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
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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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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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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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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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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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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, at 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. These 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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MARLBORO COUNTY, S.C.

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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ORANGEBURG COUNTY, S.C.

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. Sennette, 375 S.C. 650, 654

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2019 OCT -1 A 11:
ANNA M. CALLOWAY
CLERK OF COURT
RICHLAND COUNTY, S.C.

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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ANNE M. GILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

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.

FILED
2019 OCT 17 A 11:44
ANNA M. WILLIAMS
CLERK OF COURT
FLORENCE COUNTY, S.C.

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

FILED
2019 OCT 17 A 11:44
ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

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 <j[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.

THOMAS LAW

Tommy A. Thomas, PC
[redacted]
Physical [redacted]

From: Goldsmith, Brooks
Sent: Thursday, May 14, 2020 2:44 PM
To: Jackie Miller <j[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

June 15, 2020

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
[redacted]
Columbia, South Carolina 29211

RE: Weldon Stewart #295095, Appellant, v. State of South Carolina, Respondent, Case No. 2018-CP-34-00121

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

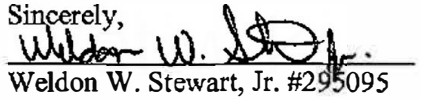
(1) Proof of service of the notice of appeal on the respondent.

(2) A copy of the orders which are to be challenged on appeal.

(3) Email showing that written notice of entry of this order was received on May 14, 2020.

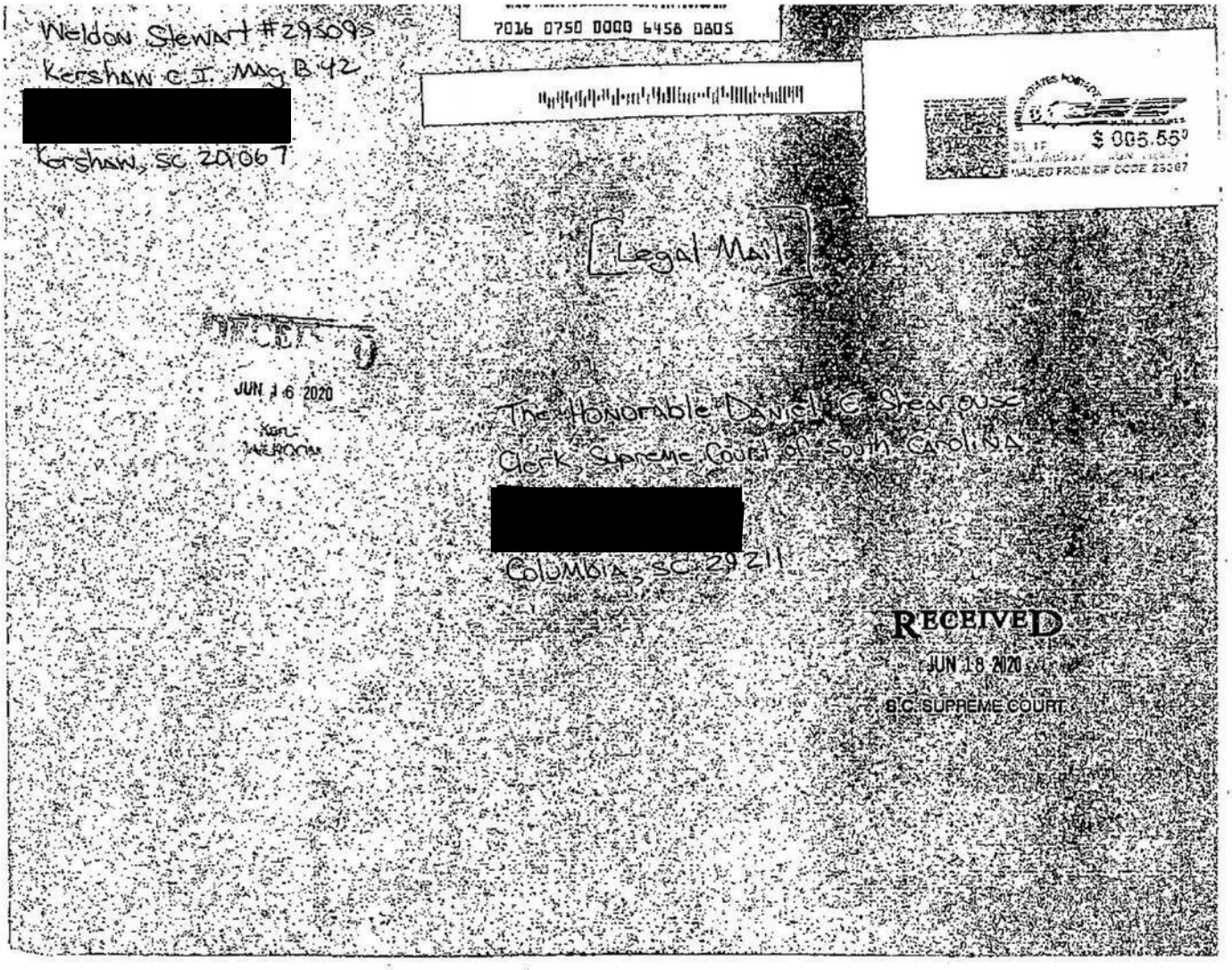
(4) This appeal is being filed with the Supreme Court because the PCR court summarily dismissed Appellant's PCR application as being successive and untimely. Appellant believes this ruling is improper because Appellant asserted that his PCR claims fall within exceptions to the bar against untimely and successive applications. Specifically, Appellant invoked the discovery rule by claiming that the evidence supporting the second PCR application was not discovered until after the original PCR application had been filed and ruled upon. Appellant further asserted that this evidence was unavailable to him at the time of the filing of his original PCR application due to the fact that the State committed Brady violations. Therefore, genuine issues of material facts exists as to whether the second PCR application is successive or untimely and a full evidentiary hearing is warranted in this matter as pursuant to this Court's rulings in McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (S.C. 2013) and Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C. 2016).

Sincerely,



Weldon W. Stewart, Jr. #295095
Kershaw Correctional Institution
[redacted]
Kershaw, South Carolina 29067
(803) 475-3970
Pro Se Appellant

cc: Chesley Marto
Assistant Attorney General



Weldon Stewart #295095
Kershaw C.I. Mag B-42
[redacted]
Kershaw, SC 29067

7016 0750 0000 6458 0805

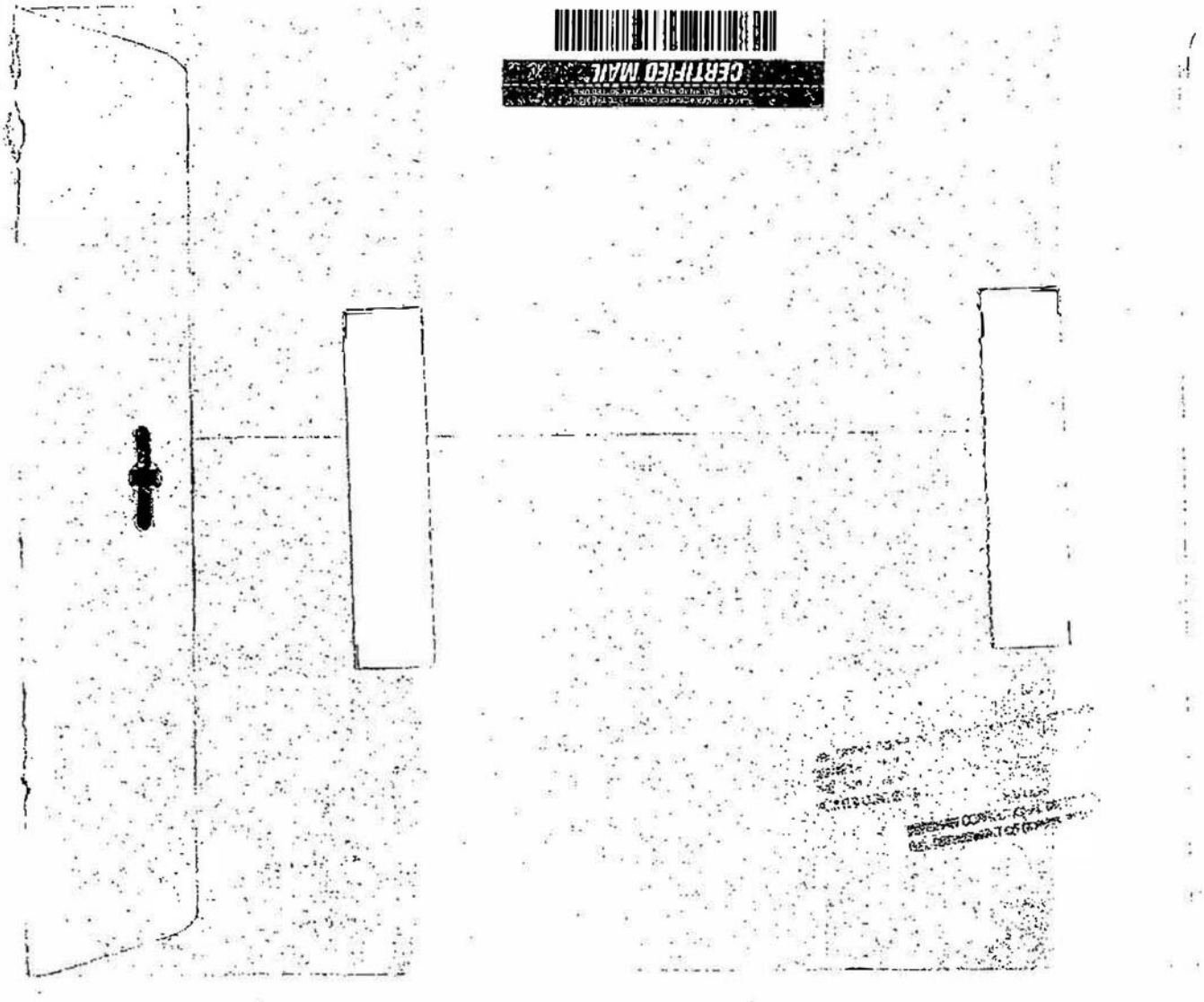
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MAILED FROM ZIP CODE 29067

Legal Mail

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JUN 16 2020
KERSHAW

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
[redacted]
Columbia, SC 29211

RECEIVED
JUN 18 2020
S.C. SUPREME COURT


CERTIFIED MAIL

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

[redacted]
COLUMBIA, SOUTH CAROLINA
29211

[redacted]
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: [redacted]

June 25, 2020

Tommy Arthur Thomas, Esquire
[redacted]
Irmo, SC 29063

Re: Weldon Stewart v. State
Appellate Case No. 2020-000900

Dear Counsel:

This Court has received a pro se notice of appeal in the above post-conviction relief action, a copy of which is attached. The records of the lower court indicate that you are counsel of record in this matter. I remind you that you remain counsel of record pursuant to Rule 71.1(g) of the South Carolina Rules of Civil Procedure until you are relieved.

Based on the date the orders were entered in the lower court, please indicate the date on which you received written notice of entry of the order denying relief. *See* Rule 203(e)(1)(C) of the South Carolina Appellate Court Rules.

Additionally, since the order of the circuit court determined that this action is barred as being successive and/or as being untimely under the statute of limitations, Rule 243(c) of the South Carolina Appellate Court Rules requires you to provide a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the

lower court was improper. The failure to make a sufficient showing may result in the dismissal of this matter.

In the event you determine that you do not have a good faith explanation to provide pursuant to Rule 243(c), you must provide this Court with a letter stating that as an officer of the Court you are unable to set forth any arguable basis for asserting the determination by the PCR judge was improper. The letter should also advise petitioner that he has twenty (20) days from the date of the letter to file a pro se explanation as to why the petitioner believes that this determination by the circuit court was improper. *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006). The letter filed with this Court should include proof of service showing that a copy of the letter has been sent to the petitioner.

Please provide the explanation required by Rule 243(c) and a statement indicating when you received written notice of entry of the final order denying relief within fifteen (15) days of the date of this letter.

Very truly yours,



DEPUTY CLERK

cc:
Chelsey Faith Marto, Esquire
Mr. Weldon W. Stewart, Jr., #295095

2020-07-10 12:06 CDT [redacted]

THOMAS LAW

RECEIVED
Jul 10 2020
S.C. SUPREME COURT

July 10, 2020

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
[redacted]
Columbia, SC 29211

FAX NO.: 803-734-1499

RE: Weldon Stewart. v. State of South Carolina
Case No.: 2020-000900

Dear Sir or Madam:

I am in receipt of your letter dated June 25, 2020. Attached please find for filing an Explanation Pursuant to Rule 243 (c).

Please feel free to contact me should you have any questions.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Chelsey Marto, Esq.
Weldon Stewart

TOMMY A. THOMAS, P.C.
[redacted]

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas
Post Conviction Relief

Brooks P. Goldsmith, Circuit Court Judge

Case No.: 2020-000900

Weldon Stewart ..... Appellant,

vs.

State of South Carolina, ...Respondent.

EXPLANATION PURUSANT TO RULE 243 (c)

PROCEDURAL HISTORY

The Appellant filed an Application for Post Conviction Relief *pro se* on June 5, 2018. In this Application, the Appellant alleged newly discovered evidence, due process violation and newly discovered evidence of a Brady violation. That early in 2019, the Appellant retained counsel to represent him in his Post Conviction Relief Action, specifically regarding a retained private pathologist who had undertaken an initial evaluation of the forensic evidence. This pathologist is Dr. J. C. Upshaw Downs.

That Dr. Downs initial findings are substantially different from what was testified at trial. These findings are a result of a review of the file and/or new scientific

technology. These findings are material and may have a significant impact upon the conviction of the Appellant. However, in order for Dr. Downs to complete his evaluation, certain documents are needed from the autopsy. This information is currently being housed at the Medical University of South Carolina in Charleston.

On February 26, 2019, a Motion for Discovery was filed by counsel. The Respondent made it's Return and Motion to Dismiss on or about July 9, 2019. The Lower Court convened a hearing into the matter on August 22, 2019 in Chesterfield County. The Appellant was present at this hearing and represented by Tommy A. Thomas, Esq. Johnny Ellis James, Jr. and Donald J. Zelenka, Esq. of the South Carolina Attorney General's Office represented the Respondent. No testimony was taken at the hearing, but attorneys for both parties argued the Motion before the Court.

The Court had before it Applicant's record from the South Carolina Department of Corrections, the records from the Marlboro County Clerk of Court, Appellant's Direct Appeal records, the Appendix from the Appeal of Applicant's prior Post Conviction Relief action including the original trial transcript and the prior PCR transcript. A transcript of the hearing on Appellant's Motion in General Sessions for a new trial, May 26, 2016 and the filings in this present action.

ARGUMENT

The Appellant contends that there are substantial issues that were presented to the Lower Court that require a ruling by this Court. These issues are as follows:

1. That the Court erred in hearing the Post Conviction Relief action on its merits at this hearing. There was a Motion for Discovery pending regarding

potentially newly discovered evidence. There is initial evidence to indicate that there was a substantial error in the testimony and evidence presented at trial by the State's pathologist. That due to new scientific technology and also through the initial investigation, that the results of the autopsy and cause of death are incorrect. However, before the pathologist can make a final decision regarding this evidence, it would be necessary for Dr. Downs to review the evidence that is in the possession of the Medical University of South Carolina in Charleston. The Appellant argues that it is premature for the Lower Court to proceed with the Post Conviction Relief action regarding after discovered evidence without first having granted the request for discovery. Until such time as the discovery is granted, the Appellant is unable to conclusively prove that Dr. Down's initial findings are correct. That until such time as discovery is received and a final decision is made by the pathologist, the Appellant is unable to prove after discovered evidence. That the Court's denial of this discovery Motion is an action by the State preventing the Appellant from exploring an issue of potential after discovered evidence which could have a significant impact upon his conviction.

Therefore, the Appellant is informed and believes that the Court was in error with its failure to grant the after discovery Motion and proceeding to hear the Post Conviction Relief action.

The Applicant raises the following issues in his 2018 Application for Post Conviction Relief:

1. The issue regarding Dr. Downs' need of the evidence currently held at MUSC; and
2. Newly discovered evidence that the Appellant believes is a Brady violation and more specifically the suppression of certain South Carolina Law Enforcement Division files that were favorable to Appellant. This information was obtained from SLED in June, 2017.

The Court's review of those issues presented in the Application for Post Conviction Relief, is in error.

The Court concludes that the Appellant has not established any reason that would require the Court to grant his Motion for Discovery or Delay a ruling upon the State's Motion to Dismiss. The Court denied Applicant's Motion for Discovery and granted Respondent's Motion to Dismiss. The Court Dismisses the Application as successive to the Appellant's previous PCR Application. The Court further dismisses the Post Conviction as barred by the equitable doctrine of latches and also for failure to comply with the filing procedure of the Uniform Post Conviction Procedural Act regarding the Statute of Limitations.

The Appellant would assert that this Appeal should proceed and the Court should render an opinion regarding these issues. The Appellant was prejudiced and prevented from seeking a determination regarding after discovered evidence. Given the fact that the initial findings by Dr. Downs indicate that there could be a significant

miscarriage of justice regarding scientific forensic evidence. This initial evidence is material to the case and the Appellant is prevented through State action from making a final conclusion regarding this potential after discovered evidence.

In addition, the Court erred in proceeding to hear arguments regarding the Post Conviction Relief action itself. These issues were not ripe for argument or consideration by the Court. The proper procedure would have been for the Court to grant the request for discovery and only after the evaluation was completed, that an evidentiary hearing regarding the after discovered evidence and the previously filed Post Conviction Relief Action could be heard.

This appeal is filed with the Supreme Court because the PCR court summarily dismissed Appellant's PCR application as being successive and untimely. Appellant believes this ruling is improper because Appellant asserted that his PCR claims fall within exceptions to the bar against untimely and successive applications. Specifically, Appellant invoked the discovery rule by claiming that the evidence supporting the second PCR application was not discovered until after the original PCR application had been filed and ruled upon. Appellant further asserted that this evidence was unavailable to him at the time of the filing of his original PCR application due to the fact that the State committed Brady violations. Therefore, genuine issues of material facts exists as to whether the second PCR application is successive or untimely and a full evidentiary hearing is warranted in this matter as pursuant to this Court's rulings in McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (S.C. 2013) and Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C. 2016).

THEREFORE, the Appellant is informed and believes that he is entitled under Rule 243 (c) for this case to proceed on Appeal.

Respectfully submitted,

_____

TOMMY A. THOMAS
Attorney for Appellant
[redacted]
Irmo, SC 29063
(803) 732-5507

July 10, 2020
Irmo, SC

The Supreme Court of South Carolina

Weldon Stewart, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000900
Lower Court Case No. 2018-CP-34-00121

ORDER

In the explanation required by Rule 243(c), SCACR, Petitioner has failed to show there is an arguable basis for asserting the determination by the lower court was improper. Accordingly, this matter is dismissed. Counsel's motion to be relieved is denied as moot. The remittitur will be sent as provided by Rule 221(b), SCACR.

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
August ___, 2020

cc: Chelsey Faith Marto, Esquire
Tommy Arthur Thomas, Esquire

THOMAS LAW

August 24, 2020
Via fax

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
[redacted]
Columbia, SC 29211

FAX NO.: [redacted]

RE: Weldon Stewart v. State of South Carolina
Case No.: 2020-000900

Dear Sir or Madam:

Attached please find a Motion to Reinstate and Renewal of Motion to be Relieved as Counsel along with a Certificate of Servce.

Please feel free to contact me should you have any questions.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Chelsey Marto. - email
Weldon Stewart

TOMMY A. THOMAS, P.C.
[redacted]

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Post-Conviction Relief Judge

Case No.: 2020-000900

Weldon Stewart ..... Appellant,

vs.

State of South Carolina, ...Respondent.

MOTION TO REINSTATE
AND RENEWAL OF MOTION TO BE RELIEVED AS COUNSEL

PROCEDURAL HISTORY

Petitioner filed an application for post-conviction relief on June 5, 2018. In this application, Petitioner alleged newly-discovered evidence, due process violation, and newly-discovered evidence of a Brady[1] violation. No evidentiary hearing has been held to address these factual allegations, nor was Petitioner's motion for discovery granted a hearing.

In early 2019, Petitioner retained undersigned counsel to represent him in the instant post-conviction relief action. The particular issue with which Petitioner required counsel was to attempt to present the work of Dr. J.C. Upshaw Downs – a retained private

[1] Brady v. Maryland, 373 U.S. 83 (1963).

pathologist who undertook evaluation of the forensic evidence from the underlying incident. His findings were made initial in August 2017.

Dr. Downs' initial findings are substantially different from what was testified to at trial. These findings are a result of a review of the file and/or new scientific technology. These findings are material and may have a significant impact upon the conviction of Petitioner. However, in order for Dr. Downs to complete his evaluation, certain documents are needed from the autopsy. This information is currently being housed at the Medical University of South Carolina (MUSC) in Charleston. On February 26, 2019, a motion for discovery was filed by undersigned counsel. Respondent made its return and motion to dismiss on or about July 9, 2019. The post-conviction relief court convened a hearing into the matter on August 22, 2019 in Chesterfield County. No testimony was taken at the hearing, but attorneys for both parties argued the motions before the Court.

ARGUMENT

I. The post-conviction relief court erred in summarily dismissing Petitioner's application because newly-discovered evidence raises issues of material fact that must be presumed to be true and viewed in the light most favorable to Petitioner.

This Court has held, "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. McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005); Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (2016). This Court in McCoy also held, "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." Id.

Petitioner has been denied access to the autopsy photographs used to convict him which, if provided to Dr. Downs, will demonstrate that the testimony from the trial pathologist, Dr. Harley, misleading if not overtly incorrect, resulting in denial of his constitutional right to a fair trial. Dr. Harley testified at trial that the victim was killed as a result of blunt force trauma. After review of the records in his possession, Dr. Downs discovered an alternate theory of the crime; however, this cannot be proven until he is able to access the entire autopsy record from MUSC.

It was not until Petitioner retained Dr. Downs that this alternate theory of the case was discovered, specifically that postmortem thermal injuries can appear nearly identical to blunt force injuries, leading to a misinterpretation of the injuries and incorrect cause of death at autopsy. Dr. Downs was retained on August 16, 2017 and, thereafter, conducted a preliminary review of the autopsy report, concluding that victim's thermal injuries, which were used to convict Petitioner for voluntary manslaughter, may been caused after death. Dr. Downs' conclusion was based in part on the location of the thermal injuries as noted in the autopsy report. Dr. Downs cannot make conclusive findings, however, because the State refuses to release the complete autopsy file to Appellant.

Appellant filed this PCR application on June 5, 2018, less than one year following Dr. Downs' initial findings, thus satisfying the requirements of S.C. Code Ann. 17-27-45. Moreover, such a discovery of this nature was not possible until the last few years due to the advancement of scientific and forensic methods, technology, and techniques since Petitioner's trial and conviction in 2003. The post-conviction relief court erred in denying

Petitioner's motion for discovery and granting the State's motion to dismiss. The Court denied Petitioner's Motion without review of the evidence at MUSC or the full autopsy records. The Court prevented the Applicant from obtaining information which was material to the case as demonstrated by Dr. Downs' initial review.

Appellant did not have access to an expert forensic pathologist's review of the Victim's autopsy until Dr. Downs agreed to do the review in August 2017. Moreover, the State never disclosed to Appellant the possibility that what appeared as fatal blunt force trauma injuries could have been thermal injuries produced after death. Therefore, expert testimony calling into questions Dr. Harley's testimony as to the cause and manner of death could not have been presented within one year of the remittitur having been sent following the denial of his direct appeal. The argument could be made that Appellant should have hired a forensic pathologist to testify at trial, but since Appellant could not afford his own attorney, he could not afford a forensic pathologist. For the purposes of this appellate review, however, Dr. Downs' conclusions that Victim's thermal injuries may have been caused post-mortem, and NOT as a result of blunt force trauma are new – and were not available until August 2017. Because Appellant filed his Application on June 5, 2018, based on evidence newly discovered in August 2017, the PCR court erred in finding that Appellant's Application was time-barred; erred in finding that his Application was successive; and erred in finding his Application was barred by the doctrine of laches.

Under the holding in *McCoy*, this Court is bound to assume that the facts alleged by Appellant are true: 1) That the autopsy used to convict Appellant shows post-mortem thermal injuries and not blunt force trauma injuries; and 2) That Dr. Harley's testimony was false and misleading. Therefore, Appellant was denied a fair trial and he must be

allowed access to the full autopsy record to facilitate an independent, comprehensive forensic review.

II. The post-conviction relief court erred in summarily dismissing Petitioner's application because the State withheld exculpatory and impeaching evidence when it failed to provide the SLED investigation in violation of Brady and Rule 5 requirements.

Some records from South Carolina Law Enforcement Division ("SLED") were provided to Petitioner prior to trial. Others, with exculpatory and impeaching information, were withheld in violation of Brady v. Maryland, 373 U.S. 83 (1963) and Gibson v. State, 344 S.C. 515 (1999), namely the notes recorded by Agent Al Stuckey. Petitioner filed a freedom of information act (FOIA) request, which provided all SLED records relating to its investigation of Petitioner's case, including Agent Stuckey's notes. The results of this request were mailed to Petitioner's wife on June 7, 2017. These notes contain information that contradicts the State's theory at trial. Specifically, the notes reflect that the crime scene investigator meticulously searched the scene but found no evidence of a violent struggle. Furthermore, there is no indication in the notes that the crime scene investigator attributed the lack of physical and forensic evidence to the fire, especially noteworthy as the investigator noted that the body was burned over a hundred feet from where the victim died.

The burden is on the State to turnover to the defense material evidence which is exculpatory and impeaching. 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 guilt or punishment. Kyles v. Whitley, 514 U.S. 419 (1995); State v. Von Dohlen, 322 S.C. 234, 241 (1996). This rule

applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667, 676 (1985).

Although Petitioner was convicted of voluntary manslaughter based on blunt force trauma, Agent Al Stuckey's notes contradict the State's theory that Petitioner killed the victim through blunt force trauma. Moreover, if Petitioner had Agent Stuckey's notes at trial, he could have used them to impeach Dr. Harley's testimony that the cause and manner of death was blunt force trauma.

On appeal from the post-conviction relief court's dismissal of his application without an evidentiary hearing, under McCoy and its progeny, the evidence contained in Agent Al Stuckey's notes must be viewed in the light most favorable to Petitioner. No evidence of a violent struggle tends to disprove the State's theory that Petitioner killed the victim in a violent altercation. This further undermines Dr. Harley's conclusions that the cause and manner of Victim's death was blunt force trauma. Thus, Stuckey's observations were 1) clearly favorable to Petitioner; 2) were in the possession of the State; 3) were suppressed by the State; and 4) were material to whether Petitioner was guilty of voluntary manslaughter.

As a result of this Brady violation, which could not have been discovered until receipt and review of the complete SLED investigative notes that included the exculpatory and impeaching observations made by Agent Stuckey, Petitioner was denied a fair trial. Because Petitioner filed his application within one year of discovering the exculpatory and impeaching evidence that was suppressed by the State, the post-conviction relief court erred in finding that Petitioner's application was time-barred and erred in finding his Application was barred by the doctrine of laches.

On June 25, 2020, undersigned counsel filed a motion to be relieved from this matter. That motion is renewed here on the following grounds:

1. That Counsel was retained to represent the Appellant regarding his Post Conviction Relief Action. This Action was dismissed and a timely Notice of Intent to Appeal has been filed.

2. The Appellant wishes to represent himself. This matter was discussed at length with the Appellant regarding his wish to Appeal and self-representation.

3. That Counsel has not been retained to represent Appellant for this appeal and is therefore informed and believes that he should be relieved as the Appellant's attorney.

THEREFORE, Petitioner is informed and believes that he is entitled to have this matter reinstated and considered for appeal.

FURTHER, if this case proceeds on appeal, the undersigned counsel should be relieved as counsel of record.

Respectfully submitted,

TOMMY A. THOMAS
Attorney for Petitioner
[redacted]
Irmo, SC 29063
(803) 732-5507

August 24, 2020
Irmo, SC

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas
Post Conviction Relief

Brooks P. Goldsmith, Circuit Court Judge

Case No.: 2020-000900

Weldon Stewart ..... Appellant,

vs.

State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Appellant, hereby certify that I emailed a copy of Explanation Pursuant to Rule 243 (c), to Chelsey Marto, Esq. of the Attorney General's Office at:

Chelsey Marto, Esq.
Attorney General's Office
[redacted]
Columbia, SC 29211-1549
[redacted]

Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Appellant
[redacted]
Irmo, SC 29063
(803) 732-5507

Irmo, SC
August 24, 2020

The Supreme Court of South Carolina

Weldon Stewart, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000900

ORDER

By order dated August 10, 2020, this Court dismissed this matter for failure to show there was an arguable basis for asserting the determination by the post-conviction relief court was improper. In addition, counsel's motion to be relieved was denied as moot. Petitioner asks the Court to reinstate this matter, and counsel renews his motion to be relieved. The motion to reinstate is denied, and the motion to be relieved as counsel is denied as moot.

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
October 19, 2020

cc: Chelsey Faith Marto, Esquire
Tommy Arthur Thomas, Esquire
Anita M. "Joy" Williams

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

[redacted]
COLUMBIA, SOUTH CAROLINA
29211
[redacted]

October 19, 2020

The Honorable Anita M. "Joy" Williams
[redacted]
Bennettsville SC 29512-0996

REMITTITUR

Re: Weldon Stewart v. State
Lower Court Case No. 2018CP3400121
Appellate Case No. 2020-000900

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

DEPUTY CLERK

cc:
Chelsey Faith Marto, Esquire
Tommy Arthur Thomas, Esquire

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-278

In re: WELDON W. STEWART, JR.,

Movant.

On Motion for Authorization to File Successive 28 U.S.C. § 2254 Petition in the United States District Court for the District of South Carolina, at Anderson.

Argued: January 26, 2023 Decided: August 21, 2023

Before GREGORY, HARRIS and QUATTLEBAUM, Circuit Judges.

Motion denied by published opinion. Judge Quattlebaum wrote the opinion, in which Judge Harris joins. Judge Gregory concurs in part and in the judgment.

ARGUED: Ciara Barone, Walker Fortenberry, UNIVERSITY OF VIRGINIA LAW SCHOOL, Charlottesville, Virginia, for Movant. Melody Jane Brown, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Respondent. **ON BRIEF:** Dawinder Sidhu, HOPWOOD & SINGHAL PLLC, Potomac, Maryland, for Movant. Alan Wilson, Attorney General, Donald J. Zelenka, Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Respondent.

QUATTLEBAUM, Circuit Judge:

A South Carolina jury convicted Weldon Stewart of voluntary manslaughter concerning the death of his girlfriend. Almost 20 years later—following three rounds of collateral litigation in state court and one 28 U.S.C. § 2254 habeas petition in federal court—Stewart seeks permission to file a second § 2254 petition. In that application, Stewart claims he now remembers that his girlfriend died by suicide. According to Stewart, his memory was repressed at the time of his trial and his regained memory satisfies the rigorous newly discovered evidence requirements of 28 U.S.C. § 2244(b)(2)(B), allowing him to file a second habeas petition. One of those requirements is that Stewart demonstrate, by clear and convincing evidence, that no reasonable factfinder, considering his alleged regained memory with the rest of the evidence, would find Stewart guilty of manslaughter. Because Stewart fails to meet this burden, we deny his application to file a successive § 2254 habeas petition.

I.

A.

On December 6, 2000, Stewart—who was 19 at the time—called the police to report that he had burned the body of his 15-year-old girlfriend C.A. Responding to the call, police officers discovered that C.A. was dead and her body had, in fact, been burned. In 2002, Stewart was indicted in Marlboro County, South Carolina, for murdering C.A. and then burning her body. He pled guilty to desecration but went to trial on the murder charge.

Stewart, despite repeated inquiries from the trial court about appointing counsel, decided to represent himself at trial. The trial court then conducted a hearing to evaluate Stewart's competency to stand trial. Relying on expert forensic psychiatrist testimony, the court found Stewart competent and thus allowed him to represent himself. But the court appointed the public defender as standby counsel for Stewart should he need or request assistance.

At trial, the state's forensic pathologist testified that C.A. died from blunt force trauma to the head before she was burned. He based this opinion on fractures to the skull and evidence of bleeding near the fractures. The evidence of bleeding, he explained, indicated the injuries occurred before the fire. On cross-examination, the pathologist agreed that the skull fracture could have resulted from a fall but said it was unlikely. He concluded that the skull fracture came from something hitting the victim's skull hard or her skull hitting something with great force.

The state called several police officers. The officers testified that they responded to a call for police aid from Stewart after he burned the body. When they arrived, Stewart told them about the fire. The officers testified that Stewart said he and C.A. had an argument that night and that she fell, went limp and made unusual sounds. Stewart also told them he left the victim after she started making those noises to grab a flashlight from his home. By the time he returned, Stewart continued, she was no longer breathing.

Along with these statements that Stewart made to the responding officers, an officer testified that Stewart delivered letters to the police describing being "overcome with rage"

because C.A. was involved with another man. J.A. 572–73. One of the letters was admitted into evidence. Written in third person, it provides:

> And she saw his rage and he knew he had learned of that which had taken place and was sore [sic] afraid. And his heart was hardened toward her, and he sought to slay her. Yet she loved him still and made haste to meet him in the night to calm his rage. He would have her to commit fornication, but she would not and in his madness, he went in unto her by force. She pleaded with him to have his way with her, but spare her life. He would not take heed and struck her in the face with his right hand, and in his madness laid his hand upon her neck and slew her. When he saw that which he had done, it greatly pleased him.
>
> . . . .
>
> He went into his house to take rest and in the seventh hour, he arose and built an alter so that he could make a burnt offering. And he found that which was for the offering caught in some bushes. And he prepared her, and in the eleventh hour, seven hours after the slaughter, he placed her on the alter. He anointed her with oil and sang and danced praises for the offering. And when he had done this, he looked towards the sky and stretched forth his hands. That he held the cloth he had taken out of the temple, and a great fire came down from the sky and lit the cloth. He then cried out with a loud voice and placed the burning cloth on the alter. As the sacrifice burnt, the smoke reached the sky and he knew that it was good. He was greatly pleased with what he had done and sang and danced and gave thanks. He sacrificed her that she may be forgiven for her sins.

J.A. 573:17–74:24.

The state also called Anthony Watson, a classmate of C.A. who was in a relationship with her when she died. Watson testified that Stewart called him multiple times threatening him. In one of these threatening phone calls, which occurred while Stewart was in jail, Stewart stated Watson was "next." J.A. 421–22.

In response, Stewart insisted C.A.'s death was accidental. He testified in detail about what happened on December 6, 2000. C.A., he said, snuck out of her house to meet Stewart for sex. Later, as he was walking C.A. home through a path in the woods, they began to

argue. Stewart told the jury that C.A. pulled out a box cutter and swung it at him. So, Stewart picked her up and started to carry her home. But according to Stewart, as he picked her up, he tripped and fell. He said he fell on top of C.A. Stewart recalled that she initially sat up, but then began calling Stewart's name. He said her voice became low and that she made "strange sounds" that "didn't sound human." J.A. 937–38. Then Stewart testified that he saw blood coming from C.A.'s mouth. He knew at that point something was wrong, so he left to find his friend Stanton Wright.

Stewart testified that he was drinking a beer and looking for cigarettes when he found Wright. And he claimed he told Wright about tripping and falling on C.A. Wright, however, previously signed a statement saying that Stewart told him that C.A. had sex with someone else before their encounter and did not shower before meeting him. According to the statement, Stewart "flipped" out when he learned this. J.A. 311.

Stewart also relied on his statements to the authorities, the lack of evidence of a struggle and the testimony of witnesses that said Stewart was not violent towards C.A. And he pointed out that the state's case lacked a murder weapon.

After all the evidence was presented, the jury found Stewart guilty of the lesser included charge of voluntary manslaughter. The trial court sentenced Stewart to 30 years' imprisonment for that charge, and 9 years on the desecration of human remains charge to run consecutively. Later, the South Carolina Court of Appeals dismissed his direct appeal.

B.

Stewart then began a series of collateral challenges to his conviction. In 2006, he sought post-conviction relief in South Carolina state court, arguing he received ineffective

assistance from his appellate counsel. He complained that his counsel did not effectively challenge the trial court's voluntary manslaughter charge, the authentication of the letters the state introduced or the admission of graphic photographs of the victim's charred remains. He also argued that the trial court erred by admitting Wright's testimony over his hearsay objections. The state post-conviction relief ("PCR") court rejected those claims, and the South Carolina Supreme Court then denied his petition for a writ of certiorari.

Next, in 2009, Stewart filed his first § 2254 habeas petition in federal court. In that petition, he claimed the trial court's failure to include an involuntary manslaughter charge he proposed violated his due process rights and repeated the ineffective assistance of counsel claims he lodged in state PCR court. The district court dismissed the petition as a matter of law. First, it held that the trial court's rejection of the jury instruction Stewart requested was not an unreasonable application of federal law as established by the Supreme Court. Second, the court held that Stewart's appellate counsel's failure to raise the ineffectiveness of trial counsel did not fall below the applicable standard of professional care nor was it sufficiently prejudicial under *Strickland v. Washington*, 466 U.S. 668 (1984). Stewart appealed the district court's order and we denied his motion for certification and dismissed his appeal. *Stewart v. Bodison*, 412 Fed. App'x. 633 (4th Cir. 2011).

In 2015, Stewart went back to state trial court. He moved for a new trial, arguing a juror from his criminal trial failed to report a relationship with him, the pathologist who testified for the state at trial was not qualified and, for the first time, that he had regained memory that C.A. actually died by suicide. Stewart claimed in March 2014, he began

communicating with Lori Stewart, his then acquaintance and now wife, on the online social network known as Tango. According to Stewart, during their subsequent conversations, the memories suddenly came back to him.[1] He alleged that he remembered that on December 6, 2000, C.A. was depressed about the one-year anniversary of having an abortion. While they were in the woods, she collapsed in Stewart's arms. Stewart recalled that "my mouth was on her mouth as she took her last breath; I felt her spirit leaving her body." J.A. 1009.1. Stewart claimed he panicked, went to buy some gas and returned to burn C.A.'s body. Stewart and his counsel later abandoned this repressed memory claim. The state court denied relief on the two grounds that Stewart pressed. [2]

Then, in 2018, Stewart sought discovery and additional post-conviction relief before the state PCR court. He alleged that the state withheld the pathologist's statements that he could not rule out that C.A.'s head injuries were caused by the fire rather than blunt force trauma. Stewart also alleged that the state failed to turn over notes from its investigators about the lack of any evidence of a struggle in the woods. The state PCR court rejected

[1] The record is unclear as to when Stewart allegedly regained his memory. At one point, he says it was in March 2014. At another point, he says it was in June 2014. Lori says it was July 1, 2014. In addition, Stewart initially told Lori his name was Ben and he was a real estate developer from California. He later came clean after which Stewart allegedly told Lori that C.A. died by suicide. Lori, a 20-plus year FBI employee, then began to investigate Stewart's story. The FBI fired her after her security clearance was revoked due to her association with Stewart. Since Stewart was a convicted felon, that association presented a potential conflict of interest. According to Stewart, Lori's attorney advised her that if Stewart were exonerated, that would give her the best chance of successfully appealing her dismissal from the FBI.

[2] Stewart filed the motion as to the regained memory pro se. But he was represented by counsel when that ground was abandoned.

those claims, finding that neither the pathologist's statements nor the notes were newly discovered. In fact, the court ruled that Stewart had the information at the time of his trial in 2003.

Stewart also raised again his regained memory that C.A. died by suicide. The state PCR court rejected this claim as well. It held:

> That Applicant now seeks to change his story and assert that [C.A.] perished from suicide, 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.

J.A. 1296 (emphasis in original). And the court added, "[c]uriously and importantly, [Stewart] does not appear to indicate how [C.A.] allegedly killed herself, and did not offer any further detail at the hearing." J.A. 1296 n.3. Thus, it concluded that the alleged new evidence "would not change the outcome of [the] trial." J.A. 1296.

C.

That brings us to Stewart's current application for pre-authorization to file a successive § 2254 habeas petition. In October 2021, proceeding pro se, Stewart asserted that, if authorized, he will submit three claims alleging constitutional error that essentially track his claims the last time he sought relief in state court. Those claims are:

> (1) Newly discovered *Brady* violation committed by the State by concealing evidence establishing that the injury alleged by the State to have caused Victim's death was an injury created after death.

> (2) Newly discovered evidence establishing that the State failed to correct false testimony given by the State's pathologist and that the State suppressed evidence proving that this testimony was false.
>
> (3) Newly discovered *Brady* violation committed by the State by withholding notes written by the State's crime scene investigator detailing observations made by the investigator while on the scene which contradicted the State's case against Stewart at trial.

ECF No. 2.

Stewart did not list his regained memory as a ground for filing a successive § 2254 habeas petition. But he discussed that issue in his application. So, construing his pro se petition liberally, we appointed counsel to represent him and requested briefing on whether the recovery of his allegedly repressed memory could serve as newly discovered evidence permitting a successive habeas petition under 28 U.S.C. § 2244(b).

II.

A.

We start with some basics about successive applications for habeas relief under 28 U.S.C. § 2254. Generally, a state prisoner is entitled to only one federal challenge. *In re Stevens*, 956 F.3d 229, 232 (4th Cir. 2020). "For any successive federal habeas application, [the Antiterrorism and Effective Death Penalty Act or 'AEDPA'] requires a prisoner to meet strict procedural and substantive gate-keeping requirements before federal courts can reach the merits of that successive application." *Id.* (citing *Panetti v. Quarterman*, 551 U.S. 930, 942–47 (2007)). Those requirements are found in 28 U.S.C. § 2244.

Under § 2244, a successive applicant must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). A claim "presented in a prior application" for relief under § 2254 "shall be dismissed." *Id.* § 2244(b)(1). And even if not previously presented, a claim must be dismissed unless it satisfies one of two requirements. The first is for new constitutional rules: the applicant must show "that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." *Id.* § 2244(b)(2)(A). The second addresses claims based on newly discovered facts and has two parts:

> (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Id. § 2244(b)(2)(B).

To obtain authorization to file a successive federal habeas claim, the petitioner need not convince the court he will ultimately satisfy the provision's demands. *Stevens*, 956 F.3d at 233. He need only make a prima facie showing to pursue his requested second claim. *In re Hubbard*, 825 F.3d 225, 229 (4th Cir. 2016). An applicant makes such a showing "[i]f in light of the documents submitted with the [motion for pre-filing authorization] it appears reasonably likely that the [motion] satisfies the stringent requirements for the filing of a second or successive petition." *In re Williams*, 330 F.3d 277, 281 (4th Cir. 2003).

B.

With that background in mind, we turn to Stewart's claim that he has recovered previously repressed memories about the night C.A. died. According to Stewart, his trial testimony that she died as a result of him accidentally falling on top of her was not true. Instead, he now remembers that she died by suicide. Stewart insists that his regained memory is newly discovered evidence that shows he is actually innocent. He further argues the evidence was not previously available because the trauma of seeing C.A. kill herself triggered a condition known as dissociative amnesia. As a result, Stewart claims he repressed his memory of what occurred and developed the version of the events that he testified about at trial.

Stewart maintains that his new memory is consistent with other evidence from the trial—the fact that December 6, 2000, roughly coincided with the one-year anniversary of C.A. having an abortion, that she left what he calls a suicide note[3] and the absence of evidence of a struggle from the woods where they were last together. Further, he presented a report from a psychologist who stated she currently cannot rule in or rule out whether he suffers from dissociative amnesia, but additional testing might allow her to clarify her opinions.[4]

[3] The pertinent part of the letter reads, "I feel like I want to kill myself, but why should I and you wouldn't even care if I did. I can't cope with the pain anymore. If I'm at the point [of] thinkin[g] about killing myself, it is not good . . . . This pain hurts so much . . . . [T]his pain is nothing I can handle anymore." J.A. 1143, 1204–09.

[4] The psychologist's report indicates that Stewart's counsel declined to pursue the evidence-based tests she recommended, opting instead for a preliminary evaluation.

No federal court that we know of has ever held that regained memory that was previously repressed constitutes newly discovered evidence for purposes of federal habeas relief. True, some state and federal district courts have recognized that dissociative amnesia exists and that individuals may have repressed memories as a result.[5] But all the cases Stewart cites are civil sexual assault claims where the victims used alleged repressed memories to argue for equitable tolling of a statute of limitation. Stewart asks us to break new ground.

Aside from being novel, Stewart's claim implicates several significant issues. The issues vary somewhat based on the way Stewart frames his argument that the newly discovered evidence of his previously repressed memory shows that he is actually innocent. At times, he appears to frame the newly discovered evidence as a procedural gateway for the consideration of the three substantive constitutional claims identified above. At other times, he appears to frame the newly discovered evidence as an independent substantive ground for habeas relief. Giving Stewart the benefit of the doubt, we will consider both frameworks.

[5] *See, e.g.*, *Moriarty v. Garden Sanctuary Church of God*, 511 S.E.2d 699 (S.C. 1999); *see also Templeton v. Bishop of Charleston*, No. 2:18-cv-02003-DCN, 2021 WL 3419442 (D.S.C. Aug. 5, 2021); *Clark v. Edison*, 881 F. Supp. 2d 192 (D. Mass. 2012), *Shahzade v. Gregory*, 923 F. Supp. 286 (D. Mass. 1996); *Isley v. Capuchin Province*, 877 F. Supp. 1055 (E.D. Mich. 1995); *Doe v. Freeburg Cmty. Consol. Sch. Dist. No. 70*, No. 10-cv-458-JPG, 2012 WL 3996826 (S.D. Ill. Sept. 12, 2012); *Anonymous v. Vella*, No. 8:04CV269, 2006 WL 1401680 (D. Neb. May 15, 2006).

1.

A habeas petitioner may generally use alleged newly discovered evidence of actual innocence as a gateway for the consideration of otherwise procedurally barred claims. *See e.g.*, *Schlup v. Delo*, 513 U.S. 298, 314 (1995) (allowing a claim of actual innocence to avoid the procedural bar to considering the constitutional errors of ineffective assistance of counsel and improper withholding of evidence by the prosecution); *McQuiggin v. Perkins*, 569 U.S. 383, 396–98 (2013) (holding that evidence of actual innocence may serve as a gateway for a habeas petitioner to pass through the statute of limitations procedural bar to asserting an unconstitutional ineffective assistance of counsel claim).[6]

Even so, Stewart faces a potential statute of limitations issue. At the latest, Stewart claims to have regained his memory on July 1, 2014. After that, he moved for a new trial in the state trial court on April 6, 2015, in part due to his regained memory. But he abandoned that argument, and the court denied his motion on the other grounds on May 26, 2015. Stewart raised his repressed memory again in filing for discovery and other relief from the state PCR court on May 25, 2018. That motion was denied on October 15, 2019, and his appeal of that denial was dismissed on August 8, 2020. Then, on October 10, 2021, over a year later, Stewart filed the motion before us today. Section 2244(d)(1)(D), imposes a "1-year period of limitation" from "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." The timeline raises serious questions about Stewart's compliance with this statute of

[6] Our court has likewise approved this type of claim. *See, e.g.*, *Finch v. McKoy*, 914 F.3d 292, 294 (4th Cir. 2019).

limitations, but the parties did not address this issue in their briefs. For that reason, we decline to address it.

Proceeding then to Stewart's claim, as discussed earlier, it must be "reasonably likely" from the motion for pre-filing authorization that "the stringent requirements for the filing of a second or successive petition" will be satisfied. *In re Williams*, 330 F.3d at 281. And for a successive § 2254 petition based on newly discovered evidence, one of those stringent requirements is that the evidence, when viewed together with all the other evidence, must be sufficient to establish by clear and convincing evidence that "no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B).

In re Williams illustrates this requirement. There, a witness testified at trial that he saw Williams shoot at the vehicle in which the witness was a passenger—killing one occupant and injuring another. *In re Williams*, 330 F.3d 330 at 278. Years after Williams was convicted, he applied to file a successive habeas application under § 2244(b). *Id*. at 279. In his application, Williams alleged that the witness recanted his trial testimony, establishing his innocence. *Id.* We, however, rejected the application concluding that while the witness' recantation supported Williams' assertion of innocence, it did not outweigh the other incriminating evidence. *Id*. at 283–84.

The same is true here. To be sure, Stewart's claim of dissociative amnesia, if accepted as true, provides some support for his claim of innocence. And the record contains other evidence that could be consistent with Stewart's alleged memory that C.A. died by

suicide. For example, there was no evidence of a violent struggle between Stewart and C.A., and C.A. did write a note expressing suicidal thoughts near the time of her death.

But the absence of evidence of a struggle is not inconsistent with the state's theory that Stewart killed C.A. by blunt force trauma. And while C.A.'s note contained suicidal thoughts, it did not say she intended to kill herself.

Also, although Stewart says he now remembers C.A. died by suicide, he has not provided any details. For example, he has not explained how she did it.[7] In contrast, Stewart provided detailed testimony at trial about how he tripped and fell on top of C.A. That sworn testimony, which Stewart now claims to be untrue, must be considered along with his alleged regained memory.

Next, the first time this regained memory came up was to a woman he met online while he was in prison. This same woman is now his wife. Stewart's own filings in the collateral state proceedings undermine his alleged regained memory. Stewart maintained in state court that Lori lost her job with the FBI based on her association with him and that her attorney advised the best chance at contesting the dismissal was for Stewart to be exonerated.

And last, the state presented substantial evidence that Stewart killed C.A. before burning her. That evidence includes the pathologist's testimony that C.A. died from blunt force trauma before she was burned; the letter Stewart sent to one of the police officers

[7] Lori stated in her interview with the consulting psychologist that Stewart told her C.A. may have ingested a pill that caused her death. She added that Stewart told her C.A. asked for some water before she died, leading him to believe that she had taken a pill.

indicating his anger about her being in a relationship with someone else and reporting violent acts and/or intentions; Wright's statement to the police that Stewart "flipped" after learning that she had sex with someone else before their encounter and did not shower afterwards; and Watson's testimony that Stewart threated to harm him due to his relationship with C.A. And we cannot forget that Stewart admitted to burning C.A.'s remains. All this evidence undermines the plausibility of his current story.

In sum, considering the problems with the evidence Stewart offers and the other evidence supporting the prosecution's theory that he killed C.A., Stewart cannot make the required prima facie showing. Even considering Stewart's testimony about his regained memory, we cannot conclude that it is reasonably likely to persuade a district court that no jury could find the applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(B).[8]

In reaching this conclusion, we are mindful that under *Hubbard*, Stewart need only make a prima facie showing that he satisfies the requirements of § 2244. But Stewart has not satisfied the standard for a prima facia showing that *In re Williams* established.

[8] This analysis does not even include the likely countervailing evidence that any presentation of dissociative amnesia would face. For example, the medical authority underlying Stewart's claim, at least at this point, seems unsettled. On the one hand, the American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 338 (5th ed. text rev. 2022) includes "dissociative amnesia" as a dissociative disorder, the defining feature of which is "an inability to recall important autobiographical information that 1) should be successfully stored in memory and 2) ordinarily would be freely remembered []." On the other, some medical research calls into question the accuracy and reliability of alleged recovered memories. *See* Ivan Mangiulli et al., *Running Head: A Critical Review of Dissociative Amnesia*, 10 Clinical Psych. Sci. 191 (2021) ("[R]eports of dissociative amnesia can be easily malingered . . . approximately 20% of violent offenders claim amnesia for their crimes (e.g., sexual assault, homicide[])") (reviewing relevant literature).

2.

Stewart also seems to argue that the newly discovered evidence of his previously repressed memory shows that he is actually innocent as an independent substantive ground for habeas relief. This argument faces the same statute of limitations issue already discussed. Additionally, even before considering the new evidence in the context of the record as a whole, Stewart's use of this framework faces two preliminary hurdles.

a.

First, as the state points out, Stewart did not list his regained memory as a substantive ground for relief. As noted above, he outlined three specific grounds that largely followed the grounds he pursued in his last state court proceeding. None of those grounds mention anything about regained memory or repressed memory. True, later in his application, Stewart discusses his repressed memory and regaining it. But, according to the state, that discussion is not framed as a substantive ground for relief but rather as a reason for us to overlook the procedural bars that would otherwise preclude the three grounds he specified in his habeas relief petition. So, for Stewart to prevail, we must look past his failure to list newly discovered evidence based on repressed memory as a specific ground for habeas relief.

b.

Second, § 2244 requires that for a successive petition based on newly discovered evidence, "but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B)(ii). Stewart initially asserts that his recovered memory indicates he is actually innocent, and that it is a

constitutional error to imprison an innocent person. The problem with that argument, however, is that neither the Supreme Court nor our court has ever permitted federal habeas relief on a claim of actual innocence "based on newly discovered evidence . . . absent an independent constitutional violation occurring in the underlying state criminal proceeding." *Herrera v. Collins*, 506 U.S. 390, 400 (1993).[9] In fact, some courts, reading

[9] This remains true 30 years after *Herrera*. *See, e.g.*, *United States v. MacDonald*, 911 F.3d 723, 798 (4th Cir. 2018) (emphasizing that the defendant "faced a daunting burden in establishing his eligibility for relief because of his actual innocence, in that the Supreme Court has never come across any prisoner who could make the extraordinarily high threshold showing for such an assumed right" (internal citations and quotations omitted))*; see also Cosey v. Lilley*, 62 F.4th 74, 86 n.11 (2d Cir. 2023) (stating "that a freestanding innocence claim would be subject to a more demanding standard than the *Schlup* gateway standard"); *Cal v. Garnett*, 991 F.3d 843, 850–51 (7th Cir. 2021) (emphasizing that "the Supreme Court has never held that actual innocence claims, standing alone—separate and apart from any constitutional error—could support habeas relief" and that the Seventh Circuit has not acknowledged such); *In re Dailey*, 949 F.3d 553, 557 (11th Cir. 2020) (assuming, but not deciding, that a freestanding actual innocence is viable, and holding the petitioner would be unable to satisfy the standard for actual innocence set forth in *Herrera*); *Farrar v. Raemisch*, 924 F.3d 1126, 1131 (10th Cir. 2019) ("[A]ctual innocence does not constitute a freestanding basis for habeas relief."); *Bruce v Warden Lewisburg USP*, 868 F.3d 170, 183–84 (3d Cir. 2017) (explaining that the threshold showing for any freestanding actual innocence claim "would necessarily be extraordinarily high"); *Dansby v. Hobbs*, 766 F.3d 809, 816 (8th Cir. 2014) (holding that if the freestanding actual innocence claim exists, it would require more than the *Schlup* gateway standard); *Jones v. Taylor*, 763 F.3d 1242, 1246 (9th Cir. 2014) (recognizing that although the freestanding actual innocence claim may exist, "[w]e have not resolved whether a freestanding actual innocence claim is cognizable in a federal habeas corpus proceeding in the non-capital context"); *Hodgson v. Warren*, 622 F.3d 591, 601 (6th Cir. 2010) (holding that a freestanding claim of actual innocence is not cognizable on habeas review in a non-capital case); *Pierce v. Lumpkin*, No. 19-40830, 2021 WL 1235454, at *1 (5th Cir. Mar. 10, 2021) (per curiam) (holding that "a freestanding claim of actual innocence is not cognizable on federal habeas review"); *Johnson v. Roden*, No. 16-1419, 2017 WL 4773221, at *2 (1st Cir. Sept. 14, 2017) (noting that the Supreme Court has not resolved whether a freestanding claim of actual innocence may entitle a prisoner to habeas relief)*;but see People v. Coleman*, 996 N.E.2d 617, 634 (Ill. 2013) (holding that although the Supreme Court has not clarified whether a freestanding actual innocence claim is

the text to require a constitutional violation separate from the claim of innocence, characterize § 2244(b)(2)(B)(ii)'s requirements as an "actual innocence plus" standard. *See, e.g.*, *In re Davis*, 565 F.3d 810, 823 (11th Cir. 2009). As to this argument, we would have to find a constitutional error not previously recognized in the § 2244 context.

Stewart alternatively insists that the state violated the due process clause of the Fourteenth Amendment by prosecuting him in 2003 while he suffered from dissociative amnesia. According to Stewart, this due process violation satisfies § 2244(b)(2)(B)(ii)'s constitutional error requirement. Citing the Supreme Court's *Dusky v. United States*, 362 U.S. 402 (1960), decision, he argues that due process requires that a defendant have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Id.* at 402. Because of his condition, Stewart contends that he did not have a factual understanding of the events that took place on December 6, 2000. As a result, he could not testify or advise standby counsel that the victim did not die as a result of his falling on the victim or striking her, but that she died by suicide. And Stewart argues our decisions in *United States v. Mason*, 52 F.3d 1286 (4th Cir. 1995), and *United States v. Kendrick*, 331 F.2d. 110 (4th Cir. 1964) (en banc), permit evaluations of a criminal defendant's competency post-trial.

But those cases are different from Stewart's. In *Kendrick*, we vacated a district court's denial of a § 2255 petition that alleged the defendant was incompetent at the time

cognizable in federal habeas, the claim is cognizable based on the Illinois Constitution as a violation of state due process).

of his trial and remanded for a competency hearing. 331 F.2d at 111. There was no indication that competency was raised or addressed by the trial court. *Id.* at 111–12. And our decision to vacate the district court's denial was based on the evidence relied on by the district court, not the issues presented here. *Id.* at 112–13. In contrast, the state trial court in Stewart's case conducted an unchallenged competency hearing immediately before trial. Despite that, Stewart claims the due process clause affords him another bite at the apple, over 20 years later.

In *Mason*, we reversed a district court's denial of the defendant's motion for a hearing on a retroactive determination of his competency made after he was convicted but before both the forfeiture phase of his trial and his sentencing. 52 F.3d at 1287. That is a far cry from Stewart's claim that due process requires a court to revisit Stewart's competency almost 20 years after the conclusion of the underlying trial and sentencing when the trial court found him competent after an unchallenged pre-trial hearing. Here, the state trial court held a competency hearing in which expert forensic psychiatrists opined and the court concluded that Stewart was competent prior to the trial. What's more, Stewart does not challenge that determination. Instead, he insists that is not enough. He argues the trial court's competency determination back in 2003 does not establish competency once and for all time. This argument for constitutional error would also involve an extension of current law.[10]

[10] The state raises yet another preliminary issue that applies to both Stewart's procedural and substantive arguments. In *Shinn v. Ramirez*, 142 S. Ct. 1718 (2022), the Supreme Court held that 28 U.S.C. § 2254(e)(2) prohibits a federal habeas court from

c.

To prevail under this independent substantive ground framework, Stewart must clear those hurdles. But for our purposes today, we need not decide whether Stewart has done so. Even assuming, without deciding, that he has, this claim also fails for the same reasons discussed in Part II, B, 1 above. Considering the evidence Stewart offered in his motion, along with the other evidence in the record, it is not reasonably likely that no reasonable factfinder "would find [Stewart] guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B)(ii).

III.

Stewart's motion for authorization to file a successive § 2254 motion for federal habeas relief is,

DENIED.

conducting evidentiary hearings or otherwise considering evidence not developed in state court based on the ineffective assistance of state postconviction counsel. *Id.* at 1734. But that provision provides an exception if the claim is based on "a factual predicate that could not have been previously discovered through the exercise of due diligence." 28 U.S.C. § 2254(e)(2). Stewart argues that in applying this provision, we look to the time of Stewart's trial or his first habeas petition. At both times, he continues, his memory that C.A. died by suicide was repressed and thus could not have been discovered. But even accepting Stewart's claim about repressed and regained memory, he recovered his memory in 2014 and pressed the argument that he now remembers C.A. died by suicide in both his 2015 and 2019 collateral state proceedings. So the state argues that we are limited to the record from his state proceedings. Because Stewart's application fails for other reasons, we need not resolve this question.

GREGORY, Circuit Judge, concurring in part and concurring in the judgment:

I agree with my friends in the majority that Stewart cannot satisfy the demands of 28 U.S.C. § 2244(b)(2). Given the record evidence pointing to his guilt, it is unlikely that Stewart can "establish by clear and convincing evidence that . . . no reasonable factfinder would have found" him guilty of voluntary manslaughter. § 2244(b)(2)(B)(ii). I write separately, however, to highlight which threshold § 2244(b)(2) requirements Stewart *can* satisfy, and to emphasize that today's decision should not foreclose all future § 2244(b) petitions premised on a theory of dissociative amnesia.

I.

Almost twenty years ago, the state of South Carolina tried Weldon Stewart for the killing of his girlfriend, C.A., when Stewart and C.A. both were teenagers. When police responded to Stewart's 911 call reporting C.A.'s death, they described Stewart's demeanor as "out of it," "afraid and confused." Pet. Br. App. A at 43. The state argued that Stewart killed C.A. in a fit of rage over C.A.'s romantic infidelity. Stewart, representing himself at trial, claimed that C.A. died after she fell from his arms. He admitted to burning her body, perhaps in a panicked or confused state, after her death. Apparently disbelieving Stewart's story, a jury convicted him of voluntary manslaughter and for the desecration of C.A.'s remains. A judge sentenced Stewart to thirty-nine years in prison.

Nearly ten years ago, Stewart informed a psychologist that he had been mistaken about the tragic events of C.A.'s death. She did not die from falling as he thought. Instead, Stewart explained, C.A. took her own life after struggling with depression stemming from

an abortion, which she underwent at just fourteen years old. Stewart now seeks postconviction relief based on this development. The discrepancy in his memory, Stewart argues, may have been caused by a state of dissociative amnesia triggered by the trauma of C.A.'s death. Stewart sought post-conviction relief in state court on this basis, but the court rejected this argument as Stewart's attempt to "amend his memory." J.A. 1296. And now that his application for pre-authorization to file a successive habeas petition is before this Court, the majority embraces similar skepticism in denying Stewart that opportunity.

In this case, I share the majority's doubts that Stewart's new explanation can undermine the strong evidence inculpating him in C.A.'s death. Stewart's new explanation cannot, for example, refute the pathologist who persuasively concluded that a fracture in C.A.'s skull likely came from a blunt instrument striking it. Nor does Stewart's recollection of grief from witnessing C.A. take her own life explain his decision to burn her body. And just how did she do it? Did she ingest a pill as he claims? To my mind, these questions and the countervailing evidence prove fatal to Stewart's application.

II.

Nevertheless, whatever misgivings I have about Stewart's case do not vitiate writ large any claim of mental incapacity by criminal defendants who suffer from dissociative amnesia. Dissociative amnesia is "the inability to recall important autobiographical information, usually of a traumatic or stressful nature, that is inconsistent with ordinary forgetting." American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 298 (5th ed. Rev. 2013). It has been described as a "transient condition" that

lasts for a "few minutes" and "lifts spontaneously." *See Zacher v. Graham*, No. 6:14-CV-06027(MAT), 2016 WL 368086, at *5 (W.D.N.Y. Feb. 1, 2016). Such a condition may well be unusual, but "[i]t is clearly within the realm of all human experience to expect that a person would react to a traumatic event and that such reactions would not be consistent or predictable in all persons." *People v. Beckley*, 456 N.W.2d 391, 404 (Mich. 1990).

A proper dissociative amnesia diagnosis may support a successive habeas petition. Before filing those petitions, a prisoner must first "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). A court of appeals will grant such authorization only in limited, statutorily prescribed circumstances. That is, "[l]eave may be granted only if the proposed habeas petition contains at least one claim that (a) rests on a new rule of constitutional law, made retroactive by the Supreme Court, or (b) rests on a previously undiscoverable factual basis that would demonstrate the applicant's innocence by clear and convincing evidence." *In re Williams*, 444 F.3d 233, 235 (4th Cir. 2006) (citing 28 U.S.C. § 2244(b)(2)). These gatekeeping provisions attempt to balance the grave importance of the constitutional right to habeas corpus against the burden successive petitions place on the federal judicial system. *See Felker v. Turpin*, 518 U.S. 651, 664 (1996); H.R. Rep. No. 104-518, at 111 (1996) (Conf. Rep.) ("[AEDPA] incorporates reforms to curb the abuse of the statutory writ of habeas corpus.").

The court of appeals has a limited role in this regard, however. To receive authorization, an applicant need only "adequately alleg[e]" each element of the relevant § 2244(b)(2) provision to merit authorization. *In re Williams*, 330 F.3d 277, 282 (2003). Thus, the court of appeals serves essentially a box-checking function, *see James v. Walsh*,

308 F.3d 162, 169 (2d Cir. 2002), considering only if the petitioner has made a "prima facie showing that the application satisfies the requirements of [§ 2244(b)]," § 2244(b)(3)(C). In other words, a petitioner may receive authorization after presenting "a sufficient showing of *possible merit* to warrant a fuller exploration by the district court." *Williams*, 330 F.3d at 281 (quoting *Bennett v. United States*, 119 F.3d 468, 469–70 (7th Cir. 1997)) (emphasis added). And "[i]f in light of the documents submitted with the application it appears reasonably likely that the application satisfies the stringent requirements for the filing of a second or successive petition, we shall grant the application." *Bennett*, 119 F.3d at 469–70.

Successful petitioners under § 2244(b)(2)(B) must establish three elements. The claim must be based on new evidence that "could not have been discovered previously through the exercise of due diligence." § 2244(b)(2)(B)(i). Next, "the claim must describe constitutional error." *Williams*, 330 F.3d at 282; *see* § 2244(b)(2)(B)(ii). Finally, the new evidence, "if proven and viewed in light of the evidence as a whole, [must be] sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." § 2244(b)(2)(B)(ii). Memories recovered from a previous state of amnesia may satisfy each of these elements. But in my opinion, Stewart can only make a prima facie case for the first two elements.

A.

First, recovered memories may qualify as new evidence which "could not have been discovered previously through the exercise of due diligence." § 2244(b)(2)(B)(i). Taking all of an amnesic defendant's alleged recovered memories as true, no measure of diligence

would have allowed him to previously "discover" his memories. That is because these repressed memories are usually recovered, if at all, "as a result of therapy or spontaneously . . . months, years, [or] even decades later." Clifford S. Fishman & Anne Toomey McKenna, *Jones on Evidence* § 56:22 (7th ed. 2023).

Stewart's case presents an example. The record reflects that he is no stranger to traumatic or scarring life events. As a child, Stewart was the brunt of severe bullying, which included being "jumped" by ten to fifteen other kids and "almost drowned by neighborhood bullies." Opening Br. at 17. At just fifteen years of age, he witnessed his then-girlfriend "force[] herself into an abortion . . . by drinking cast[o]r oil." J.A. 616. She then had the "baby out on the floor and took pictures of it and sent it to" Stewart. *Id.*

Stewart's battle continued throughout his teenage years. At the request of his current counsel, a doctor interviewed Stewart in a series of psychological evaluations in May 2022 "to explore his likelihood of meeting criteria for dissociative amnesia." Pet. Br. App. A at 1. The report indicates that while Stewart was employed at a Burger King restaurant, he discovered the remains of a partial fetus in a trash can. Stewart's mother also met with the same doctor and reported that following the near drowning by bullies, Stewart's shocking encounter with the partial fetus, and C.A.'s death, he became "distant" after each event and "went into a state like nothing happened." *Id.* at 13. Even more, following his incarceration, Stewart informed the doctor that while he was on suicide watch, he faced repeated periods of "black outs." *Id.* at 47.

These life events and Stewart's mental capacity to dissociate from such tragedy strongly support his claim that he suffered from dissociative amnesia at the time of C.A.'s

death and at his trial. These painful experiences plausibly trigger Stewart's mental state into a "fight or flight" response, forcing his brain to retreat into somewhat of a coping mechanism to shield his mind from these traumatic incidents. He has therefore made a prima facie case that his newly recovered memories of C.A.'s death "could not have been discovered previously through the exercise of due diligence." § 2244(b)(2)(B)(i).

It is important not to assume that every habeas petitioner claiming such incapacity is doing so in a bad faith attempt to relitigate his case. Such an assumption would ignore the nuances of human experience and mental health—and would do a great disservice to all criminal defendants suffering from mental incapacities, which can directly impact their competency to stand trial and ability to assist in their defense. Humans are not carbon copies; the way we manage stress, grief, and trauma is as different and unique as our fingerprints.

B.

Second, a petitioner's dissociative amnesia diagnosis could demonstrate that it was constitutional error to subject that person to trial, whether or not the diagnosis was known at the time. Stewart argues that when he was tried, he was suffering from the effects of dissociative amnesia, which caused him to repress his memories of C.A.'s death. Trying a criminal defendant who is plagued by such a condition is commensurate to trying an incompetent defendant and is untenable under the Sixth and Fourteenth Amendments.

The promises of the Sixth Amendment—to receive a fair trial, to confront state witnesses, to aid in one's own defense, and to be represented by effective counsel—depend on a criminal defendant's competency to stand trial. U.S. Const. amend. VI; *see Indiana v. Edwards*, 554 U.S. 164, 169–70 (2008). The competency requirement is "a by-product

of the ban against trials in absentia," as "the mentally incompetent defendant, though physically present in the courtroom, is in reality afforded no opportunity to defend himself." *Drope v. Missouri*, 420 U.S. 162, 171 (1975) (citation omitted). Thus, only a defendant with the "present ability to consult with his lawyer with a reasonable degree of rational understanding [and] . . . a rational as well as factual understanding of the proceedings against him" may be tried. *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). In other words, "[t]he accused must be able to perform the functions which are essential to the fairness and accuracy of a criminal proceeding." *Wilson v. United States*, 391 F.2d 460, 463 (D.C. Cir. 1968) (internal quotation marks omitted).

Nationwide, courts have been skeptical when faced with amnesia-based claims. Some fear that if such arguments were widely accepted, bad faith claims of false memory could function as an automatic and unlimited "do-over" card for convicted defendants. *See United States v. Stevens*, 461 F.2d 317, 320–21 (7th Cir. 1972); *United States v. Knohl*, 379 F.2d 427, 436 (2d Cir. 1967). Categorically excluding amnesia as a basis for incompetency, however, produces its own problems. For one, it could lead to "anomalous results." *Wilson*, 391 F.2d at 463. An amnesic defendant who cannot recollect the alleged crime is unable to effectively confront witnesses, aid in his own defense, or consult with his attorneys. He is just as prejudiced as a defendant who lacks the mental faculties to do the same yet is provided none of the same protections.

To avoid that unfairness, I would adopt the D.C. Circuit's functional approach it adopted in *Wilson*. That is, I would hold that a defendant's amnesia may amount to

incompetence when it renders the trial unfair. In considering a trial's fairness, the *Wilson* court suggests the following factors:

> (1) The extent to which the amnesia affected the defendant's ability to consult with and assist his lawyer. (2) The extent to which the amnesia affected the defendant's ability to testify in his own behalf. (3) The extent to which the evidence in suit could be extrinsically reconstructed in view of the defendant's amnesia. . . . (4) The extent to which the Government assisted the defendant and his counsel in that reconstruction. (5) The strength of the prosecution's case. Most important here will be whether the Government's case is such as to negate all reasonable hypotheses of innocence. If there is any substantial possibility that the accused could, but for his amnesia, establish an alibi or other defense, it should be presumed that he would have been able to do so. (6) Any other facts and circumstances which would indicate whether or not the defendant had a fair trial.

Id. (citation omitted); *see also Youtsey v. United States*, 97 F. 937, 941 (6th Cir. 1899) (remanding for further proceedings to determine if defendant's impaired memory affected his ability to make "a rational defense" and the "fundamental right of the court to try the main issue," guilty or not guilty).

Applying the *Wilson* factors here, Stewart's allegations amount to the kind of amnesia which would render a trial unfair, and as a result, unconstitutional. First, Stewart's amnesia suppressed his memory of the only facts in contention at trial: the manner and circumstances of C.A.'s death. Therefore, Stewart's ability to effectively consult with counsel or offer testimony on the most relevant facts in his case was entirely foreclosed. Second, the prosecution's evidence was scarce. In fact, it rested almost solely on statements and writings made by Stewart during the time frame he would have been deluded by his amnesia. Third, because Stewart was the sole eyewitness to C.A.'s death, the case turned on his credibility. There was no extrinsic evidence on which Stewart could

build his case. And we must recognize that because Stewart was allowed to proceed pro se he was additionally foreclosed from a skillful defense, which may have overcome the hurdles his amnesia presented.

To perform the § 2244 box-checking inquiry, we may presume the petitioner's allegations are true absent reason to think otherwise.[*] Here, we have no reason to disbelieve Stewart. In support of his application, Stewart provided this Court with a psychologist's opinion. While the psychologist explained that she could not definitively diagnose Stewart without being present for a dissociative episode, she did find that Stewart has a recorded, corroborated history of amnesic episodes, making subsequent episodes highly likely, and that Stewart's reported behavior following C.A.'s death was consistent with symptoms of dissociative amnesia. Pet. Br. App. A at 46–47. She concludes "it is highly probable that [Stewart] was suffering from traumatic shock following the death of C.A.," *id.* at 43, and it is "very possible" he repressed his memory of the event, *id.* at 49. Admittedly, a finding of "very possible" does not instill the utmost confidence; however, a more definite finding is neither necessary to show a prima facie case, *see St. Hubert*, 918 F.3d at 1204 (Martin, J., dissenting from denial of rehearing en banc), nor is it reachable without further factual proceedings.

[*] This presumption is a result of the prima facie standard we must apply. "A 'prima facie' showing is nothing more than a showing '[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue.'" *United States v. St. Hubert*, 918 F.3d 1174, 1204 (11th Cir. 2019) (Martin, J., dissenting from denial of rehearing en banc) (citing Prima Facie, *Black's Law Dictionary* (10th ed. 2014)).

Thus, we are faced with a narrow question: based on Stewart's allegations of dissociative amnesia, was he competent to stand trial? I think not. If a dissociative state as described by Stewart is proven true, it would have tainted his trial in almost every respect. A conviction resulting from such a trial contravenes the most fundamental guarantee of the Sixth Amendment: a defendant's right to receive a fair trial. As a result, I find that Stewart has adequately alleged that he was tried while incompetent which resulted in a constitutional violation, satisfying the second element under § 2244(b)(2)(B).

C.

Stewart's claim stumbles at the final step in the § 2244(b)(2)(B) analysis—whether the allegations adequately show "that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." § 2244(b)(2)(B)(i). Here, "a court must make its § 2244(b)(2)(B)(ii) [] determination—unbounded by the rules of admissibility that would govern at trial—based on all the evidence, including that . . . ha[s] become available only after the trial." *United States v. MacDonald*, 641 F.3d 596, 612 (4th Cir. 2011) (internal quotations omitted). This "inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record," given that the "claim involves evidence [that] the trial jury did not have before it." *Id.* at 613 (quoting *House v. Bell*, 547 U.S. 518, 519 (2006)).

As the majority underscores, the government presented "substantial evidence" demonstrating that Stewart killed C.A. before burning her remains. *Ante* at 15. Specifically, they point to "the pathologist's testimony that [C.A.] died from blunt force trauma before she was burned," "the letter Stewart sent to one of the police officers indicating his anger

about her being in a relationship with someone else and reporting violent acts and/or intentions," "Wright's statement to the police that Stewart 'flipped' after learning that she had sex with someone else before their encounter and did not shower afterwards," "Watson's testimony that Stewart threated to harm him due to his relationship with [C.A.]," and "Stewart admitt[ing] to burning [C.A.'s] remains." *Ante* at 15–16. While I might quibble with just how "substantial" some of this evidence is, I ultimately agree with the majority that Stewart cannot overcome key facts that suggest his guilt—even with his claim of recovered memories. Stewart's recovered memories are just too vague. Thus, I do not believe that Stewart can clear this hurdle to establish a prima facie case.

III.

At least in the courts, dissociative amnesia is a nuanced and novel mental condition. My purpose in writing separately is solely to comment on the importance of understanding and engaging with the impact of mental health on criminal defendants. In a different case, where the recovered memories were stronger and the evidence at trial weaker, I might reach a different conclusion. And it is my hope that my colleagues in the majority would too. In the end, however, I agree that Stewart has not established a prima facie case for every element of § 2244(b)(2)(B), so his application does not "warrant a fuller exploration by the district court." *Bennett*, 119 F.3d at 469.

For these reasons, I concur in part and concur in the judgment of the majority's opinion.

'I actually wanted to die:' Cheraw mother speaks up about daughter's murder

by **Shawnia Butler**

Sun, October 29th 2023 at 7:13 PM

Updated Mon, October 30th 2023 at 9:42 AM

CHERAW, S.C. (WPDE) — On December 6, 2000, Soraya Allen tragically lost her 15-year-old daughter [redacted] Allen in Bennettsville. She was killed and burned.

Her then-boyfriend Weldon Stewart was charged and convicted of her death and received thirty-nine years.

Soraya described her healing process as brutal and said she couldn't speak about her daughter's death for several years.

"My life was horrible and let me tell you this. I actually wanted to die. I just wanted to give up on everything I wanted to die," Allen said.

According to Allen, the teens attended the same church and both their parents were against [redacted] and Weldon dating, but the two dated in secret.

Family members of [redacted] said they noticed her behavior shifted for the worse, so they began to worry and seek help for her.

"[redacted] started to change. You know me and her always talk about everything, and she stopped talking, and you know, I said what in the world is going on with [redacted] , and I never could figure out what it was. So, I took her to counseling and that helped a little bit," Allen said.

Soraya expressed her loss as unbearable and encouraged anyone who is going through a violent relationship to seek help as soon as possible.

"If you're going through domestic violence, please seek help. Have a plan you know a lot of people say things like just leave that man they don't know how hard it is for people to leave because you never know what the situation is talk to someone," Allen said.

For anyone who may need to speak to someone, you can reach out to the Pee Dee Coalitions hotline at [redacted]

FORM 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	2023-CP-34-00282
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 Trenton 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

FILED
2023 OCT 30 A 10:26
ANITA H. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

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) See attached page 3 A

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(b) See attached page 3 A

(c) See attached page 3 A

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

(a) See attached page 3 A

(b) See attached page 3 A

(c) See attached page 3 A

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. Motion for new Trial (Juror Misconduct)

iv. Motion to file second/successive Federal Habeas Corpus

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

i. Marlboro County Courthouse; Bennettsville, SC 29512

ii. ———

iii. Marlboro County Courthouse; Bennettsville, SC 29512

iv. US Court of Appeals, Fourth Circuit, Richmond, VA

(c) the disposition thereof:

i. Denied

ii. Denied

iii. Pending

iv. Denied

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PCR FORM 5, Page 3 A

10.

(a) The trial court lacked subject matter jurisdiction to try Stewart for murder and to impose a sentence for voluntary manslaughter.
(b) Stewart's imprisonment is unconstitutional because he, an innocent man, is being punished for a crime that was never committed.
(c) Stewart was tried for murder while mentally incompetent.

11.

(a) Stewart has discovered new evidence establishing the strong probability that C.A., the deceased person in this case, committed suicide a year after being forced by her mother to undergo a partial birth abortion. Stewart believes C.A. committed this act by secretly ingesting something, while she distracted him by asking him to get her something to drink. If C.A. committed suicide, then Stewart did not commit a crime related to her death. Therefore, the criminal court lacked subject matter jurisdiction in this matter, simply because no crime was committed.
(b) It is unconstitutional for Stewart, an innocent man, to be subjected to the punishment of a person who has been "duly convicted". As such, Stewart's incarceration violates USCA Const Amend. 13 § 1.
(c) Stewart was tried while he was suffering from dissociative amnesia, a mental disorder that severely impaired his factual recall of events. Therefore, Stewart was unable to assist with his defense, or to provide crucial details that would have exonerated him. Stewart's trial, which was held while he was in this incompetent mental state, was fundamentally unfair.

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(d) the date of each such disposition:

i. January 8, 2007

ii. _____

iii. Pending

iv. August 21, 2023

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

i. _____

ii. _____

iii. _____

iv. In re: Stewart, 21-278 (4th Cir. Aug. 21, 2023)

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?

Yes

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

(a) which grounds have been presented:

i. 10 c

ii. _____

iii. _____

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

i. Motion to file second successive Federal Habeas Corpus under § 2244

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) Ground cannot be waived and may be raised at any time.

(b) Ground cannot be waived and may be raised at any time.

(c) N/A

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

(a) your arraignment and plea? No

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(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] Columbia, SC 29201

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

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

iv. See attached page 5 A

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

i. Direct Appeal

ii. Post-Conviction

iii. Post-Trial Motion for New Trial

iv. See attached page 5A

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

Stewart's sentences for voluntary manslaughter and desecration of human remains to be vacated, the Court to order for Stewart's record to be expunged, and Stewart's full rights to be restored to him as a United States citizen.

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

No

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18.

(a)

iv. Dawinder S. Sidhu, [redacted] Potomac, MD 20854.

Scott Ballenger, University of Virginia School of Law, [redacted] ottesville, VA 22903.

Catherine Steton, University of Virginia School of Law, [redacted] harlottesville VA 22903.

(b)

iv. Motion to file second/successive Federal Habeas Corpus

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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 24 day of October, 2023.

Notary Public (L.S.)

My Commission Expires: 9/22/32

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MARLBORO COUNTY, S.C.

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 24 day of October, 2023.

Kimberly L Hunt
Notary Public

My Commission Expires: 9/22/32

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MARLBORO COUNTY, S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
	)	2023-CP- 34-00282
WELDON W. STEWART JR. #295095	)	
	)	**MOTION TO PROCEED PRO SE WITH**
V.	)	**APPOINTED STANBY COUNSEL**
	)	
STATE OF SOUTH CAROLINA	)	

Stewart moves the Court to allow him to proceed pro se in this post-conviction relief action. Stewart further moves the Court to appoint standby counsel to advise him on court procedure, and to assist him with certain legal tasks which will be impossible for Stewart to accomplish, due to his incarceration. These tasks include, but are not limited to, the following:

1) To act as a liaison between Stewart and opposing counsel, to assist with scheduling hearings, and to relay any other necessary communication between the parties to this action.
2) To oversee compliance with requests for discovery.
3) To question Stewart on the stand if he is required to testify as a witness in a hearing held in this action.
4) To perform any other tasks as may be deemed necessary for standby counsel to perform in this action.

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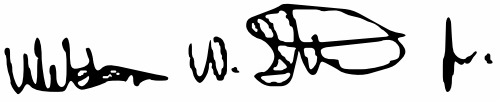
Stewart, aware of the pitfalls of self-representation, still wishes to proceed pro se in this matter. However, Stewart wishes to mitigate the disadvantages of self-representation with the appointment of standby counsel.

On these grounds, Stewart respectfully requests that the Court grant his motion to proceed pro se with appointed standby counsel. Stewart further urges the Court to delay hearing this motion, if a hearing is required, until such time as Stewart has filed his Motion for the Court to Grant Leave to Conduct Discovery, so that both motions may be heard at the same time.

Lori Stewart, Stewart's wife and Power of Attorney, will be assisting Stewart with the above-listed legal tasks until such time as the Court appoints standby counsel.

October 24, 2023.

Respectfully submitted,



Weldon W. Stewart Jr. # 295095
Trenton Correctional Institution
[redacted]
Trenton, SC 29847

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
	)	2023-CP-34-00282
WELDON W. STEWART JR. #295095	)	
	)	**MOTION FOR COURT TO GRANT**
V.	)	**LEAVE TO CONDUCT DISCOVERY**
STATE OF SOUTH CAROLINA	)	

I. Introduction

Stewart is a wrongfully convicted man praying that the Court will grant him a fair opportunity to fully develop irrefutable, scientific proof of his innocence.

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This case centers on the death of C.A., who, according to new evidence, committed suicide a year after being forced by her mother to undergo a partial-birth abortion. *See Trial Tr. p. 122.* The aborted child, whom C.A. named [redacted], was over four-months-old at the time of this procedure; C.A. was between 16 and 20 weeks pregnant when the partial-birth abortion was performed. *Id. at pp. 506-07.* C.A. underwent this procedure in December of 1999; she killed herself in December of 2000. [1] *See Id.* Stewart believes that C.A. committed the suicide act by secretly

[1] C.A. was severely traumatized after the horrific, now illegal abortion procedure. The physician induced labor, and partially delivered C.A.'s live baby until the child's head was fully exposed. C.A. then watched in horror as the physician killed her child by stabbing the baby in the head, and suctioning out the baby's brain. Finally, C.A. had to finish pushing out her dead baby, which she was then forced by her mother to hold in her arms as "punishment" for C.A. becoming pregnant as a teenager. This abhorrent procedure was banned in South Carolina in 1997. *See SC ST § 44-41-85 (Defining a partial birth abortion as "an abortion in which the person performing the abortion partially delivers a living fetus before killing the fetus and completing the delivery").* In 2003, the U.S. Congress banned this procedure in all states, declaring that it is a "gruesome and inhumane procedure that is never medically necessary and should be prohibited". *See 18 USCA § 1531.* Congress also found that "unborn infants at this stage can feel pain when subjected to painful stimuli... Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain". *See Act § 2 (14) (M).*

ingesting something while she distracted him by asking him to get her something to drink. *Trial Tr. p. 517.* She died in Stewart's arms, as he was attempting to revive her by giving her CPR. *Id at p. 530.* Her final words: **"I'm back with my baby. I'm happy"**. *Id. at p. 528.*

Stewart, a teenager at the time, was severely traumatized by C.A.'s sudden demise. A witness testified that Stewart appeared "afraid and confused" when the witness encountered Stewart "minutes" after C.A.'s death. *Id. at 210-11.* Law enforcement witnesses testified that Stewart was "in a confused state", and "in a daze", when they arrived on the scene. *Id. at pp. 350; 355-56, 358.* These eyewitness observations reveal that Stewart was exhibiting symptoms (i.e. confusion, dissociation) indicating that his mind had regressed into a childhood coping mechanism—Dissociative Amnesia—a mental disorder that buried the memory of C.A.'s suicide deep inside his subconscious to protect his mind from trauma associated with the memory. [2]

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CLERK OF COURT
MARLBORO COUNTY, SC

[2] Stewart first experienced Dissociative Amnesia during his childhood. At age ten, he was almost killed when neighborhood bullies attempted to drown him. Stewart repressed the memory of this incident for seven years, his first known case of Dissociative Amnesia. In the current case, Stewart's memory that C.A. committed suicide was blocked, while his memories of the details surrounding the suicide remained intact. C.A.'s suicide was especially traumatizing for Stewart, considering that he was raised in a Christian household to believe that suicide was an unforgivable sin. Hence, Stewart's mind created the false memory that C.A.'s death was an "accident" to protect his psyche from the trauma associated with a loved one committing suicide. At trial, Stewart testified about details surrounding the suicide while relating his "accident" version of events. But he couldn't connect these details to his memory that C.A. killed herself; this memory was blocked by his Dissociative Amnesia. The suicide claim is not a completely new, separate version of events. Rather, his previous "accident" version of events has evolved because the mental disorder that created the false memory abated, and his most traumatic memory from this incident—C.A.'s suicide—resurfaced in his mind. Importantly, the suicide claim is supported by both old and new evidence; it is also the ONLY version of events that is independently corroborated, outside of statements from Stewart.

In 2014, Stewart spontaneously recovered his memory, revealing that C.A. committed suicide. Following this revelation, independent corroborating evidence of suicide was unearthed. The realization dawned that C.A.'s death coincides with the one-year anniversary of a horrible abortion experience. It was also discovered that she wrote a letter, shortly before killing herself, in which she expressed suicidal contemplation. This letter states, in relevant part:

> **I feel like I want to kill myself, but why should I and you wouldn't even care if I did. I can't cope with the pain anymore. If I'm at the point [of] thinkin[g] about killing myself, it is not good...This pain hurts so much...This pain is nothing I can handle anymore.**[3]

Though the circumstantial evidence of suicide is compelling, Stewart sought to develop scientific evidence in support of his suicide claim. He enlisted a forensic pathologist, Dr. J.C. Upshaw Downs, for this purpose. Dr. Downs, after reviewing the new evidence and the limited available autopsy files, determined that suicide cannot be ruled out as the manner of death in this case, because among several

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[3] C.A. concluded this letter "In Memories of Mn Mn", the abbreviated name of her aborted child. C.A. could not bear to speak her child's name, or even to write her child's full name, after her abortion. (See *attached letter and forensic handwriting analysis report).* Studies show that women who abort a child have a 650% higher risk of death from suicide compared to women who carry to term. The risk is highest for younger women, and it drastically increases with women who did not want to have the abortion. Suicides often coincide with the anniversary date of the abortion. (See *Counterpoint: Long-Lasting Distress after Abortion by Martha Shuping, M.D., M.A).* In a recent television interview, C.A.'s mother acknowledged that C.A.'s personality drastically changed before her death. C.A.'s mother stated that C.A. "stopped talking" to her mother, and that she "had to place [C.A.] in counseling". (*See WPDE ABC News 15 interview between C.A.'s mother and Shownia Butler on October 29, 2023).* Curiously, C.A.'s mother failed to mention in this interview that C.A.'s personality changes began right after C.A.'s abortion. Regardless, these new developments negate the State's claim that there is no evidence C.A. exhibited psychological distress prior to her death.

reasons, the skull fracture was most likely created after death.[4] Dr. Downs was unable to provide more definitive determinations, only because he has not been granted access to the requisite autopsy files currently housed at the Medical University of South Carolina (MUSC).

Stewart therefore submits this motion seeking an order from the Court whereby Dr. Downs will be granted access to the autopsy files necessary for him to complete his scientific analysis, for the specific purpose of proving through science that the trial court lacked subject matter jurisdiction.[5]

II. Procedure

The request for discovery is pertinent to the current PCR action. It is also essential to the Court determining the merits of Stewart's claims. The requested material is not privileged material, pursuant to S.C. Code § 17-5-535, which entitles Dr. Downs to review the files for this proceeding. Compliance with the request for discovery will not be unreasonably burdensome on the receiving party, as the requested

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[4] Dr. Downs based this conclusion on several factors, including: (1) the new evidence supporting suicide, (2) the lack of prominent blood on the death scene, (3) the absence of a documented brain injury in the original autopsy report, and (4) the fact that there is no indication the death scene was evaluated for the original autopsy. *(See attached report from Dr. Downs). (First three pages of report, containing graphic photos of body, are excluded.)*

[5] The trial pathologist for the prosecution, Dr. Russell Harley, has reviewed the new evidence in this case, including the report from Dr. Downs. Dr. Harley, in a written statement, notes that Dr. Downs believes the skull fracture was caused after death by the fire. Dr. Harley states his initial impression was that the skull fracture caused death, but then admits "I could be wrong". *See attached written statement from Dr. Harley.* In light of this stunning admission, Stewart has clearly made a prima facie showing that further exploration into this matter by the Court is warranted.

material is currently housed at the MUSC and Dr. Downs is willing to travel to this location to review the material.

The denial of this request would amount to a gross miscarriage of justice, as it would improperly restrict Stewart's ability to develop crucial scientific evidence in support of his claim, and deny the Court the opportunity to base its ruling on the same. Additionally, subject matter jurisdiction may be raised at any time, and may not be waived or forfeited. Thus, there are no procedural defenses against a subject matter jurisdiction claim, nor against a request for discovery pertinent to this claim.

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III. Argument

Stewart raises two claims pertinent to the request for discovery. The first claim is that the court lacked subject matter jurisdiction to try Stewart for murder because a suicidal death does not fall within the definition of the corpus delicti of murder. The second claim is that Stewart's conviction and punishment for a crime that never occurred violates the Thirteenth Amendment, which he asserts as a freestanding actual innocence claim. Both these claims are predicated upon Stewart's underlying claim that C.A. committed suicide. Stewart has never been afforded a fair opportunity to fully develop the scientific aspects of the underlying suicide claim, as Dr. Downs has not been granted access to the autopsy files necessary for him to complete his forensic autopsy review.

Dr. Harley stated that he does not object to Dr. Downs being granted access to the autopsy files to review Dr. Harley's findings, as Dr. Harley admits his findings "could be wrong".[6] Dr. Downs indicates in his report that, once he is granted access to the autopsy files at MUSC, he will be able to definitively determine (1) whether C.A. committed suicide, and (2) whether the skull fracture was created after death and did not cause death.

The merits of Stewart's claims are inextricably rooted in the science of forensic pathology, which is the sole providence of experts in this field. If the Court were to make any ruling in this matter without first allowing full development of the scientific evidence, such a ruling would be unreasonable and would amount to a gross miscarriage of justice. Additionally, the rest of the evidence presented against

[6] There has always been lingering doubt about whether the skull fracture was present at the time of death. Prior to trial, the prosecutor stated that he was amending Stewart's murder indictment after being told by Dr. Harley that "there is some question even with the pathologist about the cause of death". *Pretrial Tr. (July 16, 2019)* at p. 14. The prosecutor went on to explain that the "autopsy report basically has some conjecture", due to the fact that "when a body is burned the skull bursts". *Id.* Additionally, Stewart recently provided some written questions to Dr. Harley concerning factors that could have contributed to evidence of suicide being missed during the autopsy. Particularly, Stewart wanted to know the potential impact the absence of his suicide memory had during the autopsy procedure. For instance, Stewart pointed out that only a basic toxicology analysis was performed, as opposed to an expanded toxicology analysis—the recommended analysis for suspected overdoses. Thus, if C.A. killed herself by ingesting something other than a commonly abused illicit or prescription drug, this substance would not have been detected in her blood by a basic toxicology analysis. Dr. Harley confirmed that "[h]ad I known there was a question of suicide, I would have gotten more extensive toxicological studies". Similarly, Dr. Harley stated that "[h]ad I known of the question of [C.A.'s] suicide, I would have wanted to review her mental health records". *See attached document reflecting email correspondences from Dr. Harley.* In essence, no evidence of suicide was found during the original autopsy because Dr. Harley was not aware of Stewart's repressed suicide memory and, therefore, was not looking for evidence of suicide. These factors potentially contributed to him missing this evidence during the autopsy. These extraordinary circumstances highlight the need for discovery, as a matter of science, so that Dr. Downs can review the autopsy files with a specific focus on evidence of suicide. The questions and answers with Dr. Harley further demonstrate the valuable information in support of Stewart's claims that can be gained through discovery and an evidence hearing.

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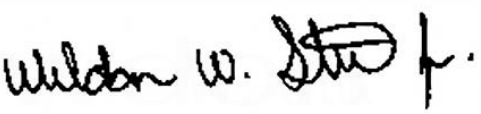
Stewart at trial is circumstantial, and would not be sufficient, absent the contested autopsy findings from Dr. Harley, to establish the corpus delicti of murder.[7]

IV. Conclusion

Based on the foregoing, Stewart moves the Court to issue an Order directing MUSC personnel to grant Dr. Downs access to the autopsy files in this case. He further moves the Court to grant leave to conduct the full spectrum of discovery in this proceeding. Stewart moves the Court to hear this motion within thirty (30) days, or as soon thereafter as it may be heard.

March 29, 2024.

Respectfully submitted,



Weldon W. Stewart Jr. # 295095
Trenton Correctional Institution
[redacted]
Trenton, SC 29847

[7] It's important to note that there was also circumstantial evidence presented at trial that was favorable to Stewart. Witness testimony established that Stewart did not flee the scene after C.A.'s death, or even change his clothes. Stewart called 911, and was cooperative with law enforcement when they arrived on the scene. Multiple witnesses, including C.A.'s father, testified that Stewart had never acted violently towards C.A., even during disagreements between them. The DNA evidence is consistent with Stewart giving CPR to C.A. as she was dying. Since trial, newly discovered forensic evidence reveals that the State's crime scene investigator specifically noted that there was no evidence of a violent struggle found on the scene, including no significant blood. Dr. Downs found this fact to be highly relevant, as an open head wound, especially one sufficient to cause death, would have been accompanied by "copious" amounts of blood on the scene. This is one contributing factor raising the probability that the skull fracture, initially thought to have caused C.A.'s death, was actually a postmortem thermal injury that did not contribute to her death. As stated earlier, Dr. Downs will be able to definitively determine this fact as a part of his analysis, once he is granted access to the autopsy files.

MOTION FOR DISCOVERY SUPPORTING DOCUMENTS

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James A. Green FORENSIC DOCUMENT EXAMINER
[redacted] • EUGENE, OR • 97405 [redacted]

May 16, 2022

The U.S. Court of Appeals for the Fourth Circuit
Lewis F. Powell Jr. Courthouse & Annex
[redacted]
Richmond, VA 23219

Re: Stewart, 21-278.

On May 11, 2022, the following documents were submitted, via email, for examination from the office of Mr. Dawinder S. Sidhu, Hopwood & Singhal, PLLC.:

Document in question:

Handprinted letter, six-pages in length, that implied the suicide of the writer.

Q-1-a: Page one had one notation, "Memories of Mn Mn." (Machine copy.)

Q-1-b: Page two began, "September 9, 2000." (Machine copy.)

Q-1-c: Page three began, "...but I don't believe it." (Machine copy.)

Q-1-d: Page four began, "You already stated." (Machine copy.)

Q-1-e: Page five began, "...can't cope with the pain anymore." (Machine copy.)

Q-1-f: Page six began, "...u no matter what, but..." (Machine copy.)

Known writing samples of [redacted] Allen:

K-1: Photograph of Ms. Allen, with a handprinted note on the reverse side. The message began, "I know u are mad at me..." The year "2000," was also written on the back side. (Machine copy.)

K-2: Photograph of Ms. Allen, with a handprinted note on the reverse side. The message began, "To: Mrs. Stewart." The year "2000," was also written on the back side.

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CLERK OF COURT
HORRY COUNTY, SC

Executive summary:

It is probable the writing on the letter in question was written by Ms. Allen. The opinion was appropriate based upon the conformity of the questioned writing to the known writing samples of hers.

Assignment:

The listed documents were submitted to facilitate a comparison of the purported handwriting of Ms. Allen on the letter in question with her known writing specimens. The purpose of the examination was to determine if the questioned hand printing was her genuine writing or not.

Methodology:

Comparisons were made consistent with the SWGDOC Standard for Examination of Handwritten Items. (SWGDOC is the acronym for the Scientific Working Group for Forensic Document Examination.) The "ACE" process used for this examination is referred to within that Standard and is common among examiners in the field. ACE represents the three steps in an examination: "Analyze, Compare and Evaluate."

The known writing samples were intracompared to determine if they were the product of the same writer. The writing on the samples conformed to one another, indicating one writer.

The questioned writing samples were also intracompared to determine if they also shared a common writer. They appeared to be written by the same person.

All samples submitted were copies rather than original documents. The examination was performed with the recognition of the limitations imposed by non-originals.

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Observations made:

1. The amount of known writing specimens for Ms. Allen was limited. However, there was sufficient writing that provided individualizing features to compare with the writing in question.

2. The capital "I"s had elongated crossbars, commonly with the crossbars angled slightly upward.

Questioned writing:



Q-1-b Q-1-e Q-1-f

Known writing of Ms. Allen:



K-1 K-1 K-2

3. The letters in the word "know," and others in both the questioned and known writing samples, had close spacing relationships. The letters frequently touched one another.

   The "k," in the questioned word, had a well-rounded lower leg, extending much further to the right than the upper leg. The "n" had a minimal approach stroke. The "hump" of the "n," was also curved in a similar manner as that of the leg on the preceding "k."

   The "o" was formed with an open bowl, drawn to a slightly lesser height than the "n." The "w" had curved sides and rounded troughs. The middle leg of the letter was minimal in height. The same features were present in the known writing samples of Ms. Allen.

Questioned writing:



Q-1-b



Q-1-e

Known writing of Ms. Allen:



K-1



K-1

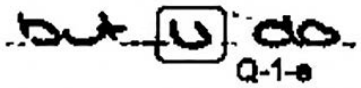
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4. The letter "u" was commonly substituted as an abbreviation for the word "you," in both the questioned and known writing samples. The "u"s had a box design with rounded corners. The letter was drawn without a "leg." The size proportion of the "u" was also consistent between the questioned and known writing samples.

Questioned writing:



Q-1-c



Q-1-e

Known writing of Ms. Allen:



K-1



K-1

5. The capital "L," in the word "Love," had a slight rightward cant in the vertical stroke, followed by the bottom horizontal stroke drawn with a slight hump. The "o"s began and ended at the 3 o'clock position. Some "o"s were formed with a flat right side.

   The "v" had a soft curvature at the bottom of the trough. The "e"s were drawn with a flat bottom to the bowl. The termination stroke to the "e" was also flat rather than formed with a common curvature.

Questioned writing:



Q-1-f



Q-1-e

Known writing of Ms. Allen:



K-1



K-2

6. The "d"s commonly had proportionally short staffs. The bowl of the "d"s were very open. The "o"s were consistent with the comments in paragraph five. The variation of the "o"s included the rounded as well as the flat side.

   The "n"s, as mentioned previously, had a short introduction stroke and a well-rounded hump. The "t"s were very short and had the "t-crossing" placed low on the staff.

Questioned writing:



Q-1-d Q-1-e

Known writing of Ms. Allen:



K-1 K-

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7. The numerals in the year from the letter (Q-1-b,) and the corresponding years from the two photos (K-1 and K-2,) conformed to one another. The "2" and "0"s were consistent in both design and size.

Questioned writing:



Q-1-b

Known writing of Ms. Allen:



K-1 K-2

8. The "y"s were made with a variation in their lower extender. Some were written with a curved hook design while others had a simple straight line drawn below the baseline.

Questioned writing:

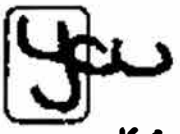


Q-1-d

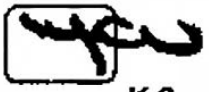


Q-1-b

Known writing of Ms. Allen:



K-1



K-2

9. The "s", in the questioned and known samples, commonly had the upper curvature made in a very angular design with the lower curve rounded.

Questioned writing:



Q-1-d

Known writing of Ms. Allen:



K-1

10. The capital "M" was formed with the middle section dropped to the mid-point of the letter. The top of the left and right sides were sharply angled.

Questioned writing:



Q-1-a

Known writing of Ms. Allen:



K-2

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MARLBORO COUNTY, S.C.

11. The "a" had the bowl shaped in an oblong manner, with the cap of the letter paralleling the curvature of the bowl.

Questioned writing:



Q-1-f

Known writing of Ms. Allen:



K-1

12. The questioned writing had variations with respect to the use of "i-dots." Some "i"s were dotted while others were not. As shown in the examples below, the two "i"s written in the known samples were not dotted.

Questioned writing:



Q-1-e



Q-1-e

Known writing of Ms. Allen:



K-1

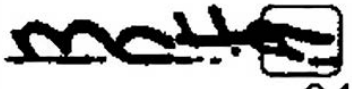


K-1

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13. The "r" had the crossbar drawn proportionally long, angled slightly downward.

Questioned writing:



Q-1-f

Known writing of Ms. Allen:



K-2

14. The apostrophe's used in the questioned writing was very short and consistent with the known sample of Ms. Allen's shown below.

Questioned writing:



Q-1-b

Known writing of Ms. Allen:



K-1



Q-1-c



Q-1-f

15. The questioned writing appeared fluently written. The copy of the letter submitted for examination did not have evidence of a simulation process in the form of tremor or unnatural stops and starts.

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A document examiner develops his, or her, opinion based upon basic principles in the profession. One foundational premise is each experienced writer has significant habits that make their handwriting identifiable. People with writing maturity devote attention toward the message or text they wish to convey rather than focusing on the actual process of writing. The mechanics of writing has already been instilled in the writer.

With repetition, writers develop and maintain habits in their writing slant, connecting strokes, approach and termination strokes, the shape and positioning of "i-dots" and "t-crossings", height and spacing relationships, etc. The numerous writing adjustments a person may adopt in their writing to match their writing skill and visual preference, make signatures and other writing unique to them.

Another foundational premise is individuals do not write exactly the same twice. Although writing may, at times, appear quite similar, it cannot be accurately aligned because our motor skills cannot replicate with the precision of a machine. Some writers are quite consistent with their signatures while others have a sizable degree of natural variation.

Aside from the normal variation all writers have, there are internal and external elements that may affect our writing. External influences may come from the consumption of alcohol, an injury, the writing surface, the writing instrument, etc. Numerous internal issues may affect our writing as well. Neurological conditions, diseases, infections, mental challenges and so forth, may all cause a person to depart from their normal writing pattern.

Differences observed in questioned writing that do not conform to the purported writer's 'normal' writing samples, may be interpreted as the product of a forgery. However, the exclusion of a writer is the most difficult opinion a document examiner can achieve.

Stating a person did not sign or write a script in question is, in part, speculative; it suggests the purported writer did not have the capability to produce the writing at issue. The opinion would be based partially on the differences noted between the questioned writing and the known samples provided. However, an exclusion would also include a speculation the features considered different would not be present on any other writing samples existing that were not discovered or provided for the examination.

Regarding the identification of the writer, the habits and qualities of the questioned writing must be in agreement with the known writing or signature samples. Lacking significant differences, an opinion on the opinion scale leading up to and including an identification may be made.

There is not an expectation a word or text will match exactly with the same word or text found elsewhere on a document. Natural variation will show differences between all extended writing by the same writer. Differences indicative of a different writer must be of a fundamental nature, not simply variation that is consistent within the range of the known samples.

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ALBERO COUNTY

Conclusions:

It is probable the signature in question was genuine. The numerous individualizing features noted in common between the writing in question, and the known writing specimens, compelled the conclusion stated. There were no significant differences to indicate a different writer was responsible for the letter.

The conclusion of "probable" is one of nine used in the profession. The terms are defined by the Scientific Working Group for Forensic Document Examination (SWGDOC), a consortium of government and private document examiners. The terms include:

Identification of the writer
Highly probable – did write
Probable – did write
Indications – did write
Inconclusive
Indications – did not write
Probable – did not write

Highly probable – did not write
Elimination of the writer

The range of opinions are necessary due to consideration given to the submission of original documents or copies, the quality of any copies provided, how closely dated the known samples were to the questioned writing, the amount of writing at issue, whether the writing was in cursive, printed or restricted to numerals or initials, the number and quality of the known writing specimens, etc.

The documents submitted for examination will be retained in the case file for testimony and/or any follow-up examination(s) requested.

The conclusion stated was based upon the documents provided. Additional known writing specimens, and/or an examination of the original letter in question, may compel a modification of the current opinion.

A copy of my current curriculum vitae, including papers published, is attached as Exhibit A.

Testimony given in the past four years is attached as Exhibit B.

Compensation is listed as Exhibit C.

Copies of the documents submitted for examination are attached as Exhibit D.

Sincerely,

James A. Green

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Attachment A

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2025 APR -1 A 9:20
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MARLBORO COUNTY, S.C.

James A. Green
Forensic Document Examiner
[redacted]
Eugene OR 97405
[redacted]

Diplomate: American Board of [redacted]

Member, and past President, of the American Society of Questioned Document Examiners

Curriculum Vitae

Education:

University of Oregon – Bachelor of Science, 1992, Sociology

Work experience:

2000 – Present: Forensic Document Examiner – Private Practice
1988 – 2000: Forensic Document Examiner – Eugene OR Police Department
1976 – 1988: Sworn Officer / Detective positions – Eugene OR Police Department

Professional memberships:

American Society of Questioned Document Examiners (ASQDE)
Life Member – Membership beginning in 1997
Past President – 2012 to 2014
Other Executive Committee positions – 2004 to 2012
Currently serving on the Editorial Review Board for the Journal of the American Society of Questioned Document Examiners.

American Academy of Forensic Sciences (AAFS) – Questioned Document Section
Currently serving as the Secretary for the Section
Member since 1995
Fellow of the Questioned Document Section

Southwest Association of Forensic Document Examiners (SWAFDE)
Member since 1994

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Certification:

American Board of Forensic Document Examiners
Certified, and re-certified, since 2004
Past Treasurer for the ABFDE – 2011 to 2018

Training:

Regular attendance at training conferences and workshops of the American Society of Questioned Document Examiners, American Academy of Forensic Sciences – Questioned Document Section and the Southwest Association of Forensic Document Examiners.

Training (cont.):

1991: Two-week mentorship at the US Postal Inspection Laboratory, San Bruno, CA.

1989: Attended the two-week USSS Questioned Document Course at the Federal Federal Law Enforcement Training Center, Glynco, GA.

1988 – 1990: Two and one-half year apprenticeship at the Eugene, OR Police Department.

Annual Proficiency Testing:

Collaborative Testing Service, Sterling, VA. (2006 – 2022)

Court testimony given in the following jurisdictions:

Federal Courts:	California	State Courts:	Alaska	Oregon
	Idaho		California	Nevada
	Montana		Idaho	Texas
	Oregon		Minnesota	Washington
	Washington		Montana	Wyoming

Foreign Courts: British Columbia, Canada

Testimony given in over 140 cases.

Publications and Papers presented:

"Indented Writing Examinations; Rubber Stamp Image Transfers," presented at the annual conference of the American Society of Questioned Document Examiners, virtual meeting, August 11, 2021. The paper was also presented at the annual conference of the American Academy of Forensic Sciences – Questioned Document Section, February 25, 2022.

"Pantographs as a Security Feature; Why They Work, Why They Fail," published in the *Journal of the American Society of Forensic Document Examiners*, Volume 23, Number 1. June, 2020.

"A Shredded Document Case Made Easy," presented at the annual conference of the Southwest Association of Forensic Document Examiners", Denver, CO, October, 2019.

"Pantographs as a Security Feature; Why They Work, Why They Fail," presented at the annual conference of the American Society of Questioned Document Examiners, Park City, UT, August, 2018.

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Publications and Papers presented (cont.):

"Paper Examinations; Consideration of Mineral Fillers," presented at the annual conference of the American Society of Questioned Document Examiners, Toronto, ON, August, 2015.

"Reliability of Paper Brightness in Authenticating Documents," published in the *Journal of Forensic Sciences*, 2011, J1.

"Rubber Stamp Inks," published in the book, *Forensic Examination of Rubber Stamps*, by Jan Seaman Kelly © 2002. Charles C. Thomas, publisher.

"Forensic Document Examination," published in the *Trial Lawyer* (Oregon Trial Lawyers Association), Fall 2001.

Training provided:

Full day seminars to private and government security personnel, sponsored by the Caribbean Institute of Forensic Accounting, at:

Port of Spain, Trinidad
Castries, St. Lucia

Seminar provided at the annual conference of the Northwest Association of Forensic Scientists and the Pacific Northwest Division of the International Association for Identification. Portland, OR. August 2019.

Seminar provided at the annual conference of the Oregon Police Officer's Association at their annual conference. Grand Ronde, OR. November, 2021.

Seminars provided regularly to investigators working for the State of Oregon – Department of Human Services Investigators.

Workshops were presented several times to the Oregon Association of Licensed Investigators at their annual conferences.

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Exhibit B

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MARLBORO COUNTY, S.C.

Testimony Given in the Last Four Years

7/9/18: Trial – Medford OR
Jackson Co. Circuit Ct
Lathrop v Lathrop
16CV28274

8/8/19: Trial – Salem OR
Marion County Circuit Court
State v Noah Jonathan Powers
Case #18CR51380

10/24/19: Hearing – Boise ID
US Bankruptcy Court – District of Idaho
Lowenstein vs Department of Education, et al.
17-06021-JDP

7/24/20: Hearing – Bend OR
Deschutes County Circuit Court
Buehler v. Harry
Case No. 20SK00206

8/28/20: Trial – Medford OR
Jackson Co. Circuit Court
J Cyphers v T Tyler and M Tyler
Case No. 19CV05490 and 19CV51070

8/31/20: Deposition – Eugene OR
State of Hawaii – Circuit Court of the Second Circuit
George S. Antonio v Sharon S. Robinson
Civil No. 19-1-0137(2)

12/4/20: Trial – Albany OR
Linn Co. Circuit Court
Saeed Holdings, LLC – Almayah Enterprises, Inc.
Case No. 20LT03966

1/27/21: Hearing – Eugene OR
Lane Co. Circuit Court
In the Matter of the Estate of Judy Ann Glover
Case: 20PB00193

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HARRY CO. S.C.

2/19/21: Hearing – Vancouver, WA
Clark County Superior Court
Gardner vs. Farmers Insurance
18-2-05222-3

3/16/21: Hearing – Medford, OR
Jackson County Circuit Court
Sherri Wilkins vs. Michael Wilkins
Case No. 21DR00425

5/21/21: Trial – Vancouver, BC
Supreme Court of British Columbia
De Angelis v. Siemy et al
SCBC Court Registry No. S171068

6/28/21: Hearing – Roseburg OR
Douglas Co. Circuit Court
Estate of Howard Lilburn Campbell Sr.
14CV4418PM- ITMO

12/14/21: Hearing – Medford OR
Jackson Co. Circuit Court
Ruth Houser v Michael Houser
20CV44313

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ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

Exhibit C

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2022 APR -1 A 9:21
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CLERK OF COURT
MARLBORO COUNTY, S.C.

Fee Schedule - 2022

Retainer: $1,800 *non-refundable* retainer required. ($2,500 for rush cases.) Laboratory services are not committed to any party in a case until the retainer is received. Examination time is billed at $175 per hour for work exceeding the retainer time. Naming me as an expert in a case is *prohibited* until the retainer payment has been made.

Examination / report preparation / trial preparation /consultation time: $175 per hour. For pre-trial conferences, or consultations outside of Eugene, a minimum four-hour fee and travel time is accessed.

Travel time: By car; $100 per hour. By plane; determined on a case-by-case basis.

Examinations conducted away from my office: $1,800 and travel time at the rate indicated above, if by car. Inquire for estimate if air travel is involved. Overnight trips: Travel days are charged at the minimum daily rate plus travel time and expenses.

Testimony & Depositions: $1,800 per day, or fraction thereof, and travel time at the rate indicated above. *Deposition fees, and travel expenses, incurred by opposing counsel to be paid in advance.* $350 fee if trial or deposition is canceled without a 24-hour notice.

Teleconference / Zoom conference testimony: $900 minimum per session, from Mr. Green's office. If testimony exceeds three hours, an additional flat-rate fee of $200 per hour will be billed. *Deposition fees incurred by opposing counsel to be paid in advance.* The $900 fee will be charged if I am ready to testify at the requested date and time, regardless if testimony is given or becomes unnecessary. A $350 fee cancelation fee will be charged if testimony is canceled without a 24-hour notice.

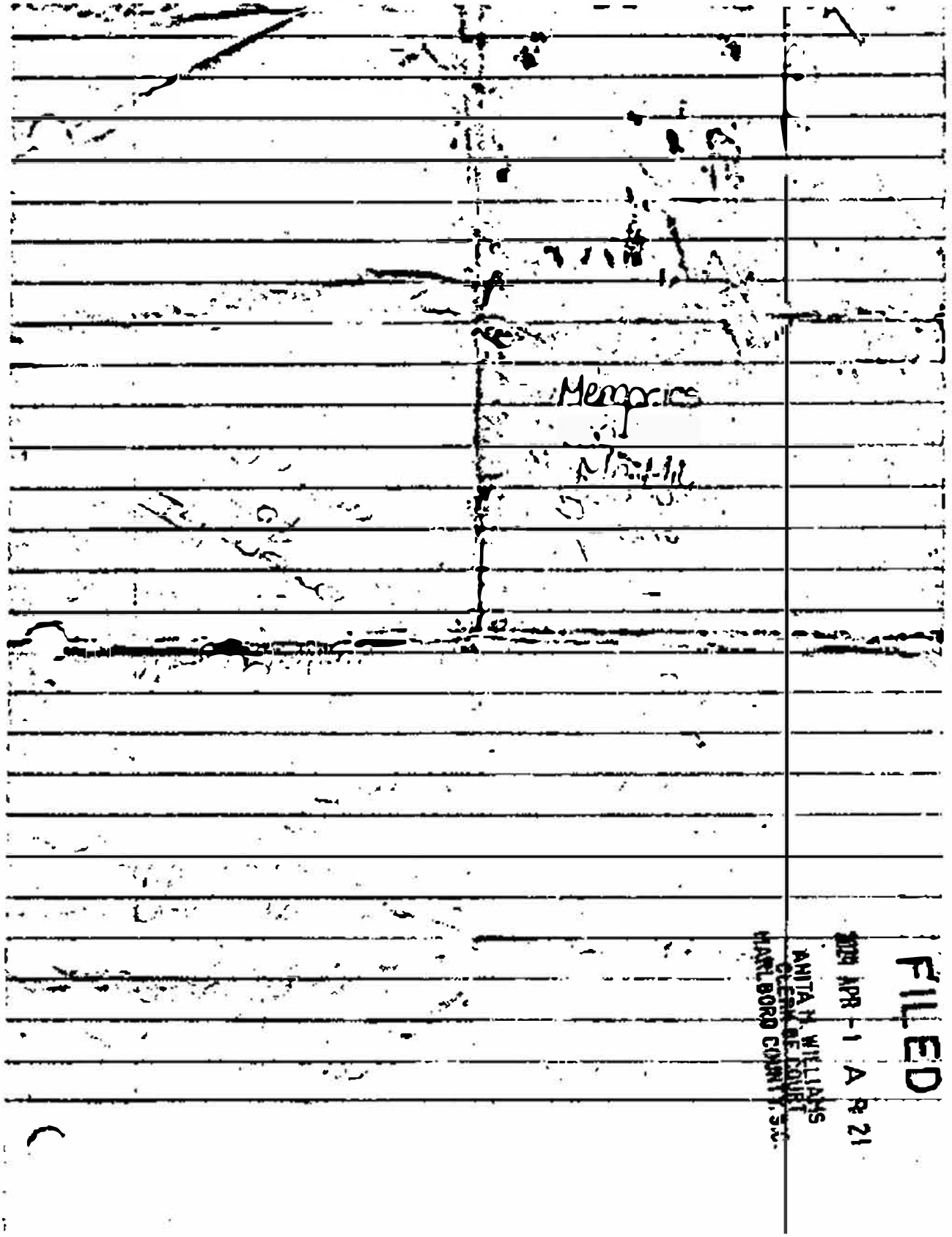
Additional charges for travel/testimony/depositions are billed at actual cost, i.e., court exhibits, lodging, airfare, etc. Testimony/depositions will be billed for the [illegible] hour(s) if I respond to the designated location, prepared to testify as requested.

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MARIA M. WILLIAMS
CLERK OF COURT
LANE COUNTY, OREGON

Note: The retaining attorney, or private client, requesting laboratory services will be held responsible for all charges incurred. If a collection process becomes necessary, the requesting party will be required to pay for the collection and court fees. Clients submitting cases to Mr. Green and Oregon courts will have jurisdiction for litigation necessary in the collection of unpaid balances. Interest at 18% per annum, will accrue on balances not paid within 30 days. Attorneys must secure their own financial arrangements with their clients. Balances must be paid in full prior to testimony given.

Exhibit D

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2009 APR -1 A 9:21
ANITA M. WILLIAMS
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CLERK OF COURT
HARLBORO COUNTY, S.C.

Q-1-A

September 9, 2000

Intro Nope dont think so But anyway. If that is yall baby I dont know what I'm going to do Because that motherfu- baby isnt worth all the shit we went through but I fail to see the point but it is your decision to do what u ned to do and tell your mom since she acts like she is so accusing. I know I cant accept the baby now your mom is about to claim it now. I know this isnt going to work Plus to the best of it he say and she say. I dont believe it I ask u about it

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2000 APR -1 A 9:21
ANITA H. WILKERS
CLERK OF COURT
MARLBORO COUNTY, S.C.

But I don't believe
it U can't trust me
and U even that me
saying this is cut
off I can't talk to
your baby mother
or the phone bills
I said I aren't going
to make a fool out
me and now U got
your mom helping U
You make me look
so dum so when
U slip off I
already have U will
make it look like
it was all good. But
baby might be more
than me, but the
baby don't mean
shit to me. So do
what U got do I also
thought we had can
our violent experience
together, but now not
to be in the picture

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MARLBORO COUNTY, S.C.

Q-1-C

You already start
right to me. You're
trying to act like your
baby mama & don't
want nothing to do
with me.
U keep breakin
promises. U don't
have ha. to keep
them. I don't mean
shit U remember U
said U'd be
stop living in a
fantasy. Maybe I am.
I'm so hurt, so
pissed off I love
U so much but I
have to make U
choose. That is your
baby over me. I
think I need to be
I'm not so bad. I
feel like I want to
kill myself. But why
should I and U wouldn't
even care if I did. I

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MARLBORO COUNTY, S.C.

Q-1-d

can't cope with the
pain anymore. If
I'm at the point
thinkin about killing
myself, it's not good
Don't let me stop
doing what u got
to do, because u aren't
living your life for
me anymore. By me
making u choose
between me and ur
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 bro
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

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Q1-e

u no matter what, but
this pain is nothing I
can't handle anymore. So
u do you hun. Go
get the pussy o' ur
Blogging ass. I love
you so much. I hate
at u. Im sorry for
making u choose but
I think Im doing this
for MaMa. Bye

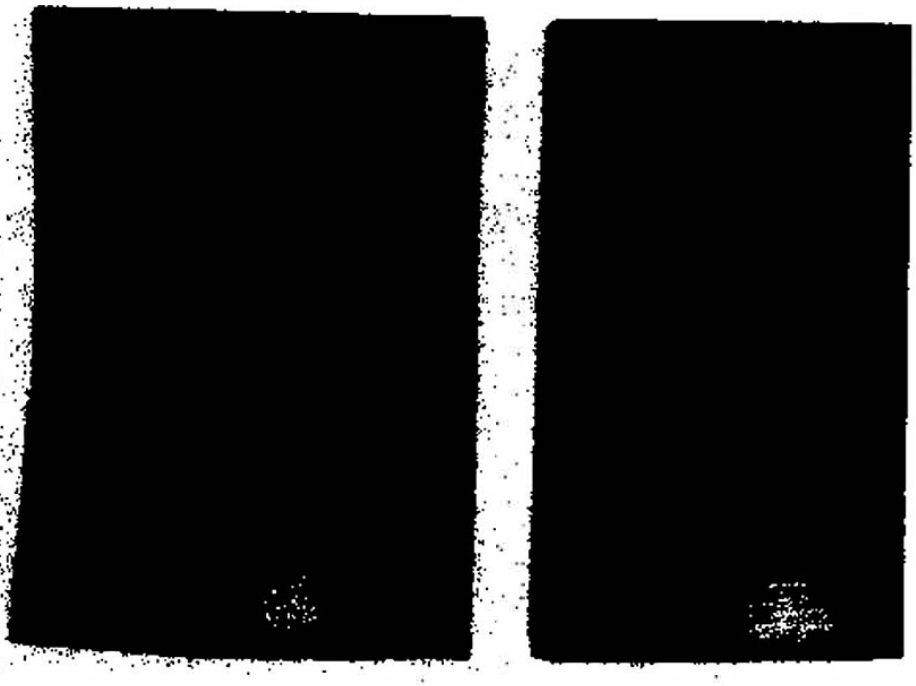
In memories
of
mine

Love.
Babybird.

Sorry.

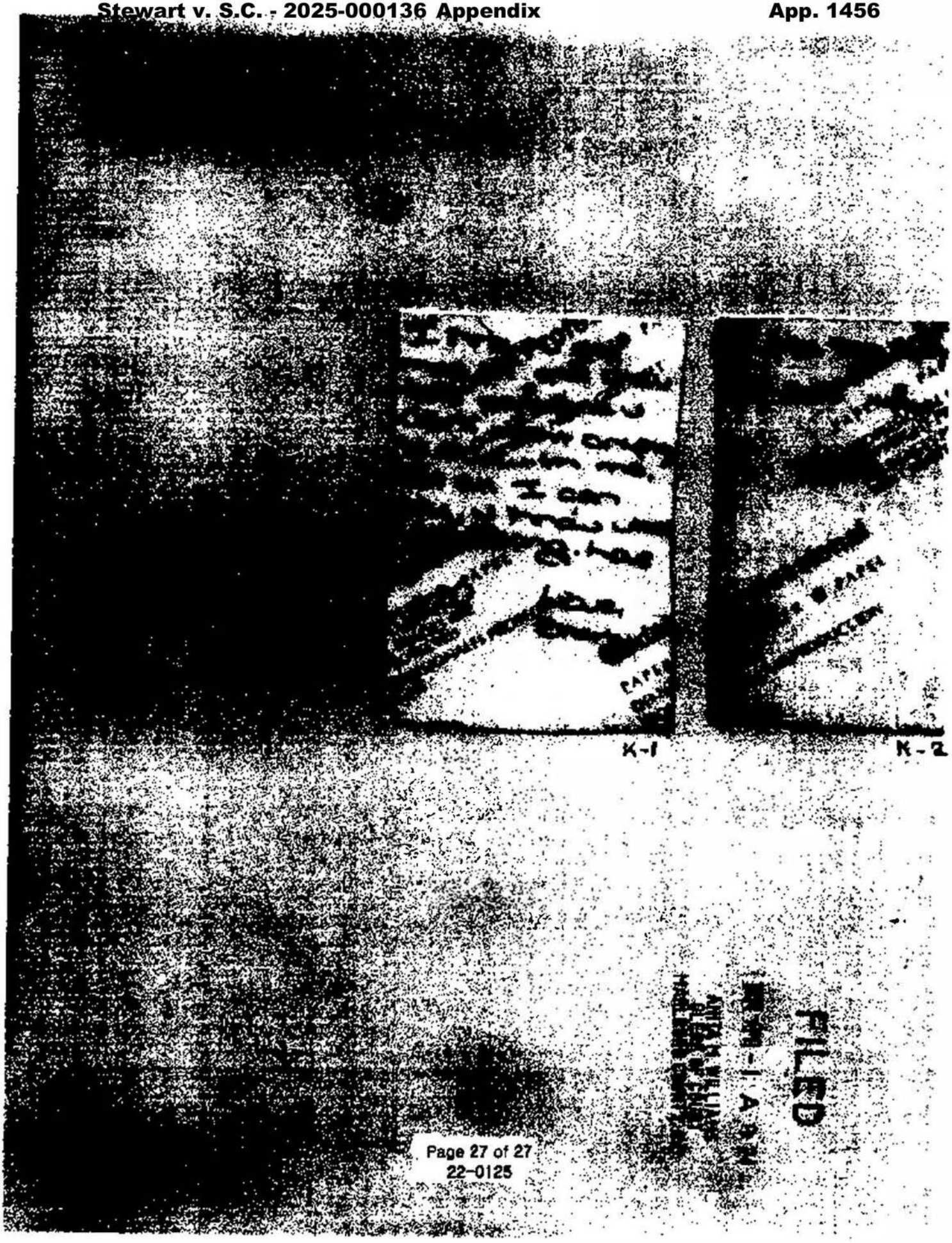
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2018 APR - 4 P 12
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BEAUFORT COUNTY, SC

Q-1-f



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2022 APR -1 A 9:21
ANITA M. WILLIAMS
CLERK OF COURT
HAMPTON COUNTY, S.C.

K-1


K-1
K-2

James A. Green FORENSIC DOCUMENT EXAMINER
[redacted] E • EUGENE, OR • 97405 [redacted] FO

June 6, 2022

The U.S. Court of Appeals for the Fourth Circuit
Lewis F. Powell Jr. Courthouse & Annex
[redacted] 1
Richmond, VA 23219

Re: Supplemental Report
Stewart, 21-278.

On June 4, 2022, the following documents were received, via Priority Mail Express, for examination from the office of Mr. Dawinder S. Sidhu, Hopewood & Singhal, PLLC.:

Document in question:

The original of the previously submitted copy of a six-paged, handprinted letter in question (Q-1.)

Known writing samples of [redacted] Allen:

The original of both photographs of Ms. Allen, previously submitted, having her handwritten notes on the reverse sides (K-1 and K-2).

Assignment / Observations

The original documents were submitted because my prior report stated there were limitations associated with the examination of non-original documents.

All original pages of the letter in question were processed with an Electrostatic Detection Device (EDD.) The laboratory instrument is designed to recover indentations on a document, in a non-destructive manner.

There were no indentations of value recovered, aside from what appeared to be a few capital "I"s and "t"s noted on image Q-1-e. The "I"s were written with [redacted] ballpoint pen crossbars, consistent with the writing on the letter in question and her known writing samples. The "t"s were also consistent, although common in design. Unidentified "I" and "t"s indentations were not sourced to specific writing on the questioned letter due to their lack of clarity.

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2022 JUN 21 A 9:45
CLERK OF COURT
WILLIAMSBURG COUNTY, S.C.

Copies of the images obtained from the EDD process are attached as Exhibit A.

The text on the letter was written in pencil. The writing appeared fluently written. There was no evidence of a simulation or tracing process.

Conclusions:

As a result of examining the original letter in question, my prior conclusion was modified from probable, to a high probability, the letter (Q-1,) had the genuine writing of Ms. Allen.

The submission of the original documents, both the questioned and known samples, enhanced the examination. However, recognition was given to the limited amount of known writing samples available for the examination.

The original letter and photographs are enclosed with this supplemental report.

Sincerely,

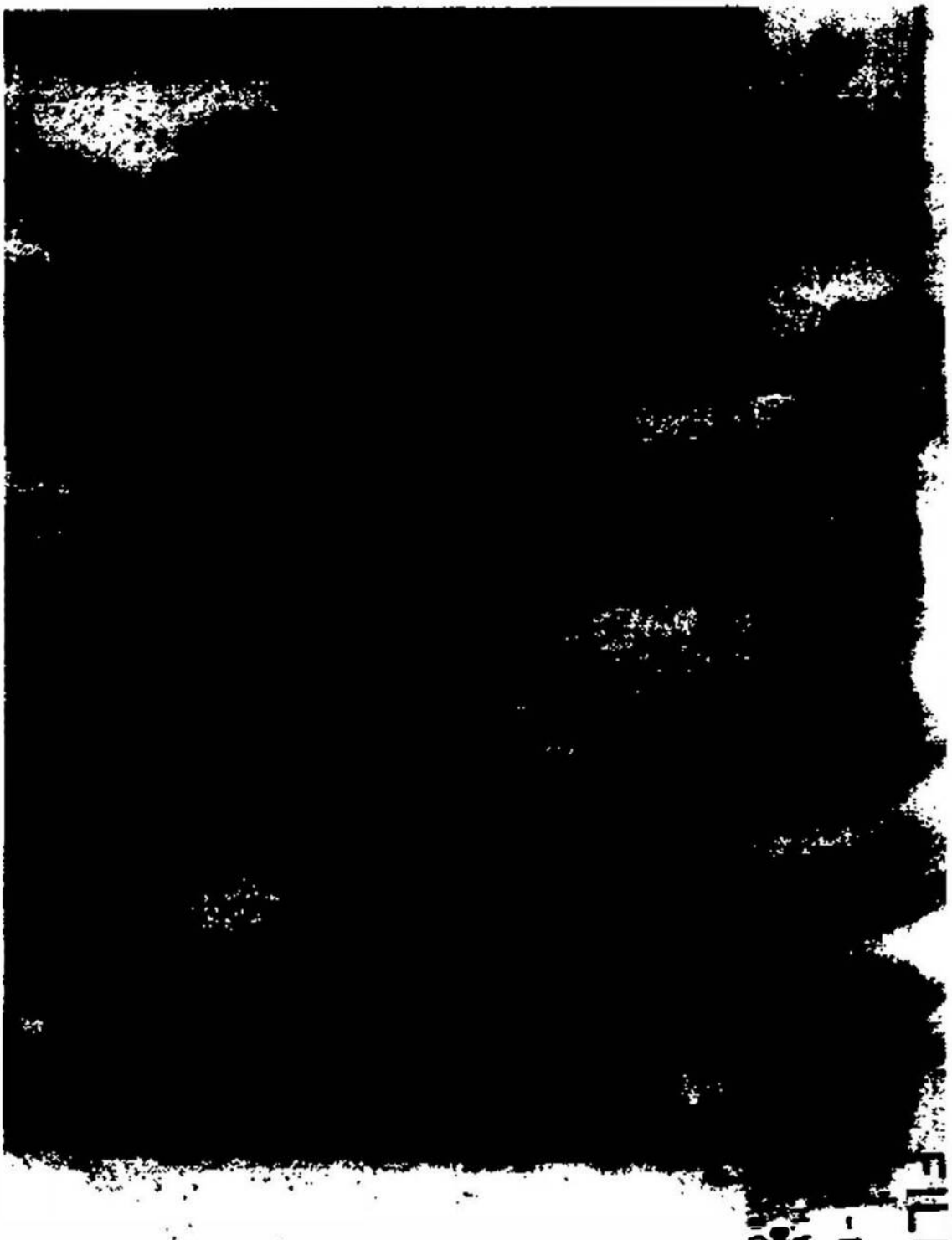
James A. Green

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2025 APR -1 A 9:21
ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

Attachment A

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2024 APR -1 A 9:21
ANITA M. WILLIAMS
CLERK OF COURT
MA BERKELEY COUNTY, S.C.

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ANITA H. WILLIAMS
CLERK OF COURT
HAMPTON COUNTY, S.C.

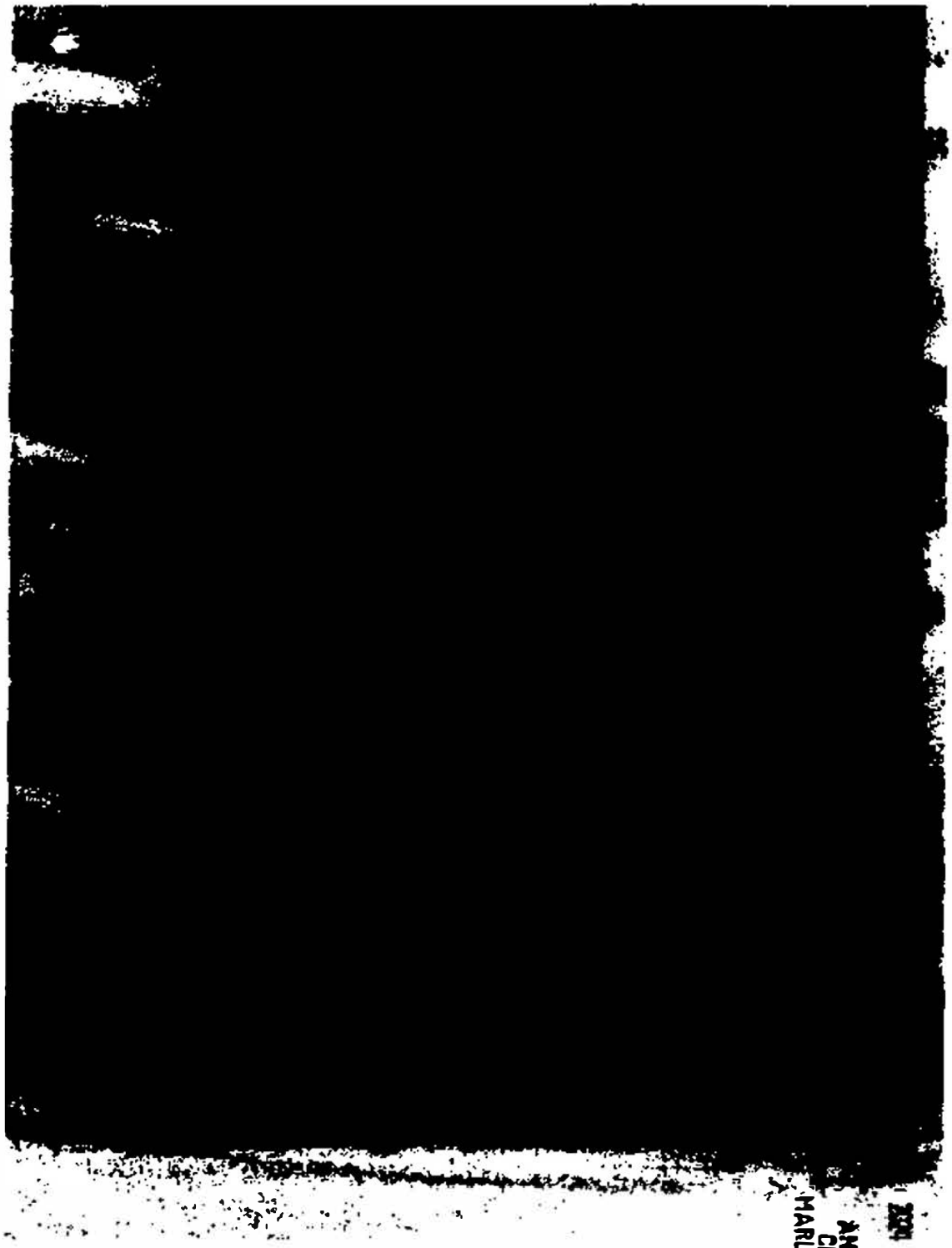


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-1 A 9:22
M. WILLIAMS
CLERK OF COURT
COUNTY, S.C.

FILED

APR -1 A 9:22

JAH. WILLIAMS
ERK of COURT
ORG COUNTY, S.C.



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ANITA H. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, S.C.

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APR -1 A 9:22

ANITA M. WILLIAMS
CLERK OF COURT
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CLERK OF COURT
BORO COUNTY, S.C.

forensX LLC
Medicolegal Consultants
Forensic Pathology & Lab Services
Courtroom Illustrations & Exhibits
Training & Continuing Education



"To strive, to seek, to find ... and not to yield."

[redacted]
Georgia [redacted]
SC [redacted]
FAX [redacted]

CONSULTATION

Date: 31 May 2022

Attention:

Dawinder "Dave" S. Sidhu, Esq.
Counsel
Hopwood & Singhal PLLC
[redacted]

SUBJECT:

S1 = [redacted] Allen

S2 = Weldon Stewart

CASE:

MUSC FA00-686

Dear Mr. Sidhu,

Thank you for asking me to conduct this review. I have completed my evaluation of the case materials. Please see my attached report.

Should you have any questions and/or should I be able to be of any further assistance in this matter, please do not hesitate to contact me.

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MARLBORO COUNTY

J.C. Upshaw Downing

MD, AP/CP/FP, FCAP, FASCP, [redacted] ABMDI, IACME
NPI: 1[redacted] GA:5[redacted] AL:[redacted] SC: 15063
[redacted] CAGE: 6[redacted] DUNS: [redacted]

[redacted] Savannah, Georgia 31406
[redacted] Johns Island, SC 29455

2. Observations and opinions:

- **Ultimately two major questions arise in the forensic pathology evaluation of this case:**
  1) **Was the described head wound postmortem thermal injury?**
     The subject clearly has extensive postmortem thermal injury . In addition, there is a described finding that may be associated with a pre-mortem wound but might also be postmortem. Additional materials examination may allow a more specific determination regarding the true nature of this latter finding.
  2) **Could this death have resulted from Suicide?**
     Based on the reviewed information, suicide cannot be excluded. Additional materials examination may allow a more specific determination regarding manner of death.

- **Manner of death (in this case, suicide versus accident versus homicide) is determined from physical findings associated with investigative findings. In this case, no compelling physical evidence allows the elimination of any of these manners of death as a possibility.**
  An inadvertent fall, with the head hitting a hard surface or a purposeful similar head injury would appear the same as a head impacted with a hard object as per the autopsy description, therefore insufficient physical data exists to allow elimination of any of these possibilities based on the documented autopsy findings in isolation.

- **The decedent has severe thermal injuries, which obscure the presence *or absence* of any potential external premortem trauma.**
  Extensive evidence of injury (be it pre-mortem or post-mortem, as well as relevant internal findings, were documented in the autopsy report:
  EVIDENCE OF INJURY: There is full body charring with exposure of organs (intestine and skull fracture with epidural and subdural hemorrhage.
  HEAD AND NECK: A fracture is to the right parietal skull associated with epidural and subdural hemorrhage and exposure of brain.
  THORAX AND ABDOMEN: Heat fractures involve the lateral aspects of all ribs. Heat involvement/damage is to the right middle and lower lobes of lung, left upper and lower lobes of lung, 50% of the right lobe and 50% of the left lobe of liver to include the entire superior aspect of the liver, both kidneys with more damage to the right kidney and burning away of the right adrenal gland, and spleen.
  UPPER EXTREMITIES: Heat fractures are to both humeri with distal amputation of the left hand.
  LOWER EXTREMITIES: Heat fractures are to both femuri [sic] with distal heat amputation of the feet.
  HEAD(CENTRAL NERVOUS SYSTEM): The brain weighs 910 grams. Excluding the injuries described under "Evidence of injury", the dura mater and falx cerebri are intact. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels, are intact and free of abnormality. Sections through the cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. The basal ganglia,

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thalami, and Ammon's horn are unremarkable. The cerebral ventricles are normal caliber. Sections through the brain stem and cerebellum are unremarkable.

The extensive postmortem thermal fracturing and amputations with fourth degree (full skin thickness to bone and internal organs), is well documented in the autopsy report. These findings limit the ability to opine on certain autopsy findings.

The subject's already deceased body sustained significant postmortem artifact: "Charred.... -- 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.... [T]his [extensive fracturing of bones] was from fire because the body was so severely charred. Totally black from top to bottom.... I don't think [fractures were caused by anything but the fire]. 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 [extensive fracturing, including the ribs] was from the heat."

Although not explicit, the autopsy appears to indicate the absence of smoke/soot inhalation associated with a fire:

"The upper airway is clear of debris and foreign material; the mucosal surfaces are smooth, yellow-tan and unremarkable."

This likely indicates that the subject was dead prior to the conflagration, although it may be that the fire lacked significant such product to cause such deposits in a living subject during the fire while the subject was alive.

At a pretrial hearing, the State acknowledged the lack of clarity in rendering opinions regarding pre-mortem versus post-mortem findings in cases such as this:

"...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."

Despite the autopsy conclusion of a single blunt force trauma to the head:

"In light of the historical information, gross, microscopic and toxicological autopsy findings, it is the opinion of the prosectors that the decedent, [redacted] Allen, died as a result of blunt force trauma to the head."

The state was uncertain about the actual cause of death. Per the prosecutor in the case:

"...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."

This uncertainty expressed by the State was to the extent that the State altered the indictment to allow for additional, non-stated, non-autopsy documented theoretical scenarios:

"... when the State amends themurder indictment, we intend to include alternative possibilities as to the actual cause of death."

This in direct contrast to the medically determined cause of death:

"Blunt force trauma to head"

with an associated survival interval of:

"seconds-minutes"

As well as the final autopsy diagnoses:

"Blunt force trauma to the head with right parietal skull fracture, epidural and subdural hemorrhage."

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The State further disparaged the autopsy report, casting doubt on the level of confidence therein:

"...the autopsy report basically has some conjecture."

Guesswork is an anathema to conclusions professional medicolegal death investigation. Speculation has no place in such matters, particularly when a subject's life is on the line or one is attempting to explain a cause of violent death. In an instance where such little faith is expressed in an autopsy result, additional information should be sought – such as review by a qualified medical professional in the form of a "second opinion."

- **The autopsy describes subdural blood, an expected finding with premortem formation but also describes epidural blood, a likely thermal artifact. The meager autopsy description is such that these findings may be merged and the epidural blood has migrated to a subdural location.**

The autopsy documented both epidural and subdural blood collections:

"In the skull, in the right-hand side under the parietal bone.... 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."

Although epidural and subdural bleeds are described, said description is meager and lack any further documentation.

Epidural blood is a well-known thermal artifact; in such instances, the bleed is readily recognized and classically described as "dark brown" or "chocolate brown." Any color descriptors are absent in the autopsy description. Subdural blood is not generally associated with thermal artifact but may be, under certain circumstances; with disruption of the dura matter which may happen associated with thermal injury, epidural blood could migrate and/or otherwise appear to have collected in a subdural location and may be mischaracterized.

With thermal burns, the calvarium is expected to have the boiling and parboiled intracranial contents under pressure until such time as the skull forcefully explodes with associated postmortem thermal skull fractures.

- **The autopsy description of the epidural/subdural blood and brain has some inexplicable seeming contradictions and limits the objective evaluation of the findings to determine the true nature of the head injury.**

Microscopic examination of the tissues documented:

"Sections of organs show heat artifact consistent with charring. The brain demonstrates hemorrhage with the presence of inflammatory cells consistent with premortem injury"

As described above, the presence of inflammatory cells with the brain infiltrate indicates an injury with survival for a significant period of time prior to death in order to allow the body to formulate such a "vital response." The provided description is meager and provides insufficient detail as to the nature of the inflammatory infiltrate (composition, location, and presence/absence of associated findings). Specifically, the gross description fails to note *any* brain injury, which is in direct contradiction to the microscopic description of blood with inflammation. With a significant premortem

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brain injury, the subject would be expected to have "coup" (blow) injury subjacent to an impact site. Conversely, with a fall, a "contre coup" (opposite the blow) injury may form provided sufficient survival time to develop same. Based solely on the autopsy description provided, these questions cannot be addressed with any sort of definitive answer. Additional materials, in the form of examination of actual remaining tissues (either grossly with the naked eye and/or microscopically with retained histology slides). In addition, these issues might be satisfactorily addressed with examination of sufficient routine and expected photodocumentation of the external and internal detailed examination of the brain (and other) tissues. To date, none of the aforementioned documentation has been provided for an independent assessment.

- **More detailed examination of the cranial and central nervous system tissues (by means of direct tissue examination if such samples remain and/or are sufficiently photodocumented to allow independent assessment would clearly assist in ascertaining the nature of the head wounds as artifact and/or premortem.**
  For example, the head has described associated epidural and subdural blood. The presence of subdural blood may suggest an antemortem injury, however, this may be present in continuity with the described epidural blood and thus could represent a continuation of the known artifactual epidural blood. Neither of these bleeds is quantified or described in such a way as to permit an independent observer reading the report to reach any meaningful conclusion regarding the definite source and nature of the blood. The bleeds are described in aggregate with specific reference to exposure of the brain, indicating disruption of the dura matter which should be the separating point between epidural (potential artifactual postmortem) and subdural (potential premortem) collections.

- **Significant open external wounds (such as lacerations), especially to the highly vascular head area, would be expected to have copious associated blood in a living subject. Postmortem oozing can occur with such injuries after death.**
  Significant inflicted premortem blunt force injury to the head resulting in death usually has open skin wounds. Here the finding of such injury is not possible due to the destruction of the scalp. Regardless, with such a wound causing death, copious blood would be expected at the scene of the event as well as any resting location(s) of the subject's body.
  Even small wounds to the area of the head (for example the mouth) may bleed copiously in a living subject.
  An existing transcutaneous defect extending to a fractured subjacent skull would be expected to provide direct access from the external to internal areas and thus allow free thermal access (and associated damage) to subjacent tissues, thus the described and described right skull defect in such instance would be expected to have associated charring and burning, extending to the brain surface. These changes were not described here, suggesting such a pre-fire defect was absent, making a burn lethal head wound less likely.

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

- **The scene and sub-locations lacked prominent identified blood, both in general and associated with any specific weapon. With an open, eventually lethal head wound (as from a blow), blood evidence would be expected with a living subject.**
  In a case with an open head wound, a deceased subject would be expected to actively bleed (if living) or ooze (postmortem) from the physical location of an injury to the final resting point of the deceased body. Such rate may differ but unless steps were taken to obfuscate same, a blood trail would be expected.
  At the scene of a violent struggle with open head wounds, blood transfer and spatter would be expected – even if the subject were rendered incapacitated and immobile, blood evidence would be expected.

- **The autopsy found no external injury, no damage to the neck structures, no aspirated blood, and no swallowed blood. In a living subject with skull fracture and subdural blood, it is common for the subject to breathe bloody fluid into the airways resulting in tracheobronchial and pulmonary tissue centriacinar blood.**
  With blood in the subdural space, depending on location and associated damage the subject may inhale blood which was not described at autopsy:
  > "The upper airway is clear of debris and foreign material; the mucosal surfaces are smooth, yellow-tan and unremarkable."

  The absence of neck blood and identified conjunctival and mucosal petechial bleeds argues against strangulation, as might be used to incapacitate or hinder a subject from self-extricating from a physical engagement (i.e., "grabbing by the throat").

- **The described fracture could have resulted from a fall or from a volitional head impact, as the State's expert opined at trial.**
  It would not take significant force to fracture the subject's skull. As the State's expert opined at trial, the decedent had:
  > "... a small, thin skull, and it wouldn't take a whole lot of force to fracture it"
  > "It's possible if she fell exactly wrong and hit her head very hard, then it could have fractured her skull."

  A death associated with a fall often has associated subdural blood and may have little else in terms of injury – especially following a subsequent severe fire with the scalp obliterated by thermal artifact. The head clearly has postmortem thermal injury, as opined by the State's Expert:
  > "The skull had some cracks and fractures in it.... [T]his [extensive fracturing of bones] was from fire because the body was so severely charred. I think it was from the heat."

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The State's expert was properly vague in attempting to suggest a possible impacting surface, since the thermally damaged body retained little useful information in regards details of this surface:

"...It's got to be something big enough to give a fracture and as big around as a lemon.... This is best guess, but my thought is this would have to be something about six inches wide by six or more inches long. It would have to be something there. Now again, without the scalp, I can't see the scalp wound. So I can't get a good idea of the shape of this, so I'm being pretty imprecise here. But there is just a lot I couldn't see.... it could be three by six, something in that range, something several inches by more than several inches."

- **The clothing of S2 had limited blood evidence recovered. Testing for salivary amylase may have been helpful in determining if some or all of this blood originated from S1's mouth.**
  This testing might still be of value if the evidence is still available.

- **Routinely, true subdural blood would ideally be collected and analyzed for postmortem toxicology, since this sample would provide the best sample for addressing the various toxicology results at the time when the bleed formed.**
  This testing might still be of value if the evidence is still available.

The foregoing specifically addresses received materials. My opinions may be further supplemented by testimony and/or discovery not yet completed in this matter, including but not limited to direct examination of material(s) from the case including but not necessarily limited to radiology studies, additional medical records of the subjects, case photographs and/or video, materials requested, testimony, and relevant literature.

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B. Facts or data considered in forming the above opinions:
In addition to my background, training, education, and experience, the above opinions are based upon facts and data contained within the following materials received for review in this case:

1. Motion from 1/12/2017
2. Pathologist pretrial statement
3. File
    a. Table of contents
    b. Case background
        1) Issue of Interest (Fourth Circuit Court of Appeals)
        2) Motion from 2015 (Repressed Memories)
        3) Memorandum (2244)
        4) Reply (2244)
4. Scene Findings
    a. Scene Notes – Al Stuckey
    b. Trial Testimony – Al Stuckey (PP138-147)
    c. Scene Notes – Bobby Elvington
    d. Trial Testimony – Bobby Elvington (PP125-137)
    e. Trial Testimony – Stanton Wright (PP211, LL5-14)
5. Physical and Forensic Findings
    a. Trial Testimony – Det. Dallas Gurley (P36, L18 to P37, L6; P474 LL9-21; P638, LL7-13)
    b. SLED Laboratory Evidence Inventory Sheet
    c. SLED Forensic Services Laboratory Report (Cecil Bradstreet)
    d. Trial Testimony – Cecil Bradstreet (PP148-158)
    e. SLED Forensic Services Laboratory Report (Manuel J. Ortuno)
    f. Trial Testimony – Manuel J. Ortuno (PP172-183)
    g. Trial Testimony – S2 (P530, L19 to P531, L3 & P553, L19 to P554, L3)
6. Police and Lay Witness Observations of Weldon Stewart (on day of incident)
    a. Incident Report – Sammy Crosland
    b. Pretrial Interview Brief – Sammy Crosland
    c. Trial Testimony – Sammy Crosland PP355-9)
    d. Trial Testimony – Alvin Worsley (P350, LL10-23)
    e. Trial Testimony – Stanton Wright (P210, L8 to P211, L4)
    f. Trial Testimony – Robert Moore(P250, L17to P251, L7)
7. Mental Health History
    a. Trial Testimony – Tony Allen(P122,L6 to P123,L1)
    b. Letter written by S1 stating suicidal ideation
    c. Forensic Handwriting Analyst Report –James A. Green
    d. Request for mental health records of S1
    e. Denial of request for mental health records of S1
8. Social History
    a. Trial Testimony – Tony Allen (P124, LL8-14)
    b. Trial Testimony – Anthony Allen (P365, LL17-24)
    c. Trial Testimony – Stanton Wright (P204, L2 to P205, L7)
    d. Trial Testimony – Anastasia Love (P592, L23 to P594,L22)
    e. Trial Testimony – Deneka Harrington (P602, L24 to P605, L8)
9. Original Autopsy Findings

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a. Autopsy Report (MUSC #FA00-686)
b. Trial Testimony – Dr. Russell Harley (PP159-171)

10. Photos

a. SLED

(#03640001-03640022, 000001369001-000003690023, & 000003710001-000003710019)

Living Room (computer desk)	Living Room view of fireplace	leaf w/ blood
Living Room looking into dining room	Living Room view of dining room	few leaves w/ blood
Kitchen	Living Room view of hallway/dining room	few leaves w/ blood
Freezer	Parents Room	leaves w/ blood & stick
Entry Way (one room to another)	Parents Room	Path
Dining Room	Parents Room	Path leaves
Melanie's Bedroom	Living Room	Front of house, street, police cars
Melanie's Bedroom	Parents Room view of bathroom	Street
Entry way to Melanie's bedroom	Parents Room	Front of house w/view of left side of house
Kitchen	Hallway looking into bathroom	Front of house w/view of right side of house
Hall Closet	Bathroom	Front car port
Hallway	Bathroom	Front of house
Room with shoe rack on door	Bathroom view to bedroom	Back of house w bball court, back deck
Melanie's Bedroom	Hallway	Back of house
Weldon's Bedroom (bed)	Hallway Closet	Side of House
Weldon's Bedroom (glass on dresser)	Laundry Room (dark view of Weldon's room & jacket	Side of House
Weldon's Bedroom (jacket)	Bathroom	Back scene of burning
Hallway looking into Weldon's Room	Bathroom trash can	Back shed
Doorway Frame (possible blood)	Laundry Room (iron, vacuum, etc.) sliding	Back pole scene of burning
Weldon's Bedroom (picture on wall	glass door	Back distant scene of burning
Weldon's Bedroom (bed looking to closet	Washing Machine	Scene of burning
Weldon's Room Bed stick	Laundry Room	Shed
Path (cigarettes)	Green Shower Curtain	Shed
Path (a little further back pic)	Close Up leaves, blood, cigarettes	Clearing shed
Side of House	Path, leaves, cigarettes	Clearing Path
Path Close Up Cigarettes	Parents Room dresser	Clearing looking towards house
Living Room to Hallway	Parents Room	Clearing looking towards scene of burning
Outside Front of House	Close Up leave w/ blood	Clearing looking towards house
Side of house	zoomed in leaf w/ blood	
Living Room view of front door	zoomed in leaf w/ blood	

b. Scene Photos (#1-16)
c. Scene House (#1-4)
d. Scene Yard (#1-3)
e. Autopsy (requested)

11. Psychologist's report

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J.C. Upshaw Downs, M.D.
ABP-AP/CP/FP, FCAP, FASCP,
F-AAFS, F-NAME, D-ABMDI, IACME

RUSSELL A. HARLEY, MD

[redacted]

March 7, 2024

Ms. Lori Stewart

[redacted]

re: Weldon Stewart

Dear Ms. Stewart:

Thank you for the additional information regarding Weldon Stewart and [redacted] Allen. Here is an abbreviated account of what I think I'm now seeing.

On Thursday Dec. 7, 2000 I performed an autopsy (FA 00686) at MUSC on the remains of [redacted] Allen. The history available to me at the time from Marlboro County indicated she had been found burned / charred. She was 15 years old and her boyfriend, Weldon Stewart, was 19. They had an argument at 4:30 AM, and he said she fell and he fell on top of her and she died.

Newer info: *Stewart told the jury that C.A. pulled out a box cutter and swung it at him. So, Stewart picked her up and started to carry her home. But according to Stewart, as he picked her up, he tripped and fell. He said he fell on top of C.A. Stewart recalled that she initially sat up, but then began calling Stewart's name. He said her voice became [illegible] and that she made "strange sounds" that "didn't sound human." Then Stewart testified that he saw blood coming from her mouth. He knew at that point something*

was wrong, so he left to find his friend Stanton Wright. Stewart testified that he was drinking a beer and looking for cigarettes when he

found Wright. He claimed he told Wright about tripping and falling on Ms. Allen. Wright, however, previously signed a statement saying that Stewart told him that Ms. Allen had sex with someone else before their encounter and did not shower before meeting him. According to the statement, Stewart "flipped out" when he learned this.

At 11:30 AM he carried her body to a nearby fiberglass shower stall in a back yard, doused her with gasoline, and burned the body. At 2:30 PM he called 911 to report this.

At autopsy, there was charring of the body with exposure of some organs. There was also a fracture of the right parietal skull with epidural and subdural hemorrhage and exposure of the brain. Otherwise, the brain was intact and appeared normal. Carboxyhemoglobin level was less than 10% saturation consistent with the history that she was dead at the time the body was burned. Sections of brain and dura showed hemorrhage and there were some inflammatory cells suggesting that the skull fracture occurred while she was alive.

Mr. Stewart pled guilty to burning the body but not to a charge of murdering Ms. Allen. He would not accept the court's offer to provide him counsel and rather chose to represent himself. The jury found him guilty of manslaughter and he was sentenced to 30 years imprisonment as well as 9 years for desecration of human remains.

According to information from Ms. Lori Stewart, repressed memories emerged to Mr. Stewart including that the deceased Ms. Allen had died of suicide. She had been pregnant at age 14 and underwent a partial birth abortion which left her severely depressed. Ms. Allen had apparently written a letter regarding her extreme depression over the loss of her child at some point before her death.

Also, Mr. Weldon Stewart had childhood trauma including neighbors trying to drown him when he was 10 years old. According to Ms. Stewart, he coped with this by developing dissociative amnesia. Ms. Stewart believes that Mr. Stewart slipped back into this coping mechanism after Ms. Allen died.

SLED Forensic Services were called to the scene at 5:45 pm on 12-6-2000. First Officer Elvington noted possible blood on a jacket and on leaves. It is not clear to

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me that the site in the woods where Ms. Allen is alleged to have died was examined by the SLED services.

Mrs. Lori Stewart arranged for Mr. Stewart to be examined by Lucid Clinical Services Andi McDaniel, PhD, Clinical and Testing Psychologist and Shea Lott, PhD, supervising Licensed Clinical Psychologist. They concluded that it is very possible that Mr. Stewart experienced dissociative amnesia following the death of [redacted] *Allen.*

On December 6, 2000, Ms Allen was depressed about the one-year anniversary of having had the abortion. Ms. Allen had apparently written a suicide note at some point before her death.

Mr. Stewart, who may have been suffering from dissociative amnesia at the time of his trial, spontaneously recovered his memory that Ms. Allen committed suicide – which Stewart believes occurred by C.A. secretly ingesting something while she distracted him by asking him to get her something to drink. The memories suddenly came back to him. He alleged that he remembered that when Ms. Allen collapsed in his arms after the fall in the woods, "my mouth was on her mouth as she took her last breath; I felt her spirit leaving her."

There is other information I have not mentioned. One peculiar one is from Mr. Weldon Stewart that addresses the death of Ms. Allen in what sounds like King James biblical language in which he must have been in an altered state of mind.

Mrs. Lori Stewart has hired Dr. James Downs, a forensic pathologist, to review the case. He is of the opinion that the skull fractures were all postmortem and heat related. The body was charred by the heat of the gasoline fire and included a number of fractures from the heat. It was my impression at the time of the autopsy that the right parietal skull fracture was probably caused by blunt force trauma, but I could be wrong. There is the question of why there was not a lot of blood at the alleged site of the injury in the woods. Good question, but was the actual site in the woods identified and examined? Mr. Weldon Stewart seems to believe that Ms. Allen committed suicide by ingestion of some sort of pill. No such pill was found in in the stomach fluid, and nothing unusual was found in the blood at toxicology exam. Whether there is still a sample of stomach fluid that could be examined now is not clear to me. I have no objection to having Dr.

Downs examine the pathology slides, but that is really not up to me but to the Coroner and to the MUSC Forensic Pathology section. I retired from active work in the Department in 2005. I am now Professor Emeritus and do not sign out cases.

Russell A. Harley, MD

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ALITA M. WILLIAMS
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Follow Up Questions from Weldon Stewart to Dr. Russell Harley

The purpose of these questions is to help the Court understand the impact, if any, the unavailability of certain evidence, at the time the autopsy was conducted, may have had on the autopsy findings. Also, we hope to demonstrate to the Court, through these questions and answers, the necessity for further exploration/investigation into Stewart's claims, through discovery, as a matter of science.

Each question will be preceded by a statement of facts to provide context and a specific focus for the answer. Please copy and paste the statement of facts and each question and then provide your written response. Thank you in advance for your cooperation with this matter.

Statement and Question #1

You stated in your letter that nothing unusual was found in the blood at the toxicology exam. However, the autopsy report reflects that only a basic toxicology analysis was performed by the National Medical Services, Inc, ("NMS"), which is understandable considering that there was no credible evidence, at that time, to suggest any cause of death other than blunt force trauma. According to the NMS website, there are three different types of toxicology analyses that can be performed: basic, expanded, and TotalTox. The basic toxicology analysis is limited to testing for commonly abused illicit and prescription drugs and alcohol (11 tests). Whereas, an expanded toxicology analysis is recommended for suspected overdoses, because this analysis involves more extensive testing (110 tests), including expanded testing for illicit and prescription drugs, prevalent designer drugs, and for Novel Psychoactive Substances ("NPS").

twofold. First, if it had been suspected, at the time of the autopsy, that [redacted] Allen committed suicide by ingesting some substance, essentially a suspected overdose, would an expanded toxicology analysis have been performed instead of a basic toxicology analysis?[2]

Second, hypothetically speaking, if [redacted] Allen killed herself by ingesting something, that wasn't covered under the 11 tests of the basic toxicology analysis, such as an NPS, isn't it true that this substance would not have been detected in the blood by a basic toxicology exam and could only have been detected by an expanded toxicology exam essence, hypothetically speaking, can the fact that nothing unusual was detected in [redacted] Allen's blood be [redacted] to the limited scope of the basic toxicology analysis, as opposed to ruling out that suicide by ingesting a substance?

Dr Harley's Answer to Question 1:

Had I known there was a question of suicide, I would have gotten more extensive toxicological studies.

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Statement and Question #2

Following up on Question #1, Stewart claims that [redacted] Allen was receiving psychological treatment following her traumatic abortion up until her death. Last year, in a television interview, [redacted] Allen's mother acknowledged that [redacted] personality drastically changed before [redacted] death and, because of this, [redacted] mother placed [redacted] in counseling.

This is also twofold. First, if you had been aware of question [redacted] ental health history when you conducted the autopsy, as well as been aware of the allegation that she committed suicide by ingesting some substance, would you have obtained [redacted] Allen's mental health records in order to determine whether she was prescribed any type of psychotropic medication, and, if so, made that medication the focus of an expanded toxicology analysis?

Second, pertaining to the current medicalegal investigation being conducted by Dr. Downs, in your professional opinion, would it be necessary to obtain the mental health records for this purpose?

Dr. Harley's Answer to Question 2:

Had I known of the question of Ms Allen's suicide , I would have wanted to review her mental health records.

Statement and Question #3

In your letter, you state that Dr. Downs is of the opinion that the skull fracture is postmortem, and heat related. You further state it was your impression at the time of the autopsy that the skull fracture was probably caused by blunt force trauma. However, you acknowledge you could be wrong. In light of the new developments in the evidence, if you are wrong, it's almost certainly because crucial evidence was not known when you conducted the autopsy, rather than any mistake on your part. For instance, the State concealed the crime scene notes from the SLED forensic crime scene investigator, Al Stuckey, which are enclosed. So, you did not review these notes which reflect that the agent meticulously searched the entire scene—both inside and outside the house—specifically looking for blood evidence but found only a minuscule amount; certainly not enough to be consistent with the amount of blood expected to be found on the scene of a violent homicide involving an open head wound. The agent further explicitly stated in his notes that he did not find any evidence of a violent struggle on the scene. You were unaware of [redacted] Allen's mental health history, the fact that she was severely traumatized by a horrific partial birth abortion experience, and that she tragically killed herself on the proximal one-year anniversary of this abortion after writing a letter expressing suicidal contemplation less than 90 days before the death.

This is a hypothetical question. At the time when you conducted the autop[redacted] you had only made statements indicating that [redacted] Allen killed herself by ingesting some substance, and all the above-mentioned [redacted] ating evidence was available for you to

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review, could these factors have contributed to you reaching a different conclusion than [redacted] Allen's death being caused by blunt force trauma in the manner of homicide? In the alternative, are these factors sufficient, at present, and in light of the previous statements and questions, to convince you that there are valid reasons to warrant Dr. Downs being allowed to review the autopsy files with a specific focus on evidence of suicide, as a matter of science?

Dr. Harley's Answer to Question 3:

I am not sure where Ms Allen died. Did she and Mr Stewart walk through some woods? Did Mr Stewart fall on her? Where did this happen?

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
	)	2023-CP-34-00282
WELDON W. STEWART JR. #295095	)	
V.	)	**MEMORANDUM OF FACTS IN SUPPORT OF MOTION FOR LEAVE TO CONDUCT DISCOVERY**
STATE OF SOUTH CAROLINA	)	

I. Introduction

This case centers on the death of C.A., who, according to new evidence, committed suicide a year after being forced by her mother to undergo a partial birth abortion. Stewart, who is convicted of killing C.A., filed a Motion for Leave to Conduct Discovery ("Motion") for purposes of gaining access to crucial evidence that will be used to scientifically prove C.A. killed herself. At a bare minimum, he will prove C.A. did not die in the manner alleged by the State at trial.

Stewart submits this Memorandum of Facts in support of the Motion. The purpose of this Memorandum is to provide the Court with a clear, detailed statement of the factual allegations, evidence, and extraordinary circumstances which warrant the Court granting the Motion.

II. The Abortion

C.A. became pregnant at a young age. She was excited about her child and was determined to be a good mother. Convinced that the baby was a girl, C.A. named the

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child [redacted] She hid the pregnancy from her parents until she was over four months pregnant.

When C.A.'s mother found out that C.A. was pregnant, her mother was adamant that C.A. would abort the child. It was illegal for the abortion to be performed in South Carolina because C.A. was so far along in her pregnancy. So, C.A.'s parents took her to North Carolina to undergo a partial birth abortion.

This procedure severely traumatized C.A., as it involved a gruesome abortion process. First, the physician induced labor, and C.A. had to push her live baby out of her womb until the baby's head was fully exposed. Then, C.A. had to watch in horror as the physician killed her child by stabbing the baby in the back of the head, and suctioning out the baby's brain. C.A. then had to finish pushing out her dead baby, just like a woman would in a normal birth. Finally, C.A. was forced, by her mother, to hold her dead baby in her arms as "punishment" for C.A. becoming pregnant as a teenager.

At trial, Stewart provided the following testimony about the abortion:

> [C.A.] was real happy about the baby. She used to rub her stomach and stuff like that all the time. And she had already named the baby and everything. And so, I know her abortion really upset her, and she used to be crying and stuff. She was bleeding for about four weeks. It was like she [would] just be crying and stuff... She would [be] just like crying and screaming and saying she heard [the] baby in her head crying "mommy" and stuff like that...[She was] so far along for her

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> pregnancy that they had to do a special process... December 1999 [is] when she had the abortion.
>
> *Trial Transcript pp. 506-507.*

C.A.'s father also provided the following testimony for the prosecution:

> Q. Okay. Now in his opening, [Stewart] alluded 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 – [C.A.] had the abortion?
>
> A. Yes, sir...
>
> Q. Where did this abortion take place?
>
> A. Charlotte, North Carolina.
>
> Q. And who went up there with [C.A.]?
>
> A. Just me and my wife.
>
> *Trial Transcript p. 122.*

C.A. underwent this traumatic abortion in December of 1999; she killed herself in December of 2000.

III. The Suicide

In the final year of her life, C.A. exhibited several indicators that she was suicidal. These indicators include changes in her personality, deep depression, and statements expressing suicidal contemplation. Many people noticed C.A.'s internal struggle, including her closest family members.

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In a recent television interview, C.A.'s mother acknowledged that she noticed a drastic change in C.A.'s personality before C.A. died. The mother stated:

> [C.A.] started to change. You know me and her always talk[ed] about everything, then she stopped talking, and you know, I said what in the world is going on with [C.A.], and I never could figure out what it was. So, I took her to counseling and that helped a little bit.

C.A. wrote a letter, less than 90 days before her death, in which she expressed that she was contemplating suicide. She stated:

> I feel like I want to kill myself, but why should I and you wouldn't even care if I did. I can't cope with the pain anymore. If I'm at the point [of] thinkin[g] about killing myself, it is not good...This pain hurts so much...This pain is nothing I can handle anymore.

On the fateful night of C.A.'s death, she spent a significant amount of time with her older brother, who was no longer living with their parents. According to C.A.'s brother, the two of them attended a high school basketball game. Following the game, the pair of siblings "rode around" and "spent quality time together" and "talked about some things". *Trial Transcript p. 361*. It is now apparent that C.A. spent this time with her brother to say goodbye to him before killing herself.

Shortly after C.A.'s brother dropped her off at their parent's house, C.A. snuck back out her parents' house to meet with Stewart. He snuck her into his parents' home, where the teenaged couple spent a few hours together. It was during this time period

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Stewart believes C.A. committed the suicide act by secretly ingesting something while she distracted him by asking him to get her something to drink. At trial, Stewart unconsciously alluded to this exact moment, testifying:

> [C.A.] told me to go get her something to drink because she was thirsty. And I went and got her something to drink in a little flower pattern glass, and she drank half of it and gave me the other half. That's how we always did if one of us had something. One took half and gave the other half. And so she drank out of it and I drank out of it and I put it on the dresser.
>
> *Trial Transcript p. 517.* [1]

Stewart recalled at trial that C.A. became visibly upset after taking the drink, and she made a sarcastic remark about his child he had recently fathered with another young lady. *Id.* C.A. had previously stated in a suicide-styled letter that Stewart needed to "choose" between her and his child. She further stated that if Stewart didn't "choose" her over his child, "then I think I need to leave", which presumably meant kill herself.

Stewart and C.A. laid down together and slept for approximately an hour; then they exited the residence to meet Stewart's friend so that the friend could drive C.A. home. Stewart's plan was for the pair to walk through a path in his parents' backyard,

[1] After C.A.'s death, Stewart suffered from a mental disorder — Dissociative Amnesia — that prevented him from remembering that C.A. committed suicide. This condition persisted for fourteen years. However, at trial, many of Stewart's memories of the details surrounding the suicide remained intact. Stewart's suicide-styled as a continuation of his trial version of events, which has evolved since his mental disorder subsided and he recovered his full memory of C.A.'s death. *See Motion p. 2 Note 2.* This Memorandum represents Stewart's complete memory of C.A.'s death, which combines his trial version of events with his recovered memory that C.A. killed herself.

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which provided a shortcut to his friend's location. However, as Stewart and C.A. approached the path C.A. became very emotional. She tearfully bemoaned her abortion and the birth of Stewart's child—both of which she considered to be the ultimate betrayals. Stewart, aware that each passing moment increased the chances that their secret rendezvous would be discovered by their parents, tried to convince C.A. to keep moving towards their destination. But, C.A. was overcome with emotion and was becoming increasingly immobile.

Suddenly, C.A. collapsed into Stewart's arms and uttered her final words: "I'm back with my baby. I'm happy". *Trial Transcript p. 528.*

C.A. was unresponsive and Stewart was frantic, as he attempted in vain to revive her by giving her CPR. At trial, Stewart testified about these agonizing moments:

> I looked in her face and a little bit of blood was coming out of her mouth... I realized then that something was wrong with her, but I didn't realize it before...I grabbed her and picked her back up...That's when her urine broke...And I knew it was over...I laid her back down slow...I couldn't move. I just sat there for a minute, just sitting there. Like I was shocked...I was like what's going on...So I just sat there for a minute and I didn't do anything...[A]nd then I came back to myself. I was shaking her at first. I just kept shaking her...I was shaking her so hard that I realized how hard I was shaking her. And I was screaming, [C.A.] get up. And I was just shaking her real hard. And then I stopped shaking her. [A]nd I bent down to her mouth and I blew in it. And when I did, it was like more blood came up into my mouth.
>
> *Trial Transcript pp. 528-30.*

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Stewart would later recount that C.A. took her final breath into his mouth while he was attempting to give her CPR. He stated that through this mouth-to-mouth connection he felt her spirit as it left her body.

IV. The Aftermath

As the realization sunk in that C.A. was deceased, Stewart was overcome with two very powerful emotions—fear and confusion. He was in utter shock. It was at this exact moment that he became acutely aware of multiple dogs howling, eerily sounding like they were mourning C.A.'s death. The sound of the dogs howling unnerved Stewart and he fled in a blind panic into his parents' house. He desperately wanted to confide in his parents what he had just witnessed, but he was too afraid. So, he grabbed two flashlights and went to find his friend, Stanton Wright, who had driven Stewart and C.A. to Stewart's parents' house.

At trial, Wright testified that when he encountered Stewart, mere minutes after C.A.'s death, Stewart looked "afraid and confused". *Trial Transcript p. 210-11.* Wright testified that he and Stewart returned to the path where C.A.'s body was located. Though Wright gave conflicting testimony about the conversation that occurred between the two teenagers as they walked towards the body, Wright

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testified with absolute certainty about what he saw when he looked at C.A.'s body.[2] During Wright's cross-examination, the following exchange occurred:

> Q. When we walked around to the path and you saw the body, did it look like she had been treated roughly or?
>
> A. No, not that I can recall.
>
> Q. Did the clothes look like they were ruffled up or?
>
> A. No.
>
> Q. Did she look like she'd been beaten up?
>
> A. No.
>
> *Trial Transcript p. 211.*

Neither of the terrified teenagers thought about calling for help. Wright jumped in his car and abruptly left the scene shortly after seeing C.A.'s body. Stewart rushed back into his parents' home, afraid to be alone with C.A.'s body while it was dark outside.

Once it was daylight, Stewart returned to C.A.'s body. He took her in his arms and held her dead body for hours. At trial, he testified that during this time period, "my mind started slipping". *Trial Transcript p. 542.* Stewart fell under the grip of a

[2] Initially, Wright testified while walking towards C.A.'s body, the only thing Stewart said to Wright was to ask if Wright was his friend. *Trial Transcript p. 194.* Later in his testimony, at the urging of the trial prosecutor, Wright admitted that he had previously written a statement alleging that Stewart told Wright "he flipped" after allegedly being told by C.A. that she had sex with another guy right before meeting Stewart. *Id at pp. 194-96.* During cross-examination, Wright admitted that when he wrote his statement he was telling police what he thought they wanted to hear to spare himself from getting into trouble. *Id at pp. 215-17.* Regardless, [illegible] established at trial that C.A. was with her brother up until shortly before meeting with Stewart, not with another guy having sex. *Supra at pp. 4-5.* In addition, previously undisclosed crime scene notes reveal that the [illegible] crime scene investigator specifically noted that no evidence of a violent struggle was found on the death [illegible]. This evidence reveals it is highly unlikely Stewart "flipped", as claimed by Wright in his written statement.

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mental disorder—Dissociative Amnesia—while holding C.A.'s body in his arms for hours. As a by-product of this mental disorder, Stewart's mind attempted to completely erase the memory of C.A.'s death by erasing the physical reminder of her death—her dead body. To that end, Stewart, in a trance-like state, moved C.A.'s body 50 feet from where she died and attempted to burn the body to ashes. He would later report that the images he saw while looking in that fire will haunt him for the rest of his life.

Stewart was snapped back to the present by the sudden appearance of Robert Moore, a man from his neighborhood. After a brief verbal exchange with Moore, Stewart staggered blindly into his parents' home and dialed 911. He was so overcome with emotion that he could only utter two words to the 911 operator—dead body. Feeling like the walls were closing in on him, Stewart dropped the phone and stumbled to the front porch of the house. It was there that the initial responding officers found him when they arrived on the scene.

Both initial responding officers testified that Stewart appeared "in a daze" and "in a confused state" upon observing him when they arrived on the scene. [3] *Trial Transcript pp. 350; 355-56, 358.* One of the responding officers expounded, during his testimony:

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[3] A forensic psychiatrist diagnosed that Stewart suffered from traumatic shock following C.A.'s death.

> [Stewart] looked more or less like something happened. It looked like [he] didn't know what to do. I mean, people don't normally stick around after they commit a crime. It had something to the affect that [Stewart] did something that [he] didn't mean to do.
>
> *Trial Transcript p. 358.*

Stewart, a scared teenager suffering from a trauma-based mental disorder, did not have a "normal" reaction to C.A.'s suicide. Because of this he was arrested, taken into police custody, and charged with murder.

V. The Letter From Jail

The moment Stewart was placed in jail, a nightmare of endless physical and psychological torture began for him. A female correctional officer, who had a daughter the same age as C.A., relentlessly taunted Stewart with threats that she was going to poison his food. Male correctional officers would mercilessly pummel Stewart for hours, while telling him: "you deserve to die for killing a young girl". The officers would then completely strip Stewart's cell, leaving him in nothing but his underwear. Stewart would try to rest his severely battered body on the cold, hard cement slab until his next beating. This tortuous cycle continued for over a year.

The psychological impact on Stewart from constantly being tormented was that it took a devastating toll on his mental stability. This is evident as an officer documented his baffling conversation with Stewart in the officer's incident report, stating:

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> [Stewart] said that he wanted to talk to me and stated that he was scared and that he had blacked out twice. Once when he flooded out and again when he scratched up his wrist last night. [Stewart] said that it was not like him to harm himself. He said that he thought someone had poisoned his food. I told him that was impossible that the food is watched all the time. [Stewart] said again that he had blacked out and that he was scared...AT [STEWART'S] REQUEST handcuffs and leg irons were put back on him. Inmate Stewart stated that he wanted them [put on him] because he could not trust himself.

The final straw for Stewart occurred when he was placed in a super maximum security cell that was out of order, and was backed up with waste from a busted sewer line. After spending three months living in piles of other people's feces, Stewart would have done anything to make the torture stop. His spirit was broken. His body was emaciated from him barely eating for over a year, and riddled with injuries from the constant beatings he received from correctional officers. His mind was delusional with fear.

It was under these horrible circumstances that Stewart wrote the letter from jail. The State claims this letter, which Stewart wrote in a scripture style, is a confession. However, Stewart, who was delusional from extreme grief and torture, wrote this letter not as a confession but for two very personal reasons: 1) to commit "legal suicide" in his case to atone for C.A.'s death, and 2) to stop the torture he was receiving from correctional officers. Though stated indirectly, he stated both these reasons in the introduction of the letter:

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> **As a young man, my wisdom and understanding left me, in that I knew that which was but couldn't understand it.** *(I knew C.A. had died but couldn't understand it)* **In that day truth was given to the multitude who received it not.** *(That day I told the truth to people who didn't believe it).* **I was sent to give that which was taken** *(I'm giving my life for C.A.'s life)* **by taking that which was given** *(by taking back the truth I gave)* **so that the bloodshed would satisfy the sinful hearts of the multitude** *(so that it will stop the torture)* **and unbalance the scales that were once balanced** *(and result in my unjust conviction).*
>
> *Trial Transcript p. 455. (Actual letter in bold, meaning in parentheses).*

Stewart, who was delusional at the time, felt that the letter would cause him to receive a life sentence, and by "losing his life" he would atone for C.A.'s death. Additionally, the part of the letter the prosecution claimed is a confession was proven to be false by the testimonies of two prosecution witnesses—Dr. Harley and Robert Moore. According to the letter, Stewart "laid his hand upon [C.A.'s] neck and slew her". *Trial Transcript p.458.* However, Dr. Harley, responding to the trial prosecutor's questions, in reference to this part of the letter, testified as follows:

> Q. Now in your report, you talked about--you break it down into sections. You've got the neck, etc. You stated in the neck that there was no abnormalities, that the hyoid bone and larynx were intact?
>
> A. The importance in stating that if someone was strangled, often the hyoid bone is broken. It was not broken in this case. If there had been any external injury, we really couldn't see it.
>
> Q. Okay so relative to the strap muscles there, you really couldn't see that clearly?
>
> A. That's correct.
>
> Q. But the hyoid bone was not broken?
>
> A. That's right. Yes, sir.

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Trial Transcript p. 165.

Similarly, according to the letter, Stewart was singing and dancing while watching the fire burn the body. However, Robert Moore, a prosecution eyewitness who observed Stewart in the act, gave the following testimony:

> Q. Okay. Now, when you came through the path and you saw me, where was I at?
>
> A. Standing by a fire by the barn.
>
> Q. Was I jumping around or anything like that?
>
> A. No. Not when I [saw] you standing by the fire.
>
> Q. Singing and dancing, anything like that?
>
> A. No.
>
> Q. Just standing there?
>
> A. Yes.
>
> Q. When I came to the front porch, I was shaking real bad; is that correct?
>
> A. Yeah.
>
> Q. Did I seem angry?
>
> A. No. It was more like scared or something like that.
>
> *Trial Transcript p. 250.*

Stewart wrote the letter from jail while in an altered state of mind resulting from him being subjected to prolonged physical and psychological torture, and him suffering from extreme fatigue and hunger. The letter is not a true version of events, but a

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confession, but is rather the inconsequential ramblings of a mentally broken man who would do anything to end his torture.

VI. The Present

Stewart was convicted following a jury trial and sentenced to 39 years in prison. The early years of his incarceration were spent in the most dangerous prisons in the state. In his younger years, Stewart struggled with disciplinary issues primarily stemming from his PTSD, which, in those years, was undiagnosed. However, as he got older and learned more coping skills, his disciplinary infractions became far less frequent. Stewart has not received any disciplinary infractions for the past six years; he has earned a minimum custody level and he has also earned the trust and the respect of the staff at his current prison.

The turning point in Stewart's life began in 2014, when he met his wife. He enrolled in various prison programs where he received certifications and work experience. Since 2017, Stewart has been a member of Toastmasters International and he has received advanced training in communication and leadership skills. He is a certified facilitator who has assisted numerous fellow inmates with achieving their GED, and he serves as a mentor to younger men, encouraging them to use their time incarcerated to prepare to return to society as productive citizens.

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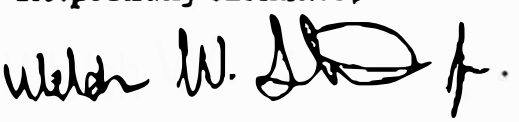
Stewart is also an avid animal advocate who spearheaded an initiative to rescue stray cats at his current prison. Within six months at the prison, he had gained enough support from the prison staff and the community to launch a cat rescue program on March 7, 2024. As of the date of this filing, a month into the program, Stewart and a team of animal advocates have raised over $3000 in funding for the cats, spayed/neutered 19 cats, and have adopted out 6 cats into loving homes. Stewart and the advocates have also saved the lives of 3 cats, who would have died if not for receiving lifesaving medical treatment funded through the program.

VII. Conclusion

Stewart submits these extraordinary circumstances as additional grounds in support of the Court granting his Motion.

April 12, 2024.

Respectfully submitted,



Weldon W. Stewart Jr. # 295095
Trenton Correctional Institution
[redacted]
Trenton, SC 29847

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Weldon Stewart, Jr., #295095, Applicant, v. State of South Carolina, Respondent.	CASE NO. 2023-CP-34-00282 **CERTIFICATE OF SERVICE**

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 this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss and Return to Motion for Discovery** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Weldon Stewart, Jr., #295095 (1A-0054-A)
Trenton Correctional Institution
[redacted]
Trenton, SC 29847

DATED this 24th day of March 2024.

D. Russell Barlow II

D. RUSSELL BARLOW, II
Attorney for Respondent

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Weldon W. Stewart, Jr., #295095, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023-CP-34-00282 **RETURN AND MOTION TO DISMISS AND RETURN TO MOTION FOR DISCOVERY** (Appointment of Counsel Not Requested)

In response to Weldon W. Stewart, Jr.'s (Applicant) application for post-conviction relief (PCR), which commenced on October 30, 2023, Respondent, the State of South Carolina, makes the following return and moves to summarily dismiss this application as untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 *et seq.* (2014). Respondent respectfully offers the following in support of its Return and Motion to Dismiss:[1]

[1] Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court).

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[2] 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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[2] 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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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, 421 Fed.Appx. 633 (4th Cir. 2011).

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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:

1. Juror Misconduct
2. Qualifications of the forensic pathologist that testified in the trial of this matter.
3. Dissociative Amnesia

(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[3] to those raised in the present application for relief. The 2018 motion appears to remain pending on the Marlboro County Public Index

SECOND PCR ACTION AND SUBSEQUENT APPEAL: 2018-CP-34-00121

In his *second* untimely post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (excerpted verbatim):

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[3] The motion's text is, as best as the undersigned can compare, perfectly identical to the first 19 pages to the brief submitted with the 2018 PCR action.

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 months of September and December 2014, Ms. [redacted]tewart 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

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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."

On July 12, 2019, the State filed its Return and Motion to Dismiss. A hearing was held on August 22, 2019, before the Honorable Brooks P. Goldsmith on Applicant's motion for discovery and Respondent's motion to dismiss. Applicant was represented by retained counsel Tommy A.

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Thomas, Esquire. Assistant Attorney General Johnny E. James, Jr., represented the State. At the conclusion of the hearing, Judge Goldsmith denied Applicant's motion for discovery and granted the State's motion to dismiss. Mr. Thomas placed a motion to reconsider on the record and the State reasserted its defenses. Judge Goldsmith denied the motion to reconsider. On December 9, 2019, Applicant filed his motion for reconsideration. Judge Goldsmith denied Applicant's motion by filed order on January 9, 2020.

Applicant filed a timely Notice of Appeal. On June 20, 2020, Mr. Thomas filed a motion to be relieved as Applicant wished to proceed in his appeal *pro se*. On July 10, 2020, Mr. Thomas filed the Explanation Pursuant to Rule 243(c), SCACR. On August 10, 2020, the South Carolina Supreme Court dismissed the appeal for failing to show a n arguable basis for asserting the determination of the lower court was improper. Mr. Thomas filed a Motion to Reinstate on August 24, 2020. That motion was denied by filed order on October 19, 2020. The Remittitur was returned to the circuit court on October 19, 2020.

FEDERAL HABEAS PETITION: 21-278

Applicant subsequently filed a *pro se* Motion Under 28 U.S.C. § 2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255. In his motion, Applicant set forth the following grounds for relief:

1. Alleged newly discovered evidence of a Brady violation that the State concealed evidence establishing that the injuries the State claimed killed Victim were not produced until after Victim's death.
2. The State knowingly presented false testimony from the State's pathologist, Dr. Russell Harley, that Victim's injuries conclusively established death by blunt force trauma, which he alleges the State failed to correct, and that the State suppressed evidence showing the testimony of the pathologist was false.
3. The State concealed evidence found in the crime scene notes written by SLED Agent Al Stuckey containing observations

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made by the crime scene investigator while on the scene, which strongly contradicted the State's case against Applicant.

On December 1, 2021, the State filed its response to Applicant's motion. On December 7, 2021, Applicant filed his reply to the State's response to the motion. On March 9, 2022, the United States Court of Appeals for the Fourth Circuit appointed Dawinder Sidhi to represent Applicant.

On July 25, 2022, Applicant filed his Opening Brief in support of his motion and argued the following:

1. Dissociative Amnesia is a Bona Fide Mental Disorder Exhibited by Mr. Stewart.
   A. Dissociative Amnesia Has Been Long Recognized by the Medical Community.
   B. Dissociative Amnesia Has Been Long Recognized by the Courts.
   C. Mr. Stewart Exhibits Dissociative Amnesia.
   D. The Recovered Memories Constitute Newly Discovered Evidence Under Section 2244.
2. No Reasonable Factfinder Would Convict Mr. Stewart and the Evidence Establishes His Actual Innocence.
   A. The Repressed Memories Establish an Alternative Version of Events that Undermines the State's Theory.
   B. The Repressed Memories Establish Movant's Actual Innocence.
3. The Newly Discovered Evidence Could Not Have Been Discovered Through the Exercise of Due Diligence.
4. The Exclusion of the Newly Discovered Evidence is a Constitutional Error

On August 29, 2022, the State filed its Response Brief Opposing Motion for Authorization Pursuant to 28 U.S.C. § 2244. On September 14, 2022, Applicant filed his reply to the State's response. On January 26, 2023, oral arguments were held before the Fourth Circuit Court of Appeals Judges Roger L. Gregory, Pamela A. Harris, and A. Marvin Quattlebaum, Jr. Applicant was represented by Ciara Barone and Walker Fortenberry. Senior Assistant Deputy Attorney General Melody Jane Brown represented the State.

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On August 21, 2023, by published opinion, the Fourth Circuit Court of Appeals denied Applicant's motion to file a successive federal habeas. In re Stewart, 78 F.4th 690 (4th Cir. 2023).

FACTS ADDUCED AT TRIAL LEADING TO CONVICTION

As Applicant admitted in his 2018 federal habeas motion for authorization, "From the onset of the case, there has been no dispute that (1) [Applicant] was present at the time of Victim's death, and (2) [Applicant] set Victim's body on fire a few hours after death." (USCA4 Appeal: 21-798, Doc. 2 at 6-7). [Applicant] also asserts that "[t]he sole dispute in this case from the beginning revolved around how the Victim died." Id. Applicant presented a defense of accident.

Applicant opted to represent himself at his jury trial held July 28-August 1, 2003. The local public defender acted as standby counsel. Prior to trial, on October 17, 2002, Applicant was arraigned on both charges and pled guilty to the desecration charge. Applicant also, at that time, challenged the wording of the murder indictment, which included "burning" as a possible method of death, asserting that the autopsy report reflected "death was caused by blunt trauma to the head." (Oct. 17, 2002, Tr. pp. 5-7). No action on the murder indictment challenge was taken at the October 2002 proceedings.

During pre-trial proceedings in December 2002, Applicant moved to interview the autopsy pathologist. Applicant indicated that he had reviewed the autopsy report and noted the stated cause of death was blunt force trauma. It did not indicate anything about a possibility that the cause of death was burning, yet he argued that the prosecutor had indicated that possibility in the indictment. (Dec. 11, 2002, Tr. pp. 6-11). The judge inquired whether Applicant would like to re-think having counsel, "who could not only interview this pathologist, but [could] find another pathologist?" Id. at 12. Applicant declined, and the judge ordered that Applicant be provided an

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opportunity to personally interview the autopsy pathologist concerning his opinion on the cause of death. (Dec. 11, 2002, Tr. pp. 6-13).

In a June 2003 hearing, Applicant again asserted that he had reviewed the autopsy report, and it reflected an opinion of death by blunt force trauma, but that the indictment still included burning, which he argued was inconsistent. (June 26, 2003, Tr. pp. 22-26). Applicant declared: "it is the contention of the defense that the victim's death was unintentional." Id. at 26. Applicant moved for a forensic pathologist to assist him. Id. at 22-23. The prosecution noted Applicant had not yet spoken to the autopsy pathologist but would be able to do under the prior order of the court. Id. at 24. While the judge denied Applicant's motion at the time, the judge cautioned that he would "not ... contend that [Applicant] cannot bring it back up but," rather, he thought it was prudent to wait for Applicant to complete the interview. He explained that after Applicant interviewed the autopsy pathologist, that "may or may not leave [Applicant] needing to come back and renew [the] motion...." Id. at 29-30. Applicant did not renew the motion.[4]

At trial, Applicant repeatedly told the jury he was the only surviving witness to what happened which he described in detail to be an accident. (Trial Tr. pp. 117-118; 407-416; 666; 692.[5] The jury, during deliberations, even requested to rehear Applicant's very descriptive opening statement that included statements and assertions such as:

- "I'm going to show you that on the morning of December 6, 2000, my girlfriend's death was accidental";

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[4] Applicant admitted in his 2018 federal habeas motion for authorization that he later interviewed the pathologist and that, because the State removed the allegation in the indictment subsequently, Applicant "believed that the matter for which he had requested a forensic pathologist had been resolved." (USCA4 Appeal: 21-798, Doc. 2 at 19).

[5] Consistently, Applicant also argued to the trial court in challenging the admission of certain evidence: "The only issue is whether the death of Ms. Allen was intentional or unintentionally caused by myself." (Trial Tr. 339).

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- That, though the minor victim's parents had tried to stop her contact with Applicant, she had quietly left her house that night voluntarily to clandestinely meet with Applicant for sex;
- That Applicant admitted that they "did get into a little argument that night" prior to her death; That the victim resisted leaving him and that "[s]he never wanted to go back home when it was time for her to go back home";
- That Applicant "was just trying to convince [his] girlfriend that she needed to go back home ... but she was upset," and he eventually "picked [victim] up to try to carry her" but "she was twisting and turning. She wasn't ready to go back home" then Applicant "tripped and fell with her in [his] arms over one of the sticks in the path." Applicant told the jury he "fell on top of her. This was an accident" a serious accident, "and she lost her life as a result of this accident."

(Trial Tr. pp. 745-751).

In his trial testimony, Applicant further asserted that the victim had previously been pregnant by Applicant but had an abortion that she regretted. (Trial Tr. p. 506). Applicant claimed they were attempting to have another child. Id. at 507. However, he asserted that on the night of her death, the victim became morose when Applicant showed her a "memorial" to the child she had aborted. Id. at 521. Applicant testified he was in the process of taking the young victim back home and, while walking down a wood-lined path, the two began to argue. According to Applicant, the victim pulled out a box cutter and swung it towards him a couple of times. He grabbed her arm, spun around behind her, and picked her up. Id. at 521-26. He claimed he was attempting to carry her, but she was not calming down, and she began to twist around. Id. at 525-26. Applicant claimed he caught his right foot "on something" and then "stumble[d]" and eventually fell. According to Applicant, the victim fell out of his arms, and he fell on top of her. Id. at 527.

Applicant testified that "she turn[ed] over and she [sat] up." Id. Applicant asserted that though she would "usually just jump[] right back up" if she fell, this time she did not stand. Applicant testified that instead, she twice called his name and asked for help, thinking it was

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a "hard to get" ploy, Applicant did not respond. Id. at 527-28. Applicant testified that "the third time ... when she called my name it sounded like – it sounded like she's getting scared, but her voice was low." Then, "she was like Stew, I'm happy. I'm happy. I'm happy ... back to my baby," at which point she fell over, making "strange sounds" that "didn't sound human." Id. at 528. Applicant testified that he saw blood coming from her mouth, "realized something was wrong with her," and started toward a nearby home. Id. at 528-29. As he carried her, he smelled urine and a bowel movement, then laid her back down. Id. Applicant testified he was dazed, then began to shake her, and "bent down to her mouth and tried to blow in it," but stopped as blood came into his mouth. Id. at 530. Applicant testified that he left to find his friend "Bo" (Stanton Wright). Applicant had a beer and was looking for his cigarettes when he saw Wright driving nearby. Id. at 531. When he connected with Wright, he took him to see the body. Id. at 531-33. Applicant claimed that he told Wright that he had tripped in explanation of what happened. Id. at 534.

Forensic pathologist Dr. Russell Harley testified at trial concerning the findings from the autopsy.[6] Dr. Harley testified that the body was "badly charred on the outside," but he could examine the remains internally for signs of trauma. Though there were multiple broken bones, he could differentiate between those caused by the fire and those inflicted before the fire because he could look for signs of bleeding. (Trial Tr. p. 163). Dr. Harley ruled out injury for certain fractures due to the lack of bleeding, attributing the brokenness to the heat of the subsequent fire. Id. However, in the skull, he found evidence of trauma:

[6] At the time of trial, Dr. Harley testified that he had 30 years of experience in the Pathology Department at the Medical University of South Carolina and had been qualified as an expert in forensic trials multiple times, specifically approximately 6 times in "forensic homicide trials." (Trial Tr. pp. 159-160). Applicant did not object to Dr. Harley's qualification as an expert in forensic pathology. Id. at 161.

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> In the skull, in the right-hand side under the parietal bone ... 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 a subdural hemorrhage as well so there was a big blood clot in the ear.

Id. at 163-64. Dr. Harley agreed that this finding contributed to his finding of blunt force trauma, but he could not opine on what "hit her head or" what "her head hit." Id. at 164. Dr. Harley opined "something cracked her skull" and she had internal bleeding. Id. Because her body was so charred and damaged from the fire, he could not opine on external bleeding, bruises, or defensive wounds. Id. at 164-65. Dr. Harley found, however, that the hyoid bone and structures around that area were intact or revealed no abnormalities, so there was no evidence of strangling. Id. at 165. Dr. Harley concluded that his opinion of the cause of death was "blunt force trauma to the right parietal." Id. at 166.

Under cross-examination by Applicant, the doctor agreed that it was possible that the skull fracture could have occurred as a result of a fall. Id. at 167-68. Dr. Harley explained that even though the body was burned such that they could not see the surface, he did see a fairly sizable skull fracture. It may have been enlarged because of the heat, he stated, but the fracture was caused by something hitting the victim's skull. Id. at 168.

On redirect, the pathologist stated the victim would have had to fall on something hard enough, like a root or a rock, for such injury, but did not think "ordinary turf" would have caused it. Dr. Harley opined a branch may have been able to cause that type of injury, noting the victim had "a small, thin skull, and it wouldn't take a whole lot of force to fracture it." Id. at 169.

On re-cross by Applicant, Dr. Harley confirmed that victim had to fall hard enough to fracture the skull. Dr. Harley stated it was unlikely, but possible, that it would be caused if she fell by herself, but acknowledged that it would be more probable if she were to fall and Applicant fell on top of

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her. Dr. Harley opined that the victim would have had to hit something "fairly large" to cause a fracture the size of a lemon, as observed, and most likely "something about six inches wide by six or more inches long." Id. at 169-71.

Stanton Wright testified and confirmed that Applicant called him and that he went to meet Applicant at Applicant's request. Wright recalled that Applicant provided two flashlights, and together they walked toward the wood-lined path. Wright testified that on the way, Applicant asked if Wright was his "homeboy, right?" Id. at 192-94. Applicant shined a light on the victim's body, and Wright became upset. Id. at 193 and 197. Wright, who was demonstratively hesitant at trial, was asked to read his prior statement to police, which reflected, "As we walked towards the path, he told me that [the victim] said that she had sex with another dude before she had sex with him and she didn't shower. And then he - - and then he said that he flipped." Id. at 196. Wright testified that Applicant asked him to help Applicant move the victim's body. Id. at 201.

On cross-examination by Applicant, Wright agreed that the victim appeared to want to see Applicant when they were initially meeting that night and did not appear "upset about anything." Id. at 207-08. Though on cross-examination, Wright also agreed with Applicant when asked if Applicant could have said "tripped" instead of "flipped" (Id. at 212), when pressed on redirect, Wright testified, "If I recall, he said he flipped." Id. at 219. Wright testified that he did not see the victim's "head area" when Applicant showed him the body. Id. at 221. Wright further testified that he never saw victim with a box cutter. Id. at 222.

Anthony Watson, who was in school with the victim at the time, was in a relationship with the victim around the time of her death. Anthony testified not only that Applicant had threatened him (calling multiple times) but also that he heard Applicant on a phone call threatening the victim should she see another man. Id. at 302-03; 305-06. Anthony stated Applicant was angry because

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victim was seeking another man. Id. at 304-05. Anthony confirmed that he had been intimate with the victim for a "[m]onth or longer" before she died. Id. at 307. Anthony testified that he also received threatening calls after Applicant was in jail, indicating Anthony was "next and all that." Id. at 305-06.

Deloris Watson, Anthony's mother, similarly testified about phone calls to her son. Deloris testified that on one occasion, she picked up the home phone, heard an announcement from a correctional institution or detention center, and heard "you next." Deloris testified that she listened to several of Applicant's calls to her son where "he was fussing about the next time, you're on your way, too," and also heard in one call,"[t]he next time you leave the house, you better tell your mother you won't see her no more. ... You better kiss her before you leave." Id. at 316-18; 322; 325. Deloris clarified on redirect that she received calls from Applicant at her home both before and after the victim's death. Id. at 328.

Officer John Boston testified Applicant first told him that Applicant and the victim "got into an argument" at approximately 4 a.m. while on a path behind Applicant's house, and "that she pulled a knife on him." Id. at 376. As he tried to hold her, the victim fell, and Applicant heard a "popping sound," then he fell on top of her. When he tried to pick the victim up, she was "limp," was not moving, and was unresponsive. Id. "[Applicant] mentioned something about she had got mad about another female." Id. In a written statement, Applicant claimed the victim had a razorblade but reiterated they had struggled. He then claimed he tripped and fell on top of the victim. Id. at 381. The officer testified that Applicant stated that after he went home and got a flashlight, he had assumed she was dead because he had "checked her heartbeat and pulse before [he] left where she was lying." Id. at 381-83.

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Officer John Valdaleso testified that he spoke to Applicant when he responded to a call for police aid at Applicant's house after Applicant burned the body. According to the officer, Applicant insisted that he wanted to tell Officer Valdaleso what happened, and Applicant declared that he and the victim had an argument, that she fell and made "funny sounds," he then walked to his house, but, when he later returned, she was no longer breathing. Applicant told the officer he panicked and tried to dispose of the body. Id. at 402-05.

Officer Dallas Gurley testified to one writing from Applicant mailed to her and one Applicant hand-delivered. The mailed document indicated Applicant was enraged over the victim's involvement with another man. Id. at 457. The other document indicated the possibility of shifting blame to another and suggestions on how to interview for favorable facts even though Applicant had not previously indicated someone else may have killed the victim. Id. at 463; 468-73.

Also of note, Applicant questioned Monique Bright, who was in the car with Applicant and Wright when they picked up the victim, about the victim's mood. Bright testified, in response to Applicant's own questioning, that victim was "happy" she and Applicant "were playing around." Id. at 237.

CURRENT APPLICATION

On October 30, 2023, Applicant *untimely* filed his application for PCR in which he alleges the following:

1. Trial Court Lacked Subject Matter Jurisdiction
   a. [Applicant] has discovered new evidence establishing the strong probability that C.A., the deceased person in this case, committed suicide a year after being forced by her mother to undergo a partial birth abortion. [Applicant] believes C.A. committed this act by secretly ingesting something, while she distracted him by asking him to get her something to drink. If C.A. committed suicide, then [Applicant] did not

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commit a crime related to her death. Therefore, the criminal court lacked subject matter jurisdiction in this matter, simply because no crime was committed.

2. Actual Innocence
   a. It is unconstitutional for [Applicant], an innocent man, to be subjected to the punishment of a person who has been "duly convicted." As such, [Applicant]'s incarceration violates USCA Const Amend 13 § 1.
3. Mental Incompetence
   a. [Applicant] was tried while he was suffering from dissociative amnesia, a mental disorder that severely impaired his factual recall of events. Therefore, [Applicant] was unable to assist with his defense, or to provide crucial details that would have exonerated him. [Applicant]'s trial, which was held while he was in this incompetent mental state, was fundamentally unfair.

Attached to Applicant's PCR application was a "Motion to Proceed *Pro Se* with Appointed Standby Counsel."

Applicant seeks relief in the form of "[Applicant]'s sentences for voluntary manslaughter and desecration of human remains to be vacated, the Court to order for [Applicant]'s record to be expunged, and [Applicant]'s full rights to be restored to him as a United States citizen."

Attached to this Return and Motion to Dismiss are the Marlboro County Clerk of Court records regarding the subject's convictions; Applicant's records from SCDC; Applicant's guilty plea transcript and trial transcript; Applicant's appellate records; Applicant's records from his prior PCR actions; Applicant's records from his prior federal habeas actions; and the records of the current PCR action. Respondent reserves the right to amend this return upon receiving any relevant materials.

MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact, which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, Respondent requests that this

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Court issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.[7] See S.C. Code Ann. § 17-27-70(b) (establishing the procedure for summary disposition of PCR applications); 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); Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for the appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[8] Specifically, the Act requires as follows:

> (A). 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 upon an appeal, whichever is later.
>
> (B). When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

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[7] A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

[8] S.C. Code Ann. § 17-27-10 to -160.

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> (C). If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter 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.

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 the statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, 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."

In the present case, Applicant is alleging he is entitled to post-conviction relief based on multiple allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant pleaded guilty, had a trial, and was sentenced on August 1, 2003. Applicant did pursue a direct appeal, and the Remittitur was returned on May 23, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-conviction relief on or before December 2, 2021. Applicant did not file this PCR application until May 24, 2006, *seventeen years, five months, and six days* beyond the statute of limitations.

Accordingly, this application is *untimely* pursuant to S.C. Code Ann. § 17-27-45 and should be dismissed for failure to file within the time mandated by the Uniform Post Conviction Procedure Act.

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SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

The Application should be summarily dismissed because it is successive to Applicant's previous *two* PCR applications. 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 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 Applicant could have raised these allegations in a previous application, then 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).

Applicant's current allegations *were or could have been* raised in the proceedings based on Applicant's prior applications 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-

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conviction relief. Therefore, he has failed to meet the burden imposed upon him.

Therefore, the Application should be summarily dismissed as successive to Applicant's previous PCR applications.

SUMMARY DISMISSAL BASED ON THE DOCTRINE OF RES JUDICATA

Additionally, this application is barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits of a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate any and all his allegations in his *first* and *second* PCR actions and in his federal *habeas* actions. The prior PCR Courts and federal courts issued final judgments on the merits of the same or similar issues Applicant raises in this successive action. The finality of the previous court's rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

SUMMARY DISMISSAL BASED ON SUBJECT MATTER JURISDICTION

Applicant's allegation that the trial court lacked subject matter jurisdiction because he is innocent should be summarily dismissed. Respondent submits that Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless.

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 354 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 538, 540 S.E.2d

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846 (2001). In this case, Applicant was indicted by the Richland County Grand Jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity because the indictments in question are sufficient on their face. Therefore, Respondent would move to dismiss this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003) because there is no issue of material fact relating to this allegation, and it should be dismissed as a matter of law.

SUMMARY DISMISSAL BASED ON THE EQUITABLE DOCTRINE OF LACHES

The application should also be dismissed as barred by the equitable doctrine of laches. To ensure the 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. 139, 142, 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

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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 two decades 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*.

SUMMARY DISMISSAL BASED ON NEWLY-DISCOVERED EVIDENCE

Applicant's assertion that he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to PCR, is without merit. The Uniform Post-Conviction Procedure Act states that a person may institute a PCR 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 a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the

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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). Otherwise, a PCR must be filed within one year of sentencing or, if a direct appeal is filed, within one year of the remittitur. S.C. Code Ann. § 17-27-45(A).

In his current application, Applicant claims that he discovered on March 7, 2023, that counsel did not file a Rule 5, SCRCrimP, for his discovery. However, Applicant's contention that counsel did not have his discovery is wholly refuted from the guilty plea and first PCR action records. A party requesting a new trial based on newly-discovered evidence 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.

Clark v. State, 315 S.C. 385, 387–88, 434 S.E.2d 266, 267 (1993); see Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (setting forth the five factors to be analyzed when considering a newly-discovered evidence claim) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979))). However, the granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011); see also State v. David, 14 S.C. 428, 432 (1881) ("There can be no doubt that motions of this sort should be received with the utmost caution, because, as it is said by a learned judge, they are but few cases tried in which something new may not be hunted up . . .").

Initially—and critically—Applicant's allegations are not newly-discovered and these allegations have been raised before the courts in his previous PCR actions and federal habeas

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action to which those courts ruled on those matters. Turning to the Clark factors, Applicant fails this test because, with due diligence, Applicant could have discovered his claim before his trial, after his trial, and before his first PCR action. See, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing 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 a *prima facie* showing of newly-discovered evidence. Because his claims do not meet the high threshold of newly-discovered evidence, they are barred by the one-year statute of limitations set forth in S.C. Code Ann. § 17-27-45(A). Thus, Applicant is not entitled to an evidentiary hearing, and this matter should be summarily dismissed.

RETURN TO APPLICANT'S MOTION FOR DISCOVERY

Applicant has also requested to invoke the discovery process and more specifically, has requested the court issue an order allowing him to obtain access to MUSC autopsy files in this case. Applicant also requests leave to conduct a "full spectrum of discovery" in this case.

The Uniform Post-Conviction Procedure Act allows for discovery in a non-capital PCR case with good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

> A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the process 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. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

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However, as discussed *supra*, Applicant's claims lack merit, and therefore, Applicant cannot establish good cause to obtain discovery in an action that is procedurally barred and should be summarily dismissed. Accordingly, Respondent requests that the Court deny his motion to conduct discovery.

FRUSTRATION OF FINALITY OF CONVICTIONS

As a final matter, both the United States Supreme Court and the South Carolina Supreme Court have emphasized the necessity for finality of litigation in criminal cases. The Court in Aice explained that:

> 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 defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. . . . [Here], Aice seeks to have more than one procedural "bite" at the apple. Aice has filed an original PCR application, and has been allowed to seek review of the ruling against him. We refuse to grant his request for a second chance, and again we do so in order to effectuate the purposes of the Act and rules.

305 S.C. at 451–52, 409 S.E.2d at 394–95 (citations omitted).

The United States Supreme Court has explained that "the principle of finality . . . is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." Teague v. Lane, 489 U.S. 288, 309 (1989). "Relitigation of a conviction is a rear-view mirror, while a respect for finality encourages those in custody to contemplate the future prospect of 'becoming a constructive citizen.'" United States v. Fugit, 703 F.3d 248, 252 (4th Cir. 2012) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 262 (1973) (Powell, J., concurring)). In his concurring and dissenting opinion in Mackey v. United States, Justice Harlan wrote:

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> Finality in the criminal law is an end which must always be kept in plain view.... At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.

401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). Seven years after Mackey, the South Carolina Supreme Court quoted Justice Harlan's opinion with approval in Anderson v. Leeke, 271 S.C. 435, 441–42, 248 S.E.2d 120, 123 (1978). Applicant's attempt to relitigate his convictions and sentences through this successive and time-barred application is contrary to the recognized need for finality of litigation.

|CONCLUSION PAGE FOLLOWS|

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CONCLUSION

WHEREFORE, the State moves to summarily dismiss the application because it is untimely, barred by the statute of limitations, successive to Applicant's previous applications, barred by the doctrine of *res judicata*, barred by the equitable doctrine of *laches*, for failing to make a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Act, S.C. Code Ann. § 17-27-10 et seq. (2014).

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
	)	2023-CP-34-00282
WELDON W. STEWART JR. #295095	)	
V.	)	**RESPONSE TO PROPOSED CONDITIONAL ORDER OF DISMISSAL AND DENIAL OF DISCOVERY**
STATE OF SOUTH CAROLINA	)	

INTRODUCTION

Stewart initiated this PCR action claiming that C.A., the deceased person in this case, committed suicide, and, because of this, he is actually innocent and the trial court lacked subject matter jurisdiction to try and punish him for any crime related to C.A.'s death. At this preliminary stage, and based on these claims, the Court needs only to consider two questions:

1) Has Stewart made a prima facie showing that C.A. committed suicide?

2) If true, would this factual allegation entitle Stewart to relief?

Stewart will demonstrate that he has made a prima facie showing that C.A. committed suicide, which would entitle him to relief on the basis of his actual innocence and because the trial court lacked subject matter jurisdiction.

Stewart will further demonstrate that it premature for the Court to consider Respondent's request for summary dismissal and that such consideration should be

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deferred until discovery has been completed, both as a matter of law and in the interests of justice.

BACKGROUND

Stewart's PCR application was filed on October 30, 2023. With the PCR application, Stewart filed a motion to proceed pro se with appointed standby counsel. On April 1, 2024, Stewart filed a Motion for Leave to Conduct Discovery ("Motion"), in which he presented grounds that warrant this Court permitting discovery in this action. On April 18, 2024, he filed a Memorandum of Facts ("Memorandum"), wherein he provided a detailed factual statement in support of the Motion.

Respondent filed a Return and Motion to Dismiss ("Return") the application on May 3, 2024. Respondent also drafted and submitted a proposed Conditional Order of Dismissal ("Conditional Order") to this Court for signing.[1]

As of date, the Court has not signed the Conditional Order. Therefore, Stewart submits this response to the Conditional Order hereby objecting to it, requesting that the Court not sign it, and requesting that the Court grant Stewart's Motion, based on the following:

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[1] Respondent drafted the Conditional Order in language substantially identical to the language in its Return. Therefore, Stewart will only reference the Conditional Order unless there is distinctive language to reference in the Return.

STANDARD OF REVIEW

"Summary dismissal without a hearing of an application for post-conviction relief is appropriate only when (1) it is apparent on the face of the application that there is no need to develop any facts and (2) the applicant is not entitled to relief". *Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (S.C. 2017).* "When considering the State's motion for summary dismissal of a motion for post-conviction relief, where no evidentiary hearing has been held, the post-conviction judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant". *Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C. 2016).*

FACTUAL AND LEGAL GROUNDS

Stewart brings this PCR action pursuant to S.C. Code 1976 § 17-27-20 (A)(1)(2)(4). Stewart's constitutional claims arise out of the Due Process Clause of the Fifth and Fourteenth Amendments, which protect an accused against conviction unless the State provides proof beyond a reasonable doubt of each element necessary to constitute the crime with which the accused is charged. This is consistent with the Constitutional provisions in our state. See *S.C. CONST Art. 1 § 3.* The claims further arise out of the Thirteenth Amendment (ratified by South Carolina November 13, 1865), which protects citizens of the United States from being subjected to slavery

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or involuntary servitude, unless the citizen is being punished for a crime after being "duly convicted".[2]

The facts presented by Stewart in this action establish that C.A. committed suicide on the one-year anniversary of a horrific partial-birth abortion, which she was forced to undergo by her mother. *Motion pp. 1-2; Memorandum pp. 1-3.* C.A. was between 16 and 20 weeks pregnant when she had the procedure. *Id.* This procedure—which involved the killing of a partially delivered, live baby—was illegal in South Carolina. Later, a national ban on partial-birth abortions was enacted upon a finding of congress that the procedure is "inhumane" and "gruesome". *Motion p.1 n. 1.* Stewart maintains that C.A. committed suicide "by secretly ingesting something while she distracted him by asking him to get her something to drink". *Id at pp. 1-2; Memorandum p. 5.*

As a legal basis for his subject matter jurisdiction claim, Respondent quotes Stewart as stating:

> If C.A. committed suicide then [Stewart] did not commit a crime related to her death. Therefore, the criminal court lacked subject matter jurisdiction in this matter, simply because no crime was committed.--
>
> *Conditional Order p. 10.*

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[2] Stewart raised a third claim alleging that he was incompetent to stand trial [illegible] and plead guilty to desecration of human remains. However, this claim is not relevant to the request for discovery and it may be deemed unnecessary once discovery is complete.

Subject matter jurisdiction is the power of a court to hear and determine cases. *Pierce v. State*, *338 S.C.139, 526 S.E.2d 222 (2000)*. Stewart's position is consistent with the South Carolina Supreme Court's holding that criminal courts only "have subject matter jurisdiction to try criminal matters". *State v. Gentry*, *363 S.C. 93, 610 S.E.2d 494 (S.C. 2005)*. And that the corpus delicti of a crime is the determining factor as to whether a crime has been committed. *State v. Teal*, *225 S.C. 472, 474, 82 S.E.2d 787, 788 (1954) ("[C]orpus delicti means, when applied to any particular offense, that the specific crime has actually been committed")*.

Stewart was indicted for murder and convicted of voluntary manslaughter. The corpus delicti of these crimes mandates that a person's death must be caused by the criminal conduct of another person. *State v. Martin*, *47 S.C. 67, 25 S.E. 113 (1896) ("[C]orpus delicti consists of two elements: the death of a human being, and the criminal act of another in causing the death")*. The fact that C.A. took her own life would preclude establishing the corpus delicti of murder, or manslaughter, because a person who took her own life was not killed by the "criminal act of another" *State v. Martin*, *supra*. Thus, these facts would establish that no crime was committed related to C.A.'s death, and that the trial court lacked subject matter jurisdiction.

The implication arising from Stewart's claims is that the order of the trial court committing him to the South Carolina Department of Corrections ("SCDC") is void

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due to a lack of subject matter jurisdiction. *Gainey v. Gainey, 382 S.C. 414, 424, 675 S.E.2d 792, 797 (Ct.App.2009) ("A judgment of a court without subject matter jurisdiction is void... ")*. Respondent's sole contention is that Stewart "cannot show any irregularity because the indictments in question are sufficient on their face". *Conditional Order p. 15.*[3] However, the South Carolina Supreme Court held that "subject matter jurisdiction of the circuit court and the sufficiency of indictment are two distinct concepts". *State v. Gentry, 363 S.C. at 101, 610 S.E.2d at 499.* Thus, Respondent's contention on this basis bears no relevance to this matter.

Stewart further maintains that he has been subjected to slavery and involuntary servitude throughout his incarceration in SCDC by being forced to work for free under the threat of disciplinary sanctions. Such punishment is unconstitutional, unless Stewart has been "duly convicted" of a crime, and he cannot be lawfully convicted of a crime that was never committed. See *Conditional Order p. 10.*

PROCEDURE

Respondent raises procedural challenges (i.e. the statute of limitations, the bar against successive applications, the doctrine of res judicata, and the equitable defense of laches) which Respondent alleges warrant the summary dismissal of this

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[3] Respondent states that Stewart was "indicted by the Richland County Grand Jury". *Conditional Order p. 15.* However, Stewart was indicted by a Marlboro County Grand Jury. *Id. at p. 2.*

PCR action. *Conditional Order pp. 11-16.* It is premature for the Court to consider Respondent's procedural challenges, or any of the other grounds presented by Respondent for summary dismissal, until discovery has been completed. *Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (S.C. 1999) ([S]ummary dismissal must not be granted until the opposing party has had a full and fair opportunity to complete discovery"); Rule 56(f), SCRCP.* See *Shaw v. Foreman, 59 F.4th 121, 128 (4th Cir. 2023) ("[S]ummary judgment must be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition").*

However, even if the Court considered these contentions, the South Carolina Supreme Court held:

> There are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural defaults on substantial claims. Such flexibility is consistent with purpose and spirit of our Rules of Civil Procedure. These considerations should guide PCR courts when struggling to balance procedural requirements against the importance of the issues at stake in PCR proceedings. We encourage trial courts in PCR cases to use the discretion we grant them on procedural matters to find reasonable ways—within the flexibility of our Rules—to reach the merits of substantial claims.
>
> *Love v. State, 428 S.C. 231, 240, 834 S.E.2d 196, 200 (S.C. 2019).*

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This case presents such an example, as it involves claims which are exempt from procedural default. Specifically, it is well established that subject matter jurisdiction

can be raised at any time and can never be waived or forfeited. *State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005); United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002).* This fact tends to preclude summary dismissal of Stewart's jurisdictional claim on procedural grounds. See *Robertson v. State, 418 S.C. 505, 519, 795 SE.2d 29, 36 (2016) ("When an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications a question of fact is raised which can only be resolved by a hearing").*

With regard to Respondent's specific procedural challenges, the South Carolina Supreme Court held that res judicata cannot bar an action alleging a lack of subject matter jurisdiction. *Judy v. Judy, 393 S.C. 160, 168, 712 S.E.2d 408, 412 (2011).* See *Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982) (Finding that "unique circumstances...warrant allowing a successive application").*[4] And that the lack of subject matter jurisdiction must be addressed, regardless of procedural default. *State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494 (S.C. 2005) ("Defects in subject matter jurisdiction require correction regardless of whether the error was raised [below]").* See *U.S. v. Wilson, 699 F.3d 789, 793 (4th Cir. 2012) ("Because*

[4] The Supreme Court has recognized that the general bar on successive applications is a "broad rule" that will necessarily have "exceptions" (i.e. actual innocence). See *Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).*

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jurisdictional limits define the very foundation of judicial authority, subject matter jurisdiction must, when questioned, be decided before any other matter").

The "unique circumstances" in this case warrant the Court being flexible with procedural requirements in the interests of justice. *Love v. State, supra.*

PRIMA FACIE SHOWING OF SUICIDE

The record clearly reflects that Stewart has made a prima showing C.A. committed suicide—a fact that would decisively establish both Stewart's actual innocence and the trial court's lack of jurisdiction. Thus, summary dismissal without conclusively determining this material fact is improper. See *McCoy v. State, 401 S.C. 363, 370, 795 S.E.2d 623, 627 (2013) ("PCR judge erred in granting the State's motion for summary dismissal because genuine issue of material fact exist...").* See also *Wai Man Tom v. Hosp. Ventures LLC, 980 F.3d 1027, 1037 (4th Cir. 2020) ("A fact is material if proof of its existence or non-existence would affect the disposition of the case under applicable law").*

"[W]here death by [apparent] violent injury has occurred, unexplained, there is a presumption against suicide... When evidence as to the fact of suicide is introduced, the presumption against suicide vanishes and the question must be resolved upon the evidence". *Strawhorne v. Atlantic Coast Life Ins. Co., 238 S.C. 443, 119 S.E.2d 101, 102 (S.C. 1961).*

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Stewart presents several uncontested facts as a prima facie showing of suicide. [5] First, the timing of C.A.'s death coincides with the one-year anniversary of a horrific partial birth abortion procedure that left C.A. severely traumatized. Both Stewart and C.A.'s father gave testimony at trial which established the timing of C.A.'s death in relation to the abortion. *Memorandum pp. 2-3.* [6]

Second, during the last year of her life, C.A. exhibited symptoms of severe psychological trauma and suicidal ideation. At trial, Stewart testified about how C.A. cried uncontrollably following her abortion and how she complained that she constantly heard babies screaming in her head. *Memorandum pp. 2-3.* C.A.'s mother gave a recent TV interview in which she admitted noticing a drastic change in C.A.'s personality during the time period following the abortion. *Id at p. 4.* Also, C.A. wrote a letter less than 90 days before her death in which she manifested extreme mental distress, and she explicitly stated in this letter that she was contemplating suicide. *Id.*

Third, and most importantly, Stewart relies heavily upon the scientific knowledge of the two forensic pathology experts currently involved in this action—Dr. Russell

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5 "Prima facie"-"At first sight, on the face of it, so far as can be judged by the first appearance, presumably; a fact presumed to be true unless disproved by some evidence to the contrary". State v. Andrews, 324 S.C. 516, 479 S.E.2d 808, [illegible] (S.C. 1996).

6 At trial, Stewart suffered from a trauma-based mental disorder—Dissociative Amnesia—which prevented him from accessing his memory that C.A. committed suicide. *Memorandum pp. 2-3.*

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Harley, the State's trial expert, and Dr. J.C. Upshaw Downs, a forensic pathologist retained by Stewart—in establishing a prima facie showing of suicide. Stewart obtained written statements from these pathologists which lend credibility to his claim that C.A. committed suicide. These statements from the pathology experts also shed insight into the need for further factual development of this claim.

Inherent in the suicide claim is the fact that C.A. did not perish from blunt force trauma, as alleged at trial. Dr. Harley testified at trial that C.A.'s death was caused by blunt force trauma in the manner of homicide, based on his observation of a right parietal skull fracture during the autopsy. *Trial Transcript pp. 163-66.* However, after he was made aware of the suicide claim and he reviewed the supporting evidence, Dr. Harley stated:

> Mrs. Lori Stewart has hired Dr. James Downs, a forensic pathologist, to review the case. He is of the opinion that the skull fractures were all postmortem and heat related. The body was charred by the heat and included a number of fractures from the heat. It was my **impression** that the right parietal skull fracture was **probably** caused by blunt force **trauma, but I could be wrong**. There is a question of why there was not a lot of blood at the alleged site of the injury in the woods. Good question, but was the actual site in the woods identified and examined?
>
> *Motion p. 4 n. 5. See corresponding Motion Attachment (Letter from Dr. Harley to Lori Stewart)*

As scientific support for his conclusion that the skull fracture was postmortem, Dr. Downs stated:

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> Significant inflicted premortem blunt force injury to the head resulting in death usually has open skin wounds. Here the finding of such an injury is not possible due to the destruction of the scalp. Regardless, with such a wound causing death, copious blood would be expected at the scene of the event as well as any resting location(s) of the subject's body. Even small wounds to the area of the head (for example the mouth) may bleed copiously in a living subject. An existing transcutaneous defect extended to a fractured subjacent skull would be expected to provide direct access from the external to internal areas and thus allow free thermal access (and associated damage) to subjacent tissues thus the visible and described right skull defect in such instance would be expected to have associated charring and burning, extending to the brain surface. These changes were not described here, suggesting such a pre-fire defect was absent, making an open lethal head wound less likely.
>
> *Motion p. 4 n. 4. See corresponding Motion Attachment (Report from Dr. Downs at p. 7).*

With respect to whether C.A. committed suicide, both pathologists have indicated that, based on the new evidence, suicide cannot be ruled out as the manner of death. *Motion pp. 2-3; p. 6 n. 6.* It is a tall order for Respondent to convincingly allege that the suicide claim is conclusively refuted by the record, such as would warrant summary dismissal, when two forensic pathology experts (including the State's trial expert) have made statements clearly establishing the viability of the suicide claim.

DISCOVERY IS WARRANTED

The focus of Stewart's request for discovery is specific. Particularly, Dr. Downs has stated that the focus of his forensic review is to definitively determine (1) whether

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