THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2025-000136

Weldon W. Stewart, Jr., #295095 Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

Weldon W. Stewart, Jr. #295095
Trenton Correctional Institution
84 Greenhouse Road
Trenton, South Carolina 29847
(803) 275-3301
Pro Se Petitioner

Other Counsel of Record:
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Columbia, South Carolina 29211
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Attorney for Respondent

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Defendant's Requested Voir Dire Question Number 5

Which do you feel is worse: A guilty man set free or an innocent man imprisoned? Why?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ROP 9 FN 6

Defendant's Requested Voir Dire Question Number 6

Are you acquainted with either the victim's family or the solicitor, Mr. Blake?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 7

Has any of your female friends or relatives ever been involved in a relationship of which you disapproved?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 8

Do you feel that we, as human beings, will all react the same way to similar situations? Why?

A CERTIFIED TRUE COPY

Anita M. Williams

CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 9

Have you ever been falsely accused of anything? How did it make you feel?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 10

If the evidence merely raises a suspicion in your mind that the Defendant is guilty, but you also feel there is a reasonable possibility that the Defendant is not guilty, will you be able to return a verdict of not guilty?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 11

Have you formed any opinions as to the Defendant's guilt or innocence?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 12

Which do you feel best shows that a person is truly sorry when he does something wrong: him crying and saying he's sorry or him admitting what he has done wrong and changing his ways? Why?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 13

Have you or anyone in your family ever been the victim of a crime?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 14

Are you a member of any organizations? And please name them.

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Defendant's Requested Voir Dire Question Number 15

Please describe yourself using one word.

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ROP 9 FN 6

Defendant's Requested Voir Dire Question Number 16

What is the difference between you and the Defendant, Mr. Stewart?

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: Mr. Newton, will you step over here, please. You responded to one of the voir dire questions concerning your disapproval of a relationship, I believe?

MR. NEWTON: Yes, sir.

THE COURT: Would that affect your ability to give a fair and impartial trial in this case in any way?

MR. NEWTON: No, sir.

THE COURT: Okay. Mr. Stewart. If you don't mind, who is the relationship?

MR. NEWTON: My daughter.

THE COURT: Your daughter. Okay. Was it an older person?

MR. NEWTON: No, sir. It was a marital relationship.

THE COURT: Did it end in divorce?

MR. NEWTON: Yes, sir. It's pending.

THE COURT: The divorce is pending. How old are they?

MR. NEWTON: My daughter is 35 and her husband is 57.

THE COURT: 35 and 57. Okay.

MR. NEWTON: 35 and 57.

THE COURT: Mr. Blake, any questions?

MR. BLAKE: No, sir.

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 146, Barney Walters. What says the State?

THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: Ms. McLaurin, your response to my voir dire question about -- on the relationship in your family or did you?

MS. McLAURIN: Would you repeat that.

THE COURT: We were thinking that when I asked the questions a few minutes ago of the jury panel, I asked one about not approving of a relationship within your family. That wasn't you?

MS. McLAURIN: No.

THE COURT: Have you got a daughter between 13 and 18?

MS. McLAURIN: Yes, sir.

THE COURT: I apologize. I had the wrong question in mind. You responded that you had a daughter between 13 and 18?

MS. McLAURIN: Yes, sir.

THE COURT: The fact that you have a daughter between 13 and 18, will that affect your ability to give a fair and impartial trial in this case in any way?

MS. McLAURIN: Maybe.

THE COURT: It may. Okay.

MR. STEWART: For cause challenge.

THE COURT: Motion granted.

MR. STEWART: Motion for cause, sir.

CLERK OF COURT: Return to your seat, please. 118, Jane

MR. BLAKE: Please seat Mr. Lynch.

CLERK OF COURT: What says the Defendant?

MR. STEWART: May I approach, sir.

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: I think you responded to my question that you had a daughter between 13 and 8?

MR. LYNCH: Yes, sir.

THE COURT: Would the fact that you have a daughter between 13 and 18 affect your ability to give a fair and impartial trial in this case?

MR. LYNCH: I don't know. Not really.

THE COURT: Okay. You may step back.

MR. STEWART: I would like to challenge for cause. His response was uncertain and indicated that he -- the fact that he has a daughter between 13 and 18 will affect his impartiality because he didn't just come straight out and say no. I want a challenge for cause.

THE COURT: Okay. Correct me if I'm wrong. Madam Court Reporter, the response was, "No, not really?"

COURT REPORTER: Yes, sir.

THE COURT: Based on his response, I'm going to have to deny your motion, but you have two strikes left -- you got one strike left. I'm sorry. I don't want to mess you up.

MR. STEWART: Please seat the juror.

THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: Mr. Newton, will you step over here, please. You responded to one of the voir dire questions concerning your disapproval of a relationship, I believe?

MR. NEWTON: Yes, sir.

THE COURT: Would that affect your ability to give a fair and impartial trial in this case in any way?

MR. NEWTON: No, sir.

THE COURT: Okay. Mr. Stewart. If you don't mind, who is the relationship?

MR. NEWTON: My daughter.

THE COURT: Your daughter. Okay. Was it an older person?

MR. NEWTON: No, sir. It was a marital relationship.

THE COURT: Did it end in divorce?

MR. NEWTON: Yes, sir. It's pending.

THE COURT: The divorce is pending. How old are they?

MR. NEWTON: My daughter is 35 and her husband is 57.

THE COURT: 35 and 57. Okay.

MR. NEWTON: 35 and 57.

THE COURT: Mr. Blake, any questions?

MR. BLAKE: No, sir.

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 146, Barney Walters. What says the State?

MR. BLAKE: Please seat Mr. Walters.

CLERK OF COURT: Any cause for challenge from the Defendant?

MR. STEWART: May I approach, sir?

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

MR. STEWART: I would like to challenge for cause. I think that this is one of the jurors who said that a female relative in his family was involved in a relationship that he found that he disapproved of and that is circumstances of my girlfriend. The family strongly disapproved of my relationship. I think that might affect his impartiality.

THE COURT: I do not find that is sufficient grounds for the Court to entertain on that. Obviously, I note that you do have at least one strike left, if I counted right. I will deny that motion for cause. Okay.

CLERK OF COURT: Any cause for challenge from the Defendant?

MR. STEWART: No, sir.

CLERK OF COURT: Have a seat in the jury box, please. Two alternates. 89, Gloria McLaurin. What says the State?

MR. BLAKE: Please seat Ms. McLaurin.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Sir, may I approach, please.

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF

THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: Ms. McLaurin, your response to my voir dire question about -- on the relationship in your family or did you?

MS. McLAURIN: Would you repeat that.

THE COURT: We were thinking that when I asked the questions a few minutes ago of the jury panel, I asked one about not approving of a relationship within your family. That wasn't you?

MS. McLAURIN: No.

THE COURT: Have you got a daughter between 13 and 18?

MS. McLAURIN: Yes, sir.

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MS. McLAURIN: Yes, sir.

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MS. McLAURIN: Maybe.

THE COURT: It may. Okay.

MR. STEWART: For cause challenge.

THE COURT: Motion granted.

MR. STEWART: Motion for cause, sir.

CLERK OF COURT: Return to your seat, please. 118, Jane

MR. BLAKE: Please seat Mr. Lynch.

CLERK OF COURT: What says the Defendant?

MR. STEWART: May I approach, sir.

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THE COURT: Okay. You may step back.

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THE COURT: Okay. Correct me if I'm wrong. Madam Court Reporter, the response was, "No, not really?"

COURT REPORTER: Yes, sir.

THE COURT: Based on his response, I'm going to have to deny your motion, but you have two strikes left -- you got one strike left. I'm sorry. I don't want to mess you up.

MR. STEWART: Please seat the juror.

individuals know your importance; that you are very important to this case, and very important to me and you're very important to the system of justice.

But also, I'd just like to make you individuals aware that you do have my life in your hands.

MR. BLAKE: Your Honor, I would like to approach. I'm sorry I didn't talk about this before. I'm sorry to interpret.

THE COURT: Come up, please.

MR. BLAKE: I don't want this to go on.

(BENCH CONFERENCE HELD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

MR. STEWART: Excuse me. Now, in your voir dire examination questions, each of you did under oath say that no matter if evidence made you emotional or upset you, that you would put your emotions aside and weigh the facts.

Each of you did make this agreement with the Court before you were selected for the jury. Ladies and gentlemen, I know that there has been some evidence that has upset you, has caused you to become emotional, however, I ask that you put your emotions aside as you promised you would do and weigh the facts.

Now, there are two different types of evidence that has been presented to you in this case. First, there has been the facts and then there has been all this he said this, she said

THE COURT: Go ahead. Is everybody all right? Okay.

(JURY EXCUSED TO JURY ROOM AT 12:38 P.M.)

THE COURT: Counsel, I propose we break for lunch. Mr. Stewart, I know you're up here.

BAILIFF: Your Honor, she was having an anxiety attack before we came out. She was having congestion in her chest. It may be an anxiety attack.

THE COURT: All right. Mr. Clerk, if you will check on her. Tell them to go ahead and go to lunch. Let's break until 2 o'clock.

(JURY EXCUSED FOR LUNCH AT 12:39 P.M.)

(COURT IN RECESS AT 12:39 P.M. AND RECONVENES AT 1:51 P.M.)

MR. BLAKE: Judge, before the jury come in, I would like to put something on the record.

THE COURT: Okay. Mr. Crow isn't here. Yes, he is. Go ahead.

MR. BLAKE: And I can't fault the defendant for this, but the closing went to lunch was, of course, very abrupt because of the medical problem with the juror.

And when we broke for lunch, Mr. Stewart was, of course, on the stand in the middle of testifying as a witness would have been sequestered. And I didn't feel it was my place to step in and do anything, but he did talk to one of his witnesses. And, of course, he was talking to his parents.

I can't change anything that's already happened. I just

want it on the record and just want it to be clear that if we have to take another break, during that break he's not really to be communicating with anybody is my understand.

THE COURT: That's my fault.

MR. BLAKE: Well, everything was very irregular.

THE COURT: I should have -- it's definitely not his fault.

MR. BLAKE: I just wanted to put that on the record; that was all.

THE COURT: Good. Got everybody in that wants to come in? You ready?

MR. BLAKE: Would we hold that for a second. Do you have the information about the juror?

THE COURT: She's fine. She was checked.

(JURY ENTERS COURTROOM AT 2:05 P.M.)

THE COURT: All right. You may continue, Mr. Stewart.

MR. STEWART: Once again, my name is Weldon W. Stewart, Jr. I'm the defendant.

MR. BLAKE: Your Honor, may I move forward? I can't hear the defendant.

THE COURT: Speak up.

MR. STEWART: Once again, my name is Weldon W. Stewart, Jr. I'm the defendant. Before we break, I was in the process of explaining the writing to you. I'm not going to further explain that writing at this time.

I feel that I already explained to everyone it was a metaphor. It was basically about what people were saying about me, not me saying about myself. I've been advised just go ahead, go forward with my testimonya: nd let the evidence speak for itself instead of going on with this writing right here.

I have explained it was a metaphor. It's not literal. It's not me talking about myself. It's rumors that other people placed on me, and I'm not even going to go any further with explaining it.

I'm just going to go tell you about the things surrounding the day and what happened on that day. Just to give you a little background about myself, school -- I startec school when I was about three -- three years old. Went to school, gifted and talented classes when I was in the third grade.

Did pretty good in school, honor roll, principal's list most of my years until I got about in the fifth grade. I had a little trouble in the fifth grade -- between my fourth grade and my fifth grade years.

Young man tried to take my life, so it kind of changed me, affected me, and I didn't do that good in my fifth grade year, started getting into a little trouble ---

MR. BLAKE: Objection, Your Honor, relevance.

MR. STEWART: Just -- is just background.

MR. BLAKE: This isn't a bifurcated trial.

THE COURT: I'm going to give him some leadway. Just don't get too far with it. Go ahead.

MR. STEWART: Just, my grades started slipping lower in the fifth grade. Other than that, I did pretty good. Was doing good at home. Got older.

When I got about 15, I started dating this older lady. She was 27, and she kind of played with my -- played with me a little bit and kind of threw me away. So that was that.

But in school, I was pretty good. Shortly after that relationship, I got with another girl, and she got -- she became pregnant. She was older -- she was a little bit older than me. I was still 15. She was like a high school senior or something. She became pregnant, and she forced herself into an abortion by -- not an abortion, but forced herself into a miscarriage by drinking caster oil, something like that.

And had baby out on the floor and took pictures of it and sent it to me. So that's what happened. Shortly after that, I started -- I had problems with. That -- that really bothered me. Just seeing the pictures and stuff, so I really -- I started -- not getting in trouble, but just to be honest, what I said I was going to do in my opening statement, so I started using a little marijuana. That was how I coped with my pain and stuff like that.

ROP 13 FN 7

from: **Rick Jones** <[redacted]>

reply-to: Rick Jones <[redacted]>

to: Lori Stewart <[redacted]>

date: Thu, Nov 19, 2015 at 9:21 AM

subject: Re: Visit

very good meeting on Tuesday We need to get Reginald Covington and Peggy Ann Alford to court on the 7th at 2pm I will do a supeona for each of them Will you contact them and see if they want me to get it served on them or will they pick it up at our office in Bennettsville also we need to talk with them before court to go over testimony can you arrange that thanks

ROP 14 FN 8

from: **Lori Stewart** <[redacted] >

to: Rick Work <[redacted] t>

date: Mon, Nov 30, 2015 at 9:33 PM

subject: Re: Visit

Hello,

I had a lengthy conversation with Mr & Mrs Alford this evening, they would like to know if Tyrone will be at the motion hearing. They are extremely scared of him and nervous about being at the hearing with Tyrone there. Mrs. Alford would like to know if she can be excused based on that fear. She is willing to do another statement expressing her fear of testifying against Tyrone. If that is not acceptable, she would be willing to do a deposition ahead of time in the Judge's chambers with you, me, Ms. Munnerlyn and Judge Burch present.

I can come back out to the courthouse again tomorrow and we can discuss this further. Just let me know what time frame works best for you.

Thank you.

Respectfully,

Lori Stewart

from: **Rick Jones** <[redacted] t>

reply-to: Rick Jones <[redacted] t>

to: Lori Stewart <[redacted] >

date: Tue, Dec 1, 2015 at 10:04 AM

subject: Re: Visit

she cannot be excused but can be sequestered and not have contact with Tyrone (if he even comes) We will be able to keep everyone separated and not in the courtroom at the same time

ROP 14 FN 8

from: **Lori Stewart** <[redacted]>

to: Rick Work <[redacted]>

date: Wed, Dec 2, 2015 at 11:18 AM

subject: Re: Visit

Good morning,

Ok, great! I will go to Bennettsville and pick them up and have them both delivered this week. I have coordinated with Mrs. Alford to bring hers to her on Friday evening. I would like to come see you briefly tomorrow at your convenience to go over a few things I learned from Mrs. Alford that Weldon & I both think will REALLY help our case. Will you be at the courthouse tomorrow or at your office?

Also, please try to find out if Tyrone is going to be at the hearing so I can let the Alfords know when I see them Friday evening. I assured Mrs. Alford that if Tyrone has to appear that the court would be sure to keep them separated. But she said they would really like to know one way or the other if he is going to be there. Mr & Mrs Alford are really scared of Tyrone.

Have a great day.

ROP 15 FN 9

May 19, 2015

[redacted]
FBIHQ

Dear [redacted]

I am currently waiting on the hearing dates for 3 pending motions that have been filed with the court for a new trial, the outcome of these hearings will strongly support my appeal. Therefore, I would like to request an additional 60 day extension, with a new proposed deadline of August 7, 2015 to submit supplemental documentation for my appeal of the dismissal action [redacted]

Thank you for your consideration of this request.

Sincerely,

[redacted] Stewart
[redacted]

[redacted]

ROP 15 FN 9

From: [redacted]
Sent: Thursday, January 28, 2016 7:18 PM
To: [redacted] (FBI)
Subject: Lori Stewart

Hi [redacted]

As you may recall, my firm represented Lori Stewart [redacted] in her FBI disciplinary proceedings last year. The final level of Ms. Stewart's appeal was held in abeyance pending the outcome of her boyfriend's criminal case - which has progressed considerably and appears to be at the point of exoneration.

[redacted] A motion hearing will take place within the next 90 days in the boyfriend's criminal case. I am told by the criminal defense attorney that there is a high probability the boyfriend's conviction will be tossed due to new evidence (including serious evidence of prosecutorial and juror misconduct). If true, that would effectively vindicate Ms. Stewart's position that her boyfriend is not a criminal, but rather the victim of a gross miscarriage of justice. We believe such a finding would be enough to mitigate any security concerns about Ms. Stewart's own conduct.

[redacted]

Thank you,
[redacted]

September 15, 2016

[redacted]
FBIHQ

Dear [redacted]:

I have made good faith showings of the circumstances that have necessitated my requests for extensions. My previous extension requests have been granted pending the outcome of Mr. Stewart's criminal appeal on the basis that his exoneration would potentially establish my state of mind as a factor of mitigation. I have been diligently working towards this goal for the purpose of perfecting my reconsideration request.

I attended a motion hearing held in Darlington County for Mr. Stewart's case on May 26, 2016. I submitted an extension request shortly following this hearing. My contemplation, during the months following the motion hearing, has forced me to face the grim reality of the unlikelihood that Mr. Stewart will receive relief from the South Carolina Courts in a timely manner, despite the irrefutable evidence that supports his claims. I am presently awaiting the official court order from the May hearing, the filing of which has been unduly delayed for months. In summary, there has been absolutely no progress in Mr. Stewart's case since my last extension request.

Mr. Stewart's criminal appeal process has been delayed repeatedly by circumstances outside my control. My appeal process has inevitably been delayed as a result. This pattern of delays has persisted for almost two years. [redacted] However, I feel it is unfair to myself, and the Bureau, for an internal FBI matter to continue to be delayed by a state criminal appeal that unfortunately may take years to resolve.

[redacted]

[redacted]

[redacted]

The current disciplinary action arose from my decision to pursue justice on behalf of a man illegally detained in violation of Federal laws. [redacted]

My decision to place my career on the line to assist Mr. Stewart with his case was originally inspired by divine guidance, and reinforced by my intuition. I made a judgement call, as I was entrusted to do on a daily basis as a part of my job [redacted]. I eventually discovered a significant amount of credible evidence, while researching Mr. Stewart's case, which validated my original gut feeling.

[redacted]

Mr. Stewart disclosed to me that he is convicted of killing someone who in actuality committed suicide. It would seem on the surface that my emotional attachment to him would have clouded my research into his case. However, a lifetime of being lied to in my relationships created within me a staunch cynicism towards any man seeking my acquaintance, especially a man locked in prison who wasn't immediately forthcoming with me about his incarcerated status. My desire to safeguard my heart from the bitter sting of deception motivated me to thoroughly research every aspect of Mr. Stewart's case, relentlessly searching for any indication that he was being dishonest with me.

My absolute refusal to be hurt again served as a very strong motivation for me to diligently seek to uncover the truth regarding Mr. Stewart's claim of innocence. I concede that the motivating factor behind my thorough approach to researching Mr. Stewart's case was misguided, according to Bureau standards. However, the end result is that I independently subjected Mr. Stewart's case to the highest degree of scrutiny. I submit, under penalty of perjury, that I have independently confirmed every detail disclosed to me by Mr. Stewart in reference to his case. I have conducted extensive research, reviewed trial and pretrial

transcripts, consulted with forensic experts, interviewed witnesses and have worked tirelessly to gather credible evidence from every available source.

[redacted] I was advised that the most effective strategy to accomplish this would be to secure Mr. Stewart's exoneration.

While I agree with this strategy in theory, it has implicitly tethered my state of mind to the resolution of Mr. Stewart's case, which is effectively causing unwarranted delay in the resolution of my appeal. In actuality, my state of mind existed prior to any resolution that will be reached in Mr. Stewart's criminal appeal and is such that I would not have continued to assist him with his appeal unless I was firmly convinced that I am acting in the interests of justice. Furthermore, I would have immediately discontinued my involvement with Mr. Stewart if I had failed to independently discover strong corroborating evidence for his claim of innocence.

[redacted].

I am submitting this request for an independent review as a proposed alternative to indefinitely delaying my appeal process pending the outcome of Mr. Stewart's criminal appeal, [redacted] I have supplemented this request with a motion for a rehearing that will be filed immediately upon the receipt of the court order from Mr. Stewart's motion hearing. The motion sheds insight on the factors that have contributed to the unreasonable delays in Mr. Stewart criminal appeal, as well as outlines a lot of the evidence obtained through my research into his case. I am further submitting a newly discovered letter, which expresses suicidal intent and was written to Mr. Stewart by the decedent in his case just three months prior to her death.

I am submitting these documents with my request in good faith and to make a preliminary showing of the compelling evidence, establishing my state of mind as a factor of mitigation that I will be submitting for independent review. [redacted]

[redacted]

Respectfully Submitted,

[redacted] Stewart

[redacted]

[redacted]

ROP 15 FN 9

September 27, 2016

[redacted]
FBIHQ

Dear [redacted]

Please see the attached supplemental documentation I would like to submit in support of my request dated September 15, 2016 [redacted] These affidavits were filed with the court on December 14, 2015 and support the motion that I included with my request.

Sincerely,

[redacted] Stewart
[redacted]
[redacted]

ROP 15 FN 9

October 3, 2016

[redacted]
FBIHQ

Dear [redacted]:

On September 15, 2016, I submitted a request to [redacted] for an independent review. This request was made due to the unwarranted delays in Mr. Stewart's appeal process, and in acknowledgement that my current disciplinary action cannot be held off indefinitely pending Mr. Stewart's exoneration. I am awaiting a response to this request.

I am hereby supplementing the above-stated request with additional documents as a good faith showing that though I have made this request, I am still taking steps to promote the resolution of Mr. Stewart's case prior to the requested deadline of 90 days. Specifically, I have written the prosecutor currently handling Mr. Stewart's case and presented her with a reasonable proposal for a resolution to his case. Based on her feedback, I will be retaining counsel for Mr. Stewart for the purpose of handling all further negotiations.

I have enclosed all pertinent documents. It is my sincere hope that Mr. Stewart's case will be resolved prior to my requested deadline, as I have been advised that his exoneration will serve as the best evidence to establish my state of mind as a mitigating factor. I am diligently working towards that end so that I may be able to provide the best evidence in support of my reconsideration request.

Respectfully Submitted,

[redacted] Stewart

[redacted]

[redacted]

ROP 15 FN 9

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

October 4, 2016

Ms. [redacted] Stewart

Dear Ms. Stewart:

Reference is made to the February 2, 2015 letter that advised of your intent to appeal the dismissal action imposed by Further reference is made to your six separate requests for time extensions by which to submit supplemental appellate materials for purposes of your appeal. Each of your six extension requests, made between April 28, 2015 and June 13, 2016, were granted subject to the same caveat, that barring extenuating circumstances, you may not submit appellate materials after the deadline for submission has passed.

Subsequently, on September 15, 2016, you faxed your appellate submission, comprising 21 pages, to for inclusion in your appellate record. Thereafter, you faxed two additional submissions: one on September 27, 2016, comprising six pages, and the second on October 3, 2016, comprising seven pages.

Sincerely yours,

true meaning of the term, no criminal responsibility attaches to the act of the defendant.

Where it appears that a killing was unintentional, the perpetrator acted with no wrongful purpose in doing the homicidal act, that it was done while he was engaged in a lawful enterprise and that it was not the result of the criminal negligence, the homicide will be excused on the score of accident or misadventure.

Now, ladies and gentlemen, you are not partisans or advocates for the State of South Carolina or the defendant. You do no serve as jurors to reward friends or punish enemy. Obviously, such a perverted system of justice would be intolerable.

You have been selected by both the State and defendant to be fair and impartial jurors. It is your duty by your joint deliberations to determine the truth in this case, giving to the defendant the benefit of every reasonable doubt on each and every issue.

Then to the facts as you determine to be true, you then take apply the law which I've given to you, and thus arrive at a verdict which does speak the truth of the case, for the word "verdict," which has a Latin derivative means "a true saying." And when you have accomplished these responsibilities, you will have satisfied your oath as jurors and you will have discharged your duty to the Court.

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	Case No.:02-GS-34-1919
WELDON W. STEWART, JR.	)	PCR BRIEF
V.	)	
STATE OF SOUTH CAROLINA	)	

Petitioner brings this brief before the Court on the basis of newly discovered evidence establishing that the solicitor's office withheld the exculpatory nature of pretrial statements made by an expert witness for the State, and the solicitor's office failed to correct the false testimony of this witness at Petitioner's trial. Petitioner further raises this brief on the basis of newly discovered evidence establishing that the solicitor's office suppressed exculpatory crime scene notes written by a forensic crime scene investigator. As said conduct violates *Brady v. Maryland, 373 U.S. 83 (1963)*, as well as Petitioner's due process rights, Petitioner respectfully submits this brief to the Court hereby requesting that the Court grant him relief.

BACKGROUND

In August of 2003, Petitioner was convicted in Marlboro County of voluntary manslaughter and was sentenced to 30 years for this offense. Petitioner pled guilty to desecration of human remains and received a consecutive 9 year sentence for this offense. Petitioner has exhausted his state and federal appeals, and he brings this matter before the Court on the basis of newly discovered evidence.

Petitioner met [redacted] (Lori) Stewart, a 24 year FBI veteran, in March of 2014. Three months later, Petitioner disclosed to Ms. Stewart that [redacted] Allen (Victim), whom Petitioner is convicted of killing, died as a result of suicide. Petitioner confided in Ms. Stewart that he had repressed the memories of Victim's death and that Ms. Stewart questioning him about his case triggered him regaining access to these memories.

Petitioner's mother confirmed to Ms. Stewart that Petitioner had a prior history of repressing the memory of a traumatic childhood event in which Petitioner was almost drowned by neighborhood bullies. Petitioner was ten years old at the time of this incident, and he had no recollection of the incident until several years later when he was reminded of the incident by his counselor during a therapy session. Victim's death occurred less than two years after the therapy session in which Petitioner regained consciousness of this traumatic childhood event.

Ms. Stewart, who was still skeptical about Petitioner's claim of innocence, relentlessly questioned Petitioner concerning the details of his case. Specifically, Ms. Stewart wanted to know how it was possible that a person who committed suicide could die from blunt force trauma to the head, Victim's official cause of death. Petitioner maintained that Victim died from suicide and that she didn't suffer from any blunt force trauma injuries.

Ms. Stewart reluctantly agreed to look into Petitioner's case to see if she would find any corroborating evidence for Petitioner's claims. Her curiosity was piqued because she felt that Petitioner was too intelligent to believe that he had a realistic chance of deceiving a seasoned FBI employee with such an outrageous story. Thus, she intuitively reasoned that there was a slight possibility that Petitioner was telling her the truth. It was this possibility which convinced her to begin investigating Petitioner's claim of innocence.

The FBI caught wind of Ms. Stewart's activities and initiated an internal investigation into her involvement with Petitioner. Ms. Stewart learned of this investigation in August of 2014 when she was warned that she was at risk of losing her security clearance based on her association with Petitioner, a convicted felon. She was advised that she should immediately sever ties with Petitioner in the interests of saving her career, which had been exemplary throughout her over two decades of service with the Bureau. Ms. Stewart held firm to the position that she could not heed this advice, in good conscience, without first completing her preliminary investigation into Petitioner's claim of innocence.

Between the months of September and December of 2014, Ms. Stewart discovered evidence which added credibility to Petitioner's claims. She conducted professional background checks on the pathologists who performed the "forensic autopsy" on Victim. She discovered that the lead pathologist, Russell Harley (Pathologist), lacked certification in forensic pathology and that the second pathologist was a mere student in training who followed the guidance of Pathologist in conducting the autopsy on Victim.[1] Ms. Stewart also reviewed court documents revealing that Pathologist made pretrial statements to Daniel Blake (Solicitor) expressing Pathologist's uncertainty about the accuracy of his conclusions in reference to Victim's cause of death.

The cumulative impact of this evidence was such that Ms. Stewart was convinced of the strong probability that Petitioner was unlawfully detained in violation of federal laws. She was equally convinced that it would be an extreme disservice to the core principles of her professional oath if she were to knowingly abandon Petitioner to suffer the fate of injustice. In essence, Ms. Stewart had discovered too much corroborating evidence for Petitioner's claim of innocence to allow her to walk away from Petitioner's case with a clear conscience. Thus, she respectfully declined the terms of the offer to rehabilitate her career, and she affirmed her intention to pursue justice on behalf of Petitioner.

Ms. Stewart was dismissed from her role with the FBI in January of 2015, as her decision to continue her unauthorized association with Petitioner posed a potential conflict of interests with her professional duties. Her attorney advised her that Petitioner's exoneration would give her the greatest chance of successfully appealing this dismissal, in that his exoneration would vindicate her position that Petitioner is a victim of a gross miscarriage of justice. Ms. Stewart, having sacrificed her prestigious career in the pursuit of justice, was now fully invested in ascertaining the truth in Petitioner's case.

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[1] Professional background of Pathologist is included in Supporting Documents.

In the months following her dismissal from the FBI, Ms. Stewart continued her investigation into Petitioner's claim that Victim did not die from blunt force trauma to the head. The trial testimony of Pathologist established that his conclusions were based on the presence of a skull fracture and brain hemorrhage. Ms. Stewart's search to comprehend the significance of Pathologist's pretrial statements led to her finding publications from forensic experts on thermal injuries. Through the information found in these publications, she discovered that the pretrial statements of Pathologist revealed that Pathologist could not rule out the possibility that the skull fracture and brain hemorrhage occurred after Victim's death as a result of the fire.

Ms. Stewart presented her findings to Petitioner, who stated that though Solicitor did mention Pathologist's statements during a pretrial hearing, Solicitor never disclosed to Petitioner any information in reference to the possibility that the skull fracture and brain hemorrhage were thermal injuries. Ms. Stewart confirmed, by reviewing Court documents, that Solicitor concealed the exculpatory nature of Pathologist's pretrial statements by claiming that these statements established the possibility that Victim died as a result of burning. She further noted that Solicitor failed to correct the misstatements made by Pathologist at trial indicating that the skull fracture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma.

Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is as common location for thermal injuries. The pathologist further explained that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs.

Petitioner submitted an ex parte motion to the trial Court wherein he informed the Court of these circumstances and requested that the Court order the disclosure of the autopsy photographs.[2] The Court refused to order the disclosure of this evidence.[3] Petitioner then submitted a request to the Medical University of South Carolina (MUSC) for disclosure of the autopsy photographs pursuant to SC Code Section 17-5-535.[4] MUSC failed to comply with this request.

In July of 2016, Ms. Stewart discovered a handwritten letter Victim wrote to Petitioner approximately three months prior to Victim's death.[5] Victim expressed in this letter her profound heartache due to the fact that Petitioner had fathered a child with another girl. She also made several references in the letter to a child she had been forced by her parents to abort, an event which left Victim severely traumatized. Victim stated twice in the letter that she was contemplating suicide, and she made several other statements in the letter from which it could be inferred that Victim was expressing suicidal intent.

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[2] Petitioner's ex parte motion and proposed order are included in Supporting Documents.
[3] Email from Marlboro County Clerk of Court to Ms. Stewart is included in Supporting Documents.
[4] Petitioner's letter to MUSC is included in Supporting Documents.
[5] A forensic handwriting expert confirmed that the handwriting found in the letter appeared to be the same handwriting found on the backs of photographs of Victim that she had given to Petitioner and his mother.

Ms. Stewart noted that Victim concluded her letter to Petitioner with a reference to the memory of her aborted child. Ms. Stewart further noted that the date of Victim's death is chronologically proximal to the one year anniversary of Victim's abortion, a fact which was confirmed by Victim's father during his testimony at Petitioner's trial.[6] Thus, Ms. Stewart concluded that her discovery of Victim's letter to Petitioner provided substantial corroboration for Petitioner's claim that Victim died as a result of suicide, and she redoubled her efforts to investigate Petitioner's case.

The contents of Victim's letter led Ms. Stewart to inquire about Victim's mental health history. Petitioner informed her that Victim had been undergoing mental health counseling at Tri County Mental Health Center from shortly after her abortion up until her death. Tri County personnel confirmed that a name matching Victim's name had been found in their database but stated that they could provide no further information without a court order.[7] Petitioner's ex parte motion requesting that the trial Court order the disclosure of Victim's mental health records was denied.[8]

Ms. Stewart shifted the focus of her investigation to the death scene. In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case.[9] While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to him.

PROCEDURAL HISTORY

Brady Motion

Petitioner was originally represented by a court-appointed attorney, Wade Crow. On December 11, 2000, Mr. Crow filed a "Rule 5 and Brady Motion" wherein he requested to be provided with "any and all investigative reports, information or material which tends to establish the Petitioner's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witnesses whom the State will or may call at trial".[10] Mr. Crow also requested in the motion disclosure of "all inconsistent statements made by a particular witness or between witnesses, whether written or oral, that are known to the solicitor's office or any other law enforcement agency".

Exculpatory Evidence Motion

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[6] See Trial Transcript page 122 lines 6-24. ***Pertinent sections of all Trial and Pretrial Transcript references are included in Supporting Documents*.**

[7] Petitioner's subpoena and letter in response from Tri County personnel are included in Supporting Documents.

[8] Petitioner's ex parte motion and proposed order are included in Supporting Documents. See also email from Marlboro County Clerk of Court at footnote 3.

[9] SLED also provided Ms. Stewart with a CD containing the scene photographs. Letters from SLED are included in Supporting Documents.

[10] Brady motion and cover letter are included in Supporting Documents.

On May 31, 2002, Mr. Crow filed a "MOTION TO PRODUCE EXCULPATORY EVIDENCE" wherein he requested that the solicitor's office disclose "any and all exculpatory evidence, whether it be oral, written, documented, or photographic, that might aid the Petitioner in exculpating himself of the charges in question".[11] On June 6, 2002, Mr. Crow filed a motion to be relieved as counsel.

Pretrial Hearing Timeline

Petitioner proceeded pro se, with Mr. Crow acting as stand-by counsel, in several pretrial hearings during which discussions were held in reference to the pretrial statements made by Pathologist. The timeline for these pretrial hearings is as follows:

- ***July 16, 2002 Pretrial Hearing***

This pretrial hearing was held before the Trial Court. During this hearing, the Court heard arguments from Petitioner and Solicitor in reference to Petitioner's motion to sever the trials for the murder and desecration of human remains charges. Petitioner argued that the incidents giving rise to these offenses occurred hours apart and that he would be prejudiced if he was not granted separate trials for the offenses. Solicitor argued that these charges arose from a single chain of events and that, according to case precedent, separate trials should not be held for these offenses.

Solicitor, while arguing against Petitioner's motion, stated his intention to amend Petitioner's murder and desecration indictments. While presenting the Court with his reasons for amending Petitioner's murder indictment, Solicitor stated the following:

"[O]ne of the reasons we are going to amend the indictment, it's not 100 percent clear how the death occurred. The autopsy says there was a blow to the head, but the body when it was found was in very bad shape and there is a question even with the pathologist about the cause of death...[T]he autopsy report basically has some conjecture. And after talking with the pathologist whether the cause of death was a blow to the head or it was the actual burning of the body. The problem being that when a body is burned, the skull bursts and so there is some question. In fact when the State amends the murder indictment, we intend to include alternative possibilities as to the actual cause of death."

Pretrial Transcript (July 16, 2002) page 12 line 23 - page 14 line 2.

- ***October 17, 2002 Pretrial Hearing***

This pretrial hearing was also held before the Trial Court for purposes of arraigning Petitioner on the amended murder and desecration indictments. Petitioner pled guilty to the desecration charge and not guilty to the murder charge. Petitioner then made a motion to quash the murder indictment on the basis that the language of the indictment included burning as a possible cause of death. While making his motion to quash the amended murder indictment, Petitioner stated the following:

"Your Honor...I wish to object to the terminology and the murder indictment. It says that 'striking, pushing and or burning to cause death.' According to the autopsy report, which I have here, death was caused by blunt trauma to the head...And I ask that this indictment not be allowed to be brought

[11] Motion and affidavit of service are included in Supporting Documents.

in the courtroom including burning as a possible cause of death because this contradicts the autopsy report."

Pretrial Transcript (October 17, 2002) page 6 line 21 - page 7 line 12.

Solicitor responded to Petitioner's motion by stating the following:

"Your Honor, I have talked to the pathologist. I think Mr. Stewart is referring to--at the bottom of the summary page, probable cause of death was blunt force trauma to the head. The pathologist, Dr. Harley, says that it is a possibility that the death was caused by burning...Dr. Harley does note that there is a skull fracture. He also notes that there is full body charring and heat fractures to the skull. So I have talked with him and the reason for him putting these different alternatives is that the only person we understand was there is Mr. Stewart..."

Pretrial Transcript (October 17, 2002) page 7 line 13 - page 8 line 5.

- ***December 11, 2002 Pretrial Hearing***

This pretrial hearing was held before Honorable James E. Lockemy. The primary focus of this hearing was Petitioner's motion to interview Pathologist. Arguments on this motion led Judge Lockemy to inquire about a possible double jeopardy issue that could arise based on the language of the amended murder indictment.

Petitioner presented his grounds for the motion by stating the following:

"[I]n several hearings...Mr. Blake has indicated that the pathologist will be deviated from the autopsy report in trial. And I haven't received the report to show these deviations. I would just like to know why would the pathologist do an autopsy report then say something totally different from the report at trial...The autopsy report states that the cause of death is blunt force trauma to the head...But when I objected to the terminology in the indictment, I objected to the inclusion of burning being included as a possible cause of death. Because as you know, I have already been convicted of desecration of human remains for the actual burning...So it's already been established that the victim was deceased before the actual burning occurred."

Pretrial Transcript (December 11, 2002) page 7 line 16 - page 8 line 22.

Judge Lockemy, after getting clarification from Petitioner about burning being included in the amended murder indictment, inquired of Solicitor the following:

"Mr. Blake, how are you going--how can you prove he killed a person by burning if he's already been convicted of--are y'all saying that he burned someone after they died?"

Pretrial Transcript (December 11, 2002) page 9 lines 13-16.

Solicitor responded to Judge Lockemy's inquiry by stating the following:

"That is very astute and tricky of Mr. Stewart...And the pathologist said there is a possibility that the death occurred through the burning."

Pretrial Transcript (December 11, 2002) page 9 line 18 - page 10 line 2.

Judge Lockemy responded to Solicitor's argument as follows:

"Let me ask you this, though...The jury finds that the victim died as a result of burning, then wouldn't that--how are you going to come back to a jeopardy question that he's already pled guilty to burning a deceased person? So therefore, the State has basically come to the conclusion that the person was dead when they were burned. Because you can't be convicted of burning a live person through that statute, it has got to be a deceased person. And if he's already been convicted of that, would that be jeopardy in a way as far as the burning? I mean that's an interesting point that you may better start looking at."

Pretrial Transcript (December 11, 2002) page 10 lines 8-21.

Solicitor responded by stating the following:

"It is certainly an interesting point. Mr. Stewart, I said tricky because we were in the middle of doing an arraignment and Mr. Stewart pled guilty to the charge. The facts haven't yet been determined as to the murder...But we don't know what the cause of death is right now."

Pretrial Transcript (December 11, 2002) page 10 line 25 - page 11 line 7.

Judge Lockemy granted Petitioner's motion to interview Pathologist, which was followed by a brief discussion in which the filing of the Rule 5 and Brady motion was mentioned.

Pretrial Transcript December 11, 2002 page 12 line 20 - page 13 line 24.

- ***June 26, 2003 Pretrial Hearing***

This pretrial hearing was held before Honorable John M. Milling. The primary focus in this hearing was Petitioner's motion for a forensic pathologist. This hearing was the fourth hearing in which the Court heard arguments from Petitioner and Solicitor in reference to Pathologist.

Petitioner presented grounds to the Court for his motion for a forensic pathologist by stating the following:

"Sir..I have this autopsy report...I have the opinion here that says, 'blunt force trauma to the head'. However, on the indictment for murder...it also has burning included as a possible cause of death, and when I objected to the terminology of this indictment in an October 17, 2002, hearing held before Judge Burch, the State did indicate that the pathologist, Dr. Harley says that it is a possibility that the victim died as a result of burning...I do not see this reflected anywhere in the autopsy report. Therefore, I originally made a motion to interview the pathologist during a December 11th...hearing held before Judge Lockemy. He granted this motion stating that I do have to interview the pathologist at least 21 days before my trial...Sir, the problem is that the autopsy report says one thing. My indictment says another, and the State has indicated that the pathologist at times has said another thing. So I'm not sure as to the accuracy of the pathologist's opinion. They certainly aren't consistent."

Pretrial Transcript (June 26, 2003) page 23 lines 5-25.

The Court, after hearing Petitioner's argument, questioned Solicitor as follows:

THE COURT: Well, the only opinion that you know at this point is what is contained in their report. The State has said something about burning. Where do you get that from, Solicitor?

MR. BLAKE: Discussions with the pathologist, Your Honor.

Pretrial Transcript (June 26, 2003) page 24 lines 2-6.

After hearing much discussion on Petitioner's motion for a forensic pathologist, the Court ruled as follows:

"I am at this time going to deny your request for an independent pathologist. I am not going to contend that you cannot bring it back up but you have not yet interviewed the pathologist who did this--who prepared this report, rather. You have not had a chance to ask this pathologist, you know, 'Are you going to testify that I burned this person as a manner of causing death or are you going to testify like the indictment I pled to that she was dead at the time I burned her?' Depending on what response you get may depend on what needs to be done thereafter. So I would ask the State to go ahead and make those arrangements to get him down to talk to the people who performed the pathology or performed the autopsy, rather, so that this issue can be cleared up. It may be that Mr. Blake's understanding of what was going to be testified to or what the pathologist meant by his findings was in error, and so you may--you will find out after you interview the pathologist as to, you know, 'Why would the State be trying to contend that I burned the person as a manner of causing death? The State's already had me plead to burning her as a manner of desecration.' And once you get the answer there, it may or may not leave you needing to come back and renew the motion but at this point in time, I'm going to deny it."

Pretrial Transcript (June 26, 2003) page 29 line 9 - page 30 line 7.

- ***July 15, 2003 Pretrial Hearing***

This pretrial hearing was held before the Trial Court. Petitioner had previously interviewed Pathologist on July 1, 2003, and Pathologist confirmed during this interview that he had never told Solicitor that burning was a possible cause of death. Solicitor's request that the Court amend Petitioner's murder indictment was as follows:

"First thing the State has...I've talked to Mr. Stewart's stand-by counsel, Mr. Crow, about amending the indictment by deleting the words, 'pushing and or burning.' I'm showing this to Mr. Stewart...It's my understanding that this is something that is agreed to by the parties, but I wanted to put that on the record so there is no confusion."

Pretrial Transcript (July 15, 2003) page 4 line 14 - page 5 line 5.

The Court, by agreement of all parties, removed the words "pushing and or burning" from Petitioner's murder indictment.

Pretrial Transcript (July 15, 2003) page 5 lines 6 - 11.

STATEMENT OF GROUNDS

Petitioner moves the Court to grant him a new trial based on the following:

1. Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist.

2. Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial.

3. Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State.

LEGAL ARGUMENT

1. Brady Violation (Pathologist) – PCR QUESTION # 11 (a)

A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to the accused guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419 (1995); Gibson v. State, 344 S.C. 515, 514 S.E.2d 320 (1999).

Petitioner's Brady claim arises from the fact that Solicitor suppressed the exculpatory nature of Pathologist's pretrial revelation to Solicitor that Pathologist questioned the accuracy of his conclusions in reference to Victim's death. Though Solicitor did disclose Pathologist's revelation, while making this disclosure Solicitor distorted the facts in a manner which created the false impression that Pathologist's revelation to Solicitor was not favorable to Petitioner. In essence, Solicitor concealed the exculpatory nature of Pathologist's admission that he was uncertain about Victim's cause of death by Solicitor falsely claiming that Pathologist's uncertainty was based upon factors which were incriminating to Petitioner.

During a July 16, 2002 pretrial hearing, Solicitor stated:

"[O]ne of the reasons we are going to amend the murder indictment, it's not 100 percent clear how the death occurred. The autopsy says there was a blow to the head, but the body when it was found was in very bad shape and there is a question even with the pathologist about the cause of death...[T]he autopsy report basically has some conjecture. And after talking with the pathologist whether the cause of death was a blow to the head or it was the actual burning of the body. The problem being that when a body is burned, the skull bursts and so there is some question."

See Pretrial Hearing Timeline (July 16, 2002 Pretrial Hearing) under Procedural History.

Solicitor's above-mentioned disclosure revealed Solicitor's knowledge that "there is a question even with the pathologist about the cause of death". However, Solicitor claimed that Pathologist questioned "whether the cause of death was a blow to the head or it was the actual burning of the body". Solicitor further claimed that the reason Pathologist was having a "problem" determining which of these factors caused Victim's death was that "when a body is burned, the skull bursts". Thus, according to Solicitor's disclosure, Pathologist's uncertainty about the cause of Victim's death was due to the possibility that Victim's death could have resulted from the burning of her body.

Solicitor persisted in creating the impression that the aforementioned disclosure was not favorable to Petitioner by repeatedly claiming, during multiple pretrial hearings, that he had been told by Pathologist that it was possible that Victim died as a result of burning. Solicitor further made statements, in support of this claim, which tended to undermine the accuracy of Pathologist's conclusion that Victim died as a result of blunt force trauma to the head. (i.e. "The autopsy says there was a blow to the head, but the body when it was found was in very bad shape"; "the autopsy report basically has some conjecture"; " Dr. Harley does note that there is a skull fracture. He also notes that there is full body charring and heat fractures to the skull"; "we don't know what the cause of death is right now"). *See Pretrial Hearing Timeline under Procedural History*.

Solicitor listed burning as a possible cause of death in Petitioner's murder indictment and told three different judges that the inclusion of burning in the murder indictment was based on "discussions with the pathologist", during which Solicitor claimed he was told by Pathologist that burning was a possible cause of death. The totality of the circumstances surrounding Solicitor's disclosure, in reference to Pathologist's uncertainty about Victim's cause of death, gave every indication that Pathologist's uncertainty was due to factors which would incriminate Petitioner for murder, based on Petitioner's admission that he burned Victim's body.

During a June 26, 2003 pretrial hearing, Petitioner made a motion to obtain a forensic pathologist on the basis that "the autopsy report says one thing. My indictment says another, and the State has indicated that the Pathologist at times has said another thing". The Court denied Petitioner's motion, reasoning that Petitioner needed only to ask Pathologist "Are you going to testify that I burned this person as a matter of causing death or are you going to testify like the indictment I pled to that she was dead at the time I burned her?" *See Pretrial Hearing Timeline (June 26, 2003 Pretrial Hearing) under Procedural History*.

Pathologist, during a July 1, 2003 interview with Petitioner, denied telling Solicitor it was possible Victim died as a result of burning. On July 15, 2003, Solicitor again amended Petitioner's indictment for murder, removing burning from the indictment. As Solicitor's claim, in reference to the possibility that burning caused Victim's death, was proven to be false, it was deduced that the facts Solicitor presented to the Court in support of this claim were equally false.

It was not until Ms. Stewart was investigating Petitioner's claim of innocence that it was discovered that Solicitor's aforementioned disclosure contained evidence favorable to Petitioner. Solicitor indicated, as a part of his disclosure, that he had been told by Pathologist that the reason for Pathologist's uncertainty about Victim's cause of death was that "when a body is burned, the skull bursts". Ms. Stewart's research into the significance of this portion of Solicitor's disclosure revealed

that the language, used by Solicitor while presenting the Court with the reason for Pathologist's uncertainty, was descriptive of thermal injuries.

According to forensic science:

"*The skull bursts due to the formation of steam within the skull cavity os a result of intense heat. Such explosive post-mortem fractures are accompanied by gaping defects and separation of non-united sutures and protrusion of brain matter. Intense heat can lead to desiccation of the skull, with the production of post-mortem thermal linear fracture, commonly located on either side of the skull, above the temples. They usually consists of several lines which radiate from a common centre. If the appearance is not typical, distinction from an ante-mortem skull fracture may be difficult.*"

Forensic Pathology (Thermal Injuries) by Dr. Dinesh Rao.

Ms. Stewart's research into thermal injuries shed light on the true implications behind the language used by Solicitor while explaining the reasons Pathologist questioned the accuracy of his conclusions in reference to Victim's cause of death. Solicitor indicated that he had been told by Pathologist "when a body is burned, the skull bursts and so there is some question". If this language is compared to the aforementioned quote on thermal injuries, it is undeniable that Solicitor was describing the factors which produce thermal injuries. In light of the fact that this language was used by Solicitor while giving details about his discussions with Pathologist in reference to Victim's cause of death, it is clear that at some point Pathologist informed Solicitor that the real reason Pathologist was uncertain about Victim's cause of death was that Pathologist could not distinguish whether the skull fracture he concluded caused Victim's death was an antemortem (before death) blunt force trauma injury, or a postmortem (after death) thermal injury. "The problem being that when a body is burned, the skull bursts and so there is some question." *See Pretrial Hearing Timeline (July 16, 2002 Pretrial Hearing) under Procedural History.*

During the July 16, 2002 Pretrial Hearing, following the above-referenced disclosure made by Solicitor, discussion was held concerning Petitioner's motion for disclosure. The Court stated to Solicitor "I'm taking that as an assumption that you're assuring the Court that you've turned over everything that you know to this point". Solicitor responded, "Certainly, Your Honor". Pretrial Transcript (July 16, 2002) page 15 lines 1-21.

The context in which Solicitor disclosed this evidence to Petitioner and the Court was such that it completely concealed the exculpatory nature of Solicitor's conversation with Pathologist in reference to Victim's cause of death. Moreover, Solicitor distorted the details of his discussions with Pathologist to the extent that it appeared that the evidence gained through these conversations was not favorable to Petitioner. Whether Solicitor's concealment of evidence favorable to Petitioner was deliberate or inadvertent is irrelevant to Petitioner's Brady claim, as the end result is that exculpatory evidence was withheld from Petitioner by Solicitor. *"It does not matter whether the prosecutor's misconduct in foiling to reveal Brody evidence is due to negligence or intentional act because a court may find a Brody violation irrespective of the good or bod faith of the prosecutor."* *Gibson v. State, supra.*

In applying the Brady analysis to Petitioner's case, first, the withheld evidence was favorable to Petitioner because it was proof of the possibility that the injury thought to have caused Victim's death was a postmortem injury. Second, this evidence was known to Solicitor, as Solicitor's own statements led Ms. Stewart to the discovery of the evidence. Third, Solicitor suppressed the evidence by failing to reveal the true context in which the evidence was given to him. Thus, Petitioner believes the first three prongs of his Brady claim are firmly established.

Evidence is material under Brady if there is a "reasonable probability" that the result of the proceeding would have been different had the information been disclosed. Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006). The question is not whether Petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence he received a fair trial "resulting in a verdict worthy of confidence". Kyles v. Whitley, supra.

During Petitioner's trial, Solicitor questioned Pathologist as follows:

Q. And it's your professional opinion that she (Victim) died from blunt force trauma to the right parietal?

A. Yes, sir, that's our conclusion.

Trial Transcript page 166 lines 8-10.

The withheld evidence of Solicitor's pretrial conversations with Pathologist was material for impeachment purposes, as Petitioner could have used this evidence to discredit Pathologist's conclusion that Victim "died from blunt force trauma". By demonstrating Solicitor's knowledge of the exculpatory value of Pathologist's pretrial admissions, Petitioner could have laid the foundation for a vigorous argument that Pathologist had been guilty of negligence and that Pathologist's trial testimony, in reference to Victim's cause of death, was false. In essence, it is beyond dispute that the withheld evidence could have been used to impeach the testimony of Pathologist. Thus, Solicitor's failure to disclose this evidence deprived Petitioner of a fair trial.

"When the state does not disclose information in its possession that might reasonably be considered favorable to the defense, it precludes the trier of fact from gaining access to such information and thereby undermines the reliability of the verdict." United States v. Bagley, 473 U.S. 667 (1985).

There is a reasonable probability that the result of the proceeding would have been different had the information been disclosed, as the only matter in dispute at Petitioner's trial, due to Pathologist's conclusions, was the manner by which Victim received blunt force trauma to the head. Solicitor's case at trial was circumstantial, and was based on proving that Victim received blunt force trauma by the intentional conduct of Petitioner. Petitioner, who admitted that he was present when Victim died, was left with no alternative other than to contend that Victim received blunt force trauma by unintentional conduct. Solicitor withheld evidence establishing that the injury alleged to be a blunt force injury could have occurred after Victim's death, and there is a reasonable probability that the disclosure of this information would have damaged the State's case to the extent that it could have created a reasonable doubt in the minds of the jurors, which would have resulted in a verdict of acquittal.

"Favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles v. Whitley, *supra.*

The withheld evidence was material to Petitioner's guilt or innocence because the conclusions of Pathologist was the essence of the State's case against Petitioner, and the entire prosecution's theory of murder was built upon the foundation that Victim died as a result of blunt force trauma. The focus of the investigation SLED conducted into Petitioner's case was guided by Pathologist's conclusions about Victim's cause of death, as the conclusion that Victim died from blunt force trauma is reflected throughout the investigative files produced by SLED.[12] Additionally, the conclusions of Pathologist serve as the basis for Petitioner's murder indictment, and was the vehicle through which the Court was given jurisdiction to try Petitioner for murder.

The circumstances which led to Petitioner's conviction are so interwoven with Pathologist's conclusions about Victim's cause of death, that the impact of Solicitor's Brady violation completely unravels the constitutional fabric of Petitioner's conviction and *"thereby undermines the reliability of the verdict". See* United States v. Bagley, *supra.* The collective impact of the aforementioned Brady violation and the newly discovered evidence that Victim's death may have resulted from suicide raises the issues of subject matter jurisdiction and Petitioner's actual innocence. Thus, Petitioner's trial was rendered fundamentally unfair by Solicitor's failure to disclose favorable evidence.

For the sake of transparency, Petitioner concedes that he did not inform anyone of the possibility that Victim died from suicide prior to his disclosure to Ms. Stewart, due to the fact that he had repressed the memory of Victim's death. However, these facts do not diminish the fact that Petitioner was denied due process by Solicitor's withholding of favorable evidence, as it was Solicitor's *"affirmative duty to turn over to the Petitioner, all information known to the government that might reasonably be considered favorable to the Petitioner's case".* Brady v. Maryland, *supra. "The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching."* Gibson v. State, *supra.*

Petitioner believes that he has demonstrated the four prongs of his Brady claim by the facts in his case. As such, Petitioner believes these facts should be sufficient to convince the Court that Petitioner's Brady claim is complete.

2. Failure to Correct False Testimony (Pathologist) – PCR Question # 11 (b)

As a result of the aforementioned Brady violation, a second Brady claim arises *"where the previously undisclosed evidence revealed that the prosecution introduced trial testimony it knew or should have known was perjured".* United States v. Agurs, *427 U.S. 97, 103 (1976).* A *"prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with the rudimentary demands of justice."* Giglio v. U.S., *405 U.S. 150, 153 (1972).*

In this section of the brief, Petitioner will compare the trial testimony of Pathologist to the information gathered through Ms. Stewart's investigation into Petitioner's case. Petitioner is making

[12] Pertinent sections of Law Enforcement investigative files are included in Supporting Documents.

this comparison for purposes of demonstrating to the Court the astounding degree of the deception perpetuated upon the Court and jurors by Solicitor knowingly presenting false evidence through Pathologist's testimony concerning how Pathologist reached his conclusions about Victim's cause of death. During Petitioner's trial, Pathologist testified to the following:

Q. When you say "remains", what did they look like?

A. Charred. The - - most of the flesh was gone. You can see the intestines. You can see the brain. The heat had been intense. There had been fractures of a number of bones. All the ribs was broken. The skull had some cracks and fractures in it. The left hand was missing. Both feet were missing.

Q. Given the fact that those bones were broken, could you tell how those bones were broken on the legs, various places on the ribs?

A. My assumption is that this was from fire because the body was so severely charred. Totally black from top to bottom. I couldn't say what might have happened to, for instance, the hands because they weren't there.

Q. And you said the ribs were broken, could they have been broken from some other cause?

A. I don't think so. Even though the body was badly charred on the outside, from the inside, we would see evidence of bleeding had there been any bleeding there. I think it was from the heat.

Q. But you did find evidence of quite a bit of internal bleeding in the skull?

A. In the skull, in the right-hand side under the parietal bone right here where I'm pointing. There was a fracture here that was epidermal hemorrhage, which is hemorrhage on top of the heavy lining of the surface of the brain. And there was subdural hemorrhage as well so there was a big blood clot in the ear.

Q. And you photographed that?

A. Yes.

Q. Is that what contributed to your finding of blunt force trauma?

A. Yes, it did...

Trial Transcript page 163 line 3 - page 164 line 10.

In summary, Pathologist indicated in his trial testimony that he observed thermal injuries while conducting the autopsy on Victim. Specifically, Pathologist testified that he observed "fractures of a number of bones. All the ribs were broken. The skull had some cracks and fractures in it". When Solicitor asked Pathologist could these injuries have occurred "from some other cause" than the fire, Pathologist testified that "I think it was from the heat" due to the fact that "we would have seen evidence of bleeding had there been any bleeding there". Solicitor then asked Pathologist, "but you did find evidence of quite a bit of internal bleeding in the skull?" Pathologist responded that he found evidence of bleeding "in the right-hand side under the parietal bone" and that there was "a fracture here with epidermal hemorrhage". When asked by Solicitor if the skull fracture and hemorrhage "contributed to your finding of blunt force trauma", Pathologist replied that "it did".

Pathologist clearly indicated in his trial testimony that the methodology he used to distinguish between thermal injuries and blunt force trauma injuries was the presence of hemorrhaging. In fact the testimony of Pathologist established that a "fracture" and "hemorrhage" were the sole factors which "contributed" to his conclusion that Victim died from blunt force trauma. According to Pathologist's trial testimony, a skull fracture accompanied by hemorrhaging could not have been produced by the fire.

"With 4th degree (charring) burns...May see artifactual epidural hematoma (hemorrhage) and skull fractures due to fire-avoid interpretation of this as antemortem (before death) injury." Essentials of Forensic Pathology *by Wendy A. Lavezzi, M.D. "Decedents involved in fires or exposed to high temperatures demonstrate skeletal fractures not indicative of antemortem (before death) injury...Thermal 'hemorrhage': Coagulation and pooling/accumulation of blood due to heat, especially over the dura, may mimic antemortem (before death) hemorrhaging."* Forensic Scene Investigation *by Renee M. Robinson, MD.*

In essence, contrary to the trial testimony of Pathologist, it is a scientific fact that the burning of a deceased body produces "skull fractures" and "hemorrhage" that may appear to be, or "mimic", injuries that were caused before death. And that pathologists are cautioned to "avoid interpretation" of these injuries as injuries that occurred before death. *"There are several pitfalls in the evaluation of blunt force trauma or supposed blunt force trauma. Some involve misinterpreting minor or resuscitative injuries as being severe injuries inflicted in the ontemortem (before death) period; others involve diagnosing blunt force trauma when, in fact, there is no trauma at all."* Forensic Autopsy of Blunt Force Trauma *by Nicolas I. Batalis, MD.*

Pathologist, in his trial testimony, described Victim's alleged blunt force trauma injuries as being located "in the right-hand side under the parietal bone". A forensic expert informed Ms. Stewart that this location "is a common location for thermal injuries". Ms. Stewart confirmed through her research that: *"Heat haematoma occurs when the head has been exposed to intense heat, sufficient to cause charring of the skull...The parietotemporal region is the most common site of such hemorrhoge...Skull fractures are usually seen on either side of the skull above the temples".* Forensic Pathology (Thermal Injuries) *by Dr. Dinesh Rao.*

If the trial testimony of Pathologist is compared to the above-referenced publications from multiple experts in forensic pathology, it is undeniable that Pathologist provided false testimony regarding Victim's cause of death, as the injuries Pathologist claimed caused her death were just as likely, or even more likely, caused after her death. Moreover, the aforementioned Brady violation revealed Solicitor's prior knowledge that "the autopsy says there was a blow to the head, but the body when it was found was in very bad shape and there is a question even with the pathologist about the cause of death". The aforementioned Brady violation further revealed Solicitor's prior knowledge that "the autopsy report basically has some conjecture". These facts clearly establishes that Solicitor knew or should have known the trial testimony of Pathologist was false, and that Solicitor failed to correct it. *"The failure to correct false evidence is as reprehensible as its presentation."* Riddle v. Ozmint, *supra.*

As an additional matter, there is a significant amount of evidence which supports Petitioner's claim that Victim committed suicide. Solicitor called Victim's father as a witness, and he confirmed the following:

Q. Okay. Now, in his opening, the Petitioner eluded to this tragic event that was a year ago. I think he's talking about the abortion.

A. Yes, sir.

Q. Do you remember approximately when that was?

A. Probably the last year before her death.

Q. All right. And this was – your daughter had the abortion?

A. Yes, sir.

Trial Transcript p. 122 lines 6-14. See footnote 6.

Evidence establishes that Victim's death occurred on the approximate one year anniversary of her abortion. *"Occosionally, there may be a significant anniversary dote of a significant other's death chronologically proximal to the date the decedent was found...os an indicator of suicidal intent". Forensic Scene Investigation, supra.*

The most convincing evidence that Victim committed suicide is Victim's own words, found in a letter Victim wrote to Petitioner three months prior to her death.[13] In this letter Victim stated:

"If that is your baby I don't know what I' m going to do...I always thought we would learn our parent experience together, but now that is out of the question...If it is your baby over me, then I think I need to leave. I hurt so bad. I feel like I want to kill myself...I can't cope with the pain anymore. If I'm at the point thinkin about killing myself, it is not good...I love you so much...I'm sorry for making u chose, but I think I'm doing this for MnMn. Bye In memories of MnMn."[14] *Written by Victim on September 9, 2000.*

It must be noted that Petitioner's case is not the only case in which Pathologist misdiagnosed the cause of death. A few years after

Petitioner's case, Pvt. Isaac Aguigui murdered his pregnant wife, Deirdre Aguigui. Pathologist, along with another pathologist, ruled that Aguigui was not responsible for his wife's death, and as a result the military awarded Aguigui over $500,000 from a life insurance policy for his wife's death. It wasn't until Aguigui murdered two other people that it was discovered that Pathologist had misdiagnosed the cause of death of Deirdre Aguigui, which caused the military to pay her husband a half million dollars from her life insurance policy after he murdered her.[15]

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[13] Letter is included in Supporting Documents.
[14] Victim abbreviated "MnMn" the name she had given to her aborted child "Minika" because she couldn't bear to say, or even write this name after her abortion.
[15] News articles from this case are included in Supporting Documents.

The circumstances under which Pathologist conducted the autopsy on Deirdre Aguigui were identical to the circumstances under which Pathologist conducted the autopsy on Victim. The findings from both autopsies were equally ambiguous, and required great skill in forensic pathology to accurately interpret the causes of death.[16] The main distinction between the facts in these two cases is the effects of Pathologist's errors. In the case of Isaac Aguigui, Pathologist's misdiagnosis of Deirdre Aguigui's cause of death resulted in a guilty man remaining free to murder two more innocent people. The newly discovered evidence in Petitioner's case strongly suggests that Pathologist's misdiagnosis of Victim's cause of death resulted in an innocent man being condemned to serve over seventeen years in prison.

Petitioner believes he is constitutionally entitled to have a properly certified forensic pathologist review the autopsy findings of Pathologist for purposes of establishing Petitioner's actual innocence, just as a properly certified forensic pathologist reviewed Pathologist's autopsy findings in order to establish Aguigui's guilt. Ms. Stewart took the initiative to hire a forensic pathologist for this purpose, and the only obstacle preventing the completion of this review is the Court's refusal to order the disclosure of evidence that is essential to the accuracy of the forensic pathologist's independent evaluation. As the completion of the autopsy review is pertinent to subject matter jurisdiction, the failure to order the disclosure of this evidence, in light of the evidence establishing the strong probability that Pathologist misdiagnosed Victim's cause of death, would amount to a gross miscarriage of justice. Thus, Petitioner renews his motion for the Court to order the disclosure of the autopsy photographs, as well as the disclosure of Victim's mental health records.

3. Brady Violation (SLED Files) – PCR Questions #11 (c)

"To my mind, the Brady decision, the reasoning that underlay it, and the fundamental interests in a fair trial, combine to give the criminal Petitioner the right to receive from the prosecutor, and the prosecutor the affirmative duty to turn over to the Petitioner, all information known to the government that might be reasonably considered favorable to the Petitioner's case... Thus, for purposes of Brady, the prosecutor must abandon his role as advocate, and pore through his files, as objectively as possible, to identify the material that could undermine his case." United States v. Bagley, *supra.*

Solicitor provided Petitioner with discovery material in July in 2003.[17] However, Solicitor suppressed evidence contained in SLED investigative files which described factors that were favorable to Petitioner. *"Because the State withheld evidence, its case was much stronger, and the defense case much weaker, than the full facts would have suggested."* Kyles v. Whitley, *supra.*

Solicitor's case against Petitioner was entirely circumstantial, as this brief has demonstrated that the physical and forensic evidence was either ambiguous or favorable to Petitioner. A major component of Solicitor's case was the claim that Petitioner "did a very good job of destroying evidence" which Solicitor could have used to establish Petitioner's guilt. However, the evidence withheld by Solicitor contradicts this claim.

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[16] Pathologist is not certified in forensic pathology.
[17] Solicitor's letter to Petitioner listing discovery material is included in Supporting Documents.

During Solicitor's closing argument, he stated the following:

"Now, this is probably the mystery of all. Place the path where the fall occurred. And why is it a mystery? Why can't I just tell you exactly where? Cause he moved the body. He messed up the crime scene. I'm being--said we didn't do an investigation or we didn't prove it. That's cause he did a very good job of destroying evidence. Where is that stick that hit her? I don't know. There was a big bond fire. No, I don't have DNA on it. How do we know in the path where it happened? Well, sometime later that day, he led some policemen and SLED people to the path...But the Judge will tell you that you can infer the mental state required for the crime by that covering up."

Trial Transcript page 718 lines 3-22.

Solicitor disclosed to Petitioner the notes written by SLED Agent Robert "Bobby" Elvington. Agent Elvington stated in his notes that:

"We asked Weldon (Petitioner) if he would show us the path used by him and the victim. Officers of the Bennettsville Police Department brought him back to the scene. Located at the rear of the property was a path leading through a small brush area. In this path we found red stains that appeared to be blood. When crime scene arrived they process the house and the path at the rear of the property and photos were taken."[18]

Solicitor withheld from Petitioner the notes written by Investigator as Investigator processed the house and the path. Investigator indicated in his notes that "no part of the house was there any sign of a struggle". Investigator's notes reflect that he thoroughly searched the house and path, tested numerous items for blood, including potential weapons, and that "all areas except jacket and leaves were negative for blood". Investigator also noted that the "jacket and leaves" were collected as evidence but that the "box of Newport cigarettes not collected per Bobby Elvington".[19]

According to the SLED Evidence Inventory Sheet, filled out by Investigator, "Item # 13" is described as "ONE (1) SET OF LEAVES FROM NEAR NEWPORT CIGARETTE PACK".[20] Though Investigator indicated in his notes that this item tested positive for blood, Ms. Stewart obtained written confirmation from SLED stating that this item had not been tested for DNA.[21] Solicitor did not disclose any of this evidence to Petitioner, and Investigator did not mention any of these facts while testifying at Petitioner's trial.

In essence, the SLED investigative reports that were withheld from Petitioner, revealed that all physical evidence from the path was completely disregarded by law enforcement, though one item of evidence collected from the path tested positive for blood. The reason this evidence was disregarded can be inferred from other SLED files that were withheld from Petitioner. Prior to Petitioner's disclosure that Victim died from suicide, Petitioner claimed that Victim's death was an accident caused by her falling in the path. SLED files indicate that "CRIME SCENE ANALYSIS

[18] Pertinent section of Agent Elvington's notes is included in Supporting Documents.
[19] Investigator's notes are included in Supporting Documents.
[20] SLED Evidence Inventory Sheet is included in Supporting Document.
[21] Email from SLED to Ms. Stewart is included in Supporting Documents.

REQUESTED TO REBUT SUSPECTS CLAIM HOW DEATH OCCURRED".[22] As the physical evidence found in the path did not "REBUT SUSPECTS ACCOUNT" that Victim died from falling in the path, this evidence was disregarded by police.

Brady, for purposes of materiality, requires that *"there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different". United States v. Bagley, supra*. The prosecution focused its entire case on disproving Petitioner's claim that Victim's death was accidental and occurred in the path. An essential part of Solicitor's case against Petitioner was the claim that Petitioner "did a very good job of destroying evidence" from the path, and in Solicitor's closing argument he told the jury "you can infer the mental state required for the crime by that covering up". As the jury could have reached its guilty verdict based on this argument, and the withheld SLED files revealed that physical evidence from the path was actually discarded by law enforcement, the suppression of this evidence "undermines the reliability of the verdict".

Specifically, by demonstrating Investigator's knowledge that physical evidence from the path had been ignored by crime scene investigators, Petitioner could have laid the foundation for a vigorous argument that the investigators had been guilty of negligence in processing the scene, which would have thrown the investigation into doubt and damaged the credibility of Agent Elvington, who directed that physical evidence be left on the scene. Moreover, the admission from Investigator that he found no signs of a struggle on the scene would have greatly diminished Solicitor's claim that Victim's death occurred as the result of a violent struggle with Petitioner. Conversely, the disclosure of the evidence would have strengthened the defense by allowing Petitioner to establish that a few drops of blood was found in only three places on the entire scene: (1) the right sleeve of Petitioner's jacket, (2) the inside of Petitioner's undershirt, and (3) on leaves found on the ground in the path where Petitioner claimed that Victim fell to her death. These facts could have been sufficient to create a reasonable doubt in the minds of the jurors, which would have resulted in a different verdict.

Disclosure of the SLED investigative files would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense. See *Kyles v. Whitley, supra*. By withholding this evidence, Solicitor was able to claim in his closing argument that the lack of physical evidence from the path, "the mystery of all", was due to the fact that Petitioner "messed up the crime scene". Disclosure of the SLED investigative reports would have revealed that the so-called "mystery" of the lack of evidence from the path was actually the result of law enforcement's negligence in processing the scene. As it is beyond dispute that Solicitor's case would have been significantly weakened by the evidence contained in the SLED investigative files, *"there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different". See United States v. Bagley, supra.*

The U.S. Supreme Court ruled that *"once a reviewing court applying Bagley has found constitutional error there is no need for further harmless-error review...a Bagley error could not be treated as harmless, since 'a reasonable probability that, had the evidence been disclosed to the defense the*

[22] SLED Behavioral Science Unit Accomplishment Report is included in Supporting Documents.

result of the proceeding would have been different,' necessarily entails the conclusion that the suppression must have had 'substantial and injurious effect or influence in determining the jury's verdict'". Kyles v. Whitley, *supra, quoting* Kotteakos v. United States, *328 U.S. 750, 776 (1946).*

Even if Solicitor were to assert that he was not aware of the evidence contained in the SLED investigative files, this would not relieve him of his responsibility to *"make disclosure when the point of reasonable probability is reached. This in turn means that an individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police...the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable."* Kyles v. Whitley, *supra.*

"'When determining whether the suppression of more than one item of evidence is material under Brady, we consider the collective impact of the undisclosed evidence." Riddle v. Ozmint, *supra. "The Constitution requires only that a Petitioner receive a fair trial, not a perfect one."* U.S. Const. Am. VI; State v. Johnson, *334 S.C. 78, 512 S.E.2d 795 (1999).* Petitioner believes that the collective impact of the withheld SLED investigative files is such that his trial was rendered fundamentally unfair by prosecutorial misconduct.

CONCLUSION

In conclusion, Ms. Stewart's investigation of Petitioner's case began with one simple statement from Petitioner: "My girlfriend committed suicide". The overwhelmingly irrefutable evidence that was gained through the investigation following up on that statement is a testament to its veracity. Petitioner believes these facts should be sufficient to firmly convince the Court that Petitioner's conviction is the direct result of severe constitutional errors, which can only be remedied by the granting of relief.

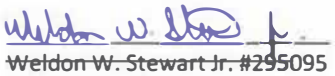
Historically, Petitioner chose to represent himself at trial, though he lacked the necessary skills and training to perform this task with competence. Petitioner, a layman to the law, failed to follow the proper trial procedures for preserving issues for appellate review. As a result, reversible errors that were committed during his trial never fell under the scrutiny of the higher courts. The overall effect of these circumstances is that Petitioner remains unlawfully imprisoned only because the grounds, warranting the reversal of his conviction, slipped through the cracks of procedural error.

Petitioner concedes that the Court gave him forewarning of the perils of self-representation. However, this does not negate the fact that the system has failed Petitioner, as it relates to fundamental fairness. *"Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a Petitioner and where to continue the Petitioner's imprisonment without review would amount to a gross miscarriage of justice."* Aice v. State, *305 S.C. 448, 409 S.E.2d 392 (1991).* Though this ruling was specifically addressing successive PCR applications, Petitioner believes the language of the ruling establishes a standard by which his case is qualified as being the "rarest of exceptions".

This brief contains allegations and proof clearly and convincingly setting forth that Petitioner's conviction was obtained by Solicitor's knowing use of perjured testimony, and by Solicitor's

deliberate suppression of evidence favorable to Petitioner. *"These allegations sufficiently charge deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody."* United States v. Bagley, *supra, quoting* Pyle v. Kansas, *317 U.S. 213, 215-216 (1942).*

Respectfully Submitted,



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May 25, 2018

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REBECCA L. JOHNSON, M.D.
CHIEF EXECUTIVE OFFICER

[redacted]
Tampa, Florida 33609-2571

EDWARD R. AHSWOOD, M.D.
SALT LAKE CITY, UTAH

JOHN V. COLLIN, M.D.
MOUNTAINVIEW, CALIFORNIA

DIANE D. DAVEY, M.D.
ORLANDO, FLORIDA

SUSAN A. FUHRMAN, M.D.
COLUMBUS, OHIO

MICHAEL A. JONES, M.D.
PORTLAND, MAINE

KAREN L. KAUL, M.D., Ph. D.
EVANSTON, ILLINOIS

STEVEN H. SWERDLOW, M.D.
PITTSBURGH, PENNSYLVANIA

December 10, 2014

Lori L. Stewart
[redacted]

Dear Ms. Stewart,

Russell A. Harley Jr., M.D. is a diplomate of the American Board of Pathology, having been certified in Anatomic Pathology effective 5/24/1971. The certificate is non-time limited and the diplomate is not required to participate in Maintenance of Certification.

Sincerely,

Rebecca L. Johnson, M.D.
Chief Executive Officer

RLJ/gw

SEAL

ROP 3 FN 2

STATE OF SOUTH CAROLINA	)	Case No.:02-GS-34-1919
COUNTY OF MARLBORO	)	
STATE OF SOUTH CAROLINA	)	EX PARTE MOTION FOR SUBPOENA
	)	OF WITNESS
V.	)	
	)	
WELDON W. STEWART, JR.	)	

Defendant, acting pro se, moves the Court, pursuant to Rule 13, South Carolina Rules of Criminal Procedure, for an Order directing that a subpoena duces tecum be issued on the witness as set forth herein to produce documents forthwith, on the grounds that the production of documents is necessary for an independent forensic pathologist to conduct a review of the autopsy that was performed in the above-entitled case. The aforementioned pathologist has stated that he will be unable to proceed with his independent evaluation without these records.

SUBPOENA DUCES TECUM

Vivian C. Fairbairn
Medical University of South Carolina
[redacted]
Charleston, SC 29425

The above witness has advised that these records will only be released to Defendant upon her receipt of an order from the court. It is Defendant's belief that the records being sought are of evidentiary value in the case and that the failure to make this disclosure is contrary to public interest. Therefore, the Court is respectfully requested to direct their forthwith production as set forth in the attached proposed order.

Respectfully Submitted,

Weldon W. Stewart, Jr. #295095
Allendale Correctional Institution
[redacted]
Fairfax, SC 29827

Fairfax, South Carolina
August 28, 2017

ROP 3 FN 2

STATE OF SOUTH CAROLINA	)	Case No.:02-GS-34-1919
COUNTY OF MARLBORO	)	
STATE OF SOUTH CAROLINA	)	**ORDER**
	)	
V.	)	
	)	
WELDON W. STEWART, JR.	)	

Upon motion of the pro se Defendant, and upon good cause being shown,

IT IS HEREBY ORDERED that the Clerk of Court shall issue a subpoena duces tecum for the following witness to produce documents forthwith.

SUBPOENA DUCES TECUM

Vivian C. Fairbairn
Medical University of South Carolina
[redacted]
[redacted]4
Charleston, SC 29425

It appearing to the Court that the pro se Defendant has issued a subpoena to: **Vivian C. Fairbairn, Medical University of South Carolina,** [redacted] **Charleston, SC 29425**, for certain documents which may be of evidentiary value in the above-entitled case, and it further appearing that these documents are needed immediately, and that the failure to make this disclosure is contrary to public interest.

IT IS THEREFORE ORDERED that the information, papers, documents or objects, or copies thereof, set forth in the attached subpoena to: **Vivian C. Fairbairn, Medical University of South Carolina,** [redacted] be provided forthwith, to pro se Defendant, **Weldon W. Stewart Jr., Allendale Correctional Institution,** [redacted], so that they may be inspected and examined.

Upon the closing of the case, the Ex Parte Motion and Order shall be unsealed by the Clerk.

_____
Circuit Court Judge

Bennettsville, South Carolina

_____, 2017

ROP 3 FN 3

from **Joy Williams** <[redacted]>

to Lori Stewart <[redacted]>

date Wed, Oct 4, 2017 at 10:43 AM

subject RE: Following up on motion and order requests

mailed-by [redacted]

Lori,

The Judge would not sign your papers and he would not allow me to sign the subpoenas either. I don't know why because we can't question a Judge's decision.

Anita M. "Joy" Williams
Marlboro County Clerk of Court
[redacted]
Bennettsville, S. C. 29512
[redacted]

ROP 3 FN 4

January [redacted] 30, 2018 W.S.

Vivian Fairbairn
Office of the General Counsel
[redacted]
[redacted]
Charleston, SC 29425

Dear Ms. Fairbairn:

I am writing to you in reference to an autopsy [redacted] performed at MUSC on [redacted] Allen on December 7, 2000. This autopsy was performed at the request of the Marlboro County Coroner's Office for the case State v. Weldon Stewart, Jr. I am the defendant in this case and I am acting as my own attorney in a post-trial proceeding pertaining to the aforementioned autopsy.

I am hereby requesting, pursuant to S.C. Code Section 17-5-535 (A)(4)(b), that MUSC provide me with copies of the autopsy photographs for the above-mentioned autopsy, as the requested documents are pertinent to post-trial proceedings for my case. As this legal matter is time sensitive, I am further requesting that MUSC comply with the above-cited statute by mailing the requested documents to me within fifteen (15) days of your receipt of this letter. Please inform me of any fees that are associated with my request. However, I am requesting that the fees be waived, if possible.

If MUSC denies my request, I am requesting to be informed in writing of the specific reasons for the denial. If MUSC grants my request, then please mail the requested documents to me at the address provided below. In the alternative to mailing this sensitive information to me, it can be mailed to Lori Stewart, who has previously been in contact with you regarding this matter. Ms. Stewart will be contacting you to discuss the payment of any fees and mailing arrangements for the requested documents. Thank you.

Sincerely,

Weldon W. Stewart Jr.
Weldon W. Stewart Jr. #295095
Allendale Correctional Institution
[redacted]
Fairfax, SC 29827

ROP 4 FN 6

mean I provided the money for them, but she was real neat. You can tell by her room that she was. She wouldn't really just walk out looking any kind of way.

Q. She use makeup?

A. Yes, sir, just starting to.

Q. Okay. Now, in his opening, the Defendant eluded to this tragic event that was a year ago. I think he's talking about the abortion?

A. Yes, sir.

Q. Do you remember approximately when that was?

A. Probably the last year before her death.

Q. All right. And this was -- your daughter had the abortion?

A. Yes, sir.

Q. Okay. And was it understood that that was Weldon's child?

A. No, sir. He didn't come forward. We tried to get her to say who he was. She never came forward.

Q. She never told you?

A. No, sir.

Q. Where did this abortion take place?

A. Charlotte, North Carolina.

Q. And who went up there with her?

A. Just me and my wife.

Q. Okay.

ROP 4 FN 7

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY Marlboro
State of South Carolina V. Weldon W. Stewart Jr.	CASE NO. 02-GS-34-1919
	SUBPOENA FOR DOCUMENT(S) OR OBJECT(S)

TO:
Michael Truluck
Tri County Community Mental Health Center
[redacted]
Bennettsville, SC 29512

YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.

PLACE	COURTROOM
	DATE AND TIME

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).

LIST DOCUMENT(S) OR OBJECT(S)

Any information and/or copies of any documents in your custody or control regarding the Tri County patient records for [redacted] [redacted]Allen to be produced forthwith and delivered, in a manner most convenient to you, to the pro se defendant listed on this subpoena.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK OF COURT Cindy M. Williams	DATE 4/13/17
(BY) DEPUTY CLERK	

THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: DEFENDANT	NAME AND ADDRESS OF ATTORNEY or DEFENDANT (IF PRO SE/SELF REPRESENTED) **Weldon W. Stewart Jr. #295095** **Ridgeland Correctional Institution** [redacted] **Ridgeland, SC 29936**

SCCA 253 (10/2011)

ROP 4 FN 7

PROOF OF SERVICE

SERVED	DATE	PLACE
	04-25-17	TRI-COUNTY MENTAL HEALTH

SERVED ON (PRINT NAME)	MANNER OF SERVICE
MICHAEL TRUWICK	DELIEVERED
SERVED BY (PRINT NAME)	**TITLE**
JAYE MOORE	DEPUTY

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on 04-25-17
0035 hrs

SIGNATURE OF SERVER

MCSO

ADDRESS OF SERVER

SCCA 253 (10/2011)

ROP 4 FN 7

South Carolina Department of Mental Health

TRI-COUNTY COMMUNITY MENTAL HEALTH CENTER
Serving
Chesterfield, Marlboro, and Dillon counties
[redacted]
Dillon, S.C, 29536
[redacted]

Date: May 3, 2017

In reply to your subpoena or other request dated April 13, 2017 , pertaining to [redacted] Allen.

Please take notice that Information identifying a patient or former patient of the South Carolina Department of Mental Health (SCDMH) or a person for whom civil commitment has been sought, is protected by §44-22-100, Code of Laws of South Carolina, as amended, and 45 CFR Part 160 (HIPAA). Such information may not be disclosed (oral, written, or otherwise) except as authorized under HIPAA and §44-22-100, including written Authorization meeting requirements of those laws, or a South Carolina or federal court order pursuant to Section 44-22-100 (A)(2), finding that "disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure is contrary to public interest." Individual patient information may be further protected by other law, including alcohol and drug treatment records protected under 42 CFR Part 2. General authority to disclose Information including: subpoena for records or testimony; discovery order; workers' compensation claim; foreign court order or general consent, is usually not sufficient to authorize disclosure of such information. Unauthorized disclosure is subject to civil and criminal penalty.

A copy of the SCDMH Authorization form is attached. When the applicable Authorization or court order is secured meeting requirements of Section 44-22-100 (A) (2), you may then send a copy with the request or subpoena for the release of the applicable information. If the Authorization is signed by a person other than the patient, also attach a copy of the document authorizing substitute consent (e.g., court appointment as guardian, personal representative, etc.)

If you believe that some other exception under the above noted laws otherwise permit or require disclosure, let us know. As applicable, should the attorney handling this case have any questions concerning the applicable law or court order, please contact the Office of General Counsel, South Carolina Department of Mental Health, [redacted]

Sincerely,

Marilyn Wood
Medical Records Analyst

Enclosed: Authorization to Disclose SCDMH Protected Health Information Form

Marlboro Clinical Services [redacted]
Chesterfield County MHC [redacted]
Dillon MHC [redacted]

ROP 4 FN 8

STATE OF SOUTH CAROLINA)	Case No.:02-GS-34-1919
COUNTY OF MARLBORO)	
STATE OF SOUTH CAROLINA)	EX PARTE MOTION FOR SUBPOENA
)	OF WITNESS
V.)	
)	
WELDON W. STEWART, JR.)	

Defendant, acting pro se, moves the Court, pursuant to Rule 13, South Carolina Rules of Criminal Procedure, for an Order directing that a subpoena duces tecum be issued on the witness as set forth herein to produce documents forthwith, on the grounds that the production of documents is necessary to assist an independent forensic pathologist with conducting a review of the autopsy performed in the above-entitled case. Reviewing the mental health history of the decedent is an essential part of the medical death investigation process.

SUBPOENA DUCES TECUM

Michael Truluck
Tri County Community Mental Health Center
[redacted]
[redacted]
Bennettsville, SC 29512

The above witness has advised that these records will only be released to Defendant upon his receipt of an order from the court. It is Defendant's belief that the records being sought are of evidentiary value in the case and that the failure to make this disclosure is contrary to public interest. Therefore, the Court is respectfully requested to direct their forthwith production as set forth in the attached proposed order.

Respectfully Submitted,

Weldon W. Stewart, Jr. #295095
Allendale Correctional Institution
[redacted]
Fairfax, SC 29827

Fairfax, South Carolina
August 28, 2017

ROP 4 FN 8

STATE OF SOUTH CAROLINA	)	Case No.:02-GS-34-1919
COUNTY OF MARLBORO	)	
STATE OF SOUTH CAROLINA	)	**ORDER**
	)	
V.	)	
	)	
WELDON W. STEWART, JR.	)	

Upon motion of the pro se Defendant, and upon good cause being shown,

IT IS HEREBY ORDERED that the Clerk of Court shall issue a subpoena duces tecum for the following witness to produce documents forthwith.

SUBPOENA DUCES TECUM

Michael Truluck
Tri County Community Mental Health Center
[redacted]
Bennettsville, SC 29512

It appearing to the Court that the pro se Defendant has issued a subpoena to: **Michael Truluck, Tri County Community Mental Health Center,** [redacted], for certain documents which may be of evidentiary value in the above-entitled case, and it further appearing that these documents are needed immediately, and that the failure to make this disclosure is contrary to public interest.

IT IS THEREFORE ORDERED that the information, papers, documents or objects, or copies thereof, set forth in the attache **Michael Truluck, County Community Mental Health Center,** [redacted], be provided forthwith, to pro se Defendant, **Weldon W. Stewart Jr., Allendale Correctional Institution** [redacted] o that they may be inspected and examined.

Upon the closing of the case, the Ex Parte Motion and Order shall be unsealed by the Clerk.

_____
Circuit Court Judge

Bennettsville, South Carolina

_____, 2017

ROP 4 FN 9

South Carolina
Law Enforcement Division

[redacted]
Columbia, South Carolina
[redacted]

Henry D. McMaster, Governor
Mark A. Keel, Chief

Tel: (803) 737-9000

June 6, 2017

Lori Stewart
[redacted]

RE: S.C. Freedom of Information Act Request #2017-0261
SLED Case Nos.: 35-00-0530 & 11-00-0047
SLED Lab No.: L00-13754
Weldon W. Stewart, Jr.

Dear Ms. Stewart:

Please find the attached CD containing the information requested by Mr. Stewart concerning his case. Per your request, we are mailing the materials to you to provide to Mr. Stewart. Please be advised that portions of this file were redacted based on the exemption found at S.C. Code Ann. Title 30-4-40 (a) (2).

Sincerely,

Special Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp

ROP 4 FN 9

South Carolina
Law Enforcement Division

[redacted]
Columbia, South Carolina
[redacted]

Henry D. McMaster, Governor
Mark A. Keel, Chief

Tel: (803) 737-9000

July 27, 2017

Lori Stewart
[redacted]

RE: S.C. Freedom of Information Act Request #2017-0261
SLED Case Nos.: 35-00-0530 & 11-00-0047
SLED Lab No.: L00-13754
Weldon W. Stewart, Jr.

Dear Ms. Stewart:

Please find the attached CD containing the information requested by Mr. Stewart concerning his case. Per your request, we are mailing the materials to you to provide to Mr. Stewart. Please be advised that portions of this file were redacted based on the exemption found at S.C. Code Ann. Title 30-4-40 (a) (2).

Sincerely,

Special Agent Thomas W. Berry
Freedom of Information Coordinator

ROP 4 FN 10

OFFICE OF THE PUBLIC DEFENDER
FOR MARLBORO COUNTY
[redacted]
BENNETTSVILLE, S. C. 29512

WADE R. CROW
ATTORNEY AT LAW

Telepho
Fax
[redacted]

December 11, 2000

Mr. Jay E. Hodge, Jr., Solicitor
Fourth Judicial Circuit
Darlington County Courthouse
[redacted]
Darlington, S. C. 29532

RE: State Vs. Weldon Stewart, Jr.
Warrant Nos. G-388587 & G-388588

Dear Jay:

This is to advise that I filed the original Rule 5 and Brady Motion in the Clerk's Office today pursuant to my appointment as his attorney last Friday. I know this is an ongoing investigation by your office and the City of Bennettsville, and that SLED has been called in to do a detailed crime scene investigation, etc. It is most important to the defense that I have a copy of the autopsy just as quickly as possible once you or the Coroner's Office receive the same.

If you later decide to seek the death penalty in this case, I will of course reserve my rights to amend the Motion for Discovery etc. as well as request the Court to appoint lead counsel who has been previously certified to sit in the number one chair in a death penalty trial.

By copy of this letter to the City of Bennettsville detectives (Gurley and Boston), I am requesting that they immediately allow me to view the photographs of the body and the alleged crime scene. It will be most helpful to me to get copies of these photographs as soon as possible so I might have the same to consult when I obtain the autopsy report.

Thanking you for your cooperation and the cooperation of the City of Bennettsville in advance, I am -

Sincerely yours,

Ronnie

WADE R. CROW

A CERTIFIED TRUE COPY
Ruth M. Williams
CLERK OF COURT
MARLBORO COUNTY

WRC/new
cc: City of Bennettsville (Gurley & Boston)
Elizabeth Munnerlyn, Assistant Solicitor

ROP 4 FN 10

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF GENERAL SESSIONS FOR THE FOURTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA -vs- WELDON STEWART, JR. Defendant.	RULE 5 AND BRADY MOTION FOR DISCOVERY AND INSPECTION WARRANT NOS. G-388587; G-388588

NOW COMES the Defendant, by and through the undersigned counsel of record, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure and *Brady v. Maryland*, who moves the prosecution to permit the Defendant to inspect and copy or photograph, within thirty days of the service of this Motion and at least within ten days prior to trial, including, but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after the initial disclosures.

The Defendant further moves that upon failure of the prosecution to so comply, that the presiding judge issue an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances.

Defendant asserts that any item requested is material to the preparation of the defense in this case. As grounds therefor, the undersigned would show as follows:

1. Under the United States Supreme Court decision in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), the solicitor has an obligation to produce all *Brady* material for the Defendant well in advance of the scheduled trial date.

2. Defendant claims under *Brady*, and its progeny, as well as pursuant to the language and spirit of *Giglio v. United States*, 405

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ROP 4 FN 10

U.S. 150, 92 S.Ct. 763 (1972); *United States v. Tashman,* 478 F. 2d 129 (5th Cir. L973); and *Napue v. Illinois,* 360 U.S. 264, 79 S.Ct. 1173 (1959); *Alcorta v. Texas,* 355 U.S. 28, 78 Sct. 103 (1975); *Mooney v. Holohan,* 294 U.S. 103, 55 S.Ct. 340, reh.den. *Ex Parte Mooney,* 294 U.S. 732, 55 S.Ct. 571 (1935)(1935); and *Moore v. Illinois,* 408 U.S. 786, 92 S.Ct. 2562 (1972), reh.den. 409 U.S. 897, 93 S.Ct. 87 (1972)(1962);that he/she is entitled to any and all records, memoranda and documents as well as a statement of the Circuit Solicitor and al appropriate state, federal and local law enforcement agencies as to:

A. All statements by the Defendant, whether oral or written; if written whether signed or unsigned.

B. All handwritten notes made by police or other investigating officers of their interview or conversation with the Defendant or any other witness.

C. Any oral, written, or recorded statements made by any person to the solicitor's office, Grand Jury, or any law enforcement agency in connection with this case.

D. A copy of all tape recordings, audio or video, made by a Defendant, witness or any other person in connection with this case. If these tape recordings have been transcribed, then a copy of the transcribed conversation is also requested.

E. Any and all investigative reports, information or material which tends to establish the Defendant's innocense, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial. *Giles v. Maryland,* 386 U.S. 66, 87 S.Ct. 793 (1967); *Napue* N *Illinois,* 360 U.S. 264, 79 S.Ct. 1173 (1959); *Giglio v. United States,* 405 U.S. 150, 92 S.Ct. 763 (1972).

F. The names and addresses of all witnesses interviewed by the solicitor's office or any other law enforcement agency who might establish the Defendant's innocense, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness of the State, whether or not the witness may testify at trial.

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Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

G. Any and all photographs taken of the Defendant or any

portion of his body.

H. Any and all photographs taken at the scene of the alleged crime and/of the alleged victim or prosecuting witness.

I. Any photographs that have been exhibited to any person for the purpose of establishing the identify of the perpetrator of the crime charge and the name and current address of the person or persons to whom the photographs were shown.

J. Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial. *Ashley v. Texas,* 319 F.2d 80 (5th Cir.), cert.den. 375 U.S. 931, 84 S.Ct. 331 (1963). This request shall include any reports by or to the State Law Enforcement Division (SLED) criminalistic laboratory, Federal Bureau of Investigation laboratories, County Sheriff's Department laboratory or any other law enforcement laboratory concerning an examination made by said laboratories and/or personnel thereof of any physical, photographic, oral or written evidence concerning the in investigation of this case.

K. All reports from the State Law Enforcement Division (SLED), Sheriff's Department, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprints checked in connection with this case.

L. All records of arrests or criminal convictions of the Defendant or any co-defendant and all State's witnesses in relation to this case. *Giglio v. United States,* 405 U.S. 150, 92 S. Ct. 7563 (1972).

M. All "inconsistent" statements made by a particular witness or between witnesses, whether written or oral, that are known to the solicitor's office or any other law enforcement agency.

N. Any statement or admission by any witness for or on behalf of the State with respect to the witness's memory or loss thereof.

O. Whether any witness call before the Grand Jury who has or will give testimony to any investigative agency has ever been psychiatrically hospitalized or undergone psychiatric treatment, examination, mental status examination or care, and if

A CERTIFIED TRUE COPY
Cindy M. Williams
CLERK OF COURT
MARLBORO COUNTY

so, a list of names and addresses of the psychiatrist, hospitals and copies of any and all relevant records and reports regarding such examination, treatment, or care.

P. All notes or memoranda prepared by psychiatrists or other medical or mental health examiners regarding their conversations with the Defendant.

Q. Any and all plea bargains, promises, rewards, reductions, dismissals, agreements not to bring criminal charges, or any other inducement made to any witness herein, whether or not such witness has testify before any State or Federal Grand Jury, or other investigative agency, and regardless of whether such witness will testify at trial.

R. Any offers or grants of immunity to any witness regarding loss of property, fine, forfeiture, prosecution or punishment in this case or any other case, related or otherwise.

S. Any and all memoranda, reports, and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local enforcement agencies regarding the investigation herein.

T. Any and all physical or tangible items in the possession, custody or control of, or which could reasonably be brought within the possession, custody or control of, the solicitor's office, state, federal or local law enforcement agency.

3. Defendant contends that this Court should specifically direct the State in the spirit of fairness and equity, to seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness's statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his/her attorney, not the solicitor, should be the judge of his/her defense and the documents relevant thereto and necessary in support of same.

4. To the extent the Defendant is specifically required to demonstrate the materiality of the requested information, the Defendant submits that this requirement is satisfied in this motion. *United States v. Agurs*, 427 U.S. 97, 96 S. Ct. 2392 (1976).

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ROP 4 FN 10

5. Recognizing that *Brady v. Maryland*, supra and other authorities cited herein require that information favorable to the Defendant be made available, and further recognizing that a genuine disagreement may arise as to whether or not a particular item of evidence is favorable, it will be requested that the Court provide for an in camera inspection of the items sought to be discovered should the State feel such items are not favorable to the Defendant. By permitting the Court to examine the items requested, the legitimate interests of the State will be protected in that no disclosure in excess of *Brady*, et al, will occur. Further, it will be requested of the Court that said Order will be a continuing one, and if, prior to or during the trial, the State discovers additional evidence or material requested, the State is hereby requested promptly to notify counsel for the Defendant of the existence of the additional evidence or material.

WHEREFORE, the undersigned prays for such Order requiring production of the above listed materials and for that which is just and proper.

WADE R. CROW
PUBLIC DEFENDER FOR MARLBORO COUNTY
[redacted]
Bennettsville, SC 29512
(843)479-7171

December 11, 2000.

Bennettsville, S. C.

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ROP 5 FN 11

FILED

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF MARLBORO) Indictment Nos: 01-GS-34-0120
01-GS-34-0121

THE STATE)
)
vs.)
)
)
WELDON STEWART, JR)
Defendant.)

WILLIAM [illegible] NDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

MOTION TO PRODUCE
EXCULPATORY EVIDENCE

TO: DAN BLAKE, ASSISTANT SOLICITOR OF THE FOURTH JUDICIAL CIRCUIT

The defendant, through his undersigned attorney, will move before this Honorable Court within five (5) days after service of this motion or as soon as thereafter it may be heard for an Order of this Court requiring the State to furnish any and all exculpatory evidence it has in its possession or knows the whereabouts of in conformance with the following requirements:

1. That the State shall deliver at the date of said hearing on the Motion above referred to, any and all exculpatory evidence, whether it be oral, written, documented, or photographic, that might aid or assist the defendant in exculpating himself of the charges in question.

2. That upon discovery of any additional excapultory evidence, the State shall notify the defendant's attorney of the same in writing within three (3) days prior to the trial in the above captioned matter.

Respectfully submitted,

WADE R. CROW, Public Defender
Marlboro County
[redacted]
Bennettsville, SC 29512
[redacted]

171

A CERTIFIED TRUE COPY

Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

Bennettsville, South Carolina
May 31, 2002

ROP 5 FN 11

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

IN THE COURT OF GENERAL SESSIONS
FOURTH JUDICIAL CIRCUIT

THE STATE,)
)
)
)
Vs.)
)
)
)
WELDON STEWART, JR.)
Defendant.)

MARLBORO COUNTY, S.C.

AFFIDAVIT OF SERVICE
BY MAIL

Indictment Nos. 01-GS34-0120;
01-GS34-0121

Personally appeared before me, Elaine E. Crow, who after being duly sworn, deposes and states that on the 31 day of May, 2002, she served one copy of the Motion to Produce Exculpatory Evidence upon:

Assistant Solicitor Dan Blake
Fourth Judicial Circuit
[redacted]
Cheraw, SC 29520

by mailing to him a copy of the same in the United States, postage prepaid as First Class Mail.

Elaine E. Crow
Elaine E. Crow

SWORN to before me this
31 day of May, 2002.

Notary Public for South Carolina
My Commission Expires: 12/29/09

A CERTIFIED TRUE COPY
Anita M. Williams
CLERK OF COURT
MARLBORO COUNTY

ROP 5

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

01-GS-34-0120, 01-GS-34-0121

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

July 16, 2002
Marlboro, South Carolina

B E F O R E:

The Honorable PAUL M. BURCH, Judge.

A P P E A R A N C E S:

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WELDON STEWART, JR., Pro Se

WADE CROW, Esquire
Standby Attorney for the Defendant

HATTIE O. GORDON
OFFICIAL COURT REPORTER
FOURTH JUDICIAL CIRCUIT
[redacted]
WALLACE, SC 29596-0597

backyard where he was residing. We have a statement from Mr. Stewart that ties those two events together, both a written statement given to law enforcement, which he's asking to suppress. But also another letter that he wrote to law enforcement.

Our witnesses tie him to the burning. I think Your Honor is aware, but I'd just like to read if I could from State v. Tucker, just the general rules there, and you know -- "There arise out of a single chain or circumstances are proved by the same evidence are of the same general nature and no real right of the defendant has been prejudiced …".

And State v. Tucker, I think is very illustrative of this particular situation because in the facts in that case, a murder occurred and then the defendant was on the run and committed two different burglaries a day and two days later. All of that was tried at the same time because they were, you know, related like that.

This was not separated by more than an hour or so. His burning of the body is certainly evidence of his, at least, some sense of guilt and to separate the two would be, essentially, to just make it very difficult for the State in as much as the witnesses will be testifying to both instances.

And I will point out, and one of the reasons we are going to amend the indictment, it's not 100 percent clear how the death occurred. The autopsy says there was a blow to the

head, but the body when it was found was in very bad shape and there is a question even with the pathologist about the cause of death.

THE COURT: Based on the same victim, it was within an hour or two of each other, I'll have to deny this motion.

MR. STEWART: Your Honor, sir?

THE COURT: Yes.

MR. STEWART: If I may speak. It wasn't an hour. It was like seven or eight hours between the two incidents.

MR. BLAKE: Your Honor, I'm not really exactly sure on that. I know I meant to find that out. It was my recollection that that's what it was. I can certainly -- we got officers here who know the case who can give you that information.

THE COURT: Seven or eight hours?

MR. STEWART: I have the incident report written by an officer. It states the time of death and the time of the alleged incident, sir.

MR. BLAKE: Your Honor, the incident report could not in any way tell you the time of the death, and the autopsy report basically has some conjecture. And after talking with pathologist whether the cause of death was a blow to the head or it was the actual burning of the body.

The problem being that when a body is burned, the skull bursts and so there is some question. In fact, when the State

amends the murder indictment, we intend to include alternative possibilities as to the actual cause of death.

THE COURT: Well, the Clerk and I were just talking. It doesn't matter if it was 7 or 8 hours, 12 hours, whatever, it's the same victim, and it's the same carry -- I mean it's the same connection.

You know, there is some leadway in here which the Tucker case refers to. I'm still going to have to deny it now. Certainly, Mr. Stewart, if you uncover something that causes you great concern, you can renew this motion with the trial judge. Okay. That will give you a little time to do some research, and Mr. Blake can also do some checking.

So I'm not going to totally cut that one off. I'm going to deny it now, but it may be renewed at trial if you uncover something a little different from what's been presented. Okay?

MR. BLAKE: Yes, and, Judge, before it slips my mind, Judge Lockemy also made an order in these previous hearings that because Mr. Stewart is proceeding pro se, that it be an order of the Court that all of the various hearings we're having prior to trial be transcribed. So we can -- if you're in accordance with that, we can present an order to that affect. But that's been -- that was what Judge Lockemy ordered originally, so ---

THE COURT: All right. Now, this goes back to Mr. Blake.

ROP 5

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

02-GS-34-1918, 02-GS-34-1919

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

October 17, 2002
Marlboro, South Carolina

B E F O R E:

The Honorable PAUL M. BURCH, Judge

A P P E A R A N C E S:

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WADE CROW, Esquire
Stand-by Attorney for the Defendant

HATTIE O. GORDON
OFFICIAL COURT REPORTER
FOURTH JUDICIAL CIRCUIT
[redacted]
WALLACE, SC 29596-0597

convened in October 2002, the Grand Jury of Marlboro County present upon their oath Weldon Stewart, Jr. in the county of Marlboro on or about December 6, 2000 did with malice aforethought kill one [redacted] Allen, to wit, by striking, pushing and or burning her and said [redacted] Allen did die as a proximate result, thereon, on or about the 6th day of December 2000.

This is in violation of Section 16-3-10 of the Code of Laws of South Carolina as amended. How do you plead?

MR. STEWART: Not guilty.

MR. BLAKE: And how will you be tried?

MR. STEWART: By God and my country.

MR. BLAKE: May God grant you good deliverance. Now, Your Honor, we have -- just heard him say he wants to plead guilty to the burning charge. Have you had a chance to discuss that with him?

MR. CROW: He just told me he wanted to do that.

MR. BLAKE: Can we just put that aside for one minute and hear his motions.

MOTION - QUASH INDICTMENT

MR. STEWART: Your Honor, I would -- I wish to object to some of the terminology and the murder indictment. It says that "striking, pushing and or burning to cause death." According to the autopsy report, which I have here, death was caused by blunt trauma to the head.

It wasn't -- it was specific about that, but however, it was enough leadway for how the blunt trauma to the head occurred. But that is the only thing that end up -- leadway enough -- no leadway as to how -- what was the cause -- what the cause of death was, and it also stated the body was desecrated hours later.

And I ask that this indictment not be allowed to be brought in the courtroom including burning as a possible cause of death because this contradicts the autopsy report. There was no factual -- there was no factual evidence like that, and as I said before, according to the autopsy report death occurring by the burning of the body is not proper.

MR. BLAKE: Your Honor, I have talked to the pathologist. I think Mr. Stewart is referring to -- at the bottom of the summary page, probable cause of death was blunt force trauma to the head. The pathologist, Dr. Harley, says that it is a possibility that the death was caused by burning.

With response to Mr. Stewart's allegation about the amount of time between the original blow and the burning, that's part of the hearsay that comes in as case history that would not be admissible in court and actually comes primarily from the defendant's mouth.

So it's not a finding of fact on Dr. Harley's part. What Dr. Harley does note is that there is a skull fracture. He also notes that there are full body charring and there are

heat fractures to the skull. So I have talked with him, and the reason for him putting these different alternatives is that the only person that we understand was there is Mr. Stewart, and I would not that this has gone before the grand jury.

I don't know how the defendant can argue with the language of the indictment. He can certainly argue that to the jury. I would understand if he was trying to seek a continuance because this was undue surprise or something. I can hand up the original warrants and the original indictments.

What you'll see there is the original indictments simply mirror the language of the warrants, and that was the reason that the previous hearing that the State talked about needing to clean up the indictments because an attorney had not really dealt with that previously.

THE COURT: All right. Any other motions at this time?

MOTION FOR BOND

MR. STEWART: Yes, sir. A motion for bond that I filed previously, and by order -- by order it was said that this motion would not be heard unless I was not tried by this week.

MR. BLAKE: Your Honor, that has been heard. It was heard in front of Judge Milling last term of court. You have an order concerning that. This also involves -- I'm passing that order up, now. That does concern his safekeeping order.

ROP 6

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

IN GENERAL SESSIONS COURT

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

VS.

MOTIONS
01-GS-34-120 & 121

WELDON STEWART, JR.
DEFENDANT

DECEMBER 11, 2002
BENNETTSVILLE, S.C.

BEFORE THE HONORABLE JAMES E. LOCKEMY, JUDGE.

APPEARANCES:

MR. DANIEL L. BLAKE,
ASSISTANT SOLICITOR FOR THE STATE

MR. WADE R. CROW,
PUBLIC DEFENDER FOR THE STATE

MARGARET T. SULLIVAN
COURT REPORTER

THE COURT: HE'S TALKING ABOUT THE PATHOLOGIST.

MR. CROW: HE WANTS TO BE TRANSPORTED TO CHARLESTON TO INTERVIEW THIS PATHOLOGIST, ISN'T THAT CORRECT?

THE DEFENDANT: THAT'S CORRECT.

MR. BLAKE: WELL LET ME FIRST INTERJECT, THE PATHOLOGIST IS IN FLORIDA. THE WAY THEY DO IT AT MUSC IS THROUGH A FELLOWSHIP PROGRAM. THE DOCTOR PERFORMING THE AUTOPSY IS JUST THERE FOR, YOU KNOW, A YEAR OR TWO YEAR STINT. SHE'S IN FLORIDA, AND SHE WILL BE HERE FOR THE TRIAL.

THE DEFENDANT: WELL, YOUR HONOR,---

THE COURT: WHAT PARTICULAR REASON IS THERE? AND WHAT ISSUE IS THERE AND HE'S CONCERNED WITH THE PATHOLOGIST?

MR. CROW: HE'S GOING TO HAVE TO ADDRESS THAT. IT'S ABOUT WHAT'S IN THE PATHOLOGIST'S REPORT.

THE DEFENDANT: IT'S NOT ABOUT WHAT'S IN THE ACTUAL AUTOPSY REPORT, BECAUSE I HAVE RECEIVED A COPY OF THE AUTOPSY REPORT. BUT IN SEVERAL HEARINGS, AND I DO HAVE A TRANSCRIPT. AND MR. BLAKE HAS INDICATED THAT THE PATHOLOGIST WILL BE DEVIATED FROM THE AUTOPSY REPORT IN TRIAL. AND I HAVEN'T RECEIVED THE REPORT TO SHOW THESE DEVIATIONS. I WOULD JUST LIKE TO KNOW WHY WOULD THE PATHOLOGIST DO AN AUTOPSY REPORT THEN SAY SOMETHING TOTALLY DIFFERENT FROM THE REPORT AT TRIAL?

THE COURT: WELL I'LL TELL YOU RIGHT NOW, THE

PATHOLOGIST IS NOT GOING TO BE PERMITTED TO SAY ANYTHING AT TRIAL THAT YOU DON'T KNOW ABOUT, UNLESS MR. BLAKE DOESN'T KNOW ABOUT IT EITHER. SO IF THE PATHOLOGIST HAS INFORMATION THAT HE OR SHE HAS PROVIDED TO THE STATE, AND THE STATE HASN'T PROVIDED IT TO YOU, THAT WOULD NOT BE ADMISSIBLE AT TRIAL.

THE DEFENDANT: BECAUSE, YOUR HONOR, IF I MAY BE ALLOWED TO SPEAK AGAIN. THE AUTOPSY REPORT STATES THAT THE CAUSE OF DEATH IS BLUNT FORCE TRAUMA TO THE HEAD. IT LEAVES NO LEEWAY AS TO OTHER POSSIBLE CAUSES OF DEATH. BUT WHEN I OBJECTED TO SOME OF THE TERMINOLOGY IN THE MURDER INDICTMENT, I OBJECTED TO THE INCLUSION OF BURNING BEING INCLUDED AS A POSSIBLE CAUSE OF DEATH. BECAUSE AS YOU KNOW, I HAVE ALREADY BEEN CONVICTED OF DESECRATION OF HUMAN REMAINS FOR THE ACTUAL BURNING.

SO IT'S ALREADY BEEN ESTABLISHED, BECAUSE 16-17-600 SAYS THAT IT MUST BE DESTROYING THE REMAINS OF A DECEASED HUMAN BEING. SO IT'S ALREADY BEEN ESTABLISHED THAT THE VICTIM WAS DECEASED BEFORE THE ACTUAL BURNING OCCURRED. SO WHEN I OBJECTED TO THE TERMINOLOGY OF THE MURDER INDICTMENT, THAT IS ACTUALLY INCLUDING BURNING AS A POSSIBLE CAUSE OF DEATH. MR. BLAKE INDICATED THAT THE PATHOLOGIST---

THE COURT: WHAT EVIDENCE DO YOU HAVE BURNING WAS THE CAUSE OF DEATH?

THE DEFENDANT: EXCUSE ME?

THE COURT: WHAT EVIDENCE DO YOU HAVE THAT BURNING WAS A CAUSE OF DEATH?

THE DEFENDANT: I HAVE NONE. BUT THAT IS -- THAT IS ON THE---

THE COURT: SO THEN WHAT ARE YOU DISCUSSING IT WITH ME FOR?

THE DEFENDANT: THAT IS ON THE INDICTMENT FOR MURDER.

THE COURT: WHAT IS?

THE DEFENDANT: BURNING AS A -- I HAVE AMENDED---

THE COURT: ARE YOU CHARGING HIM WITH BURNING THE PERSON BY KILLING THEM, MR. BLAKE?

MR. BLAKE: STRIKING, PUSHING OR BURNING.

THE COURT: MR. BLAKE, HOW ARE YOU GOING -- HOW CAN YOU PROVE HE KILLED A PERSON BY BURNING IF HE'S ALREADY BEEN CONVICTED OF -- ARE Y'ALL SAYING THAT HE BURNED SOMEONE AFTER THEY DIED?

THE DEFENDANT: THAT IS MY CONCERN, YOUR HONOR.

MR. BLAKE: THAT IS VERY ASTUTE AND TRICKY OF MR. STEWART; HOWEVER,---

THE COURT: IT'S NOT TRICKY, MR. BLAKE.

MR. BLAKE: WAIT A MINUTE, YOUR HONOR, MAY I?

THE COURT: DON'T YOU TELL ME WAIT A MINUTE, SIR. IT'S NOT TRICKY. IT'S NOT PURPOSEFULLY TRICKY. ALL I AM SAYING IS, THAT'S AN INTERESTING POINT, SO LET'S DISCUSS IT.

MR. BLAKE: IT IS AN INTERESTING POINT. AND THE

PATHOLOGIST SAID THERE IS A POSSIBILITY THAT THE DEATH OCCURRED THROUGH THE BURNING. FIRST OF ALL, HE'S ALWAYS REFERRING TO THE COVER SHEET THAT SAYS, PROBABLE CAUSE OF DEATH; PROBABLE CAUSE OF DEATH: BLUNT FORCE TRAUMA OF THE HEAD. THEY HAVE NO IDEA WHEN THIS PERSON ACTUALLY DIED.

AS, YOUR HONOR, I'M SURE KNOWS, PATHOLOGISTS CANNOT LIKE ON TV SAY IT WAS 4:32 A.M.

THE COURT: LET ME ASK YOU THIS, THOUGH. IS IT YOUR BELIEF THAT EVEN IF THIS JURY FROM THE EVIDENCE, IF THE JURY FINDS AND THE JURY HAS A RIGHT TO FIND. THE JURY FINDS THAT THE VICTIM DIED AS A RESULT OF BURNING, THEN WOULDN'T THAT -- HOW ARE YOU GOING TO COME BACK TO A JEOPARDY QUESTION THAT HE'S ALREADY PLED GUILTY TO BURNING A DECEASED PERSON? SO THEREFORE, THE STATE HAS BASICALLY COME TO THE CONCLUSION THAT THE PERSON WAS DEAD WHEN THEY WERE BURNED. BECAUSE YOU CAN'T BE CONVICTED OF BURNING A LIVE PERSON THROUGH THAT STATUTE, IT HAS GOT TO BE A DECEASED PERSON.

AND IF HE'S ALREADY BEEN CONVICTED OF THAT, WOULD THAT NOT BE JEOPARDY IN A WAY AS FAR AS THE BURNING? I MEAN THAT'S AN INTERESTING POINT THAT YOU MIGHT BETTER START LOOKING AT.

MR. BLAKE: IT IS A VERY INTERESTING---

THE COURT: I WON'T LOOK AT IT AND RULE ON IT TODAY, BUT IT IS SOMETHING YOU MIGHT WANT TO START LOOKING AT.

MR. BLAKE: IT IS CERTAINLY AN INTERESTING POINT.

MR. STEWART, I SAID TRICKY BECAUSE WERE IN THE MIDDLE OF DOING AN ARRAIGNMENT AND MR. STEWART PLED GUILTY TO THIS CHARGE. THE FACTS HAVEN'T YET BEEN DETERMINED AS TO THE MURDER. THAT'S FOR THE JURY TO DO, AND THAT'S FOR EXPERT WITNESSES TO DISCUSS. AND IF WE GET TO THAT POINT, WELL THEN WE WILL HAVE TO DEAL WITH THAT. BUT WE DON'T KNOW WHAT THE CAUSE OF DEATH IS RIGHT NOW.

AND IF IN FACT THE PERSON WAS NOT DEAD WHEN THE BURNING OCCURRED, THEN IT SOUNDS LIKE SOMETHING YOU DO WITH THAT CASE. BUT WE STILL NEED TO GO FORWARD ON THE MURDER, AND THERE ARE MANY OPEN FACTS IN THERE.

THE COURT: I MEAN IT'S SOMETHING THAT I FIND VERY INTERESTING. NOW THE ONLY THING IS NOW, THAT'S WHAT I DON'T UNDERSTAND, SIR, WHY DO YOU NOT WISH AN ATTORNEY TO BE REPRESENTING YOU SO THE ATTORNEY CAN REQUEST FUNDS FROM THE COURT TO GET ANOTHER PATHOLOGIST TO LOOK AT THIS?

THE DEFENDANT: YOUR HONOR, SIR, I HAVE THE AUTOPSY REPORT. BUT THE THING THAT I WAS REFERRING TO IS ON THE LAST PAGE WHEN IT HAS THE OPINION OF THE PATHOLOGIST. IT SAYS THIS OPINION WAS REACHED IN LIGHT OF HISTORICAL INFORMATION, MICROSCOPIC AND TOXICOLOGICAL AUTOPSY FINDINGS. AND IT HAS NOTHING. IT SAYS THE OPINION OF THE PROSECUTORS THAT DECEDENT, KENNETH ALLEN, DIED AS A RESULT OF BLUNT FORCE TRAUMA TO THE HEAD. IT HAS NO POSSIBILITY LISTING THAT THE BURNING CAUSED DEATH.

THE COURT: YOU DIDN'T ANSWER MY QUESTION.

THE DEFENDANT: SIR?

THE COURT: I ASKED YOU, ARE YOU SURE YOU DON'T WANT AN ATTORNEY TO REPRESENT YOU, WHO COULD NOT ONLY INTERVIEW THIS PATHOLOGIST, BUT SEEK OUT ANOTHER PATHOLOGIST?

THE DEFENDANT: I DON'T WANT AN ATTORNEY REPRESENTING ME.

THE COURT: HERE IS MY DECISION. MR. BLAKE, WHEN DO YOU PLAN TO TRY THIS CASE? HAVE YOU SET A TIME YET?

MR. BLAKE: YOUR HONOR, WE HAD IT SET FOR LAST TERM AND MR. STEWART HAD IT CONTINUED; I AM NOT REALLY SURE RIGHT AT THIS POINT. ONE THING I WANTED TO MAKE THE DEFENDANT AWARE OF, THERE WAS A SCHMERBER ORDER SIGNED BACK ON JULY 17TH. WE HAD A HEARING. WE PLAN TO TAKE SOME BLOOD TODAY WHILE MR. STEWART IS AVAILABLE OR SOME DNA TESTING RELATIVE TO THE CRIME SCENE.

THE COURT: OKAY.

MR. BLAKE: I CAN'T CONTROL HOW LONG THAT'S GOING TO TAKE.

THE COURT: WELL HERE'S WHAT I WANT TO DO THOUGH. I THINK AT LEAST 3 WEEKS BEFORE TRIAL, YOU NEED TO MAKE THE PATHOLOGIST AVAILABLE TO HIM BY MAKING SOME ARRANGEMENTS TO GET THE PATHOLOGIST BACK HERE FOR HIM TO INTERVIEW THE PATHOLOGIST. I AM NOT GOING TO HAVE HIM TAKEN TO FLORIDA OR WHEREVER ELSE. WHERE ARE YOU HOUSED?

THE DEFENDANT: LEE COUNTY.

THE COURT: WELL YOU CAN HAVE THE PATHOLOGIST BROUGHT HERE. THEY CAN BRING HIM HERE TO INTERVIEW THE PATHOLOGIST.

MR. BLAKE: YOUR HONOR, COULD THAT BE TELEPHONICALLY?

THE COURT: DO YOU WANT DO IT TELEPHONICALLY?

THE DEFENDANT: NO, SIR.

THE COURT: I THINK HE HAS A RIGHT TO LOOK AT THE PATHOLOGIST. I MEAN, JUST MAKE SOME ARRANGEMENTS TO PAY TO HAVE THE PATHOLOGIST TO COME HERE 3 WEEKS BEFORE -- AT LEAST 3 WEEKS BEFORE TRIAL. THEN IF WANTS TO GO FROM THERE. I WILL BE GLAD TO SIGN AN ORDER SO THAT CAN BE DONE. AND YOU CAN USUALLY GET COUNTY FUNDS OR STATE FUNDS OR WHATEVER. BUT I DO THINK HE HAS THE RIGHT TO INTERVIEW THE PATHOLOGIST.

MR. CROW: ONE OTHER MOTION HE TOLD ME ABOUT. HE WANTS TO INTERVIEW ALL OF THE STATE'S WITNESSES---

THE COURT: THAT'S DENIED.

MR. CROW: ---IN PERSON.

THE COURT: THAT'S DENIED. I'LL MAKE SURE RULE 5 IS COMPLIED WITH. BUT JUST SOME EXPANSIVE DECISION REQUEST LIKE THAT, RULE 5 DOESN'T REQUIRE THE STATE TO PROVIDE HIM EVERY WITNESS.

MR. CROW: BUT HE CAN FILE -- A RULE 5 AND A BRADY MOTION WAS FILED ON THAT.

THE COURT: UNLESS YOU CONSENT TO THAT, MR. BLAKE.

ROP 7

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
INDICTMENT NOS.: 02-GS-34-1918
COUNTY OF MARLBORO) 02-GS-34-1919

THE STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

WELDON W. STEWART, JR.,

DEFENDANT.

TRANSCRIPT OF RECORD

June 26, 2003
Darlington, S. C.

B E F O R E:

HONORABLE JOHN M. MILLING, Judge.

A P P E A R A N C E S:

DANIEL L. BLAKE, ESQUIRE
Assistant Solicitor, Fourth Judicial Circuit
Attorney for the State

WELDON STEWART, JR., DEFENDANT
PRO SE

AND

WADE R. CROW, JR., ESQUIRE
STANDBY COUNSEL
Public Defender for Marlboro County

LINDA W. MCCALL
OFFICIAL REPORTER

I'm accepting as true what you're telling me.

(Defendant passes autopsy report to the Court.)

THE COURT: Alright. So - - and for what - - what are you wanting your own forensic pathologist for?

MR. STEWART: Sir, the problem is that I have this autopsy report. This is all that I can go by. I have the opinion here that says, "blunt force trauma to the head". However, on the indictment for the murder indictment, that being Indictment # 02-GS-34-1919, it also has burning included as a possible cause of death, and when I objected to the terminology of this indictment in an October 17, 2002, hearing held before Judge Burch, the State did indicate that the pathologist, Dr. Harley says that it is a possibility that the victim died as a result of burning.

Now, I do not have this - - I do not see this reflected anywhere in the autopsy report.

Therefore, I originally made a motion to interview the pathologist during a December 11th, I think it was 2002, hearing held before Judge Lockemy. He granted this motion stating that I do have to interview the pathologist at least 21 days before my trial if I'm not mistaken.

Sir, the problem is that the autopsy report says one thing. My indictment says another, and the State has indicated that the pathologist at times has said another thing. So I'm not sure as to the accuracy of the pathologist's opinion. They certainly aren't consistent.

Therefore, I am - - -

THE COURT: Well, the only opinion that you know at this point in time of the pathologist is what is contained in their report. The State has said something about burning. Where do you get that from, Solicitor?

MR. BLAKE: Discussions with the pathologist, Your Honor.

THE COURT: So that you're saying that there may be things in the - - that the pathologist is saying that have not been included in the report?

MR. BLAKE: No, I think, actually, it's talked here about the primo oxi - - there's a measurement that was done that talks about whether it could have been caused by burning. He certainly has an opportunity to interview the pathologist. The Court has already ordered us to take him down to Charleston to do that. I don't - - really do not know if an independent pathologist could reconstruct this from simply the slides, etc.

THE COURT: Well, when there are competing expert opinions, ah, I think the second pathologist pretty much has to do it from the slides, etc. because usually by the time it gets to the latter stage, the body has been buried. So it would either have to be done in that way.

MR. BLAKE: And, Your Honor, of course, there's already been two pathologists.

MR. STEWART: I - - sir, I - - if I may be allowed to speak?

THE COURT: Yes, sir.

including burning in the murder indictment as a possible cause of death.

MR. BLAKE: Your Honor, this was addressed in the October 17th hearing by Judge Burch. Judge Burch said that that did present an interesting conundrum and that it would be dealt with at trial.

MR. STEWART: Sir - - sir, if I may be allowed to - - justice - - -

RULING OF THE COURT

THE COURT: I am at this time going to deny your request for an independent pathologist. I am not going to contend that you cannot bring it back up but you have not yet interviewed the pathologist who did this - - who prepared the report, rather. You have not had a chance to ask that pathologist, you know, "Are you going to testify that you think I burned this person as a manner of causing death or are you going to testify like the indictment I pled to that she was dead at the time that I burned her?"

Depending on what response you get may depend on what needs to be done thereafter. So I would ask the State to go ahead and make those arrangements to get him down to talk to the people who performed the pathology or performed the autopsy, rather, so that this issue can be cleared up.

It may be that Mr. Blake's understanding of what was going to be testified to or what the pathologist meant by his findings was in error, and so you may - - you will find out after you interview the pathologist as to, you know, "Why would the State be trying to

contend that I burned the person as a manner of causing death? The State's already had me plead to burning her as a manner of desecration."

MR. STEWART: Yes, sir.

THE COURT: And once you get your answer there, it may or may not leave you needing to come back and renew your motion but at this point in time, I'm going to deny it.

MR. STEWART: Sir, my concern, why I continue to raise this issue is that this being included in the indictment for murder, once this indictment is presented to the - - to the prospective jurors, I think it that it will create an unfair prejudice in that it will - - it will tend to cause them to think that simply because I pleaded guilty to desecration of human remains, I'm also guilty of murder.

THE COURT: Not necessarily. The State's going to have to prove. You could have run across the body some four or eight to six hours later, whatever the time frame is, and have burned the body.

You've told me at this point in time that the death was unintentional, not murder. I'm not so sure that you don't need to talk some with Mr. Crow as your standby counsel to see what has to be - - to see what elements constitute accident, ah, to talk with him to insure that if you're trying to - - will be asking the Court for a lesser included charge of voluntary manslaughter to see if elements exist for that but sometimes the State makes allegations

ROP 8

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHESTERFIELD

02-GS-34-1919

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

July 15, 2003
Chesterfield, South Carolina

B E F O R E:

The Honorable PAUL M. BURCH, Judge.

A P P E A R A N C E S:

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WADE R. CROW, Public Defender
Stand-by Attorney for the Defendant

VIRGINIA STEWART, Defendant's Mother
WELDON STEWART, SR., Defendant's Father
DALLAS GURLEY, Bennettsville Police Department

HATTIE O. GORDON
CIRCUIT COURT REPORTER
FOURTH JUDICIAL CIRCUIT
[redacted]
WALLACE, SC 29596-0597

MR. BLAKE: Weldon Stewart.

MR. CROW: I've asked that they take the handcuffs off Mr. Stewart and ask that his parts to come up.

MR. BLAKE: Your Honor, we're here on Indictment 02-GS-34-1919. This is a Marlboro County case. We're over here in Chesterfield County because we have a trial scheduled the week of July 28th. Mr. Stewart had some motions, and the State had some motions also.

We wanted to get things sort of cleared up before court. As Your Honor will recall, the Defendant pled to 01-GS-34-0121, desecration of human remains. And that was pled to sometime last year. Sentencing has been suspended on that until after the conclusion of the murder case.

First thing the State has, and I believe that it's just a matter of putting it on the record, I've talked to Mr. Stewart's stand-by counsel, Mr. Crow, about amending the indictment by deleting the words, "pushing and or burning." This is Indictment 01 --- excuse me, 02-GS-34-1919. I'm showing this to Mr. Stewart.

That would mean that the indictment would read, "That Weldon Stewart, Jr., in the County of Marlboro, on or about December 6, 2000, did with malice aforethought kill one [redacted] Allen to wit by striking her, and that the said [redacted] Allen did die as a proximate result thereof on or about the 6th day of December 2000. This in violation of

Section 16-3-10 of the Code of Laws of South Carolina as amended." Passing that up to Your Honor.

It's my understanding that this is something that's already been agreed to by the parties, but I wanted to put that on the record so there is no confusion.

MR. CROW: That's what I'm told. Do you want to comment on that? That takes out "burning."

THE COURT: That takes out the word "burning." Do you have any problem with that, Mr. Stewart?

MR. STEWART: No, sir.

THE COURT: So be it.

MR. BLAKE: The other matter from the State is that there are some documents, I guess I should say, that were sent to law enforcement and sent to the victim's parents. These documents had, on some of them, had Mr. Stewart's signature. These same documents have been submitted to SLED.

The handwriting expert states that it is Mr. Stewart's handwriting, and there are numerous fingerprints on these documents. I've tabbed them so the Court can kind of see just the number of them, and I can pass that up if you like.

The State seeking to have the Defendant stipulate that those documents and, specifically, that would be a documents called, "The Calamity;" that that be stipulated to as being written by Mr. Stewart.

THE COURT: Mr. Stewart, have you had an occasion to look

MR. BLAKE: Your Honor, the next one is Court's Exhibit 5. It is a motion for disclosure by Mr. Stewart, and essentially, it's the State's position that this is in essence a continuing Rule 5 request that it be dealt with at the time of trial.

(COURT'S EXHIBIT NO. 5 ADMITTED INTO EVIDENCE.)

The State recognizes its continuing duty to disclose certain information as outlined in Rule 5 to the defendant. In this motion, he's asking all of any evidence that has not been presented to him prior be suppressed. I think the rule really puts that more in the discretion of the judge.

I would simply ask that this motion, motion for disclosure, Court's Exhibit 5, be held over until the time of trial for the trial judge to look at and decide at that time.

THE COURT: All right. I won't rule on it. Trial judge will rule on it.

MR. BLAKE: Same thing for Court's Exhibit 6 ---

THE COURT: But I'm doing it, now, and I'm taking that as an assumption that you're assuring the Court that you've turned over everything that you know to this point.

MR. BLAKE: Certainly, Your Honor.

THE COURT: There may be more if it comes about, but if there is a problem with that, I agree, the trial judge should so that.

(COURT'S EXHIBIT NO. 6 ADMITTED INTO EVIDENCE.)

Q. Okay. You had indications in there about fluids and organs and things like that. Does that give you any indication of how long it might have been since she had eaten?

A. She had only a small amount of fluid in her stomach. No food, and she might have drunk something within minutes to an hour or so before she died, but she hadn't eaten anything significant. Anything that was there was gone, been digested.

Q. And it's your professional opinion that she died from blunt force trauma to the right parietal?

A. Yes, sir, that's our conclusion.

Q. Do you have an idea of how long it took for her to die?

A. In this case, it's really hard to say. The size of the blood clot there, it was considerable, but people can withstand a good bit of pressure there for a while. And it's very unpredictable as to how long a blood clot of that size might have been there before it compressed the brain to the point that she stopped breathing.

Q. Would not have been immediate though?

A. Not necessarily, however, the fact that she had this degree of trauma here suggests she may have had further trauma through the brain and again, the brain we had a good bit of brain tissue to look at, but it wasn't entirely intact. So she could have died very quickly or it could have taken a matter of hours.

ROP 13 FN 12

12/19/00

B'VILLE P.D.

DET. DALLAS GURLEY

[redacted] [redacted]

AL STUCKEY SLED CRIME SCENE ANALYST

F/15 (CHEROKEE S.C.)

DATING Weldon Stewart m/14
CAUGHT TOGETHER -
both families AGREE - NO RELATIONSHIP -
BE TOO YOUNG

PRETTY - denied Weldon -
TUMOR - PRIOR PREG/ABORTION
9th/10th GRADE H.S.
15 SOON 20 - SEXUALLY PROMISCUOUS
SLEEPING OUT HOUSE. ←→ DATING
PRIOR w/ older men -
BIO - 21 NOT @ home
DAD - PRIOR military. (NOW SC) DECEASED CANCER
MOM - UNK?

LSA: 12/6/00
BD STATION WRIGHT } B'BRIDGE, S'BRIDGE
MONAGUE
Weldon
PLN @ 0130 TO Weldon HSE FOR SEX

MOM CHK 0430
ONE DOOR UPCH - A NOT IN

ROP 13 FN 12

Δ RTN 0500/0530 ?
w/ flashlight - leaves -
NO explanation mom/DAD

Δ calls 1315 MS body in YARD

EXCELLENT - GASOLINE
COD: BFT

DENIES killing - admits fire
RE NO OPEN CASKET
discussion

Δ offered letter to Police
waived 5th/ rights arrest (MONDAY 12/11/00)

Δ appointed public defender

REQ. CRIME SCENE ANALYSIS FOR
GRAND JURY/ TRIAL

ROP 13 FN 12

PERSONS INTERVIEWED	ADDRESS	DATE

NARRATIVE REPORT

VICTIM, FB/15 YEARS old, FOUND IN YARD OF 19 YEAR OLD boyfriend. CAUSE OF DEATH, BLUNT FORCE TRAUMA, BOOT SET ON fire After death. BOYFRIEND in custody After giving four different VERSIONS HOW MURDER OCCURED.

CRIME SCENE ANALYSIS REQUESTED to Rebut SUSPECTS ACCOUNT HOW murder occured.

OPEN & ASSIGN

FINAL DISPOSITION: DATE TRIED: _____ COUNTY: _____

COURT: ☐ General Sessions ☐ Magistrate - Judge: _____

DEFENDANT(S): _____

SENTENCE: _____

REPORTING AGENT: _____ DATE: 12/18/00

CALEA 42.1.3

We asked Weldon if he would show us the path that was used by him and the victim. Officers of the Bennettsville Police Department brought him back to the scene. Located at the rear of the property was a path leading through a small brush area. In this path we found red stains that appeared to be blood.

When crime scene arrived they process the house and the path at the rear of the property and photos were taken.

On the morning of 12/07/00 I contacted MUSC where I was informed that the victim died from blunt trauma to the head that could not have been from a fall.

Weldon W. Stewart Jr. was charged with murder, warrant number G388587 and desecration of a human body, warrant number G388588.

Weldon statement stated that himself, a friend Bo and his girlfriend went and picked up the victim and that Weldon and the victim went to his house about 2:00 AM where they stayed until about 4:00 AM. He stated the she got upset because he had a baby by another girl. He stated that when they left and was fixing to enter the path, she pulled a razor on him and he grabbed her and they fell with him being on top. He stated that he heard a noise that might have been her neck crack but don't know for sure. He stated that he did not move after that. He went to the house and got a flashlight and went back to the path and also showed his friend, Stanton E. Wright (Bo), the victim. He then left and went back in the house where he stayed until about 11:00 AM at which time he went back and moved the body to where it was found. He went to the BP station where he got gas and poured the gas on the body and set it on fire.

Stanton E. Wright was also arrested for Accessory After the Fact of Murder, warrant number G388589.

Wright statement was that when Weldon and him was walking to the path before he knew what was going on, that Weldon told him that the victim had sex with someone else before coming over to his house and didn't shower. He stated he flipped out, and about that time he shined the flashlight in the path and he saw the victim. He then turned around and ran home.

A statement was taken from Virginia Stewart, Weldon's mother. Her statement showed that sometime in the early morning hours, Weldon came into the house and left again with a flashlight. She stated that she did not hear or know that the victim was in the house and anytime.

A. They were taken when the remains were brought to the Autopsy Room, and then various points during the examination.

Q. When you say "remains", what did they look like?

A. Charred. The -- most of the flesh was gone. You can see the intestines. You can see the brain. The heat had been intense. There had been fractures of a number of bones. All the ribs was broken. The skull had some cracks and fractures in it. The left hand was missing. Both feet were missing.

Q. Given the fact that those bones were broken, could you tell how those bones were broken on the legs, various places on the ribs?

A. My assumption is that this was from fire because the body was so severely charred. Totally black from top to bottom. I couldn't say what might have happened to, for instance, the hands because they weren't there.

Q. And you said the ribs were broken, could they have been broken from some other cause?

A. I don't think so. Even though the body was badly charred on the outside, from the inside, we would see evidence of bleeding had there been any bleeding there. I think it was from the heat.

Q. But you did find evidence of quite a bit of internal bleeding in the skull?

A. In the skull, in the right-hand side under the

parietal bone right here where I'm pointing. There was a fracture here that was epidermal hemorrhage, which is hemorrhage on top of the heavy lining of the surface of the brain. And there was subdural hemorrhage as well so there was a big blood clot in the ear.

Q. And you photographed that?

A. Yes.

Q. Is that what contributed to your finding of blunt force trauma?

A. Yes, it did. The exact nature of the injury, I couldn't say exactly what the thing was that hit her head or that her head hit. I couldn't see the shape of it.

If there had been a scalp there, for instance, you could see the shape and the bruise and that sort of thing. All we had was the skull and the bleeding under it. So something cracked her skull here, and she bled underneath that.

Q. Internal bleeding?

A. Right.

Q. Did she bleed externally from that?

A. I don't know. The scalp was gone.

Q. Do you know if she bled externally from anywhere?

A. No. She was totally charred, so I couldn't see.

Q. Didn't know about any bruises on the body?

A. No.

Q. Any defensive wounds where she was trying to defend

ROP 16 FN 13

September 9, 2000

Intro Nope dont think so. But anyway. If that is your baby. I dont know what I'm going to do. Because that motherfucker baby isnt worth all the shit we went through, but u fail to realize that, but it is cool U do what u got to do and your mom since she acts like she is so mature. I know I cant accept the baby, now your mom is about to claim it now. I know this isnt going to work. Plus, I'm listening to he say and she say. I dont believe it, I ask u about it

ROP 16 FN 13

but I don't believe it. U can't trust me and u were the one saying this is a test. U are talking to your baby mother on the phone like I said u aren't going to make a fool out me and now u got your mom helping u. You make me look so dirt, so when u slip or if u already have, u will make it look like it was all good. Your baby might breathe than me, but the baby don't mean shit to me. So do what u got do I always thought we was learn our parent experience together, but now that is out the question.

ROP 16 FN 13

U already stated. But to me, you are trying to screw your baby mom & don't want nothing to do with me. U keep breakin promises. U don't know how to keep them. I don't mean shit U remember U always told me to stop living in a fanty. Maybe I am, I'm so hurt, so pissed off. I love U so much, but I have to make U choose. If it is your baby over me, I think I need to leave. I hurt so bad. I feel like I want to kill myself, but why should I and you wouldn't even care if I did. I

ROP 16 FN 13

cant cope with the pain anymore. If I'm at the point thinkin abat killing myself, it is not good. Don't let me stop doing what u got to do, because u arent living your life for me anymore. By me making u choose between me and your child probably will hurt me more than u because I know who u are going to chose and it isn't me. I'm sorry boo but I never thought this would ever happen to us. I'm crying while I'm writing these words, but u do what u go to do. This pain hurts so much. I will always love

ROP 16 FN 13

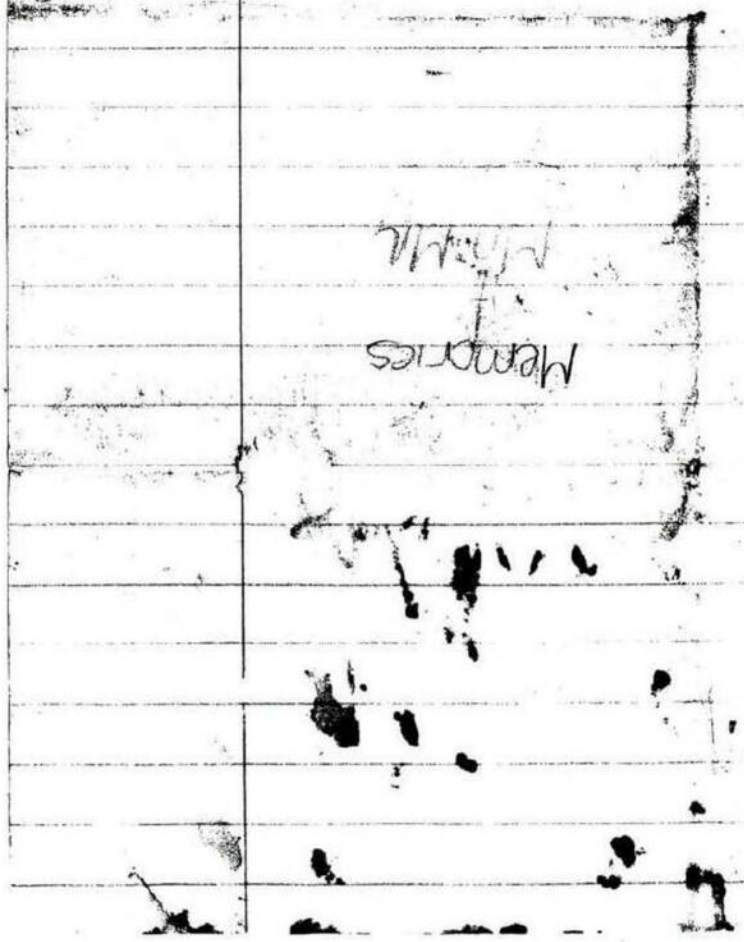
u no matter what, but this pain is nothing I can't handle anymore. So u do your thing. Go get the pussy u was Bragging about. I love you so much. I holla at u. Im sorry for making u chose, but I think Im doing this for MnMa. Bye

If memories of mnm

Love,
Babybird.

Sorry.

ROP 16 FN 13



ROP 16 FN 15

Expert: Aguigui's wife died after violent struggle

By Randy C. Murray

POSTED: July 3, 2013 9:27 a.m.

A Savannah medical examiner asked to take a second look at the autopsy results of Sgt. Deirdre Aguigui said he determined the 24-year-old, who was about about six months pregnant, died by asphyxiation.

Pathologist Dr. James Downs testified during an Article 32 hearing conducted Monday and Tuesday on Fort Stewart. He said he looked at the evidence from the original autopsy done in September 2011, and by ruling out all other possible causes of death, determined she died July 17, 2011, by asphyxiation, and that her death was a homicide. The original autopsy found the cause of death to be undetermined.

"Deirdra Aguigui died of blunt-force asphyxiation," said Downs, who explained that he has conducted more than 16,000 autopsies in his 25-year career. "I start with the autopsy report and physical findings, and I walk through what I can see with my own eyes or what's written on the page. ... That's what autopsy means, to see it yourself."

Downs reviewed dozens of autopsy photos with lead government attorney Maj. Jaclyn Grieser. He noted instances of petechial hemorrhages in the left eyelid and lips as well as multiple examples of blunt trauma to her wrists, elbows, upper and lower back, head and face. He said the bruises on the wrists were evidence that she probably had struggled violently against handcuffs.

During the examination of each photo, Pvt. Isaac Aguigui looked forward, rather than at the large flat-screen TV on the wall to his left. He did glance up at one point, however, when Downs noted the petechial hemorrhage to the left eyelid — evidence, he said, that she died of asphyxiation.

Downs said it wasn't unusual that there weren't more signs of hemorrhaging. He said if the asphyxiation is done quickly — via an Army combatives move called a sleeper hold — the blood to the head is blocked, preventing a lot of hemorrhaging. Other witnesses previously had testified that Aguigui received basic Army combatives training during his advanced individual training at Fort Huachuca, Ariz., and he told neighbors who inquired about loud noises coming from his Fort Stewart apartment that he and his wife sometimes practiced Army combatives. Neighbor Amanda Still testified hearing such noises the evening of July 17, 2011.

Other witnesses testified Aguigui abused his wife physically and sexually. Lt. Col. Kristin Brown, who was chief of Winn Army Community Hospital's OB/GYN clinic, testified she saw Deirdre Aguigui several times between April and July 2011. She noted that Deirdre Aguigui had marital problems, and the sergeant told Brown that her husband often required her to perform certain rough acts that included bondage. Brown said she never saw any signs of bruising during complete medical exams.

Brown said Deirdre Aguigui did report falling on her hip at one point, and complained often about pain in her knees and lower back. Brown said her patient seemed mostly sad about her marriage, although she was excited about her pregnancy. Other witnesses testified about the Aguiguis' marriage, including Isaac Aguigui's alleged frequent infidelity.

Close friend Michael Schaefer said Isaac Aguigui called his wife vulgar names and frequently said that he hated her. During a trip to Columbia, S.C., on July 15, 2011, Schaefer said, Isaac

Aguigui said he would be better off without his wife.
"He was having doubts about whether the child was his," Schaefer said. "He claimed she'd had an affair while she was downrange. He said he'd be better off without her. I took it to mean if she were dead ... I told him that was what divorce was for."
Schaefer's sister, Kimberly Fekete, testified she also heard Isaac Aguigui say he would be better off if his wife was dead during the weekend her brother and Isaac Aguigui stayed with her. She said Aguigui went into a vitamins shop while he was there to purchase what she thought was potassium chloride. This later was identified at potassium iodide, which is used to treat cancer patients suffering from radiation poisoning. Others testified they had heard him say his wife was allergic to iodine.
Although the bottle was found in the Aguiguis' medicine cabinet and a syringe was found in the living room of the apartment during the investigation, autopsy results were negative for potassium iodide. Other medical witnesses called included Dr. William Thompson, the emergency room doctor on call the night Deidre Aguigui was brought to Winn's emergency room; Navy Lt. Cmdr. Dr. Lisa Rivera, the pathologist-in-training who led the initial autopsy; and Dr. Russell Harley, a semi-retired pathologist with a specialty in lung pathology who also participated in the first autopsy.
Special Agent Justin Kapinus, U.S. Army Criminal Investigation Command and lead CID investigator, testified that his office received a call from the casualty-assistance office that Isaac Aguigui had asked about death gratuity pay for his wife. Kapinus said this was one among many examples of unusual behavior by Isaac Aguigui after his wife died. He said Aguigui received more than $500,000 in death gratuity and Soldiers Group Life Insurance.
Several witnesses, including a girlfriend, Samantha Cox, said Isaac Aguigui told her he was going to come into a lot of money soon, referring to a business loan he was expecting approval on. After his wife's death, he held several beer parties, witnesses said.
Schaefer said the two had talked about starting a security company, but he left all the details to Isaac Aguigui. Defense attorney Capt. Scott Noto had Kapinus testify he had found a security guard's uniform in the Aguiguis' master bedroom closet.
Kapinus said the Aguiguis' apartment appeared too staged for investigators, noting a plate with a single potato, knife and fork on the floor next to the couch where Deidre Aguigui supposedly had been found unresponsive, but fragments of potatoes were strewn across the floor. The bedroom seemed even more staged, he said. Adult "toys," such as leg restraints and hinge-style handcuffs, lay on the bed next to other paraphernalia. On one end of the bed was a bowl, book and pillow.
In her closing statements, Grieser asked where Aguigui was supposed to have slept until 8 p.m., according to what he told CID investigators. Did he sleep on top of this stuff, she asked. She also noted there was no evidence that Aguigui ever applied for a loan or government grant.
She argued there was sufficient evidence that Aguigui had the opportunity, means and desire to kill his wife. She noted that Downs, a federal "expert" in pathology testimony, had determined there was probable cause to believe Deidre Aguigui died of blunt-force asphyxiation, probably from a sleeper hold. She said the CID investigators discussed their findings and those of Downs and concluded there was enough evidence.
Noto said the government failed to show there were reasonable grounds for the second autopsy. He claimed the hearing itself was the result of what he called Down's "theory" that Deidre Aguigui died of asphyxiation. He seemed to confuse what Rivera had explained about the difference between cause of death and manner of death.
She had said an autopsy might conclude with a cause of death but not the manner in which it was caused. Noto suggested there was no evidence to determine whether Deidre Aguigui was asphyxiated by strangulation, smothering or some other manner.

Suit against Army in couple's murder gets 2016 trial date

Originally published March 9, 2015 at 6:44 pm Updated March 9, 2015 at 7:39 pm

Judge sets trial in lawsuit by families of couple slain by members of a secret Army group that was plotting to assassinate President Obama.

By
Mike Carter
Seattle Times staff reporter

A federal judge has set a July 2016 trial date in a lawsuit filed against the Army by the parents of a Marysville man and his girlfriend killed by a group of renegade soldiers in Georgia in 2012 to protect a plot to assassinate President Obama.

The wrongful-death lawsuit, filed in December in U.S. District Court in Seattle by the parents of Michael Roark, 19, and his girlfriend, 17-year-old Tiffany York, of Georgia, alleges the Army allowed a secret militia called "FEAR" — Forever Enduring, Always Ready — to "form and fester within its ranks" at Fort Stewart, Ga., where Roark was stationed as a private.

It also claims the Army had plenty of warning that the leader of the group, Pvt. Isaac Aguigui of Cashmere, Chelan County, was a "dangerous and mentally unstable" soldier — including evidence that he had murdered his wife, an Army sergeant, just five months earlier.

The lawsuit alleges that, despite suspicious circumstances surrounding the death of Sgt. Deirdre Aguigui in July 2011, the Army paid Isaac Aguigui $500,000 in death benefits, which he used to finance his plan, including the purchase of $32,000 in assault-style rifles and handguns from a Wenatchee gun shop.

The group also plotted to buy land in Washington as a compound and discussed poisoning the state's apple crop and planned to kill the president.

ROP 16 FN 15

The civil trial is expected to last two weeks.

Aguigui was sentenced to life without parole in March 2014 by a military judge after he was convicted of killing his wife. He was court-martialed only after a second autopsy found evidence she had been strangled.

The Army bungled the first autopsy, according to the lawsuit.

Aguigui pleaded guilty last May to the murders of Roark and York and received two more life terms.

York was shot by another member of the group, former Sgt. Anthony Peden, a heroin-addicted combat veteran of the Afghanistan and Iraq wars who as a Cavalry scout had suffered traumatic brain injuries and post-traumatic stress disorder. He was sentenced to life with the possibility of parole last May, with the judge acknowledging his service record.

Roark had been discharged from the Army after getting in trouble, and Aguigui and other members of the group feared he might talk about its plans.

According to prosecutors, Aguigui, Peden and the others, Pvt. Christopher Salmon and Pvt. First-Class Michael Burnett, lured Roark and York into the woods near the base and shot them. Peden shot the woman and Salmon shot Roark on his knees, according to evidence at their trials.

Salmon is also serving life without parole.

Burnett pleaded guilty to reduced charges of manslaughter in 2012, when he agreed to testify against the other soldiers

The lawsuit alleges the Army should have been on notice that Aguigui and Peden were troubled soldiers who talked openly of plans to form a militia and carry out terrorist operations.

Shortly after the suspicious death of his wife, the lawsuit alleges, the Army investigated Aguigui in a plot to kill local drug dealers so Aguigui could take over the trade.

The plaintiffs include Tracy Jahr, Roark's mother, of Marysville; his father, Brett Roark, of Daytona Beach, Fla.; and York's parents, Timothy York of Kerman, Calif.; and Brenda Thomas, of Richmond Hill, Ga.

ROP 16 FN 15

Life sentence is convict's second

Former soldier guilty of killing wife

By Randy C. Murray Correspondent

POSTED: March 28, 2014 9:43 a.m.

Pvt. Isaac Aguigui was found guilty Thursday by military Judge (Col.) Andrew J. Glass on the fourth day of Aguigui's court-martial on Fort Stewart for the murder of his wife, Sgt. Deirdre Aguigui, and the death of their unborn son.

Glass told the court he found Aguigui guilty on all charges and findings but noted that he had not considered the government's evidence that Aguigui was pending administrative discharge.

Four pathologists, accepted by the court as experts in their field, failed to agree on the findings from the autopsy report on Sgt. Deirdre Aguigui during this week's trial.

The verdict came Thursday after three days of testimony by government and defense witnesses. The trial counsel, consisting of Maj. Scott Hughes and Capts. Catherine Parnell and Jana Lepir, argued successfully that the testimony of Dr. James Down, a forensic pathologist with more than 25 years' experience demonstrated how Deirdre Aguigui died and why.

They said Isaac Aguigui hated his wife and wanted out of his marriage, and he was motivated by money. Down, who said he has performed more than 4,500 autopsies and assisted in more than 17,000 forensic evaluations, reviewed the autopsy report of a government pathologist, Navy Dr. Lisa River, who admitted she had done just over 200 autopsies at the time she did the autopsy on Deirdre Aguigui.

Rivera and Down noted more than 20 bruises and abrasions were on Deirdre's body, including abrasions to both wrists and her back. Rivera said these injuries were not the cause of death and provided no information as to the manner of her death. She noted a hemorrhage to her left eyelid but said it was probably due to post-mortem bleeding. She also found a deep bruise to the side of her neck near the carotid artery. This she also attributed to post-mortem bleeding.

Down said these injuries were evidence of manual strangulation, most specifically the result of someone strangling her with what he called a carotid sleeper hold. This information fit with the testimony of former Army Sgt. Michael Schaefer, who said Aguigui confessed to him he had handcuffs his wife, put a plastic bag over her head and then strangled her with a sleeper hold.

Down said when he makes an evaluation he looks not only at the medical evidence but also witness statements. Schaefer's testimony, along with others saying that Aguigui had told them he was "better off" without his wife and that he could kill her and get away with it, led him to give a closer look at Deirdre's injuries.

"The manner of death in this case was murder," Down said. "The cause of death was manual strangulation with multiple injuries caused by blunt force trauma from binding ligatures."

Down said he could rule out cardiac arrest because Deirdre had no history of heart problems, there was no evidence of a cardiac event at the scene and a cardiac pathologist had looked at the heart and rule out a heart attack. Dr. Russell Harley, a pulmonary pathologist also ruled out heart attack, and though he said he could see where Down's findings were possible, he couldn't make that determination. A fourth pathologist, Dr. Adel Shaker, who testified for the defense, said he agreed with assessment of the other three pathologists but said he was sure Deirdre had, in fact, had a sudden heart attack.

Shaker, a doctor-pathologist with medical training in Egypt and the United States, owns his own forensic consulting firm. During cross-examination, his findings were challenged repeatedly by the government attorneys. Down admitted it was possible for pathologist to look at the same evidence and come up with differing opinions. He emphasized, however, his years of experience in pathology and background with law-enforcement training gave him experience the other pathologists didn't have.

"Medicine is both an art and a science," he said. "Different people with different experiences and different training might see things differently ... But I am convinced to a reasonable degree of medical certainty that Deirdre was murdered."

ROP 17 FN 17

State of South Carolina
Office of the Solicitor
Fourth Judicial Circuit

MARLBORO COUNTY COURTHOUSE
[redacted]
BENNETTSVILLE, SOUTH CAROLINA 29512
TELEPH
FAX [redacted]

JAY HODGE
Solicitor

COUNTIES
CHESTERFIELD / DARLINGTON
DILLON / MARLBORO

July 1, 2003

W. Ronald Crow, for Weldon Stewart, Jr.
[redacted]
Bennettsville, SC

Dear Mr. Stewart:

Pursuant to the recent hearing in Dillon County, I have enclosed an unsigned/unfiled copy of the Order from that hearing.

In addition, I have enclosed professional copies of all known photographs, excluding the autopsy photos. You will receive the autopsy photos once I get them from MUSC Pathology.

Also, I have spoken with SLED and found out that the handwriting exemplars that they used as standards in their testing were the Miranda warning and Voluntary Statement that you signed. You already have these documents.

In addition, I have included a copy of all of the SLED Reports that I have knowledge of. There will probably be more SLED reports and I will send them along once I receive them.

Sincerely,

Dan Blake

SLED Reports
Questioned Document 8/20/02
Questioned Document 10/8/02
Report from RL Elvington
Latent Prints Report 3/20/03

ROP 17 FN 17

CERTIFICATE OF MAILING BY SOLICITOR'S OFFICE
STATE V. WELDON STEWART, JR. (MARLBORO COUNTY)

Please note that the Solicitor's Office hereby makes any and all reciprocal discovery requests as provided in Rule 5 of the South Carolina Rules of Criminal Procedure. The Solicitor's Office also does not waive any of its applicable rights under Rule 5. Copy of Rule 5, SCRCrimP is enclosed.

BELOW IS A LIST OF THE MATERIALS ENCLOSED:

Order on Defendant's Motions: Judge Burch (7/17/02) (2 pages)
Letter to SCDC Office General Counsel re Safekeeping (7/17/02)
Request for Transcript in Courtroom and Order for Expenses: Judge Lockemy (6/25/02) (4 pages)
Order to Pay Costs: Judge Burch (7/16/02)
Schmerber Order for Taking Physical Evidence: Judge Burch (7/17/02)
SLED Lab Evidence Inventory Sheet (2 pages)
Photocopies of photos taken at scene (15 pages)
Report of Finding Mental Capacity: Wm. S. Hall Forensic Division (7/25/01) (11 pages)
Necropsy Report: Forensic Pathology: MUSC (12/7/00) (7 pages)
NCIC report: Weldon Stewart, Jr. (3 pages)
Voluntary Consent to Search (12/6/00)
Warrant for Murder
Warrant for Desecration of Human Body
Booking Report (2 pages)
Miranda Warning and Statement by Weldon Stewart, Jr. (12/6/00) (3 pages)
Incident Report by Bennettsville Police Dept (12/6/00) (4 pages)
Voluntary Statement by Virginia Stewart (2 pages)
Voluntary Statement by Weldon Stewart, Sr.
Voluntary Statement by Monique Bright
Voluntary Statement by Robert Moore
Voluntary Statements by Stanton Wright (2 pages)
Seizure Report Form (12/6/00)
SLED Chain of Custody (12/6/00)
12/6/00 Typed Statement by Investigator Valdaliso
Indictment for Murder (to be amended per Judge's 7/17/02 Order) (2 pages)
Indictment for Desecration of Human Remains (to be amended per Judge's 7/17/02 Order) (2 pages)
Correspondence from Defendant to law enforcement and victim's family (77 pages)
SC Criminal Procedure Rule 5 (3 pages)

FURTHER INFORMATION, DISCOVERABLE UNDER BRADY OR RULE 5, WILL BE FORWARDED AS THIS MATERIAL BECOMES AVAILABLE.

I hereby certify that the above material materials were delivered to the US Post Office in Cheraw, SC on August 12, 2002 and that these materials were sent by Priority Mail, return receipt requested, to the following address:

Weldon Stewart, Jr., SK # 5186
Lee Correctional Institution
[redacted].
Bishopville, SC 29010

Daniel L. Blake, Asst. Solicitor

statement, same day, no mention. Opening statement, no mention. And then yesterday, he said he wanted to go home.

Now, this is probably the mystery of all. Place the path where the fall occurred. And why is it a mystery? Why can't I just tell you exactly where? Cause he moved the body. He messed up the crime scene. I'm being -- what the State is being -- said we didn't do an investigation or we didn't prove it. That's cause he did a very good job of destroying evidence.

Where is that stick that hit her? I don't know. There was a big bond fire. No, I don't have the DNA on it. How do we know in the path where that happened? Well, sometime later that day, he led some policemen and SLED people to the path, and then one week later, the police could have missed it. It's possible.

There are other things that weren't entered into evidence, but it was brought for you to look at, such things as the gas can, which you have a picture of. But I'm not supposed to talk about that because it's emotional and will even influence you.

But the Judge will tell you that you can infer the mental state required for the crime by that covering up. Those are the defendant's own statements. They are his own words. I didn't twist them. I didn't turn them.

I think there is enough inconsistency there to sink a

We asked Weldon if he would show us the path that was used by him and the victim. Officers of the Bennettsville Police Department brought him back to the scene. Located at the rear of the property was a path leading through a small brush area. In this path we found red stains that appeared to be blood.

When crime scene arrived they process the house and the path at the rear of the property and photos were taken.

On the morning of 12/07/00 I contacted MUSC where I was informed that the victim died from blunt trauma to the head that could not have been from a fall.

Weldon W. Stewart Jr. was charged with murder, warrant number G388587 and desecration of a human body, warrant number G388588.

Weldon statement stated that himself, a friend Bo and his girlfriend went and picked up the victim and that Weldon and the victim went to his house about 2:00 AM where they stayed until about 4:00 AM. He stated the she got upset because he had a baby by another girl. He stated that when they left and was fixing to enter the path, she pulled a razor on him and he grabbed her and they fell with him being on top. He stated that he heard a noise that might have been her neck crack but don't know for sure. He stated that he did not move after that. He went to the house and got a flashlight and went back to the path and also showed his friend, Stanton E. Wright (Bo), the victim. He then left and went back in the house where he stayed until about 11:00 AM at which time he went back and moved the body to where it was found. He went to the BP station where he got gas and poured the gas on the body and set it on fire.

Stanton E. Wright was also arrested for Accessory After the Fact of Murder, warrant number G388589.

Wright statement was that when Weldon and him was walking to the path before he knew what was going on, that Weldon told him that the victim had sex with someone else before coming over to his house and didn't shower. He stated he flipped out, and about that time he shined the flashlight in the path and he saw the victim. He then turned around and ran home.

A statement was taken from Virginia Stewart, Weldon's mother. Her statement showed that sometime in the early morning hours, Weldon came into the house and left again with a flashlight. She stated that she did not hear or know that the victim was in the house and anytime.

ROP 18 FN 19

4
CS

SLED FORENSI. . SERVICES
CRIME SCENE DATA SHEET

Lab #: 00-13754

CALL RECEIVED

Date: 12-6-00
Time: 5:45 AM/PM
From: OD Quarters for
Agency: SLED Aiken
Phone #: N/An
Incident Type: Death Inv.

CRIMESCENE INFORMATION

Scene: (inside) outside
Scene Secure: (yes) no
Suspect(s) In Custody: (yes) no
Vehicle Involved: yes (no)
Body Involved: (yes) no
Body At Scene: yes (no)
Weapon Involved: yes no
Type: Unknown
Special Equipment: yes (no)
Type:

Regional Captain Notified: (yes) no
Comments: via OD Quarters
Personnel at Scene Form Completed yes (no)
By Whom

VICTIM/SUSPECT DESCRIPTION

(Victim)/Suspect [redacted]
Race B Sex F DOB
Other ID:

Victim/(Suspect) Weldon Stewart, JR
Race B Sex M DOB
Other ID:

Victim/Suspect
Race Sex DOB
Other ID:

Victim/Suspect
Race Sex DOB
Other ID:

VEHICLE DESCRIPTION

Vehicle 1: V/S Make Model
State Tag Year Color
VIN
Comments (Style)

Vehicle 1: V/S Make Model
State Tag Year Color
VIN
Comments (Style)

ADDITIONAL INFORMATION

FW/TT GSR TR BS
Weather: Clear Approx. Temperature: High 30's
Terrain: Residence / Yard
Scene Location/Address: [redacted]

Time Arrived: 8:20 AM/PM Time Departed: 10:45 AM/PM
Forensic Agents Responding: Stuckey, Green
Field Agents Responding: Elvington, S. Weaver
Body Removed By: N/A Time: N/A
Coroner Responding: N/A Phone #: N/A
Local Agency Investigator: B. Elvington Phone #: N/A
Comments: See CIS Notes

Al Stuckey
SIGNATURE

LAT 011 REV. 7-98

ROP 18 FN 19

5/9

i00-13754

CB Notes

Call received @ 5:45 pm

from Bobby Elvington - SLED Arson

Arson case # 35000580

- Death Inv.

(1) Bobby Elvington

ROP 18 FN 19

200-13754
CPS Notes

6
9

Arrived at scene at 8:20 am

- briefed by Bobby Ellington

(V) [redacted]
B/F 15 YOA

(S) Weldon Stewart, Jr.
B/M 19 YOA

address:
[redacted]
Bennettsville, S.C.

- stated that he was called to this scene reg: burned body
- after processing the body, they talked with subject, Stewart.
- he stated that she fell and hit her head as they were walking, she went limp, so he burned the body.
- upon request a consent to search was gathered for the residence
- there was apparent blood noted at back of house and at various areas of the house.
- at that point CSU was notified.

ROP 18 FN 19

7
Cj

200-13754
C/S Notes

- photos taken by Shirley / Green
- possible blood noted on back bedroom floor
- broken hair piece on on floor behind bed in back bedroom
- possible blood noted on jacket in back bedroom
- possible blood noted on blinds at back door
- possible blood noted on leaves on back edge of property at woods, on the leaves
- possible blood noted on cement block at back porch of house
- possible blood noted on paper towels in trash can
- possible blood noted on wash cloth in back bathroom

Other scene notations
- search had already been done before arrival
- most lights were on in home, home was well lit
- no part of house was there any sign of a struggle

ROP 18 FN 19

L00-13754
C/S Notes

8/9

all areas except jacket and leaves were negative for blood.
- jacket and leaves collected

- box of Newport cigarettes not collected per Bobby Elvington

measurement from back of house to body area 147 ft.
from body to blood - 110 ft.

no further requests, deputies secure scene to P.D. at 10:45

- arrived at 10:50 p
- gathered copy of consent to search from Bobby Elvington.

ROP 18 FN 20

SLED LABORATORY EVIDENCE INVENTORY SHEET

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

FORM: LAB-004
NOVEMBER 1993
Previous Editions May Be Used

Lab Number L 00-13754 Sheet Number _____ of _____
(Use more than one sheet if necessary.)

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAMINATIONS REQUESTED
13	ONE (1) SET OF LEAVES FROM NEAR NEWPORT CIGARETTE PARK	DNA
14	ONE (1) SET OF LEAVES FROM BESIDE POST	DNA

1-4 E158286
5-6 E158402
7,9-10 E158401
& E158400
11-14 E158399

S.C. LAW ENFORCEMENT DIV.
RECEIVED
2000 DEC 12 AM 9:36

EVIDENCE SUBMITTED IN SEALED CONTAINER IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY OF EVIDENCE CONDUCTED BY THE SLED EXAMINER WILL BE THE CORRECT INVENTORY.

Delivered By (Print)	Item #	Received By	Date
AL STUCKEY	13 14	DNA LAB	12/12/00

Delivered By (Sign)	Item #	Received By	Date
Al Stuckey			12-12-00

ROP 18 FN 21

from: **Perry, Mary** <[redacted]>

to: Lori Stewart <[redacted]>

date: Thu, Mar 1, 2018 at 12:04 PM

subject: FOIA #2017-0261 / Weldon Stewart

mailed-by: sled.sc.gov

Hi Lori,

Per our lab, Item #13 was not analyzed. Item #13 and the appropriate standards for comparison are no longer in the laboratory.

You may wish to check with Bennettsville PD as we were requested by them to help in this investigation.

Mary

Mary C. Perry
Public Information Office
State Law Enforcement Division
[redacted]

ROP 18 FN 22

BEHAVIORAL SCIENCE UNIT ACCOMPLISHMENT REPORT

To: Capt. D. Caldwell Date: 12/18/00 Case: 11-00-47

☐ Foreign ☒ In State ☐ SLED ☐ FBI ☐ Out of State

From: MIKE PIZOLAN Date of Activity: 12/18/00

Subject: WEBB/S-EWART;
[redacted]-VICTIM (DECEASED);
BENNETTSVILLE POLICE DEPT;
BENNETTSVILLE, SOUTH CAROLINA;
12/6/00: HOMICIDE

Program: ☐ Research ☐ Training ☒ Criminal Investigative Analysis

☐ TELEPHONIC ☐ WRITTEN ☒ ON-SITE ☐ OFFICE

INSTRUCTION PROVIDED	INVESTIGATIVE	RESEARCH
☐Conference/Seminar	☒Consultation	☐Unpublished Paper/Handout/Etc.
☐Training Course/School	☐Profile	☐Publication (Article/Book/Etc.)
☐In-Service	☐Personality Assessment	☐Original Research/Academic Citation
☐Speaking Engagement	☐Investigative Techniques	☐Interview
☐# Departments ___	☐Interview Strategy	
☐# Students ___	☐Trial Strategy	
☐Instruction hours ___	☐Expert Testimony	**INSTRUCTION RECEIVED**
	☒Crime Analysis	☐In-Service
	☐Equivocal Death	☐FBI
	☐Threat Analysis	☐Conference
	☒#Victims 1	☐Seminar
	☒#Subjects 1	

SUMMARY: VICTIM: IS YO 'GIRLFRIEND' OF SUBJECT. CAUSE OF DEATH, BFT / THEN BODY SET ON FIRE WITH GASOLINE. CRIME SCENE ANALYSIS REQUESTED TO REBUT SUSPECTS ACCOUNT HOW DEATH OCCURED.

Distribution:

Case File **Regional Office**
NCAVC PEE DEE
Capt. Caldwell **Other:**
Originator _____

Comments/Recommendations: OPEN / ASSIGNED

FORM CF-014

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
Weldon W. Stewart, Jr. 295095 Full name and prison number (if any) of Applicant.	)	
	)	
v.	)	**APPLICATION FOR**
	)	
State of South Carolina	)	**POST-CONVICTION RELIEF**
	)	

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Allendale Correctional Institution
2. Name and location of Court which imposed sentence Marlboro County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 02-GS-34-1918 Desecration of Human Remains
   (b) 02-GS-34-1919 Murder
   (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) August 1, 2003 9 years (consecutive)
   (b) August 1, 2003 Manslaughter 30 years

Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X (a)

(b) after a plea of not guilty X (b)

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. South Carolina Post-Conviction Relief

iii. South Carolina Supreme Court

(b) the result in each such Court to which you appealed:

i. Denied

ii. Denied

iii. Denied

(c) the date of each such result:

i. April 20, 2005

ii. January 8, 2007

iii. March 18, 2009

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Newly discovered evidence of Brady violation (Pathologist)

(b) Newly discovered evidence of Due Proces violation (Pathologist)

(c) Newly discovered evidence of Brady violation (SLED Files)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See PCR Brief and Supporting Documents

(b) See PCR Brief and Supporting Documents

(c) See PCR Brief and Supporting Documents

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? Yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Post-Conviction Relief

ii. Federal Habeas Corpus

iii. _____

iv. Motion for new Trial (Juror Misconduct)

(b) the name and location of the Court in which each was filed:

i. Marlboro County Courthouse: Bennettsville, SC 29512

ii. _____

iii. _____

iv. Marlboro County Courthouse: Bennettsville, SC 29512

(c) the disposition thereof:

i. Denied

ii. Denied

iii. _____

iv. Pending

(d) the date of each such disposition:

i. January 8, 2007

ii. _____

iii. _____

iv. Pending

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Evidence is newly discovered

(b) Evidence is newly discovered

(c) Evidence is newly discovered

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No

(b) your trial, if any? No

(c) your sentencing? No

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Joseph L. Savitz, III, [redacted]a, SC 29201

ii. Delton W. Powers Jr.[redacted] Bennettsville, SC 29512

iii. Jamie Scruggs, [redacted] Darlington, SC 29532

(b) the proceedings at which each such attorney represented you:

i. Direct Appeal

ii. Post-Conviction

iii. Post-Trial Motion for New Trial

19. State clearly the relief you seek in filing this application:

Vacation of conviction for voluntary manslaughter and immediate release from South Carolina Department of Corrections

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Marlboro)

I, Weldon W. Stewart, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Weldon W. Stewart Jr.

SWORN to and subscribed before me this 19th day of May, 2024.

Tara Moore (L.S.)
Notary Public

My Commission Expires: 10/30/2024

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Weldon W. Stewart, Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Weldon W. Stewart Jr.
Applicant

SWORN or affirmed to and subscribed before me this 19th day of May, 2008.

Diane Moore
Notary Public

My Commission Expires: 10/30/2024

STATE OF SOUTH CAROLINA	)	IN THE COUNT OF COMMON PLEAS
	)	
COUNTY OF MARLBORO	)	DOCKET NO.: 2018-CP-34-00121
	)	
Weldon Stewart #295095,	)	
	)	
Applicant,	)	
	)	
v.	)	MOTION FOR DISCOVERY
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

Pursuant to §17-27-150 S.C. Code Ann, the Applicant does hereby move for discovery in the above referenced Post Conviction Relief action.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Marlboro County Clerk of Court's orders of commitment. The Applicant was found guilty On August 1, 2003 to Voluntary Manslaughter (2002-GS-34-01919) and Desecration or Removal of Human Remains (2002GS3401918) Applicant was represented by Wade R. Crow, Esquire at trial.

An Application for Post Conviction Relief was filed by the Applicant on June 5, 2018. In this Application, the Applicant has alleged newly discovered evidence of due process violation (pathologist) and newly discovered evidence of Brady violation.

The Applicant has retained Tommy A. Thomas, Attorney at Law, to represent him in this Post Conviction Relief Action. Upon consultation with Mr. Stewart, it appears that a Private Pathologist has been retained who has undertaken an initial evaluation of the forensic evidence. That this pathologist is Dr. J.C. Upshaw Downs.

It is Counsel's understanding that Mr. Down's initial findings are different than what was testified to at Court and that these findings are a result of review of the file and/or new scientific technology. These findings are material and may have a significant impact upon the conviction of the Applicant.

Counsel is further informed and believes that for Dr. Downs to complete his evaluation, that certain documents are needed from the Autopsy. That this information is currently being housed at the Medical University of South Carolina at Charleston.

That Counsel is informed and believes that discovery is necessary to obtain these documents for Dr. Downs to finish his review. These documents include, but are not limited to photographs of the autopsy.

That the Applicant would request that the Court issue an order of discovery in this matter.

Respectfully submitted,

Tommy A. Thomas, Esq.
Attorney for Applicant

February 20, 2019
Irmo, SC

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Weldon W. Stewart, Jr., S.C.D.C. No. 295095, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-34-00121 **RETURN AND MOTION TO DISMISS** **(Private Counsel Already Retained)**

In response to the application for post-conviction relief filed by Weldon W. Stewart, Jr. (Applicant) on June 5, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-01919), and destruction, desecration or removal of human remains (2002-GS-34-01918). Wade R. Crow, Esq. appeared as stand-by counsel for Applicant, who proceeded *pro se*. Daniel L. Blake, Esq. of the Fourth Circuit Solicitor's Office, prosecuted the case. On July 28, 2003, Applicant proceeded to trial on the murder charge[1] before the Honorable Paul M. Burch and a jury. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter on August 1, 2003. Judge Burch sentenced Applicant to imprisonment for consecutive terms of 30 years for voluntary manslaughter, and 9 years for desecration of human remains.

Applicant filed a timely notice of appeal and a direct appeal was pursued by Joseph L. Savitz, III filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South

[1] Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). The Remittitur was issued on May 23, 2005.

First PCR Application: 2006-CP-34-00125

Applicant filed his first application for post-conviction relief on April 18, 2006 (2006-CP-34-00125). He alleged the following grounds for relief in his application, as summarized by the State:

1. Ineffective assistance of appellate counsel, in that appellate counsel:
    a. Failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
    b. Failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
    c. Failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
    d. Failed to argue the trial judge allowed hearsay testimony.

Respondent made its return on July 28, 2006, and an evidentiary hearing into the matter was convened on November 15, 2006, before the Honorable John M. Milling. Applicant was present at the hearing and represented by Delton W. Powers, Jr., Esq. Karen C. Ratigan, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and was the only witness to testify. By written order dated January 8, 2007, Judge Milling denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant thereafter timely filed a *pro se* response to the Johnson petition, which raised the following issues:

FILED
CLERK OF COURT
ALLENDALE COUNTY, S.C.

1. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue the trial judge erred in giving a jury instruction on voluntary manslaughter?"
2. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue that the trial judge erred in admitting a photograph of the decedent's body into evidence?"
3. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue that the trial judge err in allowing Staton Wright to provide hearsay testimony?"

The Supreme Court of South Carolina denied Applicant's petition by unpublished order. Stewart v. State, S.C. Sup. Ct. Order field March 18, 2009. The Remittitur was issued on April 3, 2009.

Federal Habeas Petition: 8:09-842-SB-BHH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH). In his Petition, Applicant set forth the following grounds for relief:

1. "Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?"
    a. "The trial court failed to instruct the jury on the requested jury instruction on voluntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial."
2. "Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?"
    a. "Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted two documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony."

FILED

Respondent filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that Respondent's motion for summary judgment be

granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Fourth Circuit dismissed Applicant's appeal on February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

2015 General Sessions Motion for New Trial

Applicant filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. Applicant was present at the hearing and represented by Jamie Scruggs, Esq. Elizabeth R. Munnerlyn, Esq., of the Fourth Circuit Solicitor's Office, represented the State. Counsel Scruggs summarized three grounds for new trials:

> The first one was alleging juror misconduct. The second one has to do with qualifications for the forensic pathologist that testified in the trial of this matter. And the third dealt with, just simply put, a version of events by the Defendant which he claims was repressed at the time he gave his statements and at the time he testified at trial.

(Motion Tr. 4, ll. 15-21). Applicant thereafter abandoned the third ground and proceeded only on the first two. (Motion Tr. 4-5; Tr. 36, ll. 15-20). Peggy Alford, Lori Stewart, and Applicant testified at the hearing. After hearing the testimony, Judge Burch orally denied Applicant's motions from the bench. (Motion Tr. 40-43).

FILED
2019 JUL 12 PM 3 42
ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

2018 General Sessions Motion for New Trial

Applicant filed another motion for a new trial on or about May 7, 2018. In that motion, Applicant alleges grounds substantively identical[2] to those raised in the present application for relief. The 2018 motion appears to remain pending on the Marlboro County Public Index

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (excerpted verbatim):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
    a. "Between the months of September and December 2014, Ms. [redacted] Stewart discovered evidence which added credibility to Petitio claims. She conducted professional background checks on the pathologists who performed the 'forensic autopsy' on Victim. She discovered that the lead pathologist, Russell Harley (Pathologist), lacked certification in forensic pathology and that the second pathologist was a mere student in training who followed the guidance of Pathologist in conducting the autopsy on Victim. Ms. Stewart also reviewed court documents revealing that Pathologist made pretrial statements to Daniel Blake (Solicitor) expressing Pathologist's uncertainty about the accuracy of his conclusions in reference to Victim's cause of death."
    b. "The trial testimony of Pathologist established that his conclusions were based on the presence of a skull fracture and brain hemorrhage. Ms. Stewart's search to comprehend the significance of Pathologist's pretrial statements led to her finding publications from forensic experts on thermal injuries. Through the information found in these publications, she discovered that the pretrial statements of Pathologist revealed that Pathologist could not rule out the possibility that the skull fracture and brain hemorrhage occurred after Victim's death as a result of the fire."
    c. "[T]hough Solicitor did mention Pathologist's statements during a pretrial hearing, Solicitor never disclosed to Petitioner any information in reference to the possibility that the skull fracture and brain hemorrhage

FILED
2019 JUL 12 PM 3 43
ANITA F. KELLEY
CLERK
MARLBORO CO. S.C.

[2] The motion's text is, as best as the undersigned can compare, perfectly identical through the first 19 pages to the brief submitted with the present application for post-conviction relief.

were thermal injuries. Ms. Stewart confirmed, by reviewing Court documents, that Solicitor concealed the exculpatory nature of Pathologist's pretrial statements by claiming that these statements established the possibility that victim died as a result of burning. She further noted that Solicitor failed to correct the misstatements made by Pathologist at trial indicating that the skull facture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma."

2. "Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial."
    a. "Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is [a] common location for thermal injuries. The pathologist further explained that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs."
    b. Applicant thereafter details a series of *ex parte* motions to attempt to obtain photographs and records, each of which were denied.
3. "Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State."
    a. "In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case. While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to him."

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Attached to and incorporated herein are the Marlboro County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the opinions of the Court from each of Applicant's prior appeals, the final order of Applicant's

previous PCR and federal habeas actions, and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of relevant information.

III. MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal for the following reasons:

Newly-Discovered Evidence

First, Applicant's assertion that each of his allegations constitute newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

(1) Is such as would probably change the result if a new trial was had;
(2) Has been discovered since the trial;
(3) Could not by the exercise of due diligence have been discovered before the trial;
(4) Is material to the issue of guilt or innocence; and,
(5) Is not merely cumulative or impeaching.

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Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)). As for an applicant requesting a new trial based on after-discovered evidence after a guilty plea, he must show:

> (1) The newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the 'interest of justice' requires the applicant's guilty plea to be vacated.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant's allegations involve "facts" that were, or could have been, discovered before his trial.

As to the pathologist's findings, Applicant himself concedes that *more than a year* prior to trial, the State moved to amend the indictment on the basis that the autopsy report included some conjecture and could not definitively conclude whether Victim was killed by a blow to the head or by the burning of the body. As the State *explicitly stated* the potential grounds for impeachment of the autopsy in a pre-trial hearing with Applicant present, Applicant needed only exercise the barest minimum of diligence to discover that issue: he only had to listen. Applicant did listen, as he indicates again in his own application that he pled guilty to desecration of human remains by burning Victim's body, then sought to quash the amended murder indictment on the basis that the autopsy report stated Victim was killed by blunt force trauma, not burning, at which time the State *again* stated in no uncertain terms that Victim could have died from blunt force trauma *or* burning. Applicant only argues that the State did not look Applicant in the eye and tell him "this is exculpatory." The purportedly new evidence would not change the outcome of trial, was not "discovered" after trial but was made explicitly known to Applicant before trial,

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could have been discovered by the exercise of the barest minimum of diligence, is material only to the question of how Applicant killed Victim, and is ultimately merely impeaching.

As to the pathologist's testimony, the testimony was known to Applicant when it was given, and as set forth above, the question of whether Victim's injuries were the result of blunt force trauma or the burning was known to Applicant more than a year before trial. Any issues Applicant may have had with the accuracy or credibility of the pathologist's testimony could have and should have been raised at trial. 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. That the same observations could support an alternative theory as to how Victim died does not cast the pall of deception upon the pathologist's testimony, such that the State had any due process obligation to correct it. Furthermore, Applicant's "discovery" of other instances where the pathologist misdiagnosed the cause of death of a person is merely impeaching.

As to the purported notes of SLED investigators, Applicant asserts without basis that the notes were wrongfully withheld from him. To the contrary, correspondence from Assistant Solicitor Dan Blake to Applicant shows he was provided the officer's notes in 2003. (See attached Exhibit A). Additionally, the notes do not reveal anything which would either change the result if a new trial were conducted, nor anything material to the question of guilt or innocence, nor anything beyond the thinnest possible basis for impeachment. Applicant protests the notes show certain articles and refuse identified at the crime scene were not collected. Such protest is merely impeaching *at best*, and Applicant primarily emphasizes the value of the evidence for its possible use to damage "the credibility of Agent Elvington[.]" (Applicant's PCR Brief at 19). Put another way, Applicant presents only purported evidence of lack of evidence,

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which has *never* been sufficient to secure so much as a hearing, let alone a new trial. Furthermore, Applicant *did* argue and argumentatively question the inadequacy of the investigation in his lengthy closing argument at trial. (See, e.g. Tr. 135-36; Tr. 390-91; Tr. 708, ll. 1-3). Applicant can hardly contend he was not aware, or could not have been aware, of what the State's case against him lacked. Consequently, the State argued any deficiencies in the investigation were the consequence of Applicant's own efforts to destroy evidence and mess up the crime scene. (Tr. 718, ll. 3-15). Given Victim's corpse was *immolated*, the argument was well enough made.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter shall be summarily dismissed with prejudice.

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Statute of Limitations

The application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant was convicted on August 1, 2003, and the remittitur from his direct appeal issued on May 23, 2005. The current application was not filed until June 5, 2018—well after the one-year statutory filing period expired. Therefore, the application should be summarily dismissed as barred by the statute of limitations.

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Laches

The application should also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be determined in light of the

facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

Applicant seeks post-conviction relief nearly 15 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, this application should be summarily dismissed as barred by the equitable doctrine of laches.

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Successive

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally

> adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

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Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the application should be dismissed as successive to Applicant's previous PCR application.

IV. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

V. CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the application because Applicant has failed to make a *prima facie* showing of newly discovered evidence, has failed to make a *prima facie* showing of a Brady violation, and because the application is untimely, successive, and barred by the equitable doctrine of laches.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
[redacted]
Columbia, S.C. 29211

July 2019

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO WELDON STEWART, JR., #295095, Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2018-CP-34-0121 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
[redacted]
Irmo, South Carolina 29063

DATED this 9th Day of July, 2019.

Eva Cook, Legal Assistant
For Respondent

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD)

WELDON STEWART, JR.)
PETITIONER,)

TRANSCRIPT OF RECORD
v.) 18-CP-34-00121
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

August 22, 2019
Chesterfield, South Carolina

B E F O R E :

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE

A P P E A R A N C E S:

TOMMY A. THOMAS, ESQ.
Attorney for the Petitioner

JOHNNY E. JAMES, JR., ESQ.
Attorney for Respondent

FRANCES B.RAY, RPR
Circuit Court Reporter
Typed for Hattie Gordon

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(There were no exhibits submitted.)

MR. JAMES: If it may please the Court, Your Honor, this is the matter of Weldon Stewart versus State of South Carolina, docket number 2018-CP-34-00121. Mr. Stewart is present here in the courtroom today and is represented by Mr. Tommy Thomas, Esquire. Mr. Stewart was indicted October 2002 at a term of Marlboro County grand jury for murder and destruction, desecration or removal of human remains. He was represented -- he represented himself pro se on this charge, but also had Wade R. Crow, Esquire, sit with him as standby counsel through his trial. Daniel L. Blake, Esquire, of the Fourth Circuit Solicitor's Office prosecuted the case.

On July 28th, 2003, he proceeded to trial on the murder charge before the Honorable Paul M. Burch and a jury. He pled guilty to the desecration charge before proceeding to trial and sentencing was deferred until after trial. The jury found Mr. Weldon Stewart guilty of the lesser included offense of voluntary manslaughter on August 1st, 2003. Judge Burch there imposed a sentence of 30 years for voluntary manslaughter and 9 years for desecration of human remains with those terms to run consecutive. He thereafter filed timely a notice of

appeal and direct appeal was perfected by Mr. Joseph L. Savitz, III, by filing a brief pursuant to Anders v. California. The South Carolina Court of Appeals thereafter dismissed the appeal. Remittitur was issued on May 23rd, 2005.

Mr. Stewart filed his first application for post-conviction relief on April 18, 2006. He alleged a number of grounds for ineffective assistance of appellate counsel. The State make its return on July 28th, 2006, and an evidentiary hearing into that first PCR application was convened on November 15, 2006, before the Honorable John L. Milling. Applicant was present at that hearing as well and was represented by Delton Powers, Jr., Esquire, while Karen C. Ratigan, Esquire, of the South Carolina Attorney General's Office represented the State. By written order dated January 8th, 2007, Judge Milling denied and dismissed that application.

Mr. Stewart thereafter appealed and Katherine H. Huggins, Esquire, filed a brief pursuant to Johnson v. State on, the appeal from that PCR. The South Carolina Supreme Court denied the petition for writ of certiorari by order filed March 18, 2009, and the remittitur was issued on

April 3rd, 2009.

Your Honor, he thereafter filed a pro se petition for writ habeas corpus in the federal courts on March 31, 2009. The State filed its return, a motion for summary judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States magistrate judge, issued on December 10, 2009, a report of recommendation that the State's motion for summary judgment be granted and the petition for writ of habeas corpus dismissed. The Honorable Sol Blatt, Jr., United States District judge denied the petition writ of habeas corpus on March 29th, 2010, and accepted the report of the recommendation of the magistrate. Applicant thereafter gave notice of his appeal to the Fourth Circuit Court of Appeals and the Fourth Circuit denied that appeal on February 17, 2011.

Since that time Mr. Stewart has filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. He was represented at that hearing by Jamie Scruggs, Esquire, and Elizabeth Munnerlyn of the Fourth Circuit Solicitor's Office represented the State. Counsel Scruggs summarized three grounds in that

motion and applicant proceeded on the first two, one being juror misconduct and the second being regarding the qualifications of the forensic pathologist who testified at trial. After hearing the testimony Judge Burch orally denied applicant's motions from the Bench, but no written order was ever issued.

Further subsequent to that motion and immediately prior to this application for post-conviction relief, Mr. Stewart filed an additional motion for new trial on or about May 7th, 2018. In that motion he alleges grounds that are substantive identical to those that have been raised in this post-conviction relief application, and that matter remains pending before the Court in Marlboro County.

Your Honor, the State has attempted to summarize an excerpt Mr. Stewart's allegations in its return on pages 5 and 6; and in response to the application the State has filed a motion to dismiss on a number of different grounds. One, the State argues that the allegation raised by Mr. Stewart do not constitute newly discovered evidence under the law such that he would not be entitled to any special treatment to protect him from the bars

against the successive applications or against the statute of limitations; and therefore, the State also argues that the application should be barred by the statue of limitations, should be barred as successive, and additionally should be barred by the equitable doctrine of Laches due to considerable time has passed between now and the time of his conviction.

Additionally, Your Honor, Mr. Stewart's counsel has filed a motion for discovery. As I understand it he is seeking access to the original photos of the original autopsy that they might be reviewed by an independent pathologist. As to which order you would like to go on those motions we have been in dispute, they're somewhat intertangled. If you grant the motion for discovery, obviously that motion to dismiss would be delayed. If you grant the motion to dismiss, it would dispense with the motion for discovery. And so I defer to Your Honor and to Mr. Thomas as to which order you would like to go in.

THE COURT: Well, let me hear from Mr. Thomas.

MR. THOMAS: Your Honor, if it please the Court, it's our position, we, actually this action

was initiated by my client pro se. I was contacted by a friend of his, explained kind of the situation to me, asked me if I would assist him. I agreed. And I got involved, really I've spoken to a private pathologist and in talking with him he was going to review this case, try to come up with some sort of determination, but he needed additional information. This information from what we understand is being housed at MUSC; it exists. And I do have a list of some items once we get there as far as what he'd like to see. And basically what it is, is just the file, the photos, the reports, any slides that were taken, and I believe from what I understand all of this does exist at MUSC. And a safeguard I would assume procedurally wise, that he used to work at MUSC, that he would probably travel to MUSC and do his evaluation, review the documents and the information, the evidence there.

We filed, I filed a motion for discovery first. We have since then received the motion to a return and a motion to dismiss. It would be my position, Your Honor, that the motion to dismiss is premature. I don't think that I can adequately argue the motion to dismiss as a result until I know what the findings are gonna be in regards to any of

discovered evidence from the pathologist. If we argue the motion to dismiss today we would be put in a situation of having to say, well, I think the pathologist is gonna say this or I think the pathologist is not gonna say that. I don't see how we can do that because we would have to make some sort of determination as to whether or not it's after-discovered evidence and we don't know if it's after-discovered evidence, to be in all candor with the Court, and we won't know until such time as the pathologist has the ability to evaluate the evidence that's currently being housed at MUSC.

I think -- this case is actually, it's complicated when you first look at it and you look at the procedural history and you go, oh, my, you know, all this stuff, all these different filings. That's not necessarily uncommon. But from what I've been able to determine is that there's never been any determination, there's never been any decision made in regards to the issue that's before the Court. And just in summary, this is kind of how I've been able to work it out in my mind. He was charged in Marlboro County. He was convicted at jury trial in 2003 for voluntary manslaughter for a death that occurred. He was sentenced to 30 years.

Prior to that he entered a plea to desecration of human remains and received a nine year consecutive sentence and he -- the sentencing was withheld until he was adjudicated or had jury trial on the quote/unquote murder charge and received the sentence on the voluntary manslaughter. Throughout this whole process -- and if I may approach, Your Honor. I've got, I just made copies of the documents that were attached to his filings, and I just want to reference a couple of pages here and they're excerpts out of transcripts, Your Honor.

Your Honor, if it please the Court, there were numerous pretrial motions. You know, whether it's good or bad or otherwise, Mr. Stewart represent himself. And what happens is that they, the Solicitor's Office appears not to know how this young lady died. At first it kind of moves around. There's, there are pretrial motions in regards to the indictment. He was indicted for a situation, blunt force trama and/or a death caused by burning and he did plead to the desecration of human remains which I believe that the solicitor kind of created this situation. The solicitor allowed him to plead; he admitted that he did that. And he pleads to the desecration. Well, you can't desecrate a live body

according to the statute so you have a situation where the desecration of the plea is an acknowledgment that the young lady was already deceased at the time of the burning. The solicitor makes a decision, we would assume, based upon communication with their pathologist thereto. There's a student and I think MUSC and then there is the pathologist. There have been, which I think this issue has already been covered to some extent although I haven't gotten to that part yet as to whether or not the pathologist that did the initial review was actually a forensic pathologist. I think they were an anatomical pathologist. I don't know right offhand where the difference is at, but there was some question in regards to qualification.

But just kind of to summarize this, if we look at page -- and I've just numbered this handout. If we look at page 20, the -- and we're talking about beginning at line 9 through 16. This is a transcript from one of the hearings. This issue about requests for an individual pathologist. There was a request and it was actually denied by the Court. And the Court says: I am at this time going to deny your request for an independent pathologist. The, and in regards to the pathologist themselves,

if you go to page 32, this is the testimony from the trial. And if you look at page 32, lines 8 through 12, the pathologist says, the question is: Is that what contributed to your finding of blunt force trauma? "Yes, it did. The exact nature of the injury I couldn't say exactly what this was that hit her because of the burning, unfortunately." So at that point what's happened with this case is that it's moved around from blunt force trauma and/or burning. And what the solicitor actually does is amend the indictment. And if you look at page 23 of the handout, pages 17 through 25, and it says, amend the indictment by deleting the words pushing and/or burning.

What we're here today is that we believe or we suspect that this pathologist is going to review these records and possibly make a determination that the evidence of the blunt force trauma actually occurred as a thermal injury that occurred as a result of the burning, and this is not uncommon what I understand. I think that the State -- and I go back to what I was arguing at the beginning. The State created this situation. And I think it's unfair at this point in time to prejudice the defendant by saying, you know, you filed all

these motions, you've done all this stuff, you've had federal habeas, but this issue has been raised. And I do believe that if the pathologist comes back and says this blunt force trama is evidence of, this evidence was created by a thermal injury, then we have a completely different ball game. At that point in time we have to determine if it was after discovered. We have to determine whether or not procedurally this is proper to go, can be heard at evidentiary hearing by the Court. And I do think that as a result he is in this situation because of State's actions. The State through his motion to request that a private pathologist be provided is denied. He was pro se. He represented himself. He didn't have any money. His family didn't have any money. He didn't have any ability to go out, spend money, hire somebody to look at this. And then what the Court allowed him to do was to have an interview with the pathologist. At that point in time 24 days where the Court said he must have an interview with the pathologist 24 days prior to trial, what had happened at that point in time is that the State had solidified their action to be blunt force trauma. That's what they were going to try on. That's what they had amended the indictment to read. And so I

think that his situation today, which I think is while it's unfair to per se procedurally he's barred, is that the State created this situation. The State elect to go forward on a cause of death of blunt force trauma. The State through the court system denied him the ability to have a, the moneys for a private pathologist. So our argument is that as a fundamental fairness we believe that we are at least entitled to this discovery, to allow us to have at this point in time a private pathologist to review this case. He can come back and say, I don't find anything; and if he does, that's what we got. He can come back and say, I have found something. If that's the case, then I think we have to move into the stage of determining whether or not it's after discovered, whether or not it can be properly presented to the court, and whether or not we're entitled to an evidentiary hearing. I think that's the only fair thing to do, and I that's what we'd ask the Court to consider today, Your Honor.

THE COURT: All right, thank you Mr. Thomas.

Mr. James.

MR. THOMAS: Yes, sir.

MR. JAMES: Your Honor, Mr. Thomas feels

that this is the State's fault; but ultimately, it can't prevent Mr. Stewart from admitting his capability and pleading guilty to a charge that has been rightfully brought to a grand jury and indicted. The State cannot prevent him from pleading guilty to that. He looked at that charge and he admitted that he took the victim's body and burnt it. And Your Honor, that burning of the body is ultimately what brings us to this confusion before trial, during trial, and the confusion that Mr. Stewart insists upon even here today.

Your Honor, I have provided to you a copy of the entire appendix from Mr. Stewart's prior PCR appeal which contains the entire original trial transcript including some of the excerpts that have been provided up to you by Mr. Thomas. The question of the forensic pathologist's qualifications is raised at trial on page 160 of the original trial transcript. He admits, quote, "I've never taken boards in forensic pathology, but I've been the director of the combined medical and forensic pathology department at the University." There is provided to Mr. Stewart an opportunity to object to the qualifications of the pathologist and he declines that opportunity. And then additionally

since then in his motion for a new trial before Judge Burch he raised, again, what the question about the qualifications of the original trial pathologist, and Judge Burch shut him down and denied the motion. And still here again, he keeps insisting on this same question when he has had multiple opportunities to raise it. It has been raised to the court and has been ruled on and he can't keep coming back to get a new ruling.

He, additionally throughout all of these pretrial hearings, the excerpts of which have been handed up you and the packet that Mr. Thomas so politely provided and which are also included and the glue bound copy of the original application which includes those same excerpts, there is always this question because the body has been burned so terribly that parts of it are falling off, the skin is gone, and the interior portions are exposed, the intestines are exposed, the brain is exposed. And so the pathologist has trouble actually determining precisely what caused each injury because there is a question before trial and during trial as to precisely how those injuries occurred, but ultimately, he settles on the conclusion it was blunt force trauma. But the important thing is that

the question, the possibility, that the injuries were caused by the burning and not by a strike to the side of the head is evidence to Mr. Stewart at pretrial hearings. The State openly admits in court in Mr. Stewart's presence that the story that the solicitor's receiving from the pathologist is shifting a little bit; it's a bit wishy washy. The pathologist is struggling to determine whether the cause of death is the burning or whether the cause of death is the blunt force trauma. The State offers the possibility that perhaps the victim was killed in the burning and so all of these things are known and knowable to Mr. Stewart at that time prior to trial. That's why he asks for an independent pathologist at the time of trial and the trial court declines that opportunity, extends, instead gives him the opportunity to go talk to the pathologist to himself hear how the details of the report might be changing a little bit from what has been written down previously from what the preliminary findings were so he gets that opportunity.

And as far as I can find, having reviewed all of these records over the past few days and at the time that I wrote the returning motion to dismiss, there's no sign that Mr. Stewart comes back

and again asks for an independent pathologist to review the evidence after he has had this opportunity to speak to the independent pathologist. So to contrary, Mr. Stewart crafts his entire theory of defense, his entire theory of the case around the fact that his pathologist came out and concluded it was blunt force trama to the head. If you look through the entirety of the record, and in particular if you look at Mr. Stewart's opening statements and his closing statements and his cross-examination of the pathologist, Your Honor, Mr. Stewart advances his theory of defense that the victim died by accident, that he was carrying her along this dark and woody path and dropped the body such that her head hit a log and that he fell on top of her, that they slipped and fell and he fell on top of her and tragically she died as a result of this accident and that gripped by grief, gripped by the sheer terror and panic of this horrible thing that has happened, he burned the body. And he burned it to a crisp. That was his entire theory of defense.

Now here we are closing in on two decades after the crime and he has completely changed his theory. If you look in the application on page 1 of

his memorandum attached to the form application he raises this new argument that, oh, the victim actually committed suicide. He doesn't say how she committed suicide, but that she committed suicide. And that he didn't remember this at the time of trial and he didn't remember this before because it was a repressed memory and that this really didn't come out until all these years later, all of these appeals and collateral attacks have failed, but he was speaking to his now wife. And so what we have here is not an actual case of newly discovered evidence. All the issues that he raised were very evident prior to trial and were evident at trial and were questions of issues at trial that he could have challenged and he chose not to. He chose the path of theory of defense that engaged it, embraced evidence. So we're missing the core elements that are necessary in order to raise a successful claim of newly discovered evidence, Your Honor.

I've set forth those elements on page 7 and the citation is on page 8 of the State's return and motion to dismiss. That in order to obtain a new trial based on newly discovered evidence and in order to obtain the benefit of the statute of limitations, adjustment for newly discovered

evidence, he has to show that the evidence is such that would probably change the result if a new trial was had; two, has been discovered since the trial; three, could not by the exercise of due diligence have been discovered before the trial; four, is material to the issue of guilt or innocence; and five, is not merely cumulative and impeaching. The main thrust of the State's argument is that Mr. Stewart fails utterly on prongs two and three of what he must show in order to obtain relief for newly discovered evidence. All of these things could have been challenged before trial so that these things were challenged before trial. All of these things could have been challenged at trial, and so he cannot now come to court 20 years later with a whole new story based on this ridiculous notion that he had repressed memories of a suicide to claim that he is entitled to further proceedings and further discovery and re-litigate the issues that were litigated 20 years ago and which were litigated in the first PCR and in the prior federal habeas corpus and in the motion for a new trial in part, or in whole, here and there. He had opportunity to bring up the issues at the first PCR. He had opportunities to bring up these issues in the

first petition writ of habeas corpus. He had opportunity to bring up these issues in his first motion for a new trial before Judge Burch back in 2015, and he could have appealed the denial of his request for a pathologist on a direct appeal and he did not do so. He raised numerous other allegations of ineffective assistance of appellate counsel. He could have raised this in his first PCR that his original trial appellate attorney didn't appeal that denial of the independent pathologist. All of these things go together should have really just litigating the same issues that have been evident and clear to Mr. Stewart in this case for the last 20 years.

Your Honor, he has delayed in bringing this issue for two decades. It is almost certain that there are witnesses who will no longer be available to testify to the chain of custody, to testify to the nature of the investigation, or that they will have forgotten information such that it might taint their testimony, the passage of time inevitably acts upon all of our memories. And so the State also requests that we should be entitled to the equitable doctrine of Laches, we should be entitled to finality of this conviction based on the

fact that Mr. Stewart has waited so very long to raise this new story that it was a suicide and that he didn't drop her.

Your Honor, I cannot get past my stand on opposing counsel's argument that this is the State's fault. This is not the State's fault; it's Mr. Stewart's fault. He is the one who burned that body into a crisp. He is the one who destroyed the key evidence to figure out exactly how this victim died. We don't have that. We have the best effort of an extremely skilled and qualified pathologist who looked into this 20 years ago and who performed the original autopsy and who could actually look at the physical evidence and not just photographs. Mr. Stewart was the only witness there at the time of the killing. We had tons of witnesses before. We had witnesses for after. We know the circumstances of how they came together and that they were together there at the time, but he's the only person who knows with one hundred percent certainty exactly what happened that night. But ultimately, the best effort of the State, the best investigative conclusions of the State, were presented to a qualified jury of Mr. Stewart's peers in Marlboro County almost 20 years ago, and they

concluded that he was guilty of voluntary manslaughter.

Your Honor, the law is clear. He is not entitled to any protection from the statute of limitations. He is not entitled to come back and file a second PCR when he already had a first where he could have raised these same issues or in the federal habeas where he could have raised them there. The State is entitled to the equitable doctrine of Latches, and Mr. Stewart has failed entirely to advance a prima facie case to newly discovered evidence. For all those reasons it really doesn't matter what a new pathologist would conclude. The State is still entitled to all of those procedural bars, and I ask you grant the State's motion to dismiss, deny the motion for discovery, and put an end to this case once and for all.

THE COURT: Thank you, Mr. James.

Mr. Thomas.

MR. THOMAS: Your Honor, please the Court. Listening to counsel's argument, the thing that jumped out at me is that it doesn't matter what the new pathologist finds. We've already done this case; we're finished with this case. He's had all

of his stuff, all these different procedures, which it doesn't matter whether or not there's some truth into what we're seeking to find. It doesn't matter whether or not there are procedures and safeguards, and it doesn't matter whether or not someone is guilty until -- I mean, innocent until proven guilty. The State -- and I'm not saying it disparaging against the State; I'm just saying that a mistake was made. They kind of created this thing. But what happened is that the flaw in the State's argument today is that they elected. They had their pathologist. They made an election to amend the indictment. They make made an election to go forward on the cause of death being blunt force trauma. They put their pathologist on the stand who testified that she died of blunt force trauma. Now I think they would have a much stronger argument had it gone to trial based upon the fact that she was deceased, was killed as a result of the burning, because then I think the burden on after discovered for us would have to show that not only did she not, that she was, that she passed away prior to the burning and there was no blunt force trama; but I think in this case we're entitled to at least go forward to have the ability to make some

determination as to what the after discovered is.

Now, all the things about procedural and the other arguments that counsel has made -- and I don't say this disparagingly -- but it is a red herring because we're saying he didn't meet the qualifications for after-discovered evidence. We don't know what the after-discovered evidenced is, but we don't want you to have the ability to determine whether or not there is any after discovered, you don't need this discovery because we've already made a decision on your behalf that you don't meet the criteria for after-discovered evidence. We can't do that today 'cause we don't know. And I have explained to my client that if this pathologist comes back and says things that are negative to his situation and support the State's case, then his case is dead in the water. What we're seeking today is not someone who is going to tell us what we want to hear, I have never practiced law in that matter. I want someone who is going to tell me the truth; and then once we know what the evidence is, I think the State is right, I think we're back in court on their motion to determine, one, whether or not it's after discovered, whether or not we're entitled to go forward on an

evidentiary hearing, and what prejudice, if any, has occurred to the defendant as a result of the State's actions, Your Honor. So I really do feel, and we would certainly request the Court to grant the discovery motion and to continue the motion in regards to the dismissal to allow us to determine what we have. Thank you, Your Honor.

THE COURT: Let me ask this question.

MR. THOMAS: Yes, sir.

THE COURT: Do both of you agree that going back to Judge Burch's hearing on the request for an independent pathologist, that Judge Burch indicated that he could after he interviewed the psychologist -- or pathologist, excuse me, make another motion?

MR. THOMAS: He could. But see, the problem with that -- and I thought about that, Your Honor. I saw that and I thought about it. The problem with that is that at that point in time the State had elected and had solidified the concept that it was a death by blunt force trauma so, you know, his position was that he was not guilty of the death if it resulted as blunt force trauma. He was guilty of the desecration of the human remains. He was 18, 19 years old. I mean, who knows what any of

would do. I would not have done that; but a kid, you don't know what they're thinking. So I think that the court's denial of the, of the pathologist, the State resolved the issue of the discrepancy, you know. The attorney general talks about -- and it is, there's discrepancy back and forth that solicitor can't decide, but it solidifies. And the testimony at trial is a blunt force trauma so I think at that point in time there really wasn't any impetus on him 21 days or whatever prior to trial to try to hire somebody or have another motion hearing. The question resolved it. And what we're saying is that the question has now reemerged.

THE COURT: But as indicated a moment ago by Mr. James he could have appealed to that issue.

MR. THOMAS: Well, ---

THE COURT: And he could have made this request for ---

MR. THOMAS: Well, the thing is that, and I think it's a whole concept of after-discovered evidence. He could appeal, but if you don't have the knowledge of the after-discovered evidence, you don't have the knowledge to be able to grant, to ask for the appeal, I don't think we can predict things in the future that by definition could be after

discovered and have a burden to appeal that issue when we didn't know.

THE COURT: But going further down that road, the State says that he could have made this motion part of his other PCR application; is that right?

MR. THOMAS: He could have, but the thing is that, again, we don't have, which is really odd, I mean, we're standing here, I'm standing here arguing something that I'm trying to determine what is, what could be the after-discovered evidence so.

THE COURT: But the knowledge that it could have been there has been there all along.

MR. THOMAS: I agree with that up until the point that the State elected to go forward on the blunt force trauma. I think the State has a great case until that point. Until the Solicitor amends the indictment to take out the pushing and/or the burning, and I think at that point in time that's where the Attorney General's case becomes extremely weak because that point in time a choice is made. And again, you know, I'm not trying to blame anyone, but I think procedurally these decisions made by the Solicitor's Office puts him in the situation that he is in today.

THE COURT: All right. Mr. James.

MR. JAMES: Perhaps the most crucial thing before this Court is an admission by Mr. Thomas. and indeed all but admitted by Mr. Stewart in his pro se application. We don't know what the evidence is. There is no evidence before this court today. We haven't, it's not new and we haven't actually discovered anything. So how could he present a prime facie case of newly discovered evidence, he hasn't. We're standing here speculating there might be out there some newly discoverable evidence about that Mr. Stewart doesn't have and so he hasn't met his burden of showing prima facie case of newly discovered evidence in this case. The State would simply reaffirm its other arguments that it has made previously, Your Honor. I do not believe it's necessary to browbeat you with them again.

MR. THOMAS: And that's the ludicrous part of this whole thing, Your Honor. We're gonna argue that it should be dismissed because he hasn't met the burden of after-discovered evidence when we're asking the Court to allow us to have access to the evidence to try to determine if it's after discovered.

THE COURT: But it's not like something

new has occurred in the scientific world like the discovery of DNA that, you know, brand new, it wasn't available then, it wasn't known then, it's known now.

MR. THOMAS: Well.

THE COURT: At any rate, I agree with the State. I'm gonna deny your motion for discovery on the grounds based on the argument made by the State and am going to grant State's motion to dismiss on the grounds argued by the Attorney General.

And Mr. James, will you please prepare an order within 20 days.

MR. JAMES: Absolutely, Your Honor.

MR. THOMAS: Rather than doing a 59(e) my client has asked me to just ask the Court in its consideration, you know, his argument as part of the after discovered what he is seeking to determine is that the blunt force trauma occurred as a result of a burning, as a thermal injury after, in other words, after the death. So it is a situation where the pathologist would have to show that the blunt -- the evidence of the blunt force trauma occurred as a result of the burning and also that the burning, which I think has already may be some evidence of that in the record, that she did not, she did not

die as a result of a burning because there was no chemicals or whatever, they would have been in the lungs as a result of the burning. So therefore, the actual injury or the cause of death would have had to have been outside of both the burning and the blunt force trauma which were both at one time both theories of death in the State's argument, later became solidified, it became a single theory of death which was the blunt force trauma. That's what we're asking the pathologist to do, Your Honor.

THE COURT: Respond -- this is a motion to reconsider?

MR. THOMAS: Yes, sir. Yes, sir.

MR. JAMES: Your Honor, the State would re-incorporate all the arguments that it has previously advanced to the Court. Additionally, Your Honor, again, Mr. Stewart's own testimony was that the victim passed away from blunt force trauma. And furthermore, even if a new pathologist looked at these photographs and came along and concluded the head exploded from a thermal injury, that wouldn't necessarily foreclose the possibility that the victim perished of blunt force trauma. It would just potentially state that that part of the injury was not the result of blunt force trama. There were

also other injuries taken into consideration as part of the pathologist's report. In particular, there was a very large blood clot just below where the head exploded whether from blunt force trauma or from a thermal injury that would show an existing injury there; but the State has already advanced its arguments and would simply re-affirm them.

MR. THOMAS: And the problem with that, again, and I don't want to kind of keep harping on the same thing. The problem with that is the election of the State. The State elected to go with blunt force trauma why she was alive so I don't think that the State can now argue, well, you know, we really couldn't make a determination because of the burning. Well, a determination was actually made and the pathologist testified from the stand that it was blunt force trauma. What I would ask the pathologist to determine is just what we presented in our and I ask for in our reconsideration would be the fact that the blunt force trauma occurred as a result of burning; and if a determination can be made as to if the chemicals or whatever are not present that would indicate that she died as a result of a burning, then the State has no cause of death.

THE COURT: Okay. I understand the motion, but I'm gonna deny the motion to reconsider.

* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding was transcribed for Hattie Gordon from audio using computer-aided transcription; that the foregoing transcript contains a true record of the proceedings to the best of my ability.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 6th day of December, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
Weldon W. Stewart, Jr., S.C.D.C. No. 295095,	)	Case No.: 2018-CP-34-00121
Applicant,	)	
v.	)	**ORDER GRANTING RESPONDENT'S MOTION TO DISMISS APPLICATION**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Weldon W. Stewart, Jr. ("Applicant") on June 5, 2018. Applicant, by and through retained counsel, moved for discovery by filing on February 26, 2019. Respondent made its return and motion to dismiss on or about July 9, 2019. The Court convened a hearing into the matter on Thursday, August 22, 2019, at the Chesterfield County Courthouse in Chesterfield, South Carolina. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James Jr. and Donald J. Zelenka, Esqs., of the South Carolina Attorney General's Office, represented Respondent.

No testimony was taken at the hearing, but attorneys for both parties argued the motions before the Court. The Court had before it Applicant's records from the South Carolina Department of Corrections, the records of the Marlboro County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the appendix from the appeal of Applicant's prior PCR action (including the original trial transcript and the prior PCR transcript), the transcript of the hearing on Applicant's motion in General Sessions for a new trial taking place on May 26, 2016, and the filings in this present action. The Court finds as follows:

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CLERK OF COURT
MARLBORO COUNTY, S.C.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. Applicant was indicted at the October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-01919), and destruction, desecration or removal of human remains (2002-GS-34-01918). Wade R. Crow, Esq. appeared as stand-by counsel for Applicant, who proceeded *pro se*. Daniel L. Blake, Esq. of the Fourth Circuit Solicitor's Office, prosecuted the case. On July 28, 2003, Applicant proceeded to trial on the murder charge[1] before the Honorable Paul M. Burch and a jury. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter on August 1, 2003. Judge Burch sentenced Applicant to imprisonment for consecutive terms of 30 years for voluntary manslaughter, and 9 years for desecration of human remains.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). The Remittitur was issued on May 23, 2005.

First PCR Application: 2006-CP-34-00125

Applicant filed his first application for post-conviction relief on April 18, 2006 (2006-CP-34-00125). He alleged the following grounds for relief in his application, as summarized by the State:

1. Ineffective assistance of appellate counsel, in that appellate counsel:
   a. Failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.

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[1] Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

b. Failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
c. Failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
d. Failed to argue the trial judge allowed hearsay testimony.

Respondent made its return on July 28, 2006, and an evidentiary hearing into the matter was convened on November 15, 2006, before the Honorable John M. Milling. Applicant was present at the hearing and represented by Delton W. Powers, Jr., Esq. Karen C. Ratigan, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and was the only witness to testify. By written order dated January 8, 2007, Judge Milling denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant thereafter timely filed a *pro se* response to the Johnson petition, which raised the following issues:

1. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue the trial judge erred in giving a jury instruction on voluntary manslaughter?"
2. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue that the trial judge erred in admitting a photograph of the decedent's body into evidence?"
3. "Did the PCR court err in failing to find Appellate Counsel ineffective for failing to argue that the trial judge err in allowing Staton Wright to provide hearsay testimony?"

The Supreme Court of South Carolina denied Applicant's petition by unpublished Order, Stewart v. State, S.C. Sup. Ct. Order field March 18, 2009. The Remittitur was issued on April 3, 2009.

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Federal Habeas Petition: 8:09-842-SB-BHH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH). In his Petition, Applicant set forth the following grounds for relief:

1. "Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?"
    a. "The trial court failed to instruct the jury on the requested jury instruction on voluntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial."
2. "Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?"
    a. "Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted two documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony."

Respondent filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that Respondent's motion for summary judgment be granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Fourth Circuit dismissed Applicant's appeal on February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

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CLERK OF COURT
FLORENCE COUNTY, S.C.

2015 General Sessions Motion for New Trial

Applicant filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. Applicant was present at the hearing and represented by Jamie Scruggs, Esq. Elizabeth R. Munnerlyn, Esq., of the Fourth Circuit Solicitor's Office, represented the State. Counsel Scruggs summarized three grounds for new trials:

> The first one was alleging juror misconduct. The second one has to do with qualifications for the forensic pathologist that testified in the trial of this matter. And the third dealt with, just simply put, a version of events by the Defendant which he claims was repressed at the time he gave his statements and at the time he testified at trial.

(Motion Tr. 4, ll. 15-21). Applicant thereafter abandoned the third ground and proceeded only on the first two. (Motion Tr. 4-5; Tr. 36, ll. 15-20). Peggy Alford, Lori Stewart, and Applicant testified at the hearing. After hearing the testimony, Judge Burch orally denied Applicant's motions from the bench. (Motion Tr. 40-43).

2018 General Sessions Motion for New Trial

Applicant filed another motion for a new trial on or about May 7, 2018. In that motion, Applicant alleges grounds substantively identical[2] to those raised in the present application for relief. The 2018 motion appears to remain pending on the Marlboro County Public Index

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (as excerpted verbatim in the State's Return):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements

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[2] The motion's text is, as best as the undersigned can compare, perfectly identical through the first 19 pages to the brief submitted with the present application for post-conviction relief.

made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."

a. "Between the months of September and December 2014, Ms. [redacted] Stewart discovered evidence which added credibility to Petitioner's claims. She conducted professional background checks on the pathologists who performed the 'forensic autopsy' on Victim. She discovered that the lead pathologist, Russell Harley (Pathologist), lacked certification in forensic pathology and that the second pathologist was a mere student in training who followed the guidance of Pathologist in conducting the autopsy on Victim. Ms. Stewart also reviewed court documents revealing that Pathologist made pretrial statements to Daniel Blake (Solicitor) expressing Pathologist's uncertainty about the accuracy of his conclusions in reference to Victim's cause of death."

b. "The trial testimony of Pathologist established that his conclusions were based on the presence of a skull fracture and brain hemorrhage. Ms. Stewart's search to comprehend the significance of Pathologist's pretrial statements led to her finding publications from forensic experts on thermal injuries. Through the information found in these publications, she discovered that the pretrial statements of Pathologist revealed that Pathologist could not rule out the possibility that the skull fracture and brain hemorrhage occurred after Victim's death as a result of the fire."

c. "[T]hough Solicitor did mention Pathologist's statements during a pretrial hearing, Solicitor never disclosed to Petitioner any information in reference to the possibility that the skull fracture and brain hemorrhage were thermal injuries. Ms. Stewart confirmed, by reviewing Court documents, that Solicitor concealed the exculpatory nature of Pathologist's pretrial statements by claiming that these statements established the possibility that victim died as a result of burning. She further noted that Solicitor failed to correct the misstatements made by Pathologist at trial indicating that the skull facture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma."

2. "Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial."

a. "Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is a common location for thermal injuries. The pathologist further explained

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BERKELEY COUNTY, SC

that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs."

b. Applicant thereafter details a series of *ex parte* motions to attempt to obtain photographs and records, each of which were denied.

3. "Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State."

a. "In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case. While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to him."

Applicant requests relief as follows:

- "Vacation of conviction for voluntary manslaughter and immediate release from South Carolina Department of Corrections"

The substance of the arguments before this Court primarily addressed the allegedly after-discovered evidence that certain injuries to the victim relied upon by the prosecution to show the victim perished from blunt force trauma were more likely the result of a thermal injury.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. This Court has considered the arguments presented by the attorneys at the hearing. Pursuant to S.C. Code Ann. §§ 17-27-70 and -80, this Court shall dismiss the application based upon the following findings:

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CLERK OF COURT
DARLINGTON COUNTY, S.C.

Newly-Discovered Evidence and the Motion for Discovery

First, the Court finds that Applicant's assertion that each of his allegations constitute newly-discovered evidence, such that he should be entitled to an evidentiary hearing, is without merit. The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

> (1) Is such as would probably change the result if a new trial was had;
> (2) Has been discovered since the trial;
> (3) Could not by the exercise of due diligence have been discovered before the trial;
> (4) Is material to the issue of guilt or innocence; and,
> (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

As to discovery in a post-conviction relief proceeding, South Carolina law provides that a party:

> . . . shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion *and for good cause shown* grants leave to do so, but not otherwise.

S.C. Code Ann. § 17-27-150(A) (emphasis added).

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CLERK OF COURT
HARRY COUNTY, S.C.

The Court finds that Applicant has failed to allege facts sufficient to support his claim of newly discovered evidence. Each of Applicant's allegations involve "facts" that were, *or could have been*, discovered before his trial, and are founded in part upon speculation as to what further investigation might produce. Concordantly, Applicant's motion or discovery must be denied.

As to the pathologist's findings, Applicant himself concedes that *more than a year* prior to trial, the State moved to amend the indictment on the basis that the autopsy report included some conjecture and could not definitively conclude whether [redacted] Allen was killed by a blow to the head or by the burning of the body. As the State *explicitly stated* the potential grounds for impeachment of the autopsy in a pre-trial hearing with Applicant present, Applicant needed only exercise the barest minimum of diligence to discover that issue: he only had to listen. Applicant did listen, as he indicates again in his own application that he pled guilty to desecration of human remains by burning Allen's body, then sought to quash the amended murder indictment on the basis that the autopsy report stated Allen was killed by blunt force trauma, not burning, at which time the State *again* stated in no uncertain terms that Victim could have died from blunt force trauma *or* burning.

Applicant moved for funding prior to trial to have an independent pathologist review the autopsy photographs, and potentially challenge the findings of the State's pathologist at trial, and was denied by Judge Burch, a denial which could have thereafter been raised on appeal. See State v. Matthews, 291 S.C. 339, 345, 353 S.E.2d 444, 448 (1986) ("Authorization for expenditure of funds for expert witnesses is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of that discretion."). Applicant contends any attempt to appeal that denial would be subject to the same deficiency of which the State now complains:

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that the denial forecloses any realistic possibility of proffering the evidence necessary to prevail on appeal. No doubt the standard of review to challenge the trial court's ruling would have presented a high bar on appeal, but Applicant misapprehends the question immediately before the Court. This Court, in determining the applicability of procedural bars and the *prima facie* validity of a claim of after-discovered evidence, is first concerned with whether the "evidence" relied upon for the claim was known or knowable at the time of trial. The answer in the present matter is indisputably that the potential ambiguity in the pathologist's findings was known to Applicant at the time of trial, and he attempted to pursue it. That the trial court denied him the funding is a direct appeal issue, and Applicant cannot circumvent the direct appeal process and the challenge it may present through an application for post-conviction relief nearly two decades later. See S.C. Code Ann. § 17-27-20(B) (Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); Drayton v. Evatt, 312 S.C. 4, 8-9, 430 S.E.2d 517, 520 (1993) ("The Simmons rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.").

Furthermore, Applicant concedes he does not actually possess at this time the evidence relied upon for the after-discovered evidence claim. Rather, Applicant speculates as to the conclusions that a different pathologist might reach, and asserts that discovery is necessary to ascertain the nature of the evidence. Applicant explained to this Court that a private pathologist had already indicated his availability and willingness to review the evidence, a Dr. J.C. Upshaw Downs, and that he only needed authorization from the Court to access the easily accessible autopsy records still housed at the Medical University of South Carolina in order to conduct a

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complete evaluation. Applicant further noted that he filed his motion before Respondent's motion to dismiss, that dismissing the action was premature without first granting the discovery motion, and that Applicant should be permitted to explore further investigation of the evidence as a matter of fundamental fairness. Applicant argues that denial of the motion for discovery and dismissal of the action would be fundamentally unfair without conclusively determining if the original pathologist erred.

While Applicant's argument in support of his motion for discovery is understandable—that a grant of discovery is now necessary to obtain the evidentiary review he would rely upon to support his claim of after-discovered evidence that is the heart of his application—it also betrays that the claim is ultimately a fishing expedition. Applicant could have sought this relief long ago, prior to trial, by the exercise of diligence. The current application is not supported by actual new evidence, but is predicated upon speculation as to what conclusions a different expert might reach if permitted to review evidence long known to have existed. Further, the Court disagrees with Applicant's contentions that denying him discovery is fundamentally unfair when Applicant enjoyed innumerable opportunities prior to the filing of the present action, and prior to trial, to pursue the relief he now seeks. To the contrary, it would be fundamentally unfair to the State and victims, and contrary to the interests of justice and finality to permit Applicant, or any other convicted person, to file any number of applications for post-conviction relief at any time in order to then avail themselves of discovery tools which *may* be available in such matters. The availability of PCR discovery is limited to the availability of PCR at all, and the mechanisms of PCR discovery cannot be relied upon to circumvent the procedural bars which serve to foreclose the action in the first place.

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Further, the Court finds the purportedly new evidence would not change the outcome of trial. Assuming *ad arguendo* that another pathologist would rule the factures to the side of the skull were thermal injuries and not the result of blunt force trauma, other substantial evidence existed in the record to show that Allen perished from such trauma. Indeed, Applicant's own testimony at trial insisted that her passing was the result of accidental blunt force trauma. A pathological finding to the contrary would arguably impeach *Applicant* as much as the State's case against him. That Applicant now seeks to change his story and assert that Allen perished from suicide,[3] and not in the fashion testified to at trial, is inconsequential. Whether newly-discovered evidence is material, and whether it would change the outcome at trial, is considered in the context of the other evidence presented *at trial*, and not in the context of the self-serving, unsupported, and vague "alternative facts" presented by the convicted individual long after trial. Given Applicant's conspicuous lack of detail, it is evident to this Court that he seeks to secure a different pathological finding, and amend his memory to fit it, so many years beyond the original killing that the State would struggle to disprove him.

As to the pathologist's testimony, the testimony was known to Applicant when it was given, and as set forth above, the question of whether Allen's injuries were the result of blunt force trauma or the burning was known to Applicant more than a year before trial. Any issues Applicant may have had with the accuracy or credibility of the pathologist's testimony could have and should have been raised at trial. 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. That the same observations could support an alternative theory as to how Allen died does not cast the pall of deception upon the

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[3] Curiously and importantly, Applicant does not appear to indicate *how* Allen allegedly killed herself, and did not offer any further detail at the hearing.

pathologist's testimony, such that the State had any obligation to "correct" it. Furthermore, Applicant's "discovery" of other instances where the pathologist misdiagnosed the cause of death of a person is merely impeaching.

As to the purported notes of SLED investigators, Applicant asserts without basis that the notes were wrongfully withheld from him. To the contrary, correspondence from Assistant Solicitor Dan Blake to Applicant shows he was provided the officer's notes in 2003. Additionally, the notes do not reveal anything which would either change the result if a new trial were conducted, nor anything material to the question of guilt or innocence, nor anything beyond the thinnest possible basis for impeachment. Applicant protests the notes show certain articles and refuse identified at the crime scene were not collected. Such protest is merely impeaching *at best*, and Applicant primarily emphasizes the value of the evidence for its possible use to damage "the credibility of Agent Elvington[.]" (Applicant's PCR Brief at 19). Put another way, Applicant presents only purported evidence of lack of evidence, which has *never* been sufficient to secure so much as a hearing, let alone a new trial. Furthermore, Applicant *did* argue and argumentatively question the inadequacy of the investigation in his lengthy closing argument at trial. (See, e.g. Appx. 135-36; Appx. 390-91; Appx. 708, ll. 1-3). Applicant can hardly contend he was not aware, or could not have been aware, of what the State's case against him lacked. Consequently, the State argued any deficiencies in the investigation were the consequence of Applicant's own efforts to destroy evidence and mess up the crime scene. (Appx. 718, ll. 3-15). Given Allen's corpse was *immolated*, the argument was well enough made.

Before the Court will hold a full evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make

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such a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter or relief from the procedural bars set forth below.

Statute of Limitations

The Court finds the application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant was convicted on August 1, 2003, and the remittitur from his direct appeal issued on May 23, 2005. The current application was not filed until June 5, 2025, well after the one-year statutory filing period expired. Therefore, the Court dismisses the application as barred by the statute of limitations.

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Laches

The Court finds the application must also be dismissed as barred by the equitable doctrine of laches. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. McElrath v. State, 276 S.C. 282, 283, 277 S.E.2d 890 (1981). Requiring reasonable diligence "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." Id. (quoting Honeycutt v. Ward, 612 F.2d 36, 42 (2nd Cir. 1979)). Where an applicant for post-conviction relief fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of laches, which is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Bray v. State, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (quoting Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)). "Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute laches." Id.

Applicant seeks post-conviction relief nearly 15 years after his conviction. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant's claims. McElrath, 276 S.C. at 283, 277 S.E.2d at 890. Applicant has offered no justification for the delay. Because of the delay, witness memories and physical evidence will have naturally faded and degraded. See, e.g., Bray, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge's ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held); State v. Serrette, 375 S.C. 650, 654

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S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy "would undoubtedly be futile considering the passage of over ten years' time" when the delay was caused by appellant). As a result, Applicant's delay in bringing this action has affected the availability of evidence for this Court to review his claims. Therefore, the Court dismisses the application as barred by the equitable doctrine of laches.

Successive

The Court finds the application must also be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the

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allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court dismisses the application as successive to Applicant's previous PCR application.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any reasons that would require this Court to grant his motion for discovery, or deny or delay in ruling upon the State's motion to dismiss. This Court **DENIES** Applicant's motion for discovery, **GRANTS** Respondent's motion to dismiss. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. Applicant's motion for discovery is denied;

2. The application for Post-Conviction Relief must be denied and dismissed with prejudice; and

3. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 **day of** October, **2019**.

BROOKS P. GOLDSMITH
Presiding Judge
Fourth Judicial Circuit

_____, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARLBORO	)	DOCKET NO.:2018-CP-34-00121
	)	
Weldon Stewart #295095,	)	
	)	
Applicant,	)	
	)	**APPLICANT'S NOTICE AND**
v.	)	**MOTION FOR RECONSIDERATION**
	)	**OF FINAL ORDER**
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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MARLBORO COUNTY

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Applicant hereby submits this motion for reconsideration of the Court's Final order dated and entered on October 27, 2019 (the "Order").

This motion for reconsideration is divided into three sections as set forth below. Each section provides multiple grounds for reconsideration of the Court's Order. Collectively, pursuant to these grounds for reconsideration, Applicant seeks rulings on matters that the Court did not address in its Order; Applicant seeks the Court's reasons for deciding certain matters where no reasons are given; and Applicant seeks for the Court to reconsider its findings.

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Section I. Grounds For Reconsideration Based On Exceptions To Particular Statements, Findings, And Conclusions In The order.....Page 2

Section II. Grounds For Reconsideration Based On The Order's Failure To Address Applicant's Contentions Regarding The Motion To Dismiss, The Relevant And Determinative Facts, The Applicable Legal Analysis, And The Proper Relief.....Page 13

Section III. Additional Statement of Grounds for Reconsideration.....Page 17

I.

Grounds For Reconsideration Based On Exceptions To Particular Statements, Findings, And Conclusions In The Order

Applicant raises the following exceptions to particular statements. findings, and conclusions in the Order and Applicant respectfully requests that the Court reconsider the same based on the record and the evidence and arguments identified herein.

On page 8, the Order fails to consider the true nature of Applicant's claims and Applicant's contention that the legal standard applied to these claims is premature and fundamentally unfair. Applicant's claims regarding the findings of Russell Harley, MD. ("the trial pathologist") are based primarily upon science. Applicant alleges that he obtained after-discovered evidence that the State withheld information tending to establish that the findings of the trial pathologist were not accurate. The scientific foundation of these claims is that the trial pathologist misdiagnosed the cause and manner of death of [redacted] Allen ("Victim") and that Applicant was indicted for murder and convicted of manslaughter as a direct result of this misdiagnosis. Applicant specifically alleges that the trial pathologist misdiagnosed the cause of death by mistaking thermal injuries, created after Victim's death as a result of fire, as being fatal blunt force trauma injuries. A scientific process must be conducted in order to conclusively establish this fact. Applicant has retained a forensic pathologist, J.C. Upshaw Downs. MD, to conduct this scientific process.[1] Applicant requested discovery of evidence (i.e. autopsy photographs) which is currently housed at the Medical University of South Carolina (MUSC) and which is pertinent to the completion of the aforementioned scientific process.[2] The Court denied Applicant's request for discovery thereby denying Applicant a fair opportunity to put forth scientific evidence in support of his claims. Because of the scientific nature of Applicant's claims, it is premature

[1] A few years after Applicant's trial, the trial pathologist misdiagnosed the cause and manner of death for an autopsy he conducted in a murder prosecution for the Army. Dr. Downs was retained by the prosecution to correct this misdiagnosis.

[2] Applicant is entitled to the requested evidence pursuant to SC Code Section 17-5-535(4) (b).

and fundamentally unfair for the Court to begin its analysis by finding Applicant's claims do not constitute after-discovered evidence while refusing to grant Applicant access through discovery to the evidence necessary to establish a scientific foundation for these claims.

On page 9, the Order inaccurately states that "the State explicitly stated the potential grounds for impeachment of the autopsy in a pre-trial hearing with Applicant present". This finding is based on facts which are detailed on pages 5 through 8 of Applicant's PCR Brief. The State amended Applicant's murder indictment to include burning as a possible cause of death. When Applicant objected to burning being included in the murder indictment. Assistant Solicitor Dan Blake ("the Solicitor" also referred to as "the State") claimed that he had been told by the trial pathologist that it was possible Victim died from burning. The Solicitor repeated this claim in multiple pre-trial hearings in response to Applicant's challenges to burning being included in the murder indictment. The Solicitor did state that the autopsy report contained conjecture. However, this statement and other similar statements were made in connection with the Solicitor's claim that it was possible Victim died from burning. The Solicitor's claims regarding burning being a possible cause of death were proven to be false and burning was removed from the murder indictment. The pre-trial claims of the Solicitor were not "grounds for impeachment of the autopsy", because these claims were proven to be false and false claims could not be used to impeach the autopsy.

Also on page 9, the Order inaccurately states that Applicant's reason for requesting funds for a forensic pathologist was so that an independent pathologist could "review the autopsy photographs, and potentially challenge the findings of the State's pathologist at trial". On page 7 of his PCR Brief, Applicant quoted verbatim (from a pre-trial transcript) his reason for requesting funds for a private pathologist as being the Solicitor's claim that the Solicitor had been told by the trial pathologist that it was possible Victim died from burning. On page 8 of Applicant's PCR Brief, Applicant quoted

verbatim (from a pre-trial transcript) Judge Milling's reason for denying this request.[3] Judge Milling reasoned that Applicant needed to first interview the pathologist to see if the pathologist confirmed the State's claims, because "it may be that Mr. Blake's (the Solicitor) understanding of what was going to be testified to or what the pathologist meant by his findings was in error". In essence, Judge Milling held that Applicant did not need to be given funds for a private pathologist to challenge the Solicitor's claims because Applicant did not know if the trial pathologist would confirm these claims. When Applicant interviewed the trial pathologist, the pathologist denied telling the Solicitor it was possible Victim died from burning. The trial pathologist explained that the pathologist ruled out death by burning as a possible cause of death based on the carboxyhemoglobin level, which was less than 10 percent saturation. The trial pathologist further explained that the carboxyhemoglobin level was a clear indication that Victim did not inhale smoke from the fire and was, therefore, deceased prior to the fire. Applicant questioned the pathologist during the interview based upon the information Applicant had been provided by the State. (Applicant was not able to question the pathologist during this interview about the possibility that the alleged blunt force trauma injuries were thermal injuries because the State had failed to disclose to Applicant any information regarding the possibility that the fire had created the injuries after death. Applicant now contends that he should be afforded a hearing so that he can question the trial pathologist regarding the information that was withheld by the State.) Shortly following Applicant's interview with the pathologist, the Solicitor removed burning from the murder indictment. Applicant decided that it would be futile to renew his request for a private forensic pathologist because the State's claim of death by burning, which was the basis of the request, had been scientifically proven to be false. However, there is a reasonable probability that if the State had disclosed the aforementioned information about thermal injuries, Applicant would have renewed his request for a private pathologist on this basis and this request would have undoubtedly been granted.

[3] It was Judge Milling who denied Applicant's request for funds for a private pathologist.

On page 10. the Order inaccurately states that "potential ambiguity in the pathologist's findings was known to Applicant at the time of trial, and he attempted to pursue it". Applicant alleges that he was not aware of any issues with the autopsy findings prior to the after-discovered evidence giving rise to this action, an allegation which is supported by the record. The autopsy report reflects the trial pathologist ruled that the cause of death was blunt force trauma. The pathologist confirmed this finding during a pre-trial interview with Applicant. The pathologist testified at trial that the cause of death was blunt force trauma. The pathologist never gave any indication, either prior to or during trial, of potential ambiguity in his finding of death by blunt force trauma. The only "information" Applicant received from the State prior to trial regarding the pathologist's findings was the State's claim that the pathologist had indicated to the Solicitor that it was possible that Victim's death was caused by burning. Applicant pursued this claim until it was proven to be false and the State removed burning from the murder indictment. The State's pre-trial claim that burning caused the death is a far cry from Applicant's post-trial discovery that burning could have produced the alleged blunt force trauma injuries after death. Furthermore, it is offensive to the fundamental principles of disclosure to consider the State's false pre-trial claim as having satisfied the State's duty to disclose to Applicant information within the knowledge of the State's expert pertaining to the possibility that the alleged fatal injuries were produced after death.

Also on page 10, the Order inaccurately states that Applicant "does not actually possess at this time the evidence relied upon for after-discovered evidence claim." This finding is a misleading oversimplification of Counsel's arguments regarding the scientific nature of Applicant's claims. Applicant alleges that the State withheld evidence which reveals that the trial pathologist's findings about the cause and manner of death are wrong. In his PCR Brief on pages 11 and 15, Applicant quoted verbatim from publications on forensic pathology that were published after Applicant's trial and which contain scientific facts in support of this claim. While this circumstantial evidence is sufficient as a

prima facie showing of Applicant's claims about the findings of the trial pathologist, the extent to which the trial pathologist erred in his findings is a matter of science which must be determined by a forensic pathologist. Applicant has retained a forensic pathologist and requested discovery of evidence (autopsy data) which the retained pathologist needs to review in order for him to be able to reach this scientific determination. This determination must be made in order for Applicant to be able to perfect his claims that the State withheld evidence regarding the errors made by the trial pathologist. Counsel's arguments were not meant to imply that Applicant does not possess *any* after-discovered evidence in support of his claims, as Applicant has demonstrated that he possesses circumstantial evidence of fundamental errors committed by the State. Rather, Counsel's arguments were meant to convey to the Court the importance of granting discovery so that Applicant can fully develop his claims, which are deeply rooted in science, through the requisite scientific process. Furthermore, the finding of fact fails to address that Applicant does possess the crime scene notes of SLED Agent Al Stuckey that Applicant claims contains favorable evidence the State withheld from him.

On page 11, the Order inaccurately states that "Applicant's argument in support of his motion for discovery...is ultimately a fishing expedition". Applicant's allegations raise an important question of material fact as to whether Applicant's conviction is based upon false evidence, or based upon the trial pathologist's misdiagnosis of the cause and manner of death.[4] Applicant has sought to resolve this question by retaining Dr. Downs to conduct an independent evaluation of the autopsy data for purposes of determining whether the alleged blunt force trauma injuries are actually thermal injuries that were produced after death from the fire. The retained pathologist has already confirmed the possibility that the injuries in question are thermal injuries based upon the location of the injuries, as noted in the

[4] After Applicant's trial, changes were made to the MUSC's forensic autopsy policy that would disqualify the trial pathologist from conducting the autopsy for this case due to the pathologist's lack of certification in forensic pathology. In addition, there is evidence which suggests that the trial pathologist failed to perform essential steps of the forensic autopsy (i.e. scene investigation, blood spatter and DNA analysis, evaluation of social and mental health history of decedent) according to the universal standards of this procedure.

autopsy report. However, the pathologist cannot offer a definitive conclusion until he has reviewed all available autopsy data. Applicant requested discovery for the specific purpose of providing Dr. Downs with the autopsy data necessary for him to compete his independent evaluation. As the request for discovery was made in good faith for this specific purpose, this request cannot be considered a fishing expedition and should be granted as a matter of fundamental fairness.

Also on page 11, the Order's finding of fact that "Applicant could have sought this relief long ago, prior to trial, by the exercise of diligence." is not consistent with the evidence or the law. Firstly, this finding of fact is based upon the faulty premise that the State's false pre-trial claim was sufficient to satisfy the State's duty of disclosing information within the knowledge of the State's expert regarding potential errors in the autopsy findings. Secondly, this finding of fact improperly shifts the burden on Applicant to have obtained a private pathologist prior to trial in order to "discover" that the State withheld favorable evidence.[5] Thirdly, and most importantly, the United States and South Carolina Supreme Courts have not held that it is the responsibility of a criminal defendant to hire private experts in order to "discover" favorable evidence within the possession or knowledge of the State. Rather, these courts have held that it is the duty of the State to disclose favorable evidence within its knowledge or possession. According to *Brady v. Maryland, 373 U.S. 83 (1963)*, the State has an *"affirmative duty to turn over to the Petitioner, all information known to the government that might reasonably be considered favorable to the Petitioner's case"*. See *Gibson v. State, 344 S.C. 515, 514 S.E.2d 320 (1999) ("The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching.")* The State relied upon the pathologist's finding of death by blunt force trauma to indict Applicant for murder and to convict Applicant of manslaughter. Any information tending to establish that Victim did not die from blunt force trauma, or that the findings of the trial pathologist regarding

[5] On pages 4 through 5 of Applicant's PCR Brief, Applicant demonstrated that he "exercised diligence" to discover the favorable evidence within the possession or knowledge of the State by filing a "Rule 5 and Brady Motion" and a "Motion to Produce Exculpatory Evidence".

the same were wrong, was clearly favorable to Applicant. Thus, the State had a duty to disclose this information to Applicant. The State's failure to disclose this information violated due process, the burden of which cannot be shifted to Applicant.

On page 12, the Order's finding of fact that the "purportedly new evidence would not change the outcome at trial" is not consistent with the evidence or the law. Applicant alleges in this action that after his trial, and after his first PCR, Applicant discovered that (1) The State withheld information tending to establish that the trial pathologist could not rule out that injuries he claimed were blunt force trauma injuries were created after Victim's death as a result of fire, (2) The State allowed the trial pathologist to provide false or misleading testimony regarding the cause and manner of death, and (3) The State withheld favorable evidence contained in the crime scene notes of SLED Agent Al Stuckey. The aforementioned finding of fact fails to consider that the State's failure to disclose favorable evidence undermines the reliability of the verdict. See *United States v. Bagley*, 473 U.S. 667 (1985) *("When the state does not disclose information in its possession that might reasonably be considered favorable to the defense, it precludes the trier of fact from gaining access to such information and thereby undermines the reliability of the verdict.")* The fact that the failure to disclose favorable evidence undermines the reliability of the verdict necessarily entails the conclusion that the result of the proceeding would have been different if the evidence had been disclosed.

Also on page 12, the Order's finding of fact that "Assuming *ad arguendo* that another pathologist would have ruled the fractures to the side of the skull were thermal injuries and not the result of blunt force trauma, other substantial evidence existed in the record to show that Allen perished from such trauma", is not consistent with the evidence or the law. This finding is based upon the premise that "Applicant's own testimony at trial insisted that her passing was the result of accidental blunt force trauma", and that this hearsay evidence is sufficient to establish death by blunt force trauma, notwithstanding the findings of a forensic pathologist. The cause and manner of death is a scientific

determination made by an expert in forensic pathology. See *State v. Commander*, *396 S.C. 254, 721 S.E.2d 413 (2011) citing Baraka v. Common Wealth, 194 S.W. 3d313, 315 (Ky.2006) (citations omitted) ("[I]t is axiomatic that a determination of the cause and manner which led to a person's death is generally scientific in origin and outside the common knowledge of layperson jurors.")* In Applicant's case, the determination that Victim died from blunt force trauma was made by the trial pathologist. If "another pathologist" made a scientific determination that Victim did not die from blunt force trauma, and the trial pathologist failed to refute this determination (or recanted his prior determination of blunt force trauma), Applicant's hearsay testimony could not establish the existence of a cause of death which has been scientifically proven to have never occurred.

Also on page 12, in a footnote, the Order makes reference to the fact that "Applicant does not appear to indicate how Allen (Victim) allegedly killed herself". The Order fails to mention that on page 16 of Applicant's PCR Brief, Applicant quoted verbatim from the trial testimony of Victim's father to establish that Victim's death occurred on the approximate one year anniversary of a traumatic abortion she was forced to undergo. According to forensic experts, this is a strong indicator of suicidal intent. The Order further fails to mention that on page 16 of Applicant's PCR Brief Applicant quoted verbatim from a letter written by Victim less than three months prior to her death in which Victim twice stated that she was contemplating suicide.[6] However, despite the substantial circumstantial evidence that Victim's death could have occurred from a manner other than homicide (i.e. suicide),[7] Applicant realizes that the issues before the Court in this action are not whether Victim committed suicide, or even how she did it. Rather, the issues are whether the State withheld information establishing that the trial pathologist misdiagnosed the cause and manner of death and whether the trial

[6] Applicant filed the full letter as a supporting document with his PCR Brief.

[7] During the interview with Applicant, the trial pathologist stated that his designation of the manner of death as homicide was based in part upon his finding that the "head was forcefully traumatized".

pathologist provided false testimony. Any evidence of possible death by suicide is only relevant as it pertains to the issues before the Court.

Also on page 12, the Order's finding of fact "it is evident to this Court that he (Applicant) seeks to secure a different pathological finding, and amend his memory to fit, so many years beyond the original killing that the State would struggle to disprove him" is not consistent with the evidence. Firstly, this finding is speculative in nature and the matter being speculated upon does not outweigh the necessity for discovery in this action. If it is proven through science, or a "different pathological finding", that the trial pathologist misdiagnosed the cause and manner of death and provided false testimony regarding the same, this scientific evidence would be sufficient to establish Applicant's claims of fundamental errors. Speculation as to whether Applicant would attempt to "amend his memory to fit" this scientific evidence does not diminish the necessity to ascertain whether constitutional errors were committed by the State. Furthermore, Applicant put forth evidence of possible death by suicide for the **sole purpose** of supporting his claims that the trial pathologist misdiagnosed **both** the cause and manner of death and provided misleading testimony regarding the same. Secondly, Applicant, who has far less resources than the State, faced a greater struggle (than any struggle the State may face) in trying to gather credible evidence (so many years after the death of Victim) to support his claims. If the State fails to present credible evidence to rebut the evidence presented by Applicant, it may be due to the fact that Applicant's claims are true. Regardless, the time that has elapsed in this matter is just as much an obstacle to Applicant as it is to the State. Thirdly, it would be contrary to the interests of justice to deny Applicant a fair opportunity to present his claims to the Court, by summarily dismissing this action, simply because the timing of the discovery of fundamental errors allegedly committed by the State poses an inconvenience to the State. Such is the consequences of the State's failure to fulfill its duty of disclosure.

Also on page 12, the Orders finding of fact that "any issues Applicant may have had with the accuracy or credibility of the pathologist's testimony could have or should have been raised at trial" fails to consider that Applicant did not discover these issues until after trial and after his first PCR. Furthermore, as noted earlier, this finding is based upon the faulty premise that the State's false pre-trial claim of death by burning satisfied the State's burden to disclose information pertaining to potential errors made by the trial pathologist.

Also on page 12, the Order's finding of fact "there is no indication of deception in the pathologist's testimony" is not consistent with the evidence. On pages 14 through 15 of Applicant's PCR Brief, Applicant demonstrated that the pathologist's testimony gave the impression to the jury that the injuries in question (skull fracture and brain hemorrhage) were created prior to death and caused death. The testimony of the trial pathologist further gave the impression to the jury that these injuries could have only been produced by blunt force trauma. However, the pathologist omitted from his trial testimony the scientific fact that these injuries could have just as likely been produced after death as a result of fire. The omitted scientific fact is one that is well-known among forensic pathologists, as demonstrated by Applicant on pages 11 and 15 of his PCR Brief. Therefore, the trial pathologist knew, or should have known, that the omission of this scientific fact would be misleading to the jury and would make the State's case appear stronger than the full facts would have suggested. In essence, the omission of this key scientific fact allowed the trial pathologist to claim that the autopsy findings (skull fracture and brain hemorrhage) were conclusive scientific proof that Victim died from blunt force trauma, when in actuality the pathologist could not scientifically rule out that these injuries were created by the fire after Victim was already dead. This omission clearly "cast the pall of deception" upon the pathologist's testimony, and the State committed a fundamental error by failing to correct this deception of the court and jurors by the presentation of false evidence. See *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) ("*The failure to correct false evidence is as reprehensible*

as its presentation. ") Furthermore, Respondent conceded during the motion hearing that it is possible the cause of death is "unknown" due to the fire, which is different from the finding of death by blunt force that the State presented to the jury at trial. This admission tends to support Applicant's claim that the State allowed the pathologist to provide false testimony to the jury regarding the cause of death.

On page 13, the Order fails to specifically address Applicant's allegation that SLED Agent Al Stuckey's notes were withheld from Applicant. Instead, the Order vaguely states that "correspondence from Assistant Solicitor Dan Blake to Applicant shows he was provided the officer's notes in 2003". While it is true that the State provided Applicant with some of the officer's notes in 2003 (i.e. Bobby Elvington), Applicant's claim is in part based upon the State's withholding of Agent Stuckey's notes. Applicant submitted with his PCR Brief correspondence from the Solicitor dated July 01, 2003 (27 days before Applicant's trial) showing that Agent Stuckey's notes were never disclosed to Applicant.

Also on page 13 and 14, the Order's finding of fact "Applicant has failed to make such a *prima facie* showing that he is entitled to relief based on the information set forth" is not consistent with the evidence or the law. The facts alleged by Applicant in his PCR Application and Brief should be assumed to be true and viewed in the light most favorable to Applicant. See *McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013) citing Leamon v. State 363 S.C. 432, 434, 611 S.E.2d 494,495 (2005) (citing S.C. Code Ann § 17-27-80)* ("*When considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant.*") Applicant alleges that after his trial, and after his first PCR, Applicant discovered evidence establishing that the State committed Brady and due process violations. If Applicant's allegations as set forth in his PCR Application and Brief, and summarized in this motion, are assumed to be true and viewed in the light most favorable to Applicant, these allegations are sufficient to make a *prima facie*

showing that Applicant is entitled to relief on the basis of after-discovered evidence of fundamental errors committed by the State.

On pages 14 through 17, the Order fails to consider Applicant's allegations that he did not discover the State's Brady and due process violations until after his trial and after his first PCR. This fact establishes exceptions to the statute of limitations and the prohibition to successive PCR Applications and raises a genuine issue of facts which can only be resolved by a hearing. See *McCoy v. State, supra, citing Delaney v. State, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977) ("Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.")*

II.

Grounds For Reconsideration Based On The Order's Failure To Address Applicant's Contentions Regarding The Motion To Dismiss, The Relevant And Determinative Facts, The Applicable Legal Analysis And The Proper Relief

The Order adopts Respondent's contentions regarding the Motion to Dismiss, the Motion for Discovery, the evidence presented, the relevant facts, the applicable legal analysis, and the proper relief. While the Court by implication appears to have considered some of Applicant's contentions regarding the same (which were presented to the Court in Applicant's PCR Application and Brief and were presented to the Court through arguments of Counsel), the Order does not fully or adequately address Applicant's contentions. Applicant therefore respectfully requests that the Court reconsider each of the points raised herein regarding the Motion to Dismiss, the Motion for Discovery, the evidence presented, the relevant facts, the applicable legal analysis, and the proper relief.

1. That Counsel was retained to review this action for after discovered evidence. That after reviewing the files and speaking with a private pathologist, J.C. Upshaw Downs, MD, it became evident that there was a potential issue regarding errors made by the original pathologist, who testified at the Applicant's Trial. This error revolves around errors made as to the actual cause of death. That there is a possibility that Dr. Downs could determine that the alleged death by blunt force trauma never occurred and that the alleged blunt force trauma injuries were actually thermal injuries created after the death from the body being burned.
2. However, when speaking with the pathologist, he indicated that in order for him to complete his evaluation, certain documents were necessary from the autopsy and that this information is currently being housed at the Medical University of South Carolina in Charleston.
3. A Motion for Discovery to obtain this information was filed on February 26, 2019. After the filing of the Motion for Discovery, a Motion to Dismiss was filed by the Respondent. That initially a hearing was scheduled regarding the Applicant's Discovery Motion, however, after the filing of the Motion to Dismiss, the Respondent requested that the Court also hear this Motion.
4. Counsel for the Applicant argued that it was premature to hear the State's Motion to Dismiss on the grounds of it not being after-discovered evidence. As it is necessary for the Court to grant the Discovery Motion and allow Applicant to fully develop his claims before it could be conclusively determined whether or not the evidence is sufficient to constitute fundamental errors at trial. That Applicant should be allowed to obtain discovery as a matter of fundamental fairness.
5. That the needed evidence exists at MUSC and is easily accessible to Dr. Downs.
6. Counsel for Applicant argued that it was important to determine if mistakes had been made by the trial pathologist regarding the cause of death for the following reasons:
    a. That the State indicted the Applicant for a murder based upon the conclusions of the pathologist that the decedent was killed by blunt force trauma. The Pathologist testified at trial that the death was caused by blunt force trauma. The Applicant was indicted for

murder and convicted of voluntary manslaughter based upon the conclusion of death by blunt force trauma.

b. That the State elected to proceed at trial with an allegation of death by blunt force trauma, and presented these allegations to the jury. It may be determined that the jury convicted Applicant based upon an allegation which was factually false and based upon a conclusion of the pathologist which was wrong.

c. That the premature dismissal of this action, without conclusively determining if these mistakes were made by the pathologist, would be fundamentally unfair.

7. In the Applicant's PCR Application and supporting Brief, the Applicant claims that he is unlawfully detained due to after discovered evidence of Brady and due process violations that were committed by the State. The facts which establish these claims are as follows:

i. The State withheld favorable scientific evidence tending to establish that the original pathologist misdiagnosed the cause of death by mistaking post mortem thermal injuries as being blunt force trauma injuries. Pretrial statements made by the Solicitor reveal that the Solicitor was informed by the trial pathologist of the possibility that the alleged blunt force trauma injuries were thermal injuries. However, the Solicitor *misrepresented* this conversation with the pathologist by alleging that the pathologist said only that it was possible the death was caused by burning. (Applicant later discovered evidence tending to establish that the alleged fatal injuries were produced after death by the fire.)

ii. The Solicitor allowed the pathologist to provide misleading testimony regarding the nature of the injuries the pathologist relied upon to reach his conclusion about the cause and manner of death. More specifically, the facts which establish this claim are:

- ❖ The pathologist testified at trial that the presence of a skull fracture and brain hemorrhage were definitive proof of death by blunt force trauma.
- ❖ Applicant discovered evidence establishing that this testimony was false due to the fact that these exact injuries could have been produced after death as a result of burning.
- ❖ Applicant retained a forensic pathologist who reviewed the autopsy report and confirmed the possibility that the alleged blunt force trauma injuries were actually thermal injuries. However, the retained pathologist stated that he would not be able to reach a definitive conclusion about the source of these injuries until he reviewed additional data from the autopsy.

iii. The Solicitor suppressed favorable evidence contained in the crime scene notes of SLED Agent, Al Stuckey. Although Agent Elvington's notes were provided to Applicant, Agent Stuckey's notes *were not* provided. Agent Stuckey explicitly stated in his notes that he found no evidence of a struggle on the scene, which directly contradicted the State's theory at trial of death by a violent struggle. Agent Stuckey's notes reflect that the crime scene expert thoroughly searched the scene and found no signs that Applicant attempted to conceal evidence (i.e. blood spatter) of a violent struggle, which contradicted the State's theory that Applicant attempted to destroy evidence of a crime. The notes further reflect that all potential weapons found on the scene tested negative for blood.

Applicant by and through these allegations and the documents he has submitted in support of the allegations has made a *prima facie* showing that he is entitled to relief on the basis of after-discovered evidence of Brady and due process violations committed by the State. Applicant should not be held to

a standard of proving these allegations of after-discovered evidence, as suggested by the Order, until he has been allowed to obtain discovery and until such time as he has been afforded a full evidentiary hearing.

III.

Additional Statement Of Grounds For Reconsideration

In addition to and in further support of all of the above grounds for reconsideration, Applicant provides the following additional statement of grounds for reconsideration, which if properly considered would have required a decision in favor of Applicant.

1. The South Carolina Supreme Court has held under identical circumstances that a hearing was necessary. In *McCoy v. State*, supra, the petitioner claimed that the juror's misconduct was not discovered until after his first PCR Application was dismissed. The State contended that the juror misconduct could have been discovered earlier through the exercise of due diligence and, therefore, the petitioner had failed to state a "sufficient reason" why the claim was not included in his first PCR. The Supreme Court held that "based on this factual dispute, a hearing is necessary to resolve this critical issue". The PCR judge summarily dismissed the claim. The Supreme Court held that "because Petitioner's claim that he is entitled to the benefit of the discovery rule is not conclusively refuted by the record, the PCR judge erred by summarily dismissing Petitioner's claim".

   In the current action, as in McCoy, Applicant alleges that he did not discover the State's Brady and due process violations until after his first PCR Application was dismissed. The Respondent contends that these violations could have been discovered earlier through the exercise of due diligence. Applicant's claim that he is entitled to the discovery rule is not conclusively refuted by the record. Therefore, as the Supreme Court held in McCoy, a hearing is necessary to resolve this issue.

2. The Court erred in granting the Respondent's Motion to Dismiss, thereby summarily dismissing Applicant's claims, because genuine issues of material fact exist as to whether Applicant's PCR claims are successive and untimely. Furthermore, other facts and claims set forth by Applicant in this action (i.e. the trial pathologist misdiagnosed the cause and manner of death) are not conclusively refuted by the record and can only be resolved by a hearing.
3. The Court erred in denying Applicant's Motion for Discovery because the request for discovery was made in connection with Applicant's claims of after-discovered evidence, the requested evidence is housed at MUSC, and disclosure of the evidence will not pose an undue burden on the State. Furthermore, the requested evidence is pertinent to the completion of a scientific process that will determine whether Applicant's conviction is based upon false evidence.
4. The Court failed to consider that Applicant's claims have never been heard or ruled upon by a Court.
5. In light of the evidence establishing the possibility that the trial pathologist misdiagnosed the cause of death as well as the possibility that Applicant was convicted based upon this misdiagnosis, the dismissal of this action without discovery and an evidentiary hearing would amount to a gross miscarriage of justice.

THEREFORE, as set forth herein, Applicant respectfully submits that the Court reconsider its Order, reverse its rulings, and enter judgement granting Applicant's Motion for Discovery and denying Respondent's Motion to Dismiss.

Dated: December 4, 2019

Respectfully submitted,

Tommy A. Thomas
Attorney for Applicant
[redacted]
Irmo, SC 29063
(803) 732-5507

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
Weldon Stewart, S.C.D.C. No. 295095,	)	Case No.: 2018-CP-34-00121
Applicant,	)	
	)	**RETURN TO APPLICANT'S**
v.	)	**MOTION TO RECONSIDER**
State of South Carolina,	)	
Respondent.	)	

In response to "Applicant's Notice and Motion for Reconsideration of Final Order" filed through PCR counsel by Weldon Stewart ("Applicant") on December 11, 2019, Respondent would show this Court:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed June 5, 2018. Applicant, by and through retained counsel, moved for discovery by filing on February 26, 2019. Respondent made its return on or about July 9, 2019, requesting the application be summarily dismissed.

The Court convened a hearing into the matter on Thursday, August 22, 2019, at the Chesterfield County Courthouse in Chesterfield, South Carolina. Applicant was present at the hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James Jr. and Donald J. Zelenka, Esqs., of the South Carolina Attorney General's Office, represented Respondent. After hearing arguments of the parties, the Court orally granted Respondent's motion to dismiss.

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Applicant immediately and orally moved the Court to reconsider,[1] and upon arguments from the parties, the Court denied the motion. The Court directed Respondent to prepare a formal order. After protracted consultation with Applicant's counsel, Respondent submitted a proposed Order Granting Respondent's Motion to Dismiss Application to the Court, which was accepted, signed, and ultimately filed on October 17, 2019. Respondent served a copy of the filed Order on November 26, 2019.

Applicant raises his arguments framed as three grounds, each of which are briefly addressed in turn in separate sections below.

II.

First, Applicant contends the Court's Order "fails to consider the true nature of Applicant's claims and Applicant's contention that the legal standard applied to these claims is premature and fundamentally unfair." Applicant's argument that he should be granted discovery notwithstanding the applicable procedural bars was very fully fleshed out in arguments before the Court, and is accurately reflected in the Order. Applicant, in a great many words, *once again* asserts he must be permitted to investigate that which he could have already investigated. Applicant could have sought independent review prior to trial, and appealed the trial court's denial of an independent expert on appeal, and did not do so.

Applicant also contends the Order "inaccurately states that 'the State explicitly stated the potential grounds for impeachment of the autopsy in a pre-trial hearing with Applicant present.' The line is an accurate assessment and summation of the totality of the record before the Court.

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Applicant further contends the Order "inaccurately states that Applicant's reason for requesting funds for a forensic pathologist was so that an independent pathologist could 'review

[1] Whether the present motion thus constitutes a successive motion for the purposes of tolling the time to appeal is an open question. See, e.g. Quality Trailer Products, Inc. v. CSL Equipment Co., Inc., 349 S.C. 216, 562 S.E.2d 615 (2002) (Successive new trial motions or motions for JNOV do not toll the time for serving notice of appeal.).

the autopsy photographs and potentially challenge the findings of the State's pathologist at trial'." The line is an accurate assessment and summation of the totality of the record before the Court.

Applicant still further contends the Order inaccurately states the "potential ambiguity in the pathologist's findings was known to Applicant at the time of trial, and he attempted to pursue it." Applicant endeavors to thread a needle by distinguishing the possibility that the injuries could have been the result of the burning which caused her death from the possibility that the injuries could have been the result of the burning which only occurred after her death. The seed of both hypotheticals is the same: the burning could have produced the injuries. The line is an accurate assessment and summation of the totality of the record before the Court.

Applicant next asserts the Order inaccurately and oversimplifies his predicament in that he does not actually possess the evidence, and then goes so far as to raise anew a claim that the State withheld evidence. The State committed no such sin, but was exceedingly forthright in stating the ambiguous possible interpretations of how the autopsy's findings could be interpreted. The Order is an accurate assessment and summation of the totality of the record before the Court.

Applicant next contests the description of his case as "a fishing expedition" is inaccurate. Applicant's case is a fishing expedition, and one which seeks to avail itself of a hole in the ice known to Applicant at the time of trial. Applicant again contends the forensic expert was not qualified to conduct the autopsy, but that subject has been repeatedly litigated, most recently in Applicant's 2015 motion for a new trial in General Sessions.

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3RD COURT

Applicant argues against the Order's finding "that 'Applicant could have sought this relief long ago, prior to trial, by the exercise of diligence[.]'" Applicant once again attempts to convert his failure to pursue the evident and plainly stated ambiguities in the forensic report into

a claim that the State committed a violation by failing to tell him each and every way in which the forensic report could be attacked. Brady[2] and Gibson[3] do not compel the State to appraise defendants of every conceivable weakness which may be extrapolated from the evidence available in its prosecutions; it only has the obligation to make evidence available. Indeed, Applicant's absurd claims of prosecutorial misconduct are premised on a theory that would put prosecutors in the untenable position of acting both as prosecutor and counsel to the defendant.

Additionally, the number of ways in which evidence may be interpreted are defined by the other available facts which may provide the necessary context through which evidence may be interpreted—Applicant's various claims, including those of prosecutorial misconduct, are premised on his own outlandish revision of his recollection of events as contrary to those he advanced at trial. The importance of this observation is on full display in Applicant's arguments on pages 8 through 12. Applicant condemns his own direct, first-hand trial testimony of what happened *as hearsay*. Applicant notes the Court's observation that he has cagily refrained from stating how the victim killed herself, and then persists in refraining from explaining how she supposedly killed herself—the alleged cause of his "suppressed" memories—leaving open his ability to amend his ever-changing memory to conform with the evidence he seeks to obtain. The State presented its best theory of events, which resulted in Applicant's conviction, and stands by them, but the number of possible arguments against the State's theory are functionally infinite and are constrained only by the ability of Applicant's own imagination to produce new, alternative facts. Thus, it would be an impossible burden for the State to communicate every conceivable interpretation of evidence to Applicant, or any other defendant. That impossibility is

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[2] Brady v. Maryland, 373 U.S. 83 (1963).
[3] Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999).

precisely why the State need not prove a defendant's guilt to an absolute certainty, but rather beyond a reasonable doubt.

As to Applicant's argument regarding Al Stuckey's notes, the Order is an accurate assessment and summation of the totality of the record before the Court. Additionally, Applicant made *no effort* during the hearing on the competing motions to argue with respect to the investigative notes allegedly not turned over, functionally abandoning the issue to focus on what he deemed to be his best argument.

Applicant's motion for reconsideration is, in sum total, nothing more than yet another restatement of the arguments he has now repeatedly submitted to the Court, or had the opportunity to submit to the Court. Applicant offers nothing to justify reconsideration of the Order, and the motion should be denied.

III.

The entirety of Applicant's second ground for reconsideration is, taken together, little more than yet another restatement of the arguments already made. Thus, Respondent would only refer to and incorporate the arguments above, and those made previously to the Court, and the totality of the record. The motion to reconsider should be denied.

IV.

Applicant's third ground constitutes a list of five arguments, none of which compel reconsideration.

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As to McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013), the nature of the newly-discovered evidence (juror misconduct) was not conclusively refuted by the record. To the contrary, the record in McCoy firmly established that McCoy only learned of the juror's relation to the Seventh Circuit Solicitor's Office after his trial, and that the juror obscured the information

prior to his trial. McCoy's additional problem was that his second application for post-conviction relief was originally dismissed through the Conditional Order/Final Order process, without any hearing. In no way is that factual pattern "identical" to the present matter, where the record provides very clearly that the evidence was available to Applicant prior to trial and at all points thereafter, and where Applicant was extended the opportunity to argue against the State's motion to dismiss.

As to the second point, the possibility of colorable arguments against the State's motion to dismiss was recognized by the Court such that the State's motion was not directed through the Conditional Order/Final Order process, but rather subjected to a thoroughly argued hearing before this Court. There is no further genuine issue of material fact or law as to the applicability of the procedural bars, and thus no further proceedings are necessary.

As to the third, fourth, and fifth points, they are nothing more than a restatement of arguments already made to and rejected by this Court, such that they do not provide a basis for reconsideration. The legislature very clearly did not intend the post-conviction relief process to represent a mechanism by which any convicted person could avail themselves of civil discovery processes for the purpose of fishing up new claims after their conviction. See S.C. Code Ann. § 17-27-150(A) (no discovery unless permitted in court's discretion for good cause shown). As repeatedly argued by Respondent, and recognized by this Court, Applicant seeks to do just that in order to facilitate his abandonment of his trial testimony and shore up his alternative and undefined recollection of how the victim died. Every element of Applicant's newly-discovered evidence claims were known or knowable prior to trial, and his late realization two decades later that he could have read the evidence differently does not entitle him to the discovery processes necessary to do so.

The passage of time inures justice to finality. This Court has recognized as much in its Order. Applicant presents no valid grounds upon which to alter, amend, or otherwise reconsider the Order Granting Respondent's Motion to Dismiss. The motion to reconsider must be denied.

V.

WHEREFORE, Respondent respectfully requests the Court deny Applicant's motion for reconsideration.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
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By: _____
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31 Dec, 2019

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SUPREME COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	DOCKET NO.: 2018-CP-34-00121
Weldon Stewart # 295095,	)	
Applicant,	)	
v.	)	ORDER DENYING MOTION
State of South Carolina,	)	
Respondent.	)	
----------	)	

This matter comes before the court upon Applicant's Motion For Reconsideration of the Order dated and filed on October 17, 2019.

Both parties submitted briefs in support of their respective positions. After Considering both briefs I can find no substantial reason to alter the Order of October 17, 2019.

ACCORDINGLY, Applicant's Motion To Reconsider IS HEREBY DENIED.

January 6, 2020

BROOKS P GOLDSMITH
Circuit Judge

FILED
2020 JAN -9 A 11:42
ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COURT

Jackie Miller

From: Goldsmith, Brooks
Sent: Friday, May 15, 2020 12:47 PM
To: Jackie Miller; Johnny James
Subject: RE: Weldon Stewart v State

I just spoke with someone at the Clerk's Office who advised that they were normally responsible for "clocking" orders when received but in this case the Order was just placed in the file. She was on maternity leave. The Order has now been clocked and copies mailed to the attorneys.

Brooks P. Goldsmith
Circuit Judge
Active/Retired

From: Jackie Miller <[redacted]
Sent: Thursday, May 14, 2020 2:57 PM
To: Goldsmith, Brooks
Subject: RE: Weldon Stewart v State

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you.

Jackie Miller
Paralegal to Tommy Thomas, Esq.

Tommy A. Thomas, PC

THOMAS LAW

[redacted]

From: Goldsmith, Brooks
Sent: Thursday, May 14, 2020 2:44 PM
To: Jackie Miller <[redacted] Johnny James <
Subject: Weldon Stewart v State

Attached is a copy of an order dated January 6, 2010 and apparently mailed to the Clerk on January 10, 2010. I have left a message for the Clerk to contact me regarding this Order.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF MARLBORO) DOCKET NO.: 2018-CP-34-00121

Weldon Stewart # 295095,)

Applicant,)

v.) ORDER DENYING MOTION

State of South Carolina,)

Respondent.)

This matter comes before the court upon Applicant's Motion For Reconsideration of the Order dated and filed on October 17, 2019.

Both parties submitted briefs in support of their respective positions. After Considering both briefs I can find no substantial reason to alter the Order of October 17, 2019.

ACCORDINGLY, Applicant's Motion To Reconsider IS HEREBY DENIED.

January 6, 2020

BROOKS P GOLDSMITH

Circuit Judge

Mailed 1/10/2020

RECEIVED
JUN 18 2020
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2018-CP-34-00121

Weldon Stewart #295095, Appellant

v.

State of South Carolina, Respondent

NOTICE OF APPEAL

Weldon Stewart #295095 appeals the order of the Honorable Brooks P. Goldsmith dated January 6, 2020. Appellant received written notice of entry of this order on May 14, 2020.

June 08, 2020

Weldon W. Stewart, Jr. #295095
Kershaw Correctional Institution
[redacted]
Kershaw, South Carolina 29067
(803) 475-3970
Pro Se Appellant

Other Counsel of Record:
Chesley Marto
Assistant Attorney General
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Columbia, South Carolina 29000
[redacted]
Attorney for Respondent