. The pathologists indicated by their statements that said doubts stemmed from their review of credible new evidence raising questions as to whether C.A. committed suicide. None of this new evidence—including the reasonable doubt that Stewart killed C.A. expressed by the pathologist who conducted her autopsy—was heard by the jury that convicted Stewart of voluntary manslaughter.<sup>2</sup>

Despite these facts and evidence in the record before the PCR court, the court signed three orders prepared by Respondent. Said orders denied discovery and summarily dismissed the PCR action without an evidentiary hearing. However, these orders were patently deficient in addressing the facts and issues presented by Stewart, including the new evidence from the pathology experts. Moreover, even if the orders properly addressed the facts and issues presented by Stewart, the denial of discovery and an evidentiary hearing would be objectively unreasonable based on the record before the lower court.

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<sup>2</sup> Additionally, during a post-trial hearing, the trial court found that one of the jury members had previously attempted to kill Stewart because the juror member and Stewart dated the same girl. *App. 1030 ll. 22-24. See also App. 1025 ll. 11-17.* Despite these facts, the lower court issued an oral ruling denying Stewart's motion for a new trial on the basis of juror misconduct. *App. 1049 ll. 17-20.* Though over 9 years have elapsed since this oral ruling, the trial court has failed to issue a written order in this matter. The trial court is now disqualified from issuing said order due to a recent ruling from this Court. *App. 1677-78.*

Stewart therefore petitions this Court to remand his case to the lower court with instructions to grant discovery and an evidentiary hearing in an expedited manner.

### QUESTIONS PRESENTED

1. Did the PCR court err in signing deficient orders that failed to address the specific facts and issues presented by Stewart?
2. Did the PCR court err in denying discovery and summarily dismissing the action without an evidentiary hearing?

### STATEMENT OF THE CASE

Stewart was wrongfully convicted of killing C.A. following a jury trial. He received a consecutive sentence of 30 years for voluntary manslaughter and 9 years for desecration of human remains. All his prior appeals were denied. However, these denials occurred before Stewart obtained an official sworn statement from the pathologist who conducted C.A.'s autopsy.<sup>3</sup>

Stewart commenced this post-conviction relief (PCR) action with the filing of a PCR application on October 30, 2023. *App. 1411-19*. With the application, Stewart filed a motion to be allowed to represent himself with appointed standby counsel. *App. 1420-21*. Stewart began discovering admissions from Dr. Russell Harley, the State's trial pathology expert, on March 7, 2024. *App. 1475-81*. On April 1, 2024, Stewart filed a motion requesting leave to conduct discovery ("Discovery Motion"), based on the newly discovered admissions from Dr. Harley and a report from Dr. J.C. Upshaw Downs, his retained pathologist. *App. 1422-28*. On April 18,

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<sup>3</sup> Prior court rulings in Stewart's case reflect that both state and federal courts have relied heavily upon Dr. Harley's testimony about his autopsy conclusions as a basis for denying Stewart relief for his claim that C.A. committed suicide. *App. 1296*. ("Furthermore, there is no indication of deception in the pathologist's testimony: he observed epidermal hemorrhage and subdural hemorrhage those observations contributed to a finding of blunt force trauma") (2018 PCR court ruling). See also *App. 1400* ("Stewart's new explanation cannot, for example, refute the pathologist who persuasively concluded that a fracture in C.A.'s skull likely came from a blunt instrument striking it") (2023 federal appeals court ruling). However, Dr. Harley now adds weight and credibility to the suicide claim by casting doubt on his own autopsy conclusions and by confirming the scientific possibility C.A. committed suicide based on his review of evidence obtained after he conducted the autopsy. The admissions and statements from Dr. Harley were obtained after the state and federal court rulings.

2024, he filed a supporting memorandum of facts ("Discovery Memo"). *App.1482-96*.

Respondent filed its return ("Return") on May 3, 2024, and submitted with it a proposed conditional order ("Conditional Order") for the PCR court to sign. *App.1498-1526*. The Conditional Order was filed on August 12, 2024, and served on Stewart on August 27, 2024. *App.1567-87*. Stewart was notified that he would have twenty days to submit his response to the Conditional Order stating reasons why this Order should not become final. *App.1565*.

Stewart filed his initial response ("Response I") to the Conditional Order on June 10, 2024, prior to the PCR court signing and filing the Conditional Order, based on a copy of the same that was provided to him by Respondent. *App.1527-43*. Stewart filed his supplemental response ("Response II") to the Conditional Order on September 8, 2024. *App.1588-90*. On September 24, 2024, Stewart filed a motion requesting leave to supplement his Responses with two proposed orders for the PCR court to sign. *App.1596-1602*.

The PCR court filed the final order of dismissal ("Final Order") on October 15, 2024, and it was received by Stewart from the institution mail room on November 5, 2024. *App.1604-1606*. On November 7, 2024, Stewart filed a motion to alter/amend judgment pursuant to Rule 59(e), SCRCF ("59(e) Motion"). *App.1607-33*. With said motion, Stewart informed the PCR court, in great detail, of all the specific facts and issues the court had failed to address.

Respondent filed its return to the 59(e) Motion ("59(e) Return") on November 20, 2024, and submitted a proposed order ("59(e) Order") to the PCR court for signing. *App.1635-53*. Stewart filed a reply ("59(e) Reply") to the 59(e) Return on December 3, 2024. *App.1654-56*. With the 59(e) Reply, Stewart notified the PCR court that the proposed 59(e) Order, a copy of which Respondent had provided him, failed to address the issues raised by Stewart.

The PCR court signed the 59(e) Order on December 9, 2024, and it was filed on December 13, 2024. *App.1658-76*. Stewart received the filed 59(e) Order from the institution

mail room on January 2, 2025.

He filed his notice of appeal and his 243(c) Explanation with this Court on January 27, 2025. On February 4, 2025, Stewart received a letter from Patricia A Howard, Clerk of Court, directing him to file an explanation setting forth reasons why this Court should not place prohibitions on future filings made by him. Stewart filed said explanation on February 24, 2025.

On April 2, 2025, a letter was filed from Patricia A. Howard, Clerk of Court, advising Stewart this Court “has instructed that this appeal will proceed”. This letter was received by Stewart from the Institution mailroom on April 14, 2025.

### **ARGUMENT**

S.C. Code § 17-27-80 mandates: "The Court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented". See also Rule 52(a), SCRPC. "The failure to specifically rule on the issues precludes appellate review of the issues". *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007). This is because said failure makes "reviewing the court order impossible because the reasons underlying the decision are left to speculation". *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002).

This Court has repeatedly admonished counsel against preparing orders and PCR judges against signing orders which fail to specifically address the issues presented by PCR applicants. For instance, in *Pruitt v. State*, the Court cautioned: "Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it".<sup>4</sup> See *McCullough v. State*, 320 S.C. 270, 272, 464 S.E.2d 340, 341

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<sup>4</sup> 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992).

(1995)("We admonish all those involved in future PCR matters to be meticulous in preparing and reviewing prepared orders so that the final order sets forth the required findings and the reasons for those findings").

For over thirty years, this Court has been consistent in remanding cases in which the orders issued by the PCR judge failed to specifically address the facts and issues raised by the PCR applicant. See *Fishburne v. State*, 427 S.C. 505, 512-15, 832 S.E.2d 584, 587-89 (2019)(citing numerous cases remanded by the Court on this basis). While the Court acknowledged "our prior decisions have been somewhat inconsistent as to whether a Rule 59(e) motion is required to preserve an applicant's request to remand to the PCR court". *Id at 427 S.C. 515, 832 S.E.2d 589*. The Court has been unwavering in remanding cases in which a proper Rule 59(e) motion was filed, such as in Stewart's case. See *Reese v. State*, 425 S.C. 108, 111, 820 S.E.2d 376, 378 (2018).

Stewart petitions this Court to remand his case to the lower court with instructions to conduct discovery and an evidentiary hearing, based on the following:

**1. The PCR court erred in signing deficient orders that failed to address the specific facts and issues presented by Stewart.**

All orders issued by the lower court in this PCR action were prepared by Respondent and signed by the PCR judge. *App. 1679-81*. See also *App. 1587, 1606, 1676*. Stewart will demonstrate that these orders had patent inadequacies because the orders failed to address the facts and issues presented by him. He will further demonstrate that he repeatedly brought these omissions to the attention of the lower court, but to no avail.

The first order prepared by Respondent and signed by the PCR court, the Conditional Order, states in its summary of the current PCR action that Stewart raises three main claims: (1) newly discovered evidence raising questions of whether the trial court lacked subject matter

jurisdiction, (2) actual innocence, and (3) that he was tried while mentally incompetent. *App.*

1576. The facts Stewart presented in support of the first claim are summarized as follows:

[Stewart] has discovered new evidence establishing the strong probability that C.A., the deceased person in this case committed suicide a year after being forced by her mother to undergo a partial birth abortion. [Stewart] believes C.A. committed this act by secretly ingesting something, while she distracted him by asking him to get her something to drink. If C.A. committed suicide, then [Stewart] did not commit a crime related to her death. Therefore, the criminal court lacked subject matter jurisdiction in this matter, simply because no crime was committed.

*Id.*

However, under the “Findings of Fact and Conclusions of Law” section and “SUMMARY DISMISSAL BASED ON SUBJECT MATTER JURISDICTION” subsection of the Conditional Order, the factual basis for Stewart’s subject matter jurisdiction claim is incorrectly stated as being related to the insufficiency of the indictment. *App. 1581* (“The said indictment contains all the necessary elements of the offense and further cites the applicable statute... [Stewart] here cannot show any irregularity because the indictments in question are sufficient on their face”). The PCR court then issued a ruling summarily dismissing the subject matter jurisdiction claim based on these incorrect facts. *Id.* (“Accordingly, this Court finds...that there is no issue of material fact relating to this allegation, and it shall be dismissed as a matter of law”).

Similarly, under the "SUMMARY DISMISSAL BASED ON NEWLY DISCOVERED EVIDENCE" subsection, the facts presented by Stewart in support of his newly discovered evidence claim are misstated: "[Stewart] claims that he discovered on March, 7, 2023, that counsel did not file a Rule 5, SCRCrimP, for his discovery". *App. 1583*. Based on these incorrect facts, the PCR court found that "[Stewart's] allegations are not newly-discovered and these allegations have been raised before the courts in his previous PCR actions and federal

habeas actions to which those courts have ruled on those matters". *App. 1584.*<sup>5</sup>

The lower court then applied the "Clark factors" to these incorrect facts, upon which the court found that Stewart's newly discovered evidence claim "fails the Clark test". *App. 1584.*

The court then concluded: "Because [Stewart's] claims do not meet the high threshold of newly-discovered evidence, they are barred by the one-year statute of limitations". *Id.*

Ultimately, the court ruled that Stewart "is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed". *Id.*

Stewart first brought the errors and omissions in the Conditional Order to the lower court's attention in his Responses to the Conditional Order. For instance, Stewart brought it to the court's attention that his subject matter jurisdiction claim is based on new evidence establishing that no crime was committed related to C.A.'s death because she killed herself, as opposed to the incorrect factual predicate stated in the Conditional Order. *App. 1531-32.*

Stewart further brought it to the court's attention that his newly discovered evidence claim is based on a "sworn affidavit" and "newly discovered admissions" from Dr. Harley. *App. 1589-90.*<sup>6</sup>

The lower court failed to correct these errors and omissions in the Conditional Order. Instead, the court signed a Final Order prepared by Respondent and generally stating that "for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby DENIED AND DISMISSED WITH PREJUDICE". *App. 1606.*

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<sup>5</sup> As mentioned supra on p. 4, no prior court has been presented with or ruled upon the newly discovered evidence presented by Stewart giving rise to this action—the official sworn statement and other admissions from Dr. Harley, which Stewart began discovering on March 7, 2024. See also *id* at n. 2.

<sup>6</sup> Stewart also brought it to the court's attention that there were genuine factual disputes which necessitated an evidentiary hearing (i.e. whether a subject matter jurisdiction and actual innocence claim were exempt from the procedural challenges raised by Respondent). *App. 1532-35.* Stewart further contended that it was "premature for the Court to consider Respondent's procedural challenges, or any of the other grounds presented by Respondent for summary dismissal, until discovery has been completed". *App. 1533.* These facts will be discussed in more detail in the next section.

Stewart filed his 59(e) Motion, wherein he devoted twenty-seven pages to bringing the errors and omissions in the Conditional and Final Orders to the attention of the PCR court in meticulous detail. *App. 1607-33*. For instance, he reiterated that in said orders the court misstated the factual predicate for his newly discovered evidence claim, and that the court's ruling on the same was based on these incorrect facts. *App. 1619-22*. Stewart concluded the "NEWLY DISCOVERED EVIDENCE" subsection of the 59(e) Motion by requesting the following:

Stewart moves the Court to hold an evidence hearing to resolve the factual dispute pertaining to his newly discovered evidence claim. In the alternative, Stewart moves the Court to alter/amend the Final Order to specifically address this claim in the specific context in which it is raised.

*App. 1622.*

In his 59(e) Motion, Stewart meticulously brought every error and omission in the lower court's orders to the attention of the court, including those relating to his freestanding actual innocence claim (*App. 1614-17*), his subject matter jurisdiction claim (*App. 1625-28*), and his claim that he was tried while mentally incompetent (*App. 1628-30*). He requested that the court either hold an evidentiary hearing for these claims, or amend the court's orders to address the correct facts he presented in support of these claims. *App. 1617, 1628, 1630*. Stewart further alerted the lower court that the court's denial of discovery was based on incorrect facts, and requested the same alternatives for correcting this error. *App. 1622-25*.

Respondent filed its 59(e) Return in response to Stewart's 59(e) Motion. *App. 1635-53*. Respondent submitted a substantially identical proposed 59(e) Order, a copy of which Respondent provided to Stewart. See *App. 1658-76*. Upon his receipt of the same, Stewart noticed said order contained a mere one-paragraph general reference to the 59(e) motion. *App. 1675*. Moreover, the order failed to address, correct, or even mention the errors and omissions

raised by Stewart in his 59(e) Motion. *App.* 1675-76.

Stewart took an additional step to bring these errors and omissions to the attention of the PCR court by filing his 59(e) Reply. *App.* 1654-56. In said reply, Stewart notified the court that the proposed 59(e) Order failed to address or correct the errors and omissions in the court's orders of dismissal. *Id.* Stewart even specifically listed each error and omission that had not been addressed in the proposed order. *App.* 1655-56.

Despite this notice, the lower court signed the 59(e) Order, thereby denying Stewart's 59(e) Motion by generally stating: "The order of dismissal issued by this Court contains the appropriate findings of fact and conclusions of law". *App.* 1676.

In summary, the lower court record reflects that the court signed and issued three orders in this PCR action that were prepared by Respondent. Said orders were patently inadequate in addressing the facts and issues raised by Stewart. In addition, the conclusions of law rendered by the court in these orders were based on incorrect facts. Stewart repeatedly brought these errors and omissions to the attention of the lower court, but to no avail.

The facts in Stewart's case are identical to those in cases in which this Court has been consistent and unwavering, for over thirty years, in vacating the deficient orders and remanding the cases to the PCR courts with the appropriate instructions. See *supra* at pp. 6-7. Stewart prays the Court will issue a ruling in his case that is consistent with the Court's longstanding precedent.

**2. The PCR court erred in denying discovery and summarily dismissing the action without an evidentiary hearing.**

From the onset of this action, Stewart filed a motion requesting discovery "for the specific purpose of proving through science that the trial court lacked subject matter jurisdiction". *App.* 1426. Specifically, Stewart stated he was seeking to prove through science:

"(1) whether C.A. committed suicide, and (2) whether the skull fracture was created after death and did not cause death". *App.* 1427. Stewart argued that the merits of his claims "are inextricably rooted in the science of forensic pathology". *Id.* He further argued that if the court issued a ruling on the claims "without first allowing full development of the scientific evidence", such a ruling would be "unreasonable and would amount to a gross miscarriage of justice". *Id.*

With the motion, Stewart provided the PCR court with the earlier mentioned official statements from two pathology experts, including the pathologist who conducted C.A.'s autopsy for the State, Dr. Harley. *App.* 1466-81. Both pathologists made statements which gave weight and credibility to Stewart's claim that C.A. committed suicide. *App.* 1537. *See App.* 1467. ("Based on the reviewed information, suicide cannot be excluded") (Dr. Downs). *See also App.* 1477, 1593 ("It was my impression at the time of the autopsy that the right parietal skull fracture was probably caused by blunt force trauma, but I could be wrong") (Dr. Harley).

Both Dr. Downs and Dr. Harley identified procedural omissions from C.A.'s autopsy that presumably had an adverse impact on the scientific validity of the autopsy conclusions. For instance, Dr. Downs noted Dr. Harley's apparent failure to evaluate the death scene.

Specifically, Dr. Downs stated:

The autopsy report provides no indication that any scene materials were reviewed and/or evaluated in conjunction with the autopsy. Integration of the scene findings with the autopsy findings is critical to good forensic Pathology practice. All death cases begin at the scene. In order to opine about a violent cause of death, all available scene information should be reviewed and noted by the examining Forensic Pathologist.<sup>7</sup>

*App.* 1471.

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<sup>7</sup> Dr. Harley made statements confirming his failure to evaluate the death scene. *See supra p. 2 n. 1.* *See also App.* 1623.

Dr. Downs further noted previously unevaluated scene findings that are inconsistent with Dr. Harley's autopsy conclusion C.A. died from blunt force trauma. Specifically, Dr. Downs noted:

Significant inflicted premortem blunt force injury to the head resulting in death usually has open skin wounds. Here the finding of such injury is not possible due to the destruction of the scalp. Regardless, with such a wound causing death, copious blood would be expected at the scene of the event as well as any resting location(s) of the subject's body...The scene and sub-locations lacked prominent identified blood, both in general and associated with any specific weapon. With an open, eventually lethal head wound (as from a blow), blood evidence would be expected with a living subject. In a case with an open head wound, a deceased subject would be expected to actively bleed (if living) or ooze (postmortem) from the physical location of an injury to the final resting point of the deceased body. Such rate may differ but unless steps were taken to obfuscate same, a blood trail would be expected. At the scene of a violent struggle with open headwounds, blood transfer and spatter would be expected – even if the subject were rendered incapacitated and immobile, blood evidence would be expected.

App. 1470-71. See App. 1538.

In response to reviewing these findings and observations from Dr. Downs, Dr. Harley candidly admitted his conclusion C.A. died from blunt force trauma "could be wrong". *App. 1593*. Dr. Harley further confirmed that the lack of blood on the death scene was significant. *Id.* See *App. 1623*. In addition, Dr. Harley confirmed his failure to review C.A.'s mental health history. *App. 1594*. See *State v. Commander*, 396 S.C. 254, 267, 721 S.E.2d 413, 420 (2011) (*Quoting a forensic pathologist who testified that "without a history, the autopsy, in and of itself, is invalid"*). *App. 1540*.

Stewart's claims establish that C.A. committed suicide by "secretly ingesting something while she distracted him by asking him to get her something to drink". *App. 1422-23*. Initially, Dr. Harley seemed to rebut this claim by stating "no such pill was found in the stomach fluid, and nothing unusual was found in the blood at the toxicology exam". *App. 1477, 1593*. See *App. 1623*. However, upon further questioning by Stewart, Dr. Harley confirmed that said toxicology

exam was basic and was insufficient to detect if C.A. overdosed from anything other than an illicit drug (i.e. medication prescribed to her to treat her depression following her forced abortion). *App. 1479, 1593-94. See App. 1623.* Dr. Harley further clarified: "Had I known there was a question of suicide, I would have gotten more extensive toxicological studies". *Id.*

As for Stewart burning the body after C.A.'s death, both pathologists agreed to the strong probability this act produced a skull fracture after C.A.'s death that was misdiagnosed by Dr. Harley as being the injury that caused death. In Dr. Harley's own words, as quoted verbatim from his sworn statement:

Mrs. Lori Stewart has hired Dr. James Downs, a forensic pathologist, to review the case. He is of the opinion that the skull fractures were all postmortem and heat related. The body was charred by the gasoline fire and included a number of fractures from the heat. It was my impression at the time of the autopsy that the right parietal skull fracture was probably caused by blunt force trauma, but I could be wrong.

*App. 1593. See App. 1537.*

Both pathologists clearly indicated further scientific exploration through discovery was necessary to definitively resolve the claims. Dr. Downs stated:

Additional materials examination may allow a more specific determination regarding manner of death...Additional materials, in the form of examination of actual remaining tissues (either grossly with the naked eye and/or microscopically with retained histology slides). In addition, these issues might be satisfactorily addressed with examination of... photodocumentation of the external and internal detailed examination of the brain (and other) tissues...My opinions may be further supplemented by testimony and/or discovery not yet completed in this matter.

*App. 1467, 1470, 1472. See App. 1539.*

In response, Dr. Harley stated: "I have no objection to having Dr. Downs examine the pathology slides". *App. 1477-78, 1593-94. See App. 1539 n. 7.*

The lower court record clearly and unequivocally reflects a consensus among the two pathology experts involved in this action that (1) the new evidence raises serious questions

about the scientific validity of the Dr. Harley's autopsy conclusions related to C.A.'s cause and manner of death, and (2) these questions can be definitively resolved through discovery (i.e. by the pathologists being granted access to review the autopsy files). *App. 1536-37*. Despite these facts, the PCR court signed an order prepared by Respondent which denied discovery, stating: "[Stewart] cannot establish good cause to obtain discovery in an action that is procedurally barred and shall be summarily dismissed". *App. 1585*.

Stewart brought it to the attention of the lower court that it was "premature" for the court to make this ruling "until discovery has been completed". *App. 1533*. He further brought it to the court's attention that Dr. Harley was "the most uniquely qualified person to determine the merits of any claim challenging the accuracy of his autopsy conclusions...and Dr. Harley has clearly indicated Stewart's claims hold merit". *App. 1624*. Moreover, he brought it to the court's attention that the court's finding that Stewart's claims "lack merit"—the basis for the court's denial of discovery—was "based on an inaccurate statement of the facts supporting these claims...and procedural defaults being applied to incorrect facts". *Id. See App. 1585*.

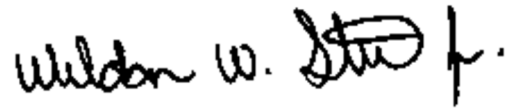
As discussed in the previous section, the PCR court signed two subsequent orders prepared by Respondent which affirmed the denial of discovery. *App. 1604-06, 1675-76*. Similarly, these subsequent orders disregarded Stewart's contentions that the lower court record clearly reflected an evidentiary hearing was necessary to resolve material factual disputes (i.e. whether Stewart's subject matter jurisdiction and actual innocence claims are exempt from procedural challenges). *App. 1533-35, 1630-33*.

## CONCLUSION

Based on the foregoing, Stewart respectfully petitions this Court to vacate the orders of the lower court and to remand his case to the same with instructions to grant discovery and to

hold an evidentiary hearing in an expedited manner. In the alternative, Stewart respectfully petitions this Court to vacate the orders of the lower court and to remand his case to the same to prepare an order which complies with the law.

Respectfully submitted,

A handwritten signature in black ink that reads "Weldon W. Stewart, Jr." The signature is written in a cursive style with a large, stylized "S" and "Jr." at the end.

July 2, 2025

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