THE STATE OF SOUTH CAROLINA
In The 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

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

Other Counsel of Record:
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Attorney for Respondent

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C.A. committed suicide, and (2) whether the right parietal skull fracture was a postmortem skull fracture that did not contribute to C.A.'s death. *Motion p. 6; Report from Dr. Downs p. 4.* And these scientific determinations are essential to Stewart proving his subject matter jurisdiction and actual innocence claims. With regard to how discovery will aid him in making these determinations, Dr. Downs stated:

> 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.[7]
>
> *Report from Dr. Downs p. 9.*

Moreover, Dr. Harley admitted that only a basic toxicology analysis was performed for the autopsy, and this basic analysis is not recommended in suspected overdose cases, such as this one, because the basic analysis would not have detected many of the potential substances C.A. could have ingested to kill herself. *See Motion Attachments Questions and Answers from Dr. Harley.* Also, Dr. Harley stated that

[7] Dr. Harley stated that "I have no objection to Dr. Downs examining the pathology slides". *Motion p. 6.* In fact, Dr. Harley has been fully cooperating with the discovery process, which Stewart has been conducting through his wife, and Dr. Harley even made himself available to the medical University of South Carolina ("MUSC") about the procedure for Dr. Downs to gain access to the autopsy files. *See attached email correspondences between Dr. Harley and Lori Stewart.*

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he would have reviewed C.A.'s mental health records while conducting the autopsy, if he had known, at that time, there was a question of C.A. killing herself. *Id.*

In essence, Dr. Harley indicated that evidence of suicide was not found during the autopsy because the pathologist was not looking for it, not because evidence of suicide didn't exist. Such omissions render the autopsy invalid, as Dr. Harley indicated that Stewart not having access to his memory of the suicide adversely impacted the case history and the methodology employed by the pathologist while conducting the autopsy. See *State v. Commander*, *396 S.C. 254, 267, 721 S.E.2d 413, 420 (2011) (Finding that "without a history, the autopsy, in and of itself, is invalid").*

As additional factors warranting discovery, Dr. Harley admittedly did not review the death scene, and reviewing the scene is essential to the forensic pathology procedure (i.e. both pathologists found it highly significant that no significant blood was found on the scene, as the lack of blood on the scene is not consistent with death by lethal open head wound). See *pp. 11-12, supra*. Also, since the year 2000 (the year the autopsy was conducted in this case), there has been major scientific advancements in the knowledge of postmortem thermal skull injuries, and how these injuries can be mistaken for ante-mortem blunt force trauma head injuries as occurred in this case.

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Importantly, Stewart has already initiated discovery, on his own accord, and has gained information through discovery which lends credibility to his suicide claim. And reaching the merits of Stewart's claims involves scientific determinations that can only be made by forensic pathologists once the Court grants discovery. [8]

INTERESTS OF JUSTICE OUTWEIGH NEED FOR FINALITY

Respondent stresses the need for finality. *Conditional Order pp. 19-20.* However, the legislative intent of finality is not to foreclose relief from an order of the court which is void due to a lack of jurisdiction, nor is it to condemn an innocent man to suffer the injustice of criminal punishment. Such an extreme application of the legal principle of finality would be unconscionable.

To put matters in perspective, this action centers around the suicide of a girl, who was so severely traumatized by being forced to undergo a gruesome partial-birth abortion that she took her own life on the one-year anniversary of this procedure. This girl—over four months pregnant at the time—was forced to partially push out her living baby, only to watch the physician kill her child by stabbing the baby in

---

[8] The determination as to whether C.A. committed suicide is a matter of science within the sole providence of experts in forensic pathology. *State v. Commander, 395 S.C. 254, 266, 721 S.E.2d 413, 419 (2011) ("[I]t is axiomatic that a determination of the cause of manner which led to a person's death is generally scientific in origin and outside the common knowledge of a layperson[s]") (internal citations omitted).*

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the back of the head and sucking out the baby's brain.[9] She then had to finish pushing out her dead baby, which she was forced to hold in her arms as "punishment" for her becoming pregnant as a teenager. Any mother would understandably be suicidal after such a horrific experience involving her child.

Stewart, an innocent man, stands wrongfully convicted of killing C.A., a crime which never occurred. The only significance that should be attached to this case being decades old is that an innocent man has lost decades of his life being punished for a crime he didn't commit. While it is true that Stewart could have used him time in prison to concoct a story alleging that C.A. killed herself, it is utterly impossible that he would have been able to provide such a high degree of independent corroboration if the suicide claim was merely a fabrication.

Respondent's contention regarding the need for finality suggests that justice should be denied to Stewart, C.A., and a murdered unborn child, for no other reason than the perceived "inconvenience" posed by reopening an old case, despite clear proof such action is necessary.[10] If this Court were to adopt Respondent's rationale by

---

[9] Studies show that the baby could feel every painful sensation from being stabbed in the head, to a heightened degree. *Motion p. 1 n. 1.* Thus, the brief life of this innocent child was filled with nothing but excruciating pain.

[10] Respondent fails to mention its part in delaying finality being achieved in this case by repeatedly urging courts, as it is attempting to do now, to block access to the autopsy files needed to definitively determine whether C.A. committed suicide. Stewart has been attempting to gain access to these files for almost a decade.

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granting the motion for summary dismissal, Stewart respectfully cautions that such action would be unreasonable and would result in the grossest miscarriage of justice.

Finality cannot be realized in this case until the all-important question—whether Stewart is convicted of killing someone who actually killed herself—has been resolved. And this question can be definitively answered through science simply by this Court granting discovery. To this extent, and based on these extraordinary circumstances, the need for finality is outweighed by the interests of justice.

CONCLUSION

Based on the foregoing, Stewart moves this Court to grant leave to conduct discovery and to defer considering Respondent's motion for summary dismissal until discovery has been completed.

June 4, 2024.

Respectfully submitted,

Weldon W. Stewart Jr.

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

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ALAN WILSON
ATTORNEY GENERAL

April 24, 2024

The Honorable Michael S. Holt
Fourth Circuit Chief Administrative Judge—Common Pleas
Darlington County Courthouse
[redacted]
Darlington, SC 29532

Re: **Weldon Stewart, Jr., #295095 v. State of South Carolina**
Case No: 2023-CP-34-00282

Dear Judge Holt:

Enclosed, please find the proposed **Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR Action**, in the above-captioned caseyou're your consideration.

If you approve of this Order, please sign it and return it to me in the enclosed envelope for filing.

Should you require anything additional, please do not hesitate to contact me

Sincerely,

D. Russell Barlow, II
Assistant Attorney General

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DRB/jjh

cc: Weldon Stewart, Jr., SCDC #295095

Enclosures

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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 **CONDITIONAL ORDER OF DISMISSAL AND DENIAL OF MOTION FOR DISCOVERY IN SUCCESSIVE PCR ACTION**

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Weldon W. Stewart, Jr. (Applicant) on October 30, 2023. In response, Respondent made its return[1] and moved to summarily dismiss the action as procedurally barred 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). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed and provisionally dismisses the action based on

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[1] Respondent's return to the application was due to be filed within sixty days of receipt. 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 effort required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court accepts these returns 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.).

the following:

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 thirty (30) years for voluntary manslaughter and nine (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:

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[2] Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

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a. Failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
b. Failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
c. Failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
d. Failed to argue the trial judge allowed hearsay testimony.

Respondent made its return on July 28, 2006, and an evidentiary hearing into the matter was convened on November 15, 2006, before the Honorable John M. Milling. Applicant was present at the hearing and represented by Delton W. Powers, Jr., Esq. Karen C. Ratigan, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and was the only witness to testify. By written order dated January 8, 2007, Judge Milling denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant thereafter timely filed a *pro se* response to the Johnson petition, which raised the following issues:

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?"

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The Supreme Court of South Carolina denied Applicant's petition by unpublished order. Stewart

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v. State, S.C. Sup. Ct. Order field March 18, 2009. The Remittitur was issued on April 3, 2009.

FEDERAL HABEAS PETITION: 8:09-842-SB-BHH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH). In his Petition, Applicant set forth the following grounds for relief:

1. "Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?"
   a. "The trial court failed to instruct the jury on the requested jury instruction on voluntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial."
2. "Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?"
   a. "Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted two documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony."

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

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February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

2015 GENERAL SESSIONS MOTION FOR NEW TRIAL

Applicant filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. Applicant was present at the hearing and represented by Jamie Scruggs, Esq. Elizabeth R. Munnerlyn, Esq., of the Fourth Circuit Solicitor's Office, represented the State. Counsel Scruggs summarized three grounds for new trials:

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-[illegible]-00128

In his *second* untimely post-conviction relief application, Applicant [illegible] his being held

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[3] 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 2018 PCR action.

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unlawfully for the following reasons (excerpted verbatim):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
   a. "Between the months of September and December 2014, Ms. [redacted] Stewart discovered evidence which added credibility to 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 the 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

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indicating that the skull facture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma."

2. "Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial."
   a. "Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is [a] common location for thermal injuries. The pathologist further explained that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs."
   b. Applicant thereafter details a series of *ex parte* motions to attempt to obtain photographs and records, each of which were denied.
3. "Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State."
   a. "In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case. While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to h[illegible]

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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.

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 [illegible] 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 [illegible]
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)..

CURRENT ACTION BEFORE THIS COURT

On October 30, 2023, Applicant *untimely* filed his *third* 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 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."

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MARLBORO COUNTY, S.C.

Before this Court is Respondent's Return and Motion to Dismiss; the Marlboro County

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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.

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. Pursuant to South Carolina Code Annotated §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing 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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons;

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[4] 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.

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COUNTY, S.C.

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

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> (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.
>
> (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 May 23, 2005. Pursuant to S.C. Code Ann. § 17-27-45(A), Applicant needed to file his application for post-

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

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss this application 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 raised earlier 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 [illegible] 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 [illegible] grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have

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

Accordingly, this Court finds this application is successive and procedurally barred pursuant to S.C. Code Ann. § 17-27-90, and shall be dismissed.

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. The prior PCR Courts and the issued final judgments on the merits of the same or similar issues Applicant raises in this successive action.

This Court finds the finality of the previous court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

SUMMARY DISMISSAL BASED ON SUBJECT MATTER JURISDICTION

Respondent moved to dismiss Applicant's allegation that the trial court lacked subject matter jurisdiction as a matter of law. This Court agrees.

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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, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 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.

Accordingly, this Court finds, pursuant to S.C. Code Ann. § 17-27-70 (2003), that there is no issue of material fact relating to this allegation, and it shall be dismissed as a matter of law.

SUMMARY DISMISSAL BASED ON THE EQUITABLE DOCTRINE OF LACHES

The application shall 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. 1980)). 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

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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 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 shall be summarily dismissed as barred by the equitable doctrine of *laches*.

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SUMMARY DISMISSAL BASED ON NEWLY-DISCOVERED EVIDENCE

This Court finds 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 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. 328, 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

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received with the utmost caution, because, as it is said by a learned judge, there are but few cases tried in which something new may not be hunted up . . .").

Initially—and critically—this Court finds Applicant's allegations are not newly-discovered and these allegations have been raised before the courts in his previous PCR actions and federal *habeas* action to which those courts ruled on those matters. Turning to the Clark factors, Respondent argues 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."). This Court agrees with Respondent and finds that Applicant fails the Clark test.

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).

Accordingly, this Court finds Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed.

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

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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.

Respondent opposed this motion, noting that the underlying successive application is procedurally barred on numerous grounds. Furthermore, Respondent asserts this issue has been extensively litigated, and Applicant has not shown good cause to invoke the discovery process on his meritless claims.

This Court agrees that Applicant has failed to show good cause. 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 shall be summarily dismissed. Accordingly, this Court denies 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

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> 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:

> 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

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Marlboro County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 4th Circuit
[redacted]
mbia, Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Marlboro County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this ____ day of _____, 2024.

THE HONORABLE MICHAEL S. HOLT
Chief Administrative Judge
Fourth Judicial Circuit

_____, South Carolina

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CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
	)	No. 2023-CP-34-00282
WELDON STEWART, JR., #295095	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
STATE OF SOUTH CAROLINA	)	

I, [redacted] Stewart, hereby certify that I have served one copy of the below listed documents on D. Russell Barlow, II, Assistant Attorney General by mailing copies of the same via USPS priority mail to the address at:

D. Russell Barlow, II, Assistant Attorney General
Office of the Attorney General
[redacted]
Columbia, SC 29211

The following document is being served:

1) Response to Proposed Conditional Order of Dismissal and Denial of Discovery.

6/11/2025
Date

[redacted] Stewart
[redacted]. Stewart
For Weldon W. Stewart, Jr.

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MARLBORO COUNTY, S.C.

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 **CONDITIONAL ORDER OF DISMISSAL AND DENIAL OF MOTION FOR DISCOVERY IN SUCCESSIVE PCR ACTION**

This matter is before the Court based on a successive application for post-conviction relief (PCR) filed by Weldon W. Stewart, Jr. (Applicant) on October 30, 2023. In response, Respondent made its return[1] and moved to summarily dismiss the action as procedurally barred 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). After a review of the record and pleadings, this Court agrees this application should be summarily dismissed and provisionally dismissed [illegible] based on

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[1] Respondent's return to the application was due to be filed within sixty days of receipt. 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, this Court accepts these returns 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.).

the following:

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 thirty (30) years for voluntary manslaughter and nine (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 2[illegible] 2005.

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MARLBORO COUNTY, S.C.

FIRST PCR APPLICATION: 2006-CP-34-00125

Applicant filed his *first* application for post-conviction relief on April 1[illegible] 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:

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[2] Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

a. Failed to argue the trial judge erred in charging voluntary manslaughter when there was no evidence to support the charge.
b. Failed to argue the trial judge admitted two documents where the authenticity of the documents had not been established and the documents were not relevant to the issues at trial.
c. Failed to argue the trial judge admitted photographs that were not relevant to the issues at trial and were graphic in nature.
d. Failed to argue the trial judge allowed hearsay testimony.

Respondent made its return on July 28, 2006, and an evidentiary hearing into the matter was convened on November 15, 2006, before the Honorable John M. Milling. Applicant was present at the hearing and represented by Delton W. Powers, Jr., Esq. Karen C. Ratigan, Esq., of the South Carolina Attorney General's Office, represented Respondent. Applicant testified on his own behalf, and was the only witness to testify. By written order dated January 8, 2007, Judge Milling denied and dismissed the application.

Applicant filed a timely notice of appeal and a petition for writ of certiorari was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Applicant thereafter timely filed a *pro se* response to the Johnson petition, which raised the following issues:

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?"

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The Supreme Court of South Carolina denied Applicant's petition by unpublished order. Stewart

v. State, S.C. Sup. Ct. Order field March 18, 2009. The Remittitur was issued on April 3, 2009.

FEDERAL HABEAS PETITION: 8:09-842-SB-BHH

Applicant subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 on March 31, 2009 (C.A. No. 8:09-842-SB-BHH). In his Petition, Applicant set forth the following grounds for relief:

1. "Did the trial court deprive me of my constitutional right to due process by failing to instruct the jury on involuntary manslaughter?"
   a. "The trial court failed to instruct the jury on the requested jury instruction on voluntary manslaughter. There was evidence presented during the trial which supported the jury instruction and the trial court's failure to instruct the jury on this instruction deprived me of a fair trial."
2. "Did appellate counsel deprive me of my constitutional right to effective assistance of counsel?"
   a. "Appellate counsel was ineffective for failing to argue on my appeal: 1) the trial judge erred by charging the jury on voluntary manslaughter when there was no evidence to support the charge, 2) the trial judge admitted documents that were not authenticated, 3) the trial judge admitted photographs that were irrelevant and prejudicial, and 4) the trial judge allowed hearsay testimony."

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Respondent filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that Respondent's motion for summary judgment be granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Fourth Circuit dismissed Applicant's appeal on

February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

2015 GENERAL SESSIONS MOTION FOR NEW TRIAL

Applicant filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. Applicant was present at the hearing and represented by Jamie Scruggs, Esq. Elizabeth R. Munnerlyn, Esq., of the Fourth Circuit Solicitor's Office, represented the State. Counsel Scruggs summarized three grounds for new trials:

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).

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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

[3] 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 2018 PCR action.

unlawfully for the following reasons (excerpted verbatim):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
   a. "Between the months of September and December 2014, Ms. [redacted] Stewart discovered evidence which added credibility to 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 [illegible] 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

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indicating that the skull fracture and brain hemorrhage conclusively established that Victim died as a result of blunt force trauma."

2. "Petitioner is entitled to a new trial because the solicitor's office violated Petitioner's due process rights when it failed to correct misstatements made by the pathologist while testifying against Petitioner at trial."
   a. "Ms. Stewart hired a forensic pathologist to review the autopsy conducted on Victim. The pathologist made a preliminary finding that it was possible the skull fracture and brain hemorrhage were thermal injuries based upon the location of the injuries, the parietal region, which is [a] common location for thermal injuries. The pathologist further explained that the location of the injuries is not common for blunt force trauma injuries. However, the forensic pathologist informed Ms. Stewart that he would not be able to complete his independent evaluation until he examined the autopsy photographs."
   b. Applicant thereafter details a series of *ex parte* motions to attempt to obtain photographs and records, each of which were denied.
3. "Petitioner is entitled to new trial because the solicitor's office committed a Brady violation when it suppressed SLED files that were favorable to Petitioner, and the suppressed evidence could have been used to impeach the testimony of witnesses for the State."
   a. "In June of 2017, the South Carolina Law Enforcement Division (SLED) provided Ms. Stewart with a CD containing the SLED investigative files for Petitioner's case. While reviewing these files, Ms. Stewart noticed that crime scene notes, written by SLED forensic investigator Al Stuckey (Investigator), contained evidence which was favorable to Petitioner. Ms. Stewart further noticed that other SLED investigative files were also favorable to Petitioner. Ms. Stewart shared her findings with Petitioner, who informed her that none of this evidence had been disclosed to him."

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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.

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 [redacted] 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

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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.

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)..

CURRENT ACTION BEFORE THIS COURT

On October 30, 2023, Applicant *untimely* filed his *third* 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 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.

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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."

Before this Court is Respondent's Return and Motion to Dismiss; 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.

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. Pursuant to South Carolina Code Annotated §§ 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application as there is no genuine issue of material fact which would necessitate an evidentiary hearing. See S.C. Code Ann. § 17-27-70(b) (establishing 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); Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Respondent moved for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

SUMMARY DISMISSAL BASED ON STATUTE OF LIMITATIONS

Respondent moved to summarily dismiss this application for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act.[4] 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.

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

(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.

(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."

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

SUMMARY DISMISSAL BASED ON SUCCESSIVENESS

Respondent moved to summarily dismiss this application 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 raised earlier 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.

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

Accordingly, this Court finds this application is successive and procedurally barred pursuant to S.C. Code Ann. § 17-27-90, and shall be dismissed.

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. The prior PCR Courts and the issued final judgments on the merits of the same or similar issues Applicant raises in this successive action.

This Court finds the finality of the previous court's rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

SUMMARY DISMISSAL BASED ON SUBJECT MATTER JURISDICTION

Respondent moved to dismiss Applicant's allegation that the trial court lacked subject matter jurisdiction as a matter of law. This Court agrees.

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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, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 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.

Accordingly, this Court finds, pursuant to S.C. Code Ann. § 17-27-70 (2003), that there is no issue of material fact relating to this allegation, and it shall be dismissed as a matter of law.

SUMMARY DISMISSAL BASED ON THE EQUITABLE DOCTRINE OF [illegible]

The application shall 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

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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 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 shall be summarily dismissed as barred by the equitable doctrine of *laches*.

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SUMMARY DISMISSAL BASED ON NEWLY-DISCOVERED EVIDENCE

This Court finds 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 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 tri[illegible] had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been disco[illegible] before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

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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, there are but few cases tried in which something new may not be hunted up . . .").

Initially--and critically—this Court finds Applicant's allegations are not newly-discovered and these allegations have been raised before the courts in his previous PCR actions and federal *habeas* action to which those courts ruled on those matters. Turning to the Clark factors, Respondent argues 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."). This Court agrees with Respondent and finds that Applicant fails the Clark test.

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).

Accordingly, this Court finds Applicant is not entitled to an evidentiary hearing, and this matter shall be summarily dismissed.

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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.

Respondent opposed this motion, noting that the underlying successive application is procedurally barred on numerous grounds. Furthermore, Respondent asserts this issue has been extensively litigated, and Applicant has not shown good cause to invoke the discovery process on his meritless claims.

This Court agrees that Applicant has failed to show good cause. 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 shall be summarily dismissed. Accordingly, this Court denies 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

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> 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:

> 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 press, 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.

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CONCLUSION

This Court finds Applicant has failed to establish good cause to obtain discovery in an action that is procedurally barred and shall be summarily dismissed. Further, pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Marlboro County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
PCR Division – 4th Circuit
[redacted]
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Marlboro County Clerk of Court and opposing counsel within twenty days, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 5th **day of** August, **2024.**

THE HONORABLE GEORGE M. MCFADDIN, JR.
Chief Administrative Judge
Fourth Judicial Circuit

Sumter, South Carolina

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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	)	**SUPPLEMENTAL RESPONSE TO CONDITIONAL ORDER OF DISMISSAL AND DENIAL OF DISCOVERY**
V.	)	
STATE OF SOUTH CAROLINA	)	

Stewart filed his Response to Proposed Conditional Order of Dismissal and Denial of Discovery ("Response") with the Marlboro County Clerk on June 10, 2024, before this Court signed the Conditional Order.[1] He served a copy of the same on opposing counsel. Stewart was served with the signed Conditional Order on August 27, 2024. He respectfully requests that the Court accept his previously filed Response as part of his timely answer to the Conditional Order. In addition, Stewart hereby provides his Supplemental Response to the Conditional Order to place further emphasis on the need for discovery, based on the following:

Since recovering his memory in 2014, Stewart has maintained that C.A., the deceased person in this case, took her own life on the one-year anniversary of a horrifically traumatizing partial birth abortion she was forced to undergo by her mother. *Response p. 4.* The claim that C.A took her own life clearly and automatically implicates that the trial court lacked subject matter jurisdiction, because criminal liability (i.e. murder, manslaughter) cannot be applied to a death that resulted from suicide. *Id at pp. 4-6.* Previously, the State never disputed many of the facts Stewart presented in support of his suicide claim, including the fact that C.A. had the abortion and that less than 90 days before her death she wrote a letter in which she explicitly stated that she was contemplating suicide. Rather, the State bombarded prior courts with a plethora of procedural arguments, as Respondent

[1] Stewart was given a copy of the proposed order by opposing counsel, and he filed a copy of the document with his Response.

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CLERK OF COURT
MARLBORO COUNTY, SC

does now, in an effort to have Stewart's suicide claim summarily dismissed without any resolution to the question of whether C.A. died by her own hand.

With the current action, Stewart implores this Court to correct this grievous oversight by granting leave to conduct discovery. And through discovery a scientific process will be completed by which two pathologists (including the State's trial pathology expert) will be able to definitively determine if C.A. committed suicide, or, at a bare minimum, if she did NOT die from blunt force trauma. These questions raise issues which are purely scientific in nature, which are material to the question of the trial court's jurisdiction, and which can only be resolved by this Court granting discovery.

Additionally, it would be premature for this Court to summarily dismiss this action because "summary dismissal must not be granted until the opposing party has had a full and fair opportunity to complete discovery". *Id at p. 7.* This is especially true in a case such as this where Stewart has initiated discovery and through this discovery has obtained statements from the State's trial pathology expert which casts doubt on his trial testimony and lends credibility to Stewart's suicide claim. Put simply, it would be fundamentally unfair for the Court to grant Respondent's request for summary dismissal, at this juncture, effectively and prematurely halting Stewart's efforts to discover information which is essential to his successful opposition of this request. *Id.*

Stewart demonstrates the need for discovery by providing statements from two pathology experts, including a sworn affidavit from the State's trial pathology expert, Dr. Russell Harley.[2] It must be noted that Dr. Harley, upon being made aware of Stewart's suicide claim which directly opposes his trial conclusions, did not defend the validity of these conclusions, nor did he refute the scientific possibility of death by suicide in this case. Instead, he candidly admitted that the conclusions he testified to at trial "could be wrong", even going so far as identifying several factors which could have contributed to him misdiagnosing the cause and manner of death (i.e. only performing a basic toxicology analysis instead of a more extensive toxicology screen, not reviewing C.A.'s mental health history, failing to evaluate the death scene). *See Sworn Affidavit pp. 3-4.* In essence, Dr.

[2] See attached Sworn Affidavit.

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MARLBORO COUNTY, S.C.

Harley admitted that he could have missed key evidence of suicide while conducting the autopsy, simply because he wasn't looking for it.

The claim that C.A. committed suicide is a matter of science, particularly the science of forensic pathology. Dr. Harley, the pathologist who performed the autopsy on C.A., is uniquely qualified to determine whether there is any possible merit to the suicide claim. And Dr. Harley has clearly indicated, with his newly discovered admissions, that C.A. committing suicide is a very real possibility. As the person who conducted the autopsy on C.A. has declined to conclusively refute the claim that C.A. killed herself, it would be a tall order to contend that Stewart has failed to make a prima facie showing of his suicide claim or the accompanying subject matter jurisdiction claim.

In light of these extraordinary circumstances, Stewart respectfully requests that the Court deny Respondent's motion for summary dismissal and grant Stewart's motion for leave to conduct discovery, as to do otherwise would be objectively unreasonable and would amount to a gross miscarriage of justice. He further respectfully requests that the Court defer all considerations of the law or procedure to be applied to the facts in this action, until such time that he has been given a full and fair opportunity to complete discovery and the factual record has been fully established.

August 28, 2024

Respectfully Submitted,

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

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

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
	)	2023-CP-34-00282
WELDON W. STEWART JR. #295095	)	
	)	AFFIDAVIT OF ORIGINAL
	)	FORENSIC PATHOLOGIST
V.	)	
	)	
STATE OF SOUTH CAROLINA	)	

AFFIDAVIT

(SWORN STATEMENT)

DATE: Aug 23, 2024

[redacted]

Being duly sworn, hereby swear under oath that:

On Thursday, December 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 a.m., and he said she fell, and he fell on top of her, and she died.

At trial, Stewart told the jury that Ms. Allen 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 Ms. Allen. 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." 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.

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MARLBORO COUNTY, S.C.

At 11:30 a.m. 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 p.m. he called 911 to report this.

SLED Forensic Services were called to the scene at 5:45 p.m. on 12-6-2000. Field Officer Elvington noted possible blood on a jacket and on leaves. It is not clear to me that the site in the woods where Ms. Allen is alleged to have died was examined by the SLED services.

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 with 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 Mrs. 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.

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.

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MARLBORO COUNTY, S.C.
CLERK OF COURT

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 Ms. Allen 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 the stomach fluid, and nothing unusual was found in the blood at the 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.

After giving this initial statement to Mrs. Stewart, she provided me with a series of follow-up questions. The first question was essentially asking why there was only a basic toxicology analysis for the autopsy. The toxicology examination for this autopsy was based on the data available at that time. It was not known at the time of the autopsy that there was a question of suicide. Had I known there was a question of suicide, I would have gotten more extensive toxicological studies.

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BERKELEY COUNTY, S.C.

The second question asked about the significance of Ms. Allen's mental health history. Had I known of the question of Ms. Allen's suicide, I would have wanted to review her mental health records.

The third question was posed as a hypothetical basically asking about the impact of the new evidence on my conclusions from the autopsy. Additional information is required. 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?

Under penalty of perjury, I hereby declare and affirm that the above-mentioned statement is to the best of my knowledge, true and correct.

Affiant's Signature: [signature] Date: 8-23-24

BRIDGET WELCH
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires
12-12-2028

[signature]

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CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO WELDON STEWART, JR., #295095 v. STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT Case No. 2023-CP-34-00282 **CERTIFICATE OF SERVICE**

I, [redacted] hereby certify that I have served one copy of the below listed documents on D. Russell Barlow, II, Assistant Attorney General by mailing copies of the same via USPS priority mail to the address at:

D. Russell Barlow, II, Assistant Attorney General
Office of the Attorney General
PCR Division – 4th Circuit
[redacted]
Columbia, SC 29211

The following document is being served:

1) Supplemental Response to Conditional Order of Dismissal and Denial of Discovery.
2) Sworn Affidavit from Original Trial Pathologist, Dr. Russell Harley.

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[redacted]
For Weldon W. Stewart, Jr.

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CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICAL CIRCUIT
Weldon W. Stewart, Jr. #295095 Applicant, v. State of South Carolina, Respondent,	CASE NO. 2023-CP-34-00282 **MOTION FOR LEAVE TO SUPPLEMENT FILED RESPONSE**

Stewart moves the Court to grant him leave to supplement his filed responses to the Conditional Order with the attached proposed orders for the Court's consideration. Stewart seeks to submit these proposed orders for the Court to sign upon a favorable ruling in order to expedite the discovery process. The language in the proposed orders mirrors arguments presented by Stewart in his timely filed responses, which have been served on Respondent. Thus, Respondent will suffer no undue surprise or disadvantage by the Court accepting the proposed orders.

On the above grounds, Stewart respectfully requests the Court grant him leave to supplement his filed responses with proposed orders.

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

September 23, 2024

Respectfully Submitted,

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

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICAL CIRCUIT
Weldon W. Stewart, Jr. #295095, Applicant, v. State of South Carolina, Respondent,	)	CASE NO. 2023-CP-34-00282 **ORDER OF DENIAL OF SUMMARY DISMISSAL AND GRANTING APPLICANT LEAVE TO CONDUCT DISCOVERY**

This matter is before the Court based on a third application for post-conviction relief (PCR) filed by Weldon Stewart, Jr. (Applicant) on October 30, 2023. With the application, Applicant filed a motion requesting to be allowed to proceed pro se with appointed standby counsel. Applicant filed a motion requesting leave to conduct discovery on April 1, 2024, and he filed a supporting memorandum of facts on April 18, 2024.

Applicant brings this action claiming that C.A., the deceased victim in this case, committed suicide on the one-year anniversary of her undergoing a partial-birth abortion. Applicant further claims new evidence indicating C.A. killed herself, as opposed to being killed by Applicant, retrospectively establishes the trial court lacked subject matter jurisdiction to try him for murder, or to impose a sentence on him for voluntary manslaughter. Applicant seeks to be granted leave to conduct discovery for the stated purpose of developing scientific evidence necessary to perfect these claims.

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CLERK OF COURT
MARLBORO COUNTY, SC

In response, Respondent made its return and moved to summarily dismiss the action. The Court signed a Conditional Order, on August 5, 2024, informing Applicant of the Court's intent to summarily dismiss the action unless Applicant provided sufficient reasons why this Order should not become final, within twenty days from his service of the Order. The Order was filed on August 12, 2024, and was served on Applicant on August 27, 2024.

Applicant filed a timely response, contending that the Court should not summarily dismiss the action because Applicant has not been afforded an opportunity to complete discovery, because Applicant has made a prima facie showing of merit for his claims, and because the Court should defer ruling on the law or procedure applicable to the facts in this action until a complete factual record has been established through discovery and an evidentiary hearing.

After a review of the record and pleadings, this Court agrees the application should not be summarily dismissed, and Applicant should be granted leave to conduct discovery, based on the following:

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CLERK OF COURT
BERKELEY COUNTY, S.C.

Findings of Fact and Conclusions of Law

Summary dismissal of a PCR action without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts, and (2) the applicant is not entitled to relief. S.C. Code Ann. § 17-27-70 (b),(c). "When considering the State's motion for summary dismissal, where no

evidentiary hearing has been held, the PCR judge must assume the 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).

Applicant presents facts alleging that C.A. committed suicide. In support of this claim, he provides two written statements from two different pathologists— a sworn affidavit from Dr. Russell Harley, the State's trial expert who conducted the autopsy on C.A., and a report from Dr. J.C. Upshaw Downs, a forensic pathologist retained by Applicant.[1] Dr. Harley, who testified at trial that the cause of C.A's death was a right parietal skull fracture inflicted by blunt force trauma, now admits in his sworn affidavit:

> 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. Affidavit p. 3.

Dr. Harley also acknowledged various omissions that were made by him while conducting the autopsy on C.A., because the pathologist was not aware "there was a question of suicide" at the time of the autopsy. Affidavit pp. 3-4.[2] It must be noted that Dr. Harley manifests a clear recollection of the facts in Applicant's case, and a keen understanding of the claims Applicant brings in this action.

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CLERK OF COURT
MARLBORO COUNTY, S.C.

[1] Applicant also provides an uncontested letter written by C.A., less than 90 days before her death, in which she twice explicitly states that she is contemplating suicide.

[2] Applicant claims at the time of the autopsy he suffered from Dissociative Amnesia, a mental disorder that blocked his access to the memory of C.A.'s suicide. Applicant further claims he did not recover his memory of the suicide until fourteen years after the autopsy was conducted.

If viewed in the light most favorable to Applicant, these facts are sufficient as a prima facie showing of merit for the suicide claim. And the fact that C.A. killed herself, if true, would certainly entitle Applicant to some form of relief. Thus, summarily dismissal of this action is not proper.

Applicant requests leave to conduct discovery primarily for Dr. Downs to be granted access to autopsy materials, from the autopsy conducted on C.A., which are currently housed at the Medical University of South Carolina. Dr. Downs states in his report "suicide cannot be excluded" as the manner of death, based on his review of limited autopsy materials, and "[a]dditional materials examination may allow a more specific determination regarding the manner of death". Report p. 4. Dr. Downs also points out several scientific inconsistencies which increase the probability that the right parietal skull fracture did not cause C.A.'s death. Id at pp. 6-7. He states he can make a more definitive determination regarding this fact by examining remaining tissues "either grossly with the naked eye and/or microscopically with retained histology slides", and by examining "photodocumentation of the external and internal detailed examination of the brain". Id at p. 7.

Dr. Harley indicates in his affidavit that he reviewed the report from Dr. Downs. Affidavit p. 3. Dr. Harley does not rebut the findings in this report. Rather, he states "I have no objection to having Dr. Downs examine the pathology slides". Id.

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CLERK OF COURT
BERKELEY COUNTY, S.C.

Based on this record, the Court can find no reasonable basis to deny Applicant's request for discovery, as Applicant has clearly shown good cause for the Court to grant this request.

Therefore, Applicant shall be granted leave to conduct discovery by any manner available to him under the South Carolina Rules of Civil Procedure. See Rule 71.1(a), SCRCP.

This ruling does not constitute a ruling on the merits of Applicant's claims, nor does it constitute a final determination that Applicant has satisfied procedural requirements in filing his claims. However, this Court does find further inquiry into this matter is warranted, based on the record, and Applicant has shown good cause for the Court to grant leave for discovery. As such, this action should not be summarily dismissed.

CONCLUSION

Accordingly, Respondent's motion for summary dismissal is **DENIED**, and Applicant's motion for leave to conduct discovery is **GRANTED**.

As an additional matter, Applicant's motion to proceed pro se is **GRANTED**, and Applicant will be appointed standby counsel to assist him with discovery, and with preparations for any subsequent hearings.

AND IT IS SO ORDERED this ____ day of _____, 2024.

THE HONORABLE GEORGE M. MCFADDIN, JR.
Chief Administrative Judge
Fourth Judicial Circuit

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CLERK of COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	}	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICAL CIRCUIT
Weldon W. Stewart, Jr. #295095	}	CASE NO. 2023-CP-34-00282
Applicant,	}	**ORDER TO EXAMINE AUTOPSY MATERIALS BY RETAINED PATHOLOGIST**
v.	}	
State of South Carolina,	}	
Respondent,	}	

This Court hereby directs Marlboro County Coroner, Tim Brown, to contact the appropriate personnel at the Medical University of South Carolina (MUSC) and arrange with said personnel to make available to Dr. J.C. Upshaw Downs any and all materials from an autopsy (FA 00686), conducted on [redacted] Allen, to include, but not limited to, photographs, histology slides, remaining tissues, and blood samples. Dr. Downs is a forensic pathologist retained by Weldon Stewart, Jr., a party in the above captioned action, and the examination of the autopsy materials by Dr. Downs is pertinent to the resolution of the action. Coroner Brown is to advise MUSC personnel that the autopsy materials shall be made available, within thirty (30) days from the date of service of this Order, for Dr. Downs to examine at the MUSC.

AND IT IS SO ORDERED this ____ day of _____, 2024.

THE HONORABLE GEORGE M. MCFADDIN, JR.
Chief Administrative Judge
Fourth Judicial Circuit

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	
	Case No. 2023-CP-34-00282
WELDON STEWART, JR., #295095	
	CERTIFICATE OF SERVICE
v.	
STATE OF SOUTH CAROLINA	

I, [redacted] hereby certify that I have served one copy of the below listed documents on D. Russell Barlow, II, Assistant Attorney General by mailing copies of the same via USPS priority mail to the address at:

D. Russell Barlow, II, Assistant Attorney General
Office of the Attorney General
PCR Division – 4th Circuit
[redacted]
Columbia, SC 29211

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

The following document is being served:

1) Motion for Leave to Supplement Filed Response.
2) Proposed Order of Denial of Summary Dismissal and Granting Applicant Leave to Conduct Discovery
3) Proposed Order to Examine Autopsy Materials by Retained Pathologist

9/24/2025
Date

[redacted] Stewart
For Weldon W. Stewart, Jr.

tracking # 9505 5114 0147 4248 8859 38

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 **FINAL ORDER OF DISMISSAL**

This matter comes before this Court by way of a successive post-conviction relief (PCR) action commenced by Weldon W. Stewart, Jr. (Applicant), on October 30, 2023. Respondent made its Return and Motion to Dismiss requesting this action be summarily dismissed because it was 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).

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR Action filed on August 12, 2024, provisionally denying and dismissing this action while giving counsel for Applicant twenty days from the date of service of said order in which to show why the Conditional Order of Dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an affidavit of service dated August 27, 2024, indicating the State served the above-mentioned Conditional Order of Dismissal on Applicant.

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WILLIAM M. ADAMS
CLERK OF COURT
MARLBORO CO., S.C.

On June 10, 2024, prior to this Court's signing and filing of the Conditional Order of Dismissal, Applicant filed his "Response to Proposed Conditional Order of Dismissal and Denial of Discovery." On September 8, 2024, Applicant filed his "Supplemental Response to Conditional Order of Dismissal and Denial of Discovery," wherein he argues the same or similar variations of the arguments previously presented and ruled upon in his multiple prior actions. On September 24, 2024, Applicant filed his "Motion for Leave to Supplement Filed Response," his proposed "Order to Examine Autopsy Materials by Retained Pathologist," and his proposed "Order of Denial of Summary Dismissal and Granting Applicant Leave to Conduct Discovery."

As to Applicant's motion for leave, that request is denied.

Furthermore, this Court has thoroughly reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds Applicant has failed in his burden to establish there is a genuine issue of material fact such that he should be granted an evidentiary hearing on his PCR application. S.C. Code Ann. § 17-27-70(c); 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). This Court reasserts its findings in the Conditional Order of Dismissal that the current PCR application must be dismissed 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-[illegible] and § 17-27-90, and for failing to comply with the Uniform Post-Conviction Procedures Code Ann. § 17-27-10

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CLERK OF COURT
GREENVILLE COUNTY, S.C.

et seq. (2014).

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such a showing based on the information set forth in his application and his responses, and, therefore, he is not entitled to an evidentiary hearing in this matter. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises Applicant he must file and serve a notice of appeal within thirty days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 8th day of October, 2024.

GEORGE M. McFADDEN, JR.
Chief Administrative Judge
Fourth Judicial Circuit

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JEANNETTE W. WILLIAMS
CLERK
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Sumter, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICAL CIRCUIT
Weldon W. Stewart, Jr. 6295095, Applicant, v. State of South Carolina, Respondent,	)	CASE NO. 2023-CP-34-00282 **MOTION TO ALTER/AMEND JUDGEMENT PURSUANT TO RULE 59(e)**

INTRODUCTION

In this extraordinary case, the Court is faced with one simple question--should a potentially innocent person be denied a fair opportunity to prove his innocence based solely on procedural requirements, with no exceptions. The higher court provides clear guidance for these types of exceptional cases. The South Carolina Supreme Court held that exceptions should be made to procedural requirements "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".[1] Specifically, as with this case, our Supreme Court has declined to strictly adhere to procedural requirements in instances where false or misleading scientific evidence was presented to the jury.[2]

[1] Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

[2] Simmons v. State, 416 S.C. 584, 589, 788 S.E.2d 220, 223 (2016).

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This case presents a clear example of the system failing a defendant. In 2003, Stewart was convicted of killing C.A. based largely upon the scientific conclusions of the State's pathology expert, Dr. Russell Harley. However, at the time of trial, Stewart, the sole eyewitness to C.A.'s death, was mentally incompetent. Specifically, he was suffering from Dissociative Amnesia, a mental disorder that caused his mind to repress his memory that C.A committed suicide on the year anniversary of a forced abortion.

Since he recovered his memory in 2014, a steady stream of direct and circumstantial evidence has been discovered which points squarely to Stewart's actual innocence. For example, crime scene notes withheld by the State reveal the forensic crime scene investigator meticulously searched the scene of C.A.'s death but found no evidence to support the State's trial theory that she died by means of violence. Though C.A.'s abortion was mentioned at trial, more details about this abortion were discovered after trial. It was discovered C.A. underwent a partial-birth abortion, a procedure banned nationally by the U.S. Congress because it was deemed to be "gruesome and inhumane". And a letter written by C.A. was discovered in which she stated she was "thinking about killing myself", shortly before she died.

Most remarkably, during this very proceeding, Stewart obtained a sworn affidavit from Dr. Harley, the pathologist who conducted C.A.'s autopsy. In this affidavit, Dr. Harley partially recanted the scientific conclusions he testified to at trial, admitting he "could be wrong" about his testimony related to C.A.'s cause and manner of death.

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pathologist made this admission after reviewing the new evidence, including a report from Dr. J.C. Upshaw Downs, a forensic pathologist retained by Stewart. Dr. Harley left open the possibility that he would fully recant his trial testimony upon further forensic analysis of C.A.'s autopsy files, which Dr. Harley indicates he had no objection deferring to Dr. Downs to conduct.

It was based on these extraordinary circumstances that Stewart requested leave of the Court to conduct discovery. Specifically, Stewart requested the Court issue an order for Dr. Downs to be granted access to C.A.'s autopsy files, which are currently housed at the Medical University of South Carolina. The sole purpose of this request is so that Dr. Downs can complete his independent evaluation of C.A.'s autopsy, a scientific process which Dr. Harley indicates is pertinent to his decision of whether to fully recant his trial testimony.

At this juncture, Stewart does not request a new trial, or the vacation of his sentence. He simply requests the Court grant him a full and fair opportunity to prove his innocence before reaching a final determination in this action. He renews this request in this motion.

Stewart prays the Court will reconsider the decision to summarily dismiss this action, as the basis for this decision is an inflexible adherence to procedural requirements which are applied to incorrect facts. Stewart implores the Court to consider the well-established exceptions (i.e. newly discovered evidence, actual innocence, mental incompetence, subject matter jurisdiction) to procedural requirements that apply to the correct facts in this case. In the alternative, Stewart moves the Court to alter/amend its judgement to address the specific issues

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raised by Stewart in this action, and also to address the specific facts presented by Stewart in support of his claims.

BACKGROUND

Stewart commenced this post-conviction relief (PCR) action with the filing of a PCR application on October 30, 2023. With the application, Stewart filed a motion to be allowed to represent himself with appointed standby counsel in this proceeding. On April 1, 2024, Stewart filed a motion ("Discovery Motion") requesting leave to conduct discovery, and on April 18, 2024, he filed a supporting memorandum of facts ("Discovery Memo").

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

Stewart filed his initial response ("Response I") to the Conditional Order on June 10, 2024, prior to the Court signing and filing the Conditional Order, based on a copy of the same that was provided to Stewart by Respondent. Stewart filed his supplemental response ("Response II") to the Conditional Order on September 8, 2024. On September 24, 2024, Stewart filed a motion requesting leave to supplement his Responses with two proposed orders for the Court to sign.

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The Court filed the final order of dismissal ("Final Order") on October 15, 2024, and it was received by Stewart from the institution mail room on November 5, 2024. Pursuant to Rule 59 (e), SCRCP, Stewart has ten days from this date to file his motion to alter/amend judgment; this motion must be filed by November 15, 2024. Stewart hereby submits the following motion.

ARGUMENT

From the onset of this case, Stewart was criminally charged with C.A.'s death based largely upon the autopsy conclusions of Dr. Harley. The pathologist ruled C.A.'s death as a homicide. He concluded the cause of death was blunt force trauma to the head, based on his finding that C.A. sustained a right parietal skull fracture prior to death. *Return pp. 13-15.* Dr. Harley testified with absolute certainty to his conclusions before the jury at trial, leaving open only whether the right parietal skull fracture resulted from a fall, or from C.A. being struck in the head with a blunt object. *Id.*

However, Dr. Harley now admits that his autopsy conclusions and subsequent trial testimony that C.A. sustained the skull fracture prior to death "could be wrong". *Response I p. 11; Harley Affidavit p. 3.*[1] Dr. Harley indicates post-trial evidentiary developments led him to partially recant his trial testimony. *Id.* These developments include evidence that Stewart was suffering from Dissociative Amnesia following C.A.'s death, evidence raising a question of whether C.A. killed herself, and a report from Dr. Downs outlining several previously unknown

[1] Response II p.2 n.2

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factors which significantly raise the probability that the right parietal skull fracture was sustained after death. *Id.*

Stewart brings this PCR action under S.C. Code Ann. § 17-27-20 (A)(1)(2)(4). *Response I p. 3.* He proclaims that he is entitled to relief under this section because his conviction and sentence was in violation of the United States and South Carolina Constitutions, the trial court lacked jurisdiction to impose his sentence, and new evidence requires the vacation of his sentence in the interests of justice. *Id at pp. 3-5.* Specific constitutional violations invoked by Stewart include the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. *Id.* He further invokes a violation of South Carolina Constitution Art. I § 3. *Id.*

The crux of Stewart's argument is that he made a prima facie showing his case should have never been submitted to the jury. *Response I p. 1.* Specifically, new admissions from Dr. Harley support Stewart's claim that C.A committed suicide, and therefore, Stewart committed no crime related to C.A.'s death. *Conditional Order p. 10; Response I pp. 9-12.* But, even if his case was properly submitted to the jury, his sentence should be vacated because his trial was plagued by multiple constitutional violations, including that Stewart was tried while mentally incompetent. *Conditional Order p. 10.*

The Conditional Order, prepared for the Court by Respondent, fails to address any of the specific claims raised by Stewart in this action, as required by S.C. Code Ann. § 17-27-80 and by Rule 52 (a), SCRCP. See *Reese v. State, 425 S.C. 108, 111, 820 S.E.2d 376, 378 (2018).* The Conditional Order further incorrectly states the facts presented by Stewart in support of his

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claims. *Id.* Thus, Stewart hereby moves the Court to alter/amend the Final Order to address his specific claims, pursuant to Rule 59 (e), SCRCP, based on the following:

STATUTE OF LIMITATIONS

The Court summarily dismissed this action, in part, because Stewart filed the current application "seventeen years, five months, and six days beyond the statute of limitations". *Conditional Order pp. 11-13.* [4] This finding is based on a narrow interpretation that S.C. Code Ann. §17-27-45(A) forecloses the filing of a PCR application beyond one year after the Remittitur was returned, without any exceptions. *Conditional Order pp. 12-13.* However, subsections (B) and (C) of this statute provide exceptions to subsection (A) based on retroactively applied new rulings, and newly discovered evidence.

Stewart raises constitutional claims in the current action that fall generally within the exception to the statute of limitations provided in subsection (C), the exception for newly discovered evidence. See *Response I pp. 3-4.* Specifically, Stewart claims new evidence establishes his actual innocence, at least to a prima facie degree, and that the trial court lacked subject matter jurisdiction to adjudicate his case. *Conditional Order p. 10.* See *Response I p. 9.* Stewart also claims new evidence establishes he was mentally incompetent to stand trial due to him suffering from Dissociative Amnesia. *Conditional Order p. 10.*

[4] The Court states the final dismissal of this action is for "reasons set forth in the Court's Conditional Order of Dismissal". *Final Order p. 3.* Thus, for purposes of this motion, Stewart will reference the Conditional Order.

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Stewart raises a credible actual innocence claim, supported by reliable new evidence that was not presented at trial. See *Schlup v. Delo, 513 U.S. 298, 234, 115 S.Ct. 851 (1995).* Specifically, he provides new evidence of admissions from Dr. Harley casting doubt on the scientific conclusions that directly resulted in Stewart being criminally charged with C.A.'s death. This new evidence lends credence to Stewart's claim that he is innocent of voluntary manslaughter because C.A. committed suicide. The United States Supreme Court held that actual innocence serves as an exception to the statute of limitations. *McQuiggin v. Perkins, 569 U.S. 383, 133 S.Ct. 1924 (2013).* Similarly, the South Carolina Supreme Court has recognized this exception to the statute of limitations when newly discovered evidence is "material to the accused guilt or innocence". *McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627 (2013).*

Aside from invoking actual innocence as an exception to procedural requirements, Stewart also asserts his actual innocence as a freestanding constitutional claim entitling him to relief under S.C. Code Ann. § 17-27-20 (A)(1)(4). *Conditional Order p. 10.* The liberal construction of this claim is that the unlawful imprisonment of an innocent person violates due process under S.C. Const. Art. I § 3. To this extent, Stewart moves this Court to follow other state courts in recognizing freestanding actual innocence claims in PCR proceedings. See *Schmidt v. State, 909 N.W.2d 778 (2018).*

Stewart's actual innocence claim further establishes federal constitutional violations of due process and cruel and unusual punishment. U.S.C.A. 8, 14. Though the U.S. Supreme Court has never recognized a freestanding actual innocence claim, the facts in Stewart's case are clearly

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distinguishable from the facts in cases where the Supreme Court made these rulings. For instance, Stewart does not claim actual innocence on the basis that someone else committed the crime, or on the basis that he is only guilty of the crime to a lesser degree. See *Herrera v. Collins, 506 U.S. 390, 124 S.Ct. 1847 (1993)*; *Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979)*. Rather, Stewart's actual innocence claim centers on the fact that he is convicted of a crime that was never committed, because the person he is convicted of killing committed suicide. *Response I p. 4.*

It is essential to a fair analysis of this issue to consider all the evidence of Stewart's innocence that was obtained after trial. In 2014, Stewart recovered his memory that C.A. killed herself on the year anniversary of a forced abortion by ingesting something. *Discovery Motion pp. 1-3.* In 2018, Stewart discovered crime scene notes revealing the forensic crime scene investigator, Al Stuckey, meticulously searched the scene of C.A.'s death but found no evidence of a violent struggle. See *In re Stewart, 78 F.4th 690 (4th Cir. 2023)*.[5] This evidence, which was withheld from Stewart by the State, directly contradicts the State's trial theory that C.A. died following a violent struggle with Stewart. That same year, a letter written by C.A. shortly before her death was discovered, and in this letter, C.A. explicitly stated she was "thinking about killing myself". *Discovery Motion p. 3.*

[5] The Fourth Circuit Court of Appeals relied upon a finding of the prior PCR judge that the crime scene notes were disclosed to Stewart prior to trial, though Stewart vehemently denies it. *Id.* Regardless, Dr. Manly's sworn affidavit reflects that Al Stuckey's crime scene notes were also withheld from the pathologist. *Manly Affidavit p. 2.*

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In 2022, during a federal proceeding, a forensic psychiatrist conducted a mental evaluation on Stewart. The psychiatrist concluded in her report that Stewart suffered from traumatic shock after C.A.'s death. See *In re Stewart, supra*. The psychiatrist further concluded, based on Stewart's prior history of suffering from Dissociative Amnesia, among other factors, it is "very possible" he suffered from this mental disorder after witnessing C.A.'s death. *Id.*

During the same proceeding, Stewart obtained a forensic autopsy analysis report from Dr. Downs, based on the pathologist's evaluation of the new evidence, and the limited files from C.A.'s autopsy that were in Stewart's possession. Dr. Downs concluded that "suicide cannot be ruled out" as C.A.'s manner of death. *Discovery Motion pp. 3-4.* He further noted several factors, including the lack of blood on the death scene, which indicate the right parietal skull fracture was sustained after death. *Id.*

During the current proceeding, Stewart obtained a sworn affidavit from Dr. Harley. *Response II p. 2.* Dr. Harley admitted, after revi ewingthe new evidence and the report from Dr. Downs, that his conclusion C.A. sustained the right parietal skull fracture prior to death "could be wrong". *Id.* Dr. Harley agreed with Dr. Downs that the lack of blood on the death scene is significant, but Dr. Harley indicated that he was not made aware of the evidence from the scene when be conducted the autopsy. *Harley Affidavit pp. 2-3.* Dr. Harley also admitted, because he wasn't aware there "was a question of suicide", he didn't request the more extensive toxicology analysis recommended for detecting suspected suicide overdoses, and he didn't review C.A.'s mental health history. *Response I pp. 13-14; Harley Affidavit pp. 3-4.* Dr. Harley's admissions

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leave open the possibility that C.A. committed suicide exactly how Stewart claimed, but this fact wasn't discovered during the autopsy due to omissions that were made by Dr. Harley while conducting the autopsy. *Response I p. 14; Response II pp. 2-3.*

The facts presented by Stewart in this action establish new evidence of his actual innocence both as an exception to the statute of limitations, and as a separate substantive claim warranting relief. See *Response I pp. 6-8.* Thus, a material factual dispute exists as to whether this action is untimely, and this dispute can only be resolved by a hearing. *Id at p. 8.* For these reasons, Stewart moves the Court to hold an evidence hearing to resolve this factual dispute. Alternatively, Stewart moves the Court to alter/amend the Final Order to specifically address how these facts fail to establish an actual innocence exception to the statute of limitations, and to specifically address Stewart's freestanding claim of actual innocence.

Additionally, the South Carolina Supreme Court held the statute of limitations should be tolled "in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to mental incompetency". *Ferguson v. State, 302 S.C. 615, 619-20, 677 S.E.2 d 600, 602 (2009).* The Supreme Court further held, in these instances, the PCR court should hold a hearing to determine the specific circumstances of the mental incompetency, including its duration. *Id.* See *Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 535 S.E.2 d 672 (2000) (tolling of statute of limitations for dissociative amnesia).* The holding of the Supreme Court gives clear indication that summary dismissal under these circumstances is improper, because the mentally incompetent applicant has not received his "one bite of the apple" in PCR proceedings.

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Stewart began recovering his memory in 2014, at the earliest. However, his recovery of specific details about C.A.'s suicide has been gradual, leading to continuous chain of newly discovered evidence, culminating in the initial discovery of admissions from Dr. Harley on March 7, 2024. Dr. Harley made further admissions on March 19, 2024, and he signed his sworn affidavit on August 23, 2024.

Dr. Harley's admissions establish, for the first time in this case, a connection between Stewart's mental incompetency and potential inaccuracies in the pathologist's autopsy conclusions. Specifically, Dr. Harley admits that if he had known of Stewart's suicide memories at the time of the autopsy, the pathologist would have conducted the autopsy differently, which presumably would have led him to reach different conclusions regarding C.A.'s cause and manner of death. *Response I pp. 13-14.* Hence, Dr. Harley admitted his autopsy conclusions underlying his trial testimony that C.A.'s death resulted from a right parietal skull fracture "could be wrong". *Id at p. 11.*

If the statute of limitations for Stewart's mental incompetency claim is tolled until March 7, 2024, the earliest date of discovery of Dr. Harley's admissions, then this issue has been timely filed. These facts raise a material factual dispute as to the timeliness of the mental incompetency claim, and this factual dispute can only be resolved by a hearing. *Robertson v. State, 418, S.C. 505, 519, 795 S.E.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").*

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Stewart, therefore, moves this Court to hold an evidence hearing to determine if the statute of limitations should be tolled due to his mental incompetency. In the alternative, he moves the Court to alter/amend the Final Order to specifically address this issue.

NEWLY DISCOVERED EVIDENCE

As stated, supra, Stewart obtained new evidence which entitles him to relief under S.C. Code Ann. § 17-27-20(A)(4). Specifically, he obtained new admissions from Dr. Harley indicating the pathologist provided false testimony regarding C.A.'s cause and manner of death. *Response I pp. 10-14; Response II pp. 2-3.* Stewart discusses the specific details of these admissions at great length, supra. Thus, for the sake of brevity, he will only discuss how this evidence meets the South Carolina newly discovered evidence standard, and how it establishes a violation of due process under the Fourteenth Amendment.

South Carolina has set forth five factors to be analyzed when considering a newly discovered evidence claim. *Clark v. State, 315 S.C. 385, 387-88, 434 S.E.2d 266, 267 (1993).* The United States Supreme Court held "a conviction obtained through use of false evidence" violates the Fourteenth Amendment. *Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).* This fact holds true "irrespective of the good or bad faith of the prosecution". *Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).* See *Simmons v. State, 416 S.C. 584, 788 S.E.2d 220 (2016).*

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First, Dr. Harley's admissions would not only change the outcome in a new trial but would also change Stewart being criminally charged with C.A.'s death. Second, this evidence was initially discovered on March 7, 2024, well after Stewart's 2003 trial.

Third, this evidence could not have been discovered sooner through the exercise of due diligence. Dr. Harley's decision to partially recant his trial testimony is based on other new evidence obtained after trial, including evidence obtained in 2023. Moreover, Dr. Harley indicates his decision on whether to fully recant his trial testimony hinges on the completion of a forensic review of C.A.'s autopsy by Dr. Downs, which cannot be accomplished unless the Court grants discovery.[6]

Fourth, this evidence is material to guilt or innocence. Dr. Harley's admissions leave open the possibility C.A. committed suicide, a fact which would unquestionably establish Stewart's actual innocence for voluntary manslaughter. Fifth, this evidence is not merely cumulative or impeaching. Dr. Harley's conclusions about C.A.'s cause and manner of death was the only direct evidence presented by the State at trial to support its violent death theory. These conclusions also directly resulted in Stewart being charged with a crime for C.A.'s death.

Though, admittedly, Dr. Harley has not yet fully recanted his trial testimony, his admissions indicating his trial testimony "could be wrong" is sufficient as a prima facie showing

[6] The need for discovery will be discussed in more detail in the following section.

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this testimony was false. At this stage, a prima facie showing of merit is all that is required to avoid summary dismissal. *See Response I p. 10 n. 5.*

Stewart does not imply that Dr. Harley deliberately provided false testimony, or that the Sate knowingly presented this false evidence to the jury. Dr. Harley's admissions clearly indicate that he acted in good faith while testifying at trial, as his testimony was based on evidence "available to me at the time". *Harley Affidavit pp. 1, 3.* However, the good or bad faith of the prosecution, or Dr. Harley, has no bearing on the constitutional error arising from the introduction of false evidence to the jury. *Brady v. Maryland, supra.*

The Conditional Order incorrectly states the factual predicate for Stewart's newly discovered evidence claim: "[Stewart] claims that he discovered on March 7, 2023, that counsel did not file a Rule 5, SCRCrimP, for his discovery". *Conditional Order p. 17.* The Conditional Order then states the reasons for summarily dismissing this claim, based on these incorrect facts. *Id at pp. 17-18.* Thus, the summary dismissal of the newly discovered evidence claim, based on an incorrect factual predicate, is moot.

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

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DISCOVERY

Stewart requested a full and fair opportunity to complete discovery to fully develop scientific proof of his innocence, and to also fully develop evidence pertinent to his opposition of Respondent's request for summary dismissal. *Discovery Motion p. 1; Response I p. 7.* As a showing of good cause, he provided new evidence of admissions from Dr. Harley, which has been discussed at great length, supra.

As also stated previously, Dr. Harley has already partially recanted his trial testimony. *Harley Affidavit pp. 3-4.* And through his admissions, he indicates his decision on whether to fully recant his testimony depends on the results from the completion of a scientific process, namely a forensic autopsy review of C.A.'s autopsy. *Id.* Dr. Harley states he is "retired from active work". *Id at p. 3.* Therefore, he indicates he has "no objection" deferring to Dr. Downs to complete the forensic review of C.A.'s autopsy. *Id.*

Dr. Harley states he reviewed a report from Dr. Downs outlining multiple previously unknown factors which indicate the right parietal skull fracture is "postmortem and heat related". *Id.* Dr. Harley indicates his consideration of these factors led him to admit his conclusion the skull fracture was sustained prior to death "could be wrong". *Id.* Dr. Harley states "additional information is required" in order for him to determine the full "impact of the new evidence on my conclusions from the autopsy". *Id at p. 4.*

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Dr. Harley further states he reviewed statements from Stewart indicating C.A. "committed suicide by ingestion of some sort of pill". *Id at p. 3.* Initially, Dr. Harley states "no such pill was found in the stomach fluid, and nothing unusual was found in the blood at the toxicology exam". *Id.* However, upon further questioning, Dr. Harley admitted he only requested a basic toxicology exam, and a more extensive exam is required to detect many of the potential substances C.A. could have ingested to kill herself. *Response I p. 13.* Dr. Harley states he did not request the more extensive toxicology exam because he was not aware "there was a question of suicide" at the time of the autopsy. *Harley Affidavit p. 3*

Dr. Harley also indicates that he did not review key evidence from the death scene. Specifically, he states "[i]t is not clear to me that the site in the woods where [C.A.] is alleged to have died was examined by SLED services". *Id at p. 2.* [7] However, after reviewing the death scene analysis from Dr. Downs, Dr. Harley stated his agreement that the lack of blood on the death scene is significant. *Id at p. 3.* It must be noted that Dr. Downs evaluated evidence that was not available when Dr. Harley conducted the autopsy, including a description of the evidence found on the death scene, as contained in the withheld crime scene notes. See *id.* See also *Downs Report p. 10.*

[7] This statement reveals that Dr. Harley never reviewed the crime scene notes from SLED Agent, Al Stuckey, the same crime scene notes the state withheld from Stewart. Agent Stuckey, the forensic crime scene investigator, made death scene observations which contradicted the State's trial theory that C.A. died following a violent struggle with Stewart. Most significantly, the crime scene investigator stated no "sign of a struggle" was found on the death scene, including, as noted by Dr. Down's, "a prominent lack of identified blood". *Downs Report p. 8.*

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The focus of Dr. Downs' forensic autopsy review is specific: (1) to scientifically determine whether the right parietal skull fracture was sustained after death, and (2) to scientifically determine whether C.A. committed suicide, including, if possible, determining how she did it. *Response I pp. 12-13.* However, he cannot complete this review unless the Court grants discovery. *Response I p. 15; Discovery Motion pp. 3-4.* Specifically, Dr. Downs needs to be granted access to files from C.A.'s autopsy, currently housed at the Medical University of South Carolina, in order to complete his review. *Id.*

The Conditional Order states Stewart's request for discovery was denied because his "claims lack merit, and therefore, [Stewart] cannot establish good cause to obtain discovery in an action that is procedurally barred and shall be summarily dismissed". *Conditional Order p. 19.* However, the underlying rationale for this denial fails for three reasons.

First, Dr. Harley, the person who conducted the autopsy on C.A., is the most uniquely qualified person to determine the merits of any claim challenging the accuracy of his autopsy conclusions. *Response II p. 3.* And Dr. Harley has clearly indicated Stewart's claims hold merit, including the fact that Dr. Harley voluntarily provided Stewart with a sworn affidavit in which the pathologist admitted his conclusions "could be wrong". Second, as discussed in the previous section, the finding in the Conditional Order that Stewart's claims "lack merit" is based on an inaccurate statement of the facts supporting these claims. Third, as also stated previously, the finding that this action is "procedurally barred" is based on procedural defaults being applied to incorrect facts.

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Moreover, Stewart respectfully cautions that the Court cannot reasonably determine the proper legal standards to apply in reviewing Stewart's claims without first granting discovery, as the final scientific conclusions of Dr. Harley and Dr. Downs are essential to the Court's determination. *Response I pp. 1-2, 15.* For instance, if the pathologists can only agree that the right parietal skull fracture was sustained after death, the proper legal standard to review the claims would be the newly discovered evidence standard, in order to determine if the new evidence would change the outcome of a new trial. However, if both pathologists agree that C.A. committed suicide, the proper legal standard to review the claims would be the subject matter jurisdiction standard to determine if the remaining evidence is sufficient to warrant Stewart being criminally charged with C.A.'s death.

For these reasons, Stewart renews his request for the Court to grant him leave to conduct discovery. In the alternative, he moves the Court to alter/amend the Final Order to address the denial of this request according to the correct facts presented by Stewart in this action.

SUBJECT MATTER JURISDICTION

The Conditional Order states Stewart's subject matter jurisdiction claim is dismissed "as a matter of law". *Conditional Order p. 14.* As the legal basis for dismissal, the Order states that Stewart "cannot show any irregularity because the indictments in question are sufficient on their face". *Id at p. 15.* However, the South Carolina Supreme Court held "subject matter jurisdiction of the circuit court and sufficiency of the indictments are two distinct concepts". *State v. Gentry, 363 S.C. 93, 99, 610 S.E.2d 494, 499 (2005).* This ruling overruled cases cited in the Conditional

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Order on this issue "to the extent they combine the concept of the sufficiency of the indictment and the concept of subject matter jurisdiction". *Id at Appendix.*

Stewart's subject matter jurisdiction claim is not based on the sufficiency of the indictment but is because C.A. committed suicide, and therefore, the criminal court lacked jurisdiction since no crime was committed related to C.A.'s death. *Conditional Order p. 10.* As stated in the previous section, the Court must grant discovery for Stewart to scientifically prove this fact. However, at this preliminary stage, a prima facie showing of the same is all that is required to avoid summary dismissal. *Response I p. 1.* Stewart demonstrates a prima facie showing C.A. committed suicide based on his recovered memory, and Dr. Harley's admissions indicating the only direct evidence presented at trial which opposes suicide—the pathologist's trial conclusions—"could be wrong". *Id at pp. 9-12.* Thus, this fact must be presumed to be true and viewed in the light most favorable to Stewart. *Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (2016).*

Subject matter jurisdiction is the power of the court to hear and determine cases. *State v. Gentry, supra.* In the instance of a person's death, this power is conveyed to the criminal court only if the elements of the corpus delicti have been met, or the person's death was caused by the criminal conduct of another person. *Response I p. 5.* Thus, a suicide death is outside the jurisdiction of a criminal court, except under rare circumstances not found in Stewart's case. These factors, if proven true, would render void the court order committing Stewart to the South

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Carolina Department of Corrections, because this order was issued without jurisdiction. *Id at pp. 5-6.*

While the State presented other evidence of guilt at trial, besides Dr. Harley's autopsy conclusions, this evidence is wholly circumstantial in nature. Though circumstantial evidence can be relied upon to establish the corpus delicti of murder, reliance on circumstantial evidence for this purpose is appropriate only when it is the best evidence obtainable, generally in cases where no body was found. See *State v. Owens*, *293 S.C. 161, 167, 359 S.E.2d 275, 278 (1987)*. And some jurisdictions have found circumstantial evidence in these cases must "negate the possibility of suicide". See *U.S. v. Russell*, *971 F.3d 1098, 1111 (4th Cir. 1992)* discussing factors found in *Virgin Islands v. Harris*, *938 F.2d 401, 411 n. 12 (3rd Cir. 1991)*.

Regardless, the circumstantial evidence presented by the State at Stewart's trial primarily consists of out-of-court statements purportedly made by him. Aside from the fact that Stewart was suffering from a mental disorder that seriously undermines the trustworthiness of any statement made by him while in that state, the statements allegedly made by Stewart are uncorroborated.[8] And the extrajudicial statement of a criminal defendant is not sufficient to establish the corpus delicti of a crime, unless supported by independent proof of its trustworthiness. *State v. Osborne*, *335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999)*. See *Opper v. United States*, *248 U.S. 84, 89-90, 75 S.Ct 158, 99 L.Ed. 101 (1954)*. However, even if this

[8] Conversely, Stewart provides a detailed account of his recovered suicide memory that is largely supported by independent corroborating evidence. See *Discovery Memo*.

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evidence independently warranted submission to a jury, no reasonable juror would vote to convict Stewart of voluntary manslaughter, based on such scant evidence, if considered against the overwhelming new evidence of suicide.

As previously stated, Stewart respectfully cautions that the merits of his subject matter jurisdiction claim cannot be determined without discovery, as it involves a scientific determination of whether C.A. committed suicide. Thus, he moves the Court to reconsider the summary dismissal of this claim without discovery, considering said dismissal is based on an obsolete legal standard applied to incorrect facts. In the alternative, he moves the Court to alter/amend the Final Order to address this issue in the proper context in which it is raised.

MENTAL INCOMPETENCY DUE TO DISSOCIATIVE AMNESIA

Stewart claims he was subjected to a jury trial while mentally incompetent, due to him suffering from Dissociative Amnesia, which deprived him of a fair trial under the Sixth Amendment. *Conditional Order p. 10.* Moreover, Dr. Harley's admissions indicate that Stewart's mental incompetency directly contributed to the inaccuracy of the pathologist's autopsy conclusions. *Harley Affidavit pp. 3-4.* [9] Specifically, the pathologist indicates that if he knew of Stewart's repressed suicide memory at the time of the autopsy, the pathologist would have

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[9] Dr. Harley also indicates that the State withholding evidence from the death scene also directly contributed to the same. *Id at pp. 2-3.*

conducted more extensive autopsy procedures that presumably would have led him to reach different conclusions about C.A.'s cause and manner of death. *Id at pp. 3-4.*

Dr. Harley's admissions shed new insight into the foundational impact of Stewart's mental incompetency. Put simply, the adverse effect of Stewart's mental disorder on the accuracy of the pathologist's autopsy conclusions was a contributing factor to Stewart being charged with a crime that was never committed. This fact was previously unknown, and therefore, was not considered by prior courts while reviewing Stewart's mental incompetency claim. Thus, there is a genuine issue of whether this claim, in this specific context, is barred as successive, or by res judicata.[10]

The pathologist also sheds scientific insight into how Stewart's mental disorder adversely impacted the veracity of statements made by him. For instance, Dr. Harley dismissed a letter written by Stewart as being inconsequential. *Harley Affidavit p. 3.* Though this letter was introduced by the State at trial as an admission of guilt, Dr. Harley stated it is apparent Stewart wrote this letter while "in an altered state of mind". *Id.* The pathologist has unique insight into the untrustworthiness of the statements about C.A.'s death found in the letter, simply because the pathologist conclusively ruled out that C.A. died in the manner described in the letter. *Return p. 14; Discovery Memo pp. 12-13.*

[10] These factors will be discussed in more detail in the following section.

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Additionally, new evidence reveals a direct connection between Stewart's mental disorder and his peculiar behavior after C.A.'s death. Particularly, new evidence reveals that Stewart burned the body NOT to cover up a crime, but in a physical manifestation of his mind attempting to dissociate from the painful memory of C.A.s death. *Discovery Memo pp. 8-9.* This fact is consistent with Stewart's trial testimony that he cradled C.A.'s dead body in his arms for hours, and that his mind "started slipping" right before he burned the body. *Id.*[11] This fact is also consistent with the trial testimonies of the initial responding officers, who observed that Stewart was in a "confused state" when they arrived on the scene, and that his demeanor didn't give the impression he had just committed a crime, but that he had done something he "didn't mean to do". *Discovery Memo pp. 9-10.*

Stewart moves the Court to hold an evidence hearing for further factual development of this claim. In the alternative, he moves the Court to alter/amend the Final Order to address this issue.

SUCCESSIVENESS, RES JUDICATA AND LACHES

The Conditional Order states Stewart's claims are procedurally barred for various reasons (i.e. successiveness, res judicata, laches). *Conditional Order pp. 13-16.* However, the unique

[11] A witness for the State at trial testified that the path where Stewart cradled C.A.'s body was not an ideal spot to hide a body because this path was frequently used as a shortcut by people in the neighborhood. *Trial Tr.* [illegible] 249-50.

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facts in this case, which are not properly addressed in the Conditional Order, establish exceptions to these procedural defaults.

As demonstrated, supra, the correct facts presented in this action establish sufficient reasons why Stewart's claims were not raised in prior actions. Specifically, his claims are based on newly discovered evidence, and any delay in raising his claims is due to his previous mental incompetence. *Supra pp. 11-15.* These factors negate the contention that Stewart has received his "one bite of the apple" for these claims. *Id at pp. 11, 13.*

And though previous courts have heard and considered certain aspects of Stewart's claims, new evidence has been discovered since these proceedings revealing factors in these claims that were not considered by the previous courts. For instance, the federal habeas court considered Stewart's mental incompetency claim in the limited context of newly discovered evidence, holding that this claim did not meet the "no reasonable juror" requirement of 28 U.S.C. § 2244(b)(2)(B). See *In re Stewart, supra.* This adverse ruling was largely based on Dr. Harley's trial conclusions, and extrajudicial statements purportedly made by Stewart. *Id.*

However, the federal court did not consider the new admissions from Dr. Harley, discovered after the federal proceeding, which indicate that Dr. Harley provided false testimony regarding the conclusions relied upon by the federal court to support its ruling. Dr. Harley's admissions further indicate that statements from Stewart, also relied upon by the federal court to support its ruling, are untrustworthy based on conclusive findings made by the psychologist while

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conducting the autopsy. *Supra at pp. 22-23.* Additionally, the federal court did not consider Stewart's mental incompetency claim in the context of subject matter jurisdiction.

The unique facts in this case negate a reasonable contention that any possible delay has worked to Respondent's "injury, prejudice, or disadvantage". See *Conditional Order p. 16.* Dr. Harley, the sole witness for the State whose testimony is pertinent to this action, has manifested a clear recollection of the facts in this case. See *Harley Affidavit.* And the evidence necessary for Dr. Downs to complete his forensic autopsy review is currently housed at the Medical University of South Carolina. Thus, any perceived delay has not "affected the availability of evidence for this Court to review [Stewart's] claims". See *id.*

Moreover, as discussed at length in previous sections, new evidence raises a reasonable probability that Stewart is convicted of a crime that was never committed. This fact calls into question the jurisdiction of the trial court, and it is well established that issues related to subject matter jurisdiction cannot be waived or forfeited. *Response I pp. 7-8.* Thus, this longstanding procedural safeguard stands against dismissing claims related to subject matter jurisdiction on procedural grounds. *Id.*

The prudence underlying the legislative intent of this safeguard is apparent when applied to the extraordinary circumstances in this case. For without this procedural safeguard, Stewart could remain imprisoned for a crime that was never committed, solely because he is denied judicial review of his subject matter jurisdiction claim due to procedural default. The South Carolina Supreme Court rejected even the possibility such an unconscionable outcome by

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recognizing necessary exceptions to procedural defaults "when the system has simply failed a defendant and where to continue a defendant's imprisonment without review would amount to a gross miscarriage of justice". *Aice v. State, supra.*

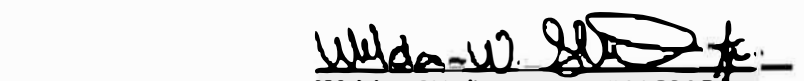
Stewart leaves the Court with the same question posed at the beginning of the motion—should a potentially innocent person be denied a fair opportunity to prove his innocence based solely on procedural requirements, with no exceptions. He prays the Court will resolve this question in favor of granting him a full and fair opportunity to complete discovery.

CONCLUSION

For the above reasons, Stewart moves the Court to grant leave to conduct discovery and to hold an evidence hearing in order to achieve a complete record. In the alternative, Stewart moves the Court to alter/amend the Final Order to address the specific issues raised by Stewart, as detailed in this motion, and to address the specific and correct facts presented by him in support of his claims.

November 7, 2024

Respectfully Submitted,



Weldon W. Stewart Jr. #295095
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Trenton, SC 29847

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
	)	Case No. 2023-CP-34-00282
WELDON STEWART, JR., #295095	)	
	)	
	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
	)	

I, [redacted] Stewart, hereby certify that I have served one copy of the below listed documents on D. Russell Barlow, II, Assistant Attorney General by mailing copies of the same via USPS priority mail to the address at:

D. Russell Barlow, II, Assistant Attorney General
Office of the Attorney General
PCR Division – 4th Circuit
[redacted]
Columbia, SC 29211

The following document is being served:

1) Motion to Alter/Amend Judgment Pursuant to Rule 59 (e).

11/7/2024
Date

[redacted]
For Weldon W. Stewart, Jr.

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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 TO APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**

Respondent, the State of South Carolina, by and through undersigned Counsel, making its Return to Applicant's Motion to Alter or Amend, filed on November 7, 2024, would respectfully show this 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[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.

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[1] Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

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.
>   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.

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."

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Respondent filed its Return and Motion for Summary Judgment on July 13, 2009. The Honorable Bruce Howe Hendricks, United States Magistrate Judge, issued on December 10, 2009, a Report and Recommendation that Respondent's motion for summary judgment be granted. Stewart v. Warden of Lieber Corr. Inst., 8:09-842-SB-BHH, 2009 WL 6322405 (D.S.C. 2009). The Honorable Sol Blatt, Jr., United States District Judge, denied Applicant's Petition on March 29, 2010, and accepted the Report and Recommendation for summary judgment. Stewart v. Warden of Lieber Corr. Inst., 701 F.Supp.2d 785 (D.S.C. 2010). Applicant gave notice of his appeal to the Fourth Circuit Court of Appeals; the Fourth Circuit dismissed Applicant's appeal on February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).

2015 GENERAL SESSIONS MOTION FOR NEW TRIAL

Applicant filed motions for a new trial in or about April 2015 and proceeded to a hearing before the Honorable Paul M. Burch on that motion on May 26, 2016. Applicant was present at the hearing and represented by Jamie Scruggs, Esq. Elizabeth R. Munnerlyn, Esq., of the Fourth Circuit Solicitor's Office, represented the State. Counsel Scruggs summarized three grounds for new trials:

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).

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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

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):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
   a. "Between the months of September and December 2014, Ms. [redacted] Stewart discovered evidence which added credibility to 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 [illegible]

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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 2018 PCR action.

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 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."

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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. 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

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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 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.

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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.

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.

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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 seek out another pathologist?" Id. at 12. Applicant declined, and the judge ordered that Applicant be provided an 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.[3]

[3] 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).

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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.[4] 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";
- 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

[4] 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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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, but, thinking it to be 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.

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Forensic pathologist Dr. Russell Harley testified at trial concerning the findings from the autopsy.[5] 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:

> 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

[5] At the time of trial, Dr. Harley testified that he had 30 years of experience with 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 trial[s]." (Trial Tr. pp. 159-160). Applicant did not object to Dr. Harley's qualifications as an expert in forensic pathology. Id. at 161.

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 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 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.

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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 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.

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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.

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.

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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 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

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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."

Respondent made its return and moved to summarily dismiss the action as procedurally barred 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). On August 12, 2024, this Court issued its Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR, provisionally denying and dismissing the action. On June 10, 2024, prior to this Court's signing and filing of the Conditional Order of Dismissal, Applicant filed his "Response to Proposed Conditional Order of Dismissal and Denial of Discovery." On September 4, 2024, Applicant filed his "Supplemental Response to Conditional Order of Dismissal and Denial of Discovery." On October 15, 2024, this Court issued its Final Order of Dismissal.

APPLICANT'S MOTION TO ALTER OR AMEND

On November 7, 2024, Applicant filed a "Motion to Alter/Amend Judgement Pursuant to Rule 59(e)." In his motion, Applicant requests the Court to either "grant leave to conduct discovery and to hold an evidentiary hearing in order to achieve a complete record" or "to alter/amend the Final Order to address the specific issues raised by [Applicant], as detailed in [his] motion, and to address the specific and correct facts presented by him in support of his claims."

Applicant raises newly discovered evidence, actual innocence, mental incompetence, and subject matter jurisdiction as the exceptions to the procedural bars that this Court has already addressed. Respondent submits that this Court properly ruled on all issues after ample opportunity

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for Applicant to present all his issues and that this motion should be denied in full.

REQUEST FOR SUMMARY DISMISSAL OF THE MOTION

WHEREFORE, Respondent respectfully requests this Court deny Applicant's Rule 59(e), SCRCP, motion.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Assistant Attorney General

By: D. Russell Barlow II Esq
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
[redacted]
Columbia, SC 29211

November 13, 2024

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICAL CIRCUIT
Weldon W. Stewart, Jr. #295095, Applicant, v. State of South Carolina, Respondent,	CASE NO. 2023-CP-34-00282 **REPLY TO RESPONDENT'S RETURN PURSUANT TO RULE 59(e), SCRCP**

Stewart filed a motion to alter/amend judgement ("59(e) Motion") on November 7, 2024. Respondent filed its return ("59(e) Return") on November 20, 2024, and submitted a proposed order ("59(e) Order") to the Court for signing.[1] Respondent provided copies of both documents to Stewart.

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Stewart thoroughly reviewed these documents and noticed the proposed 59(e) Order fails to address the issues raised by Stewart in the 59(e) Motion. Specifically, the 18-page proposed 59(e) Order contains a mere two-paragraph reference to the 27-page 59(e) Motion, followed by a general assertion that "the order of dismissal issued by this Court contains the appropriate findings of fact and conclusions of law". 59(e) Order *pp. 18-19*. The South Carolina Supreme Court consistently held that general conclusions, such as this, are not sufficient to address

[1] The language in the 59(e) Order is substantially identical to the language in the 59(e) Return.

specific issues presented in a motion to alter/amend. See Reese v. State, *425 S.C. 108, 109-10, 820 S.E.2d 376, 377-78 (2018)*(remanding case to the PCR court "for the entry of a new PCR order that complies with the law").[2]

"The court shall make specific findings of fact, and state expressly its conclusions of law, related to each issue presented." S.C. Code Ann. § 17-27-80. Specific issues Stewart presented in the 59(e) Motion that were not addressed in the 59(e) Order include: (1) Stewart's actual innocence claim as an exception to the statute of limitations and as a freestanding claim, 59(e) Motion *pp. 7-11*; (2) Stewart's mental incompetence as an exception to the statute of limitations and as a separate claim *Id at pp. 11-13, 22-24*; (3) Stewart's newly discovered evidence claim based on Dr. Harley's admissions, *Id at pp. 13-15*; (4) Stewart's request for discovery based on official statements from two pathology experts, including the State's trial expert, *Id at pp. 16-19*; (5) Stewart's subject matter jurisdiction claim based on evidence of suicide, *Id at pp. 19-22*; (6) Stewart's demonstrated exceptions to procedural defaults, including successive pcr, *Id at pp. 24-*

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[2] The circumstances in this case are identical to those in Stewart's case. In Reese's case, the PCR court signed an order, prepared by the State, that "did not address each of Reese's claims, and did not include specific findings of fact or conclusions of law on any of Reese's claims". The PCR court summarily denied Reese's Rule 59(e) motion. Similarly, in Stewart's case, the Conditional and Final Orders prepared by Respondent, and signed by the Court, do not address the facts and issues presented by Stewart, and the Orders contain errors of fact and law. Stewart properly raised these issues in his 59(e) Motion. However, Respondent prepared a 59(e) Order for the Court to sign which summarily denies the 59(e) Motion using general language similar to that used in the denial of the Rule 59(e) motion in Reese's case. The Supreme Court ruled, under identical circumstances, that orders such as the Conditional, Final and 59(e) Orders do not comply with the law, and the summary denial of motions such as the 59(e) Motion is improper.

27; and (7) specific instances of misstated facts and errors of law in previous orders prepared by Respondent, *Id at pp. 15, 19-20.*[3]

Based on these omissions, Stewart respectfully requests that the Court hold a hearing on the 59(e) Motion so the issues presented therein can be properly considered and ruled upon by the Court. In the alternative, Stewart respectfully requests that the Court order Respondent to prepare an order which sufficiently addresses the above listed facts and issues presented in the 59(e) Motion, as pursuant to S.C. Code Ann. §17-27-80, and Rule 52(a) of the South Carolina Rules of Civil Procedure. Should the Court grant the latter request, Stewart respectfully requests leave of the Court to prepare an opposing proposed order.

December 2, 2024

Respectfully Submitted,

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

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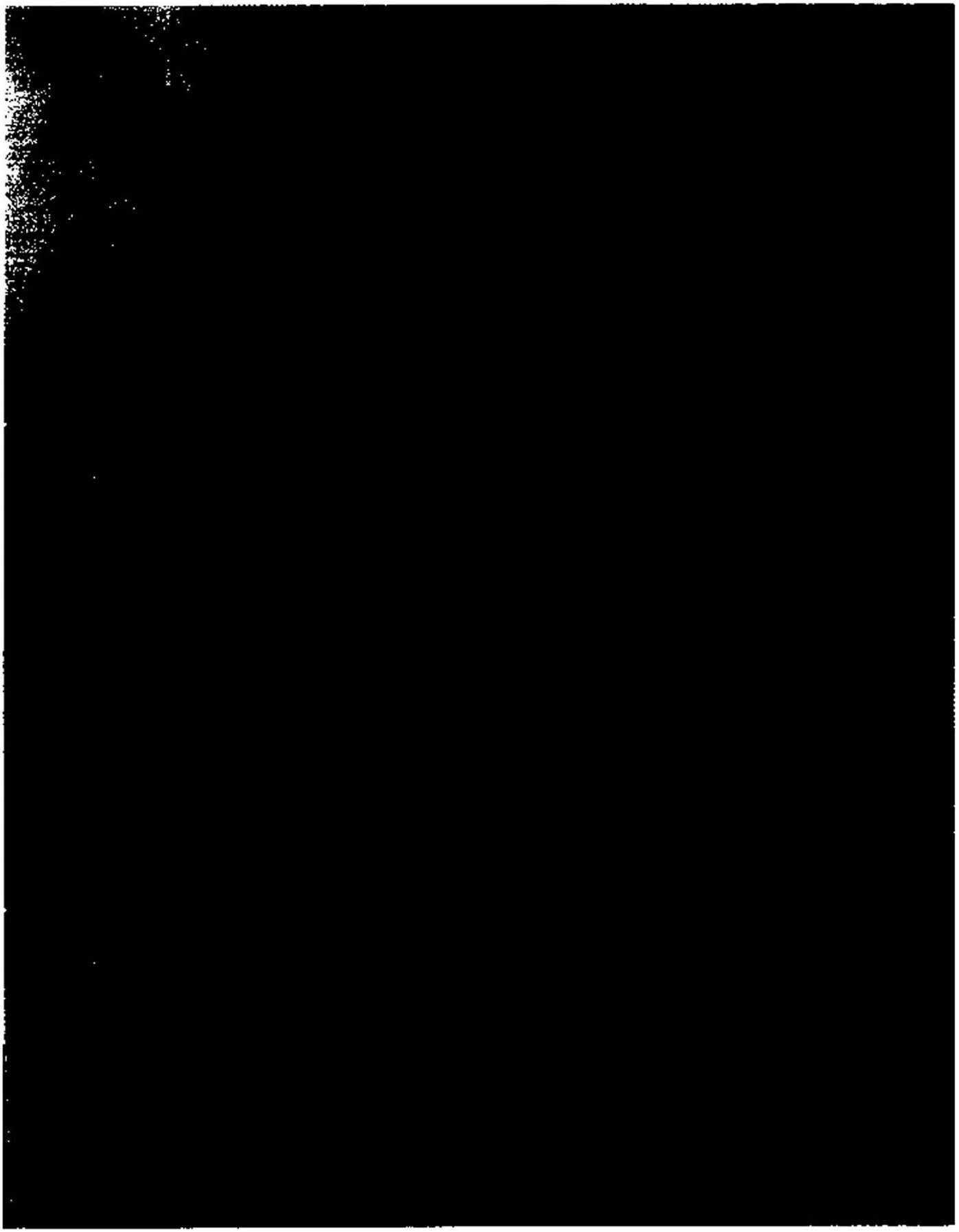
[3] The 59(e) Motion references prior documents filed by Stewart in this action in which he presented these issues to the Court.



STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
Weldon W. Stewart, Jr., #295095, Applicant	)	CASE NO. 2023-CP-34-00282
v.	)	**ORDER DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**
State of South Carolina, Respondent.	)	

This matter comes before the Court by way of Weldon W. Stewart Jr.'s (Applicant) "Motion to Alter/Amend Judgement Pursuant to Rule 59(e)" filed on November 7, 2024, asking this Court to alter or amend its Final Order of Dismissal denying Applicant's application for post-conviction relief.

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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

[1] Applicant pled guilty to the desecration charge and sentencing was deferred until after trial.

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.
   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.

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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.

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

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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).

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

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(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

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):

1. "Petitioner is entitled to a new trial because the solicitor's office committed a Brady violation when it suppressed the exculpatory nature of pretrial statements made by the pathologist, and the suppressed evidence could have been used to impeach the testimony of the pathologist."
   a. "Between the months of September and December 2014, Ms. [redacted] Stewart discovered evidence which added credibility to 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

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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 2018 PCR action.on.

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 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

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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. 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 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.

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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.

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-[illegible], 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 seek out another pathologist?" Id. at 12. Applicant declined, and the judge ordered that Applicant be provided an 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

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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.[3]

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.[4] 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";
- 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).

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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

[3] 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).

[4] 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).

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, but, thinking it to be 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 scared, 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.

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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.[5] 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:

> 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.

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[5] At the time of trial, Dr. Harley testified that he had 30 years of experience with 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 trial[s]" (Trial Tr. pp. 159-160). Applicant did not object to Dr. Harley's qualification as an expert in forensic pathology. Id. at 161.

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 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 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

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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 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;

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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.

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

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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 ACTION BEFORE THIS COURT

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 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.

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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."

Respondent made its return and moved to summarily dismiss the action as procedurally barred 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).

On August 12, 2024, this Court issued its Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR, provisionally denying and dismissing the action. On June 10, 2024, prior to this Court's signing and filing of the Conditional Order of Dismissal, Applicant filed his "Response to Proposed Conditional Order of Dismissal and Denial of Discovery." On September 4, 2024, Applicant filed his "Supplemental Response to Conditional Order of Dismissal and Denial of Discovery." On October 15, 2024, this Court issued its Final Order of Dismissal.

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APPLICANT'S MOTION TO ALTER OR AMEND

On November 7, 2024, Applicant filed a "Motion to Alter/Amend Judgement Pursuant to Rule 59(e)." In his motion, Applicant requests the Court to either "grant leave to conduct discovery and to hold an evidentiary hearing in order to achieve a complete record" or "to alter/amend the Final Order to address the specific issues raised by [Applicant], as detailed in [his] motion, and to address the specific and correct facts presented by him in support of his claims."

CONCLUSION

After careful consideration of the arguments of Applicant and Respondent and review of the record, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. The order of dismissal issued by this Court contains the appropriate findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code of Laws and Rule 52(a) of the South Carolina Rules of Civil Procedure. Accordingly, Applicant's motion for reconsideration is **DENIED.**

IT IS THEREFORE ORDERED that Applicant's motion is hereby **DENIED AND DISMISSED.**

AND IT IS SO ORDERED this 11 day of December, 2024.

GEORGE M. McFADDIN, JR.
Chief Administrative Judge
Fourth Judicial Circuit

Bennettsville, South Carolina

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ANITA M. WILLIAMS
CLERK OF COURT
MARLBORO COUNTY, SC

The Supreme Court of South Carolina

RE: Assignment and Disqualification of the Honorable Judge Paul M. Burch

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ORDER

On November 2, 2024, attorney Paul Michael Burch, Jr. was elected Solicitor for the Fourth Judicial Circuit. This is the same circuit in which his father, Paul Burch, currently serves as a resident Circuit Court Judge.

A judge may not preside over a proceeding in which a judge's family member is a party to the proceeding, acts as a lawyer in the proceeding, or acts as a director of a party. *See* Rule 3E, CJC, Rule 501, SCACR ("(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: . . . (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) is a party to the proceeding, or an officer, director or trustee of a party; (ii) is acting as a lawyer in the proceeding. . .").

As the Solicitor for the Fourth Circuit, Solicitor Burch has direct responsibility and oversight of the prosecution of criminal matters by attorneys employed in the Solicitor's Office. Accordingly, I find it necessary to issue an Order clarifying Judge Burch's assignments in the Fourth Circuit. Effective January 1, 2025, Judge Burch shall neither be assigned to any term of the Court of General Session nor entertain any motions or any other matters pertaining to the Fourth Circuit Solicitor's Office. This shall include matters involving scheduling and other uncontested matters. Furthermore, Judge Burch shall be disqualified from presiding in civil cases in the Court of Common Pleas where the Solicitor's Office or any employee thereof is a party, including post-conviction relief matters where the Fourth Circuit Solicitor's Office prosecuted the matter.

s/ John W. Kittredge
John W. Kittredge
Chief Justice of South Carolina

Columbia, South Carolina
December 20, 2024

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ALAN WILSON
ATTORNEY GENERAL

April 24, 2024

The Honorable Michael S. Holt
Fourth Circuit Chief Administrative Judge—Common Pleas
Darlington County Courthouse
[redacted]
Darlington, SC 29532

Re: **Weldon Stewart, Jr., #295095 v. State of South Carolina**
Case No: 2023-CP-34-00282

Dear Judge Holt:

Enclosed, please find the proposed **Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR Action**, in the above-captioned caseyou're your consideration.

If you approve of this Order, please sign it and return it to me in the enclosed envelope for filing.

Should you require anything additional, please do not hesitate to contact me

Sincerely,

D. Russell Barlow II

D. Russell Barlow, II
Assistant Attorney General

DRB/jjh

cc: Weldon Stewart, Jr., SCDC #295095

Enclosures

COPY

ALAN WILSON
ATTORNEY GENERAL

September 26, 2024

The Honorable George M. McFaddin, Jr.
Fourth Circuit Chief Administrative Judge—Common Pleas
[redacted]
Sumter, SC 29150

Re: **Weldon W. Stewart, Jr., #295095 v. State of South Carolina**
Case No: 2023-CP-34-00282

Dear Judge McFaddin:

Enclosed, please find the proposed **Final Order of Dismissal** in the above-captioned case for your consideration. If you approve of this order, please sign it and forward it to the Marlboro County Clerk of Court for filing.

Should you require anything additional, please do not hesitate to contact me

Sincerely,

D. Russell Barlow, II
Assistant Attorney General

DRB/jjh

cc: Weldon W. Stewart, Jr., SCDC #295095

Enclosures

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ALAN WILSON
ATTORNEY GENERAL

November 13, 2024

The Honorable George M. McFaddin, Jr.
Fourth Circuit Chief Administrative Judge—Common Pleas
[redacted]
Sumter, SC 29150

Re: **Weldon Stewart, Jr., #295095 v. State of South Carolina**
Case No: 2023-CP-34-00282

Dear Judge McFaddin:

Enclosed, please find the proposed **Order Denying Applicant Motion Pursuant to Rule 59(e), SCRCP**, in the above-captioned case for your consideration.

If you approve of this order, please sign it and forward it to the Marlboro County Clerk of Court in the enclosed envelope for filing.

Should you require anything additional, please do not hesitate to contact me

Sincerely,

D. Russell Barlow II Esq.

D. Russell Barlow, II
Assistant Attorney General

DRB/jjh

cc: Weldon Stewart, Jr., SCDC #295095 (w/out attachments previously sent)

Enclosures