Upon Receiving the Indictment, Trial Counsel Should Have Discussed with Appellant That "The Indictment Is Defective Because It Does Not State The Time And Place of the Victims Death. **BY LAW**, You Do Not Have To Present An Alibi Because You Will Be Placed Under the Presumption of **Innocence** Which Means That The State Has To Prove You Guilty Beyond A Reasonable Doubt And You Can Put Up A Defense If You Would Like But Due To The Defective Indictment Stating That A Murder Occurred on A Different Date Than What The State Been Intending To Prove At Trial; **I Can** Motion To Quash The Defective Indictment And the State Will Not Be Able To Re-Indict You For Murder, that You Will Be Protected By the Double Jeopardy Clause."

Appellant Claims Trial Counsel Should Have Been found Ineffective In Failing To Object To The Defective Indictment In Accordance With S.C. Code Ann. Section 17-19-90, That Way If The Trial Judge overruled Trial Counsel's Motion To Quash then the Issue Would Have Been Preserved For Direct Appellate Reviews.

In Gentry Supra, The Supreme Court Held the General Rule Regarding Preservation of Error And Held that A Defendant Must Raise An Issue Regarding The Sufficiency of the Indictment Before The Jury Is Sworn In order To Preserve The Error For Direct Appellate Review.

South Carolina Statutory Law Provides The Following:

> EVERY OBJECTION To ANY INDICTMENT FOR ANY DEFECT APPARENT ON THE FACE THEREOF SHALL BE TAKEN BY DEMURRER OR ON MOTION TO QUASH SUCH INDICTMENT BEFORE THE JURY SHALL BE SWORN AND NOT AFTERWARDS.
>
> S.C. Code Ann. Section 17-19-90

It Was The Best Defense To Put the State To Its Proof Beyond A Reasonable Doubt Of Which They Were Entitled To Which Was Object To The Indictment Count One Murder Before The Jury Was Sworn In Then Motion To Quash So That the State May Bring Back A Properly Constituted Indictment For **Appellant** To Be Apprised Of the elements of the offense And Allow Him To Decide Whether To Plead Guilty Or Stand Trial.

At The Close Of the State's Case At Trial, It Moved To Amend The Indictment To Correct The Date Of the Crimes As Stated In the Indictment To Reflect Their occurrence on February 18, 2003. Counsel Contemporaneously objected To The Court Allowing Such An Indictment Amendment, But Was overruled And the Indictment Was corrected.

Trial Counsel Should Have Been found Ineffective For even Contemporaneously Objecting Because That Was Not even Evidence When The State Asked The Trial Judge To Amend The Indictment Because The State Rested Their Case on the Record Therefore No More Evidence Should Have Been Allowed. A contemporaneous objection is on the record In Front of the Jury Nothing that counsel made.

A contemporaneously Objection Is When the evidence Is Actually offered Into Evidence At the Trial To Preserve The Issue For Review. This Rule Is In Contradiction With S.C. Code Ann. §17-19-90 And In Violation With the Ruling In State v. Gentry Ruling Of **Preserving An Error.** Of Trial Counsel Decision.

The State Violated Statutory Law Of South Carolina By Asking The Judge To Amend The Indictment To Reflect To The Appropriate Date once They Rested Their Case on the Record At **Trial.**

South Carolina Statutory Law Provides The Following:

> Amendments Of Indictments; Proceedings After Amendment.
>
> If **(A)** There Be Any **DEFECT** In Form In **ANY** Indictments Or **(B)** On The **TRIAL** Of Any Case There Shall Appear To Be Any **VARIANCE** Between the Allegations Of the Indictment And The Evidence Offered In Proof Thereof, The Court **BEFORE** Which The Trial Shall Be Had May Amend The Indictment (According To The Proof, If the Amendment Be Because Of A **Variance**) If Such Amendment Does Not Change The Nature Of the Offense Charged. After Such Amendment The Trial Shall Proceed In All Respects And With the Same Consequences As If the Indictment Had Originally Been Returned As So Amended, Unless Such Amendment Shall operate As A Surprise To The Defendant, In Which Case The Defendant Shall Be entitled, Upon Demand, To A Continuance Of the Cause.
>
> S.C. Code Ann. Section 17-19-100.

An Amendment To The Indictment Must Be Done, **BY LAW**, **BEFORE** Which the Trial Shall Be Had Because In Appellants Case There Was A Variance Between The Allegations Of The Indictment And The Evidence Offered In Proof thereof.

Amendments Usually Are Permitted For Purposes **Of** Correcting An Error Of Form, Such As A Scrivener's Or Clerical Error. Culver, 354 S.C. At 155, 580 S.E.2d At 122. Thus, A Motion To Amend An Indictment Should Be Granted When the Proposed Amendment Does Not Change The Nature Of The Offense Or **Affect the Sufficiency** Of The Indictment. See For example

STATE V. QUARLES, 261 S.C. 413, 416-17, 200 S.E.2D 384, 385-86 (1973)

(INDICTMENT MAY BE AMENDED TO STATE THE CORRECT TIME OR DATE OF THE ALLEGED **CRIME** WHEN TIME OR DATE **IS NOT** OF THE ESSENCE OF THE CRIME)

TIME IS AN ESSENTIAL ELEMENT OF THE CRIME OF MURDER. Time Is recognized In the Law. Time Changes Everything.

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IN SOUTH CAROLINA, IT IS A RULE OF UNIVERSAL OBSERVANCE IN ADMINISTERING THE CRIMINAL LAWS THAT A DEFENDANT MUST BE CONVICTED, IF CONVICTED AT ALL, OF THE PARTICULAR OFFENSE CHARGED IN THE BILL OF **INDICTMENT.**

A MATERIAL VARIANCE BETWEEN CHARGE AND PROOF ENTITLES THE DEFENDANT TO A DIRECTED VERDICT; SUCH A VARIANCE IS NOT MATERIAL IF IT IS NOT AN **ELEMENT OF THE OFFENSE.**

41 AM. JUR. 2D INDICTMENT & INFORMATIONS SECTION 252 (2005) ("STATING THAT ONE OF THE TWO WAYS AN INDICTMENT CAN BE IMPROPERLY MODIFIED IS THROUGH A VARIANCE, WHEREBY THE CHARGING TERMS OF THE INDICTMENT ARE LEFT UNALTERED, BUT THE EVIDENCE OFFERED AT TRIAL PROVES FACTS MATERIALLY DIFFERENT FROM THOSE ALLEGED IN THE INDICTMENT").

A CONVICTION UNDER THE LATTER **CIRCUMSTANCES VIOLATES** PRINCIPLES OF **DUE PROCESS...** BECAUSE THE STATE HAS **FAILED TO PROVE** BEYOND A REASONABLE DOUBT **EVERY FACT NECESSARY** TO CONSTITUTE A CRIME WITH WHICH A DEFENDANT WAS CHARGED.

41 AM. JUR. 2D INDICTMENT & INFORMATIONS SECTION 256 (2005) ("A MATERIAL VARIANCE THAT VIOLATES A DEFENDANT'S SUBSTANTIAL RIGHT TO BE TRIED ONLY ON CHARGES PRESENTED IN AN INDICTMENT CONSTITUTES **FATAL** ERROR AND WARRANTS A REVERSAL ON AN APPEAL OF A JUDGEMENT OF CONVICTION OF THE OFFENSE NOT CHARGED IN THE INDICTMENT")

A VARIANCE, HOWEVER, DOES NOT UNDERCUT THE CHARGING TERMS OF AN INDICTMENT BUT MERELY PERMITS THE PROOF OF FACTS TO ESTABLISH THE CRIMINAL CHARGE MATERIALLY DIFFERENT FROM THE FACTS CONTAINED IN THE INDICTMENT. IN THIS MANNER A VARIANCE DOES NOT VIOLATE THE FIFTH AMENDMENT GRAND JURY GUARANTEE BUT INSTEAD INFRINGES UPON THE "APPRISAL FUNCTION" OF THE **SIXTH AMENDMENT** WHICH REQUIRES THAT "[I]N **ALL** CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE **RIGHT... TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION...**".

IN BALL V. U.S., 140 U.S. 118, 11 S.Ct. 761, 767, 35 L.ED. 377, MR. CHIEF JUSTICE FULLER SAID:

> "THE ACCUSED IS ENTITLED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM, AND THE **JURISDICTION** SHOULD NOT BE EXERCISED WHEN THERE IS DOUBT AS TO THE AUTHORITY TO EXERCISE IT. **ALL THE ESSENTIAL INGREDIENTS** OF THE OFFENSE CHARGED **MUST BE** STATED IN THE INDICTMENT, EMBRACING WITH REASONABLE CERTAINTY THE PARTICULARS OF TIME AND PLACE, THAT THE ACCUSED MAY BE ENABLED TO PREPARE HIS DEFENSE, AND AVAIL HIMSELF OF HIS ACQUITTAL OR CONVICTION AGAINST ANY FURTHER PROSECUTION FOR THE SAME **CAUSE...**"

TRIAL COUNSEL FAILED TO ASSURE THAT APPELLANT'S SIXTH AMENDMENT RIGHT WAS PROTECTED SO THAT APPELLANT MAY RECEIVE A FAIR TRIAL.

TRIAL COUNSEL SHOULD HAVE BEEN CONVERSANT **IN THE LAW** AND IN PREPARATION FOR TRIAL TO INVESTIGATE THE FACTS AND CIRCUMSTANCES OF THE ALLEGED CRIME.

TRIAL COUNSEL SHOULD HAVE KNOWN THE LAW THAT WAS ESTABLISHED IN THE LONG PRECEDENT OF STATE V. BLAKENEY, 33 S.C. 111, 11 S.E. 637, DECIDED **1890** WHEREAS:

IN THAT CASE THE DEFENDANTS WERE CHARGED WITH THE CRIME OF MURDER IN CHESTERFIELD COUNTY. THE INDICTMENT ALLEGED, PROPERLY, THAT THE INJURIES WERE INFLICTED IN CHESTERFIELD COUNTY. THERE WAS AT THE TRIAL SOME QUESTION AS TO THE SUFFICIENCY OF THE ALLEGATION AS TO THE PLACE OF DEATH. AFTER THE JURY HAD BEEN SWORN, THE DEFENDANTS MOVED TO QUASH THE INDICTMENT BECAUSE IT FAILED TO ALLEGE THE PLACE OF DEATH OF THE DECEASED, BUT MOTION TO QUASH WAS REFUSED BECAUSE IT CAME TOO LATE UNDER THE TERMS OF THE 1887 ACT, REFERRED TO. THE COURT ALLOWED THE SOLICITOR TO AMEND THE INDICTMENT BY INSERTING THE EXPRESS ALLEGATION THAT THE DEATH OF THE DECEASED OCCURRED IN CHESTERFIELD **COUNTY.** ON APPEAL TO THIS COURT, IT WAS HELD THAT THE INDICTMENT WAS NOT DEFECTIVE, FOR THE REASON THAT THE ALLEGATION AS TO THE PLACE OF DEATH, CHESTERFIELD COUNTY, WAS SUFFICIENT EVEN BEFORE THE ALLOWANCE OF THE AMENDMENT, AND, FOR THAT REASON, THE **JUDGEMENT** BELOW WAS AFFIRMED. WE QUOTE VERY FULLY FROM THE OPINION OF CHIEF JUSTICE SIMPSON, CONCURRED IN BY JUSTICES McIVER AND McGOWAN, WHAT WAS HELD AS TO THE NECESSITY OF ALLEGING IN AN INDICTMENT FOR MURDER THE PLACE OF DEATH OF THE DECEASED, AND THE RIGHT TO AMEND SUCH INDICTMENT IN THAT REGARD:

"IF THE INDICTMENT HAD BEEN DEFECTIVE IN THE **PARTICULAR ALLEGED BY THE APPELLANT,** TO-WIT, **IN FAILING TO** STATE THE PLACE OF THE DEATH OF THE DECEASED, THEN WE THINK THE GROUNDS OF APPEAL WOULD DEMAND A REVERSAL OF THE JUDGEMENT BELOW. WE SUPPOSE THAT IT CAN HARDLY BE NECESSARY TO CITE AUTHORITY TO THE FACT THAT IS ABSOLUTELY ESSENTIAL IN AN INDICTMENT LIKE THAT HERE THAT THE PLACE OF THE DEATH OF THE PARTY KILLED SHOULD BE ALLEGED THEREIN, AND THAT, IN THE ABSENCE OF SUCH ALLEGATION, SUCH INDICTMENT IS FATALLY DEFECTIVE, AND SHOULD BE QUASHED ON MOTION MADE; AND WE THINK, FURTHER, THAT SUCH A DEFECTIVE INDICTMENT IS BEYOND THE REACH OF AMENDMENT. TRUE, UNDER SECTION 5, P. 830, OF THE ACT OF 1887, MUCH OF THE USELESS PHRASEOLOGY WHICH CHARACTERIZED INDICTMENTS IN FORMER TIMES MAY BE DISPENSED WITH, AND OMISSIONS OF MERE FORMS MAY BE CURED BY AMENDMENT; BUT THIS ACT HAS NEITHER DISPENSED WITH ESSENTIAL ALLEGATIONS, NOR HAS IT ATTEMPTED TO CURE THEIR OMISSION BY ALLOWING AMENDMENTS TO THAT END. INDEED, WE MAY SAY THAT WE DO NOT THINK THAT THE GENERAL ASSEMBLY WOULD HAVE THE POWER TO PROVIDE FOR THE AMENDMENT OF INDICTMENTS TO THE EXTENT CLAIMED HERE, AND IN A MATTER SO **VITAL AS** THE PLACE OF THE DEATH OF THE PARTY KILLED, WHICH IS ABSOLUTELY NECESSARY TO BE ALLEGED IN A JURISDICTIONAL POINT OF VIEW, AND MUST BE PASSED UPON BY THE GRAND JURY IN ACCORDANCE WITH THE CONSTITUTIONAL RIGHTS OF THE ACCUSED. WE DO NOT THINK, THEREFORE, THAT THE **ACT(S)** IN QUESTION WAS INTENDED TO REACH THIS FAR.

"We Concur, too, in the Position that, Had the Indictment Been Defective in the Matter Complained of, that It Would Have Been **Error** To Have Allowed The Trial To Proceed on The Indictment As Amended, Because, As Contended, This Would Have Jeopardized The Accused Upon An Indictment Not Found By the Grand Jury, And In Violation of His Constitutional Rights. So..."

A somewhat exhaustive Research Has Failed To Disclose Any Decision of this Court, Since the time the Blakeney Case Was Decided, Which Tends In Any Way to Modify or Weaken Any one of the Holdings... As the Judges stated in State v. Platt.

Trial Counsel Failed To Appropriately Protect Appellants DUE PROCESS PROCEDURES IN ORDER FOR Appellant To Receive A Fair Trial Through the Sixth Amendment.

Trial Counsel Could Have Determined that the **Indictment** was **Insufficient** When He seen the Date Defect on the face of the Indictment By Counsel Investigation To The Facts of the Case If He Done A **Investigation**.

Joseph v. State, 351 S.C. 551, 571 S.E.2d 280, 285 (Citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001)) Is Comprised of The Time And Place of the Composite Crime of Murder, Including Both the Time And Place of the Death of the Victim. This **REQUIREMENT** was Met In Joseph Indictment **But NOT** In the Present Case (Appellant Case). As To Where the Victim Died And As to the **TIME** The Victim Died, the original Indictment Is Silent on that.

As Cited In Joseph, the Murder Indictment was Sufficient To Confer Subject Matter Jurisdiction on the Plea Court. As Mentioned In Section 17-19-30, the Indictment set forth The Time ("On or **About** March 18, 1987") And Place ("In Clarendon County") of the Crime, And Stated The Manner In Which The Death of the Deceased was Caused ("Kill one Alfred Cole By Means of Shooting Him With A Colt 357, Magnum Pistol").

Trial Counsel Should Have Known Of this Joseph v. State Case that was Ruled upon In 2002 Dealing With the Sufficiency of the Indictment so that He May Apply the Laws To The Case of Appellant Indictment Then Motion To Quash Such Insufficient Indictment.

Again, Trial Counsel Should Have Known The Ruling of the Court In Wims v. State, 363 S.C. 414, 611 S.E.2d 901, That was Filed By the South Carolina Supreme Court March 28, 2005, A Month And Some odd Days Before The Appellant went To Trial Where the Court **Held** By Chief Justice Toal:

"That The P.C.R Court erred In finding The Indictment **Defective**. Although the Indictment Did Not State that Mouzon Did "then and there" Die, the only logical Reading of the Indictment Is that on October 4, 1997, Wims Hit Mouzon In The Head Several Times, At the Belangia Apartments, And Mouzon Died either At the time He was Attacked or soon Thereafter. The Indictment Provides The **Time** of Death (October 4, 1997) And the Place of Death (the Belangia Apartments, St. Stephens, South Carolina). Had The Victim Been found in A Different Location or on A Different Date, the Indictment, As written, **MAY HAVE BEEN** Insufficient. **But** Because Mouzon was found Dead In His Bed, on the Same Day And In the Same Place where Wims struck Him, And Because The Indictment explained that the Blows To The Head were the "Proximate Cause of Death," we find that the Indictment States the offense of Murder with Sufficient Certainty And Particularity Such that Wims Knew What He was Being Called upon To Answer. Accordingly, The Indictment was Not Defective.

In Justice Pleicones Dissenting: I Respectfully Dissent. In Reviewing the Sufficiency of An Indictment, we look solely To The Words used There-in And **Not To THE EVIDENCE ADDUCED At TRIAL**..."

Trial Counsel Should Have Known of the Applicable Law And Provide Appellant with A Reasonable Accurate Description of It In Helping Appellate Prepare His Defense.

It Is Evident That **Before An Attorney Can Make Sound Decisions** they **Must First fully** Investigate **All the facts** Of The **Case**, **Applicable Law**, Potential Defenses, And Consult With experts **Relevant To The Case**.

This Standard Applies To Both Trial And In Making Intelligent Decisions Concerning Preservation of Claims for future Appellant Reasons. Courts Across the Nation View Investigations of the **FACTS AND LAWS TO BE ONE OF Counsel's PRIMARY AND MOST IMPORTANT Duties**, Because without such, Intelligent Decisions Cannot Be Made. Counsel was found INEFFECTIVE FOR FAILURE TO INVESTIGATE, FAILED To Prepare And FAILED TO **PROVIDE** DEFENDANT A **VITAL DEFENSE**; See Stevens v. Johnson, 575 F. Supp. 881 (ED N.C. 4th Cir. 1983).

In The Instant Case Trial Counsel's Conduct In Failing To Make **MOTION To QUASH INDICTMENT UNDERMINED THE PROPER FUNCTIONING** OF THE ADVERSARIAL **PROCESS** THAT The TRIAL **CANNOT BE RELIED** UPON AS Having **PRODUCED** A JUST RESULT." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984).

IN CONSIDERING THE ERROR PRONG OF STRICKLAND, THE P.C.R COURT JUDGE ERRED IN VIEWING COUNSELS DECISIONS IN LIGHT OF THE CIRCUMSTANCE(S) AT THE TIME OF THE DECISIONS WAS MADE.

IN CONSIDERING THE ERROR PRONG OF STRICKLAND, THE P.C.R COURT MUST AVOID VIEWING THE ACTIONS AND DECISIONS BY THE ATTORNEY IN HINDSIGHT COUNSEL'S DECISIONS MUST BE VIEWED IN LIGHT OF THE CIRCUMSTANCES AT THE TIME OF THE DECISIONS WAS MADE.

IN ACCORDANCE WITH THE FACTS AND LAW IN THIS CASE, TRIAL COUNSEL PREJUDICED THE APPLICANT AND ALTERED THE OUTCOME OF THE TRIAL AND FAILED TO APPLY APPLICABLE LAW AS TO SUBJECT MATTER JURISDICTION WHEN THE COUNSEL FAILED TO MAKE MOTION TO QUASH THE INDICTMENT AT TRIAL AND MAINLY **BEFORE** THE SWEARING IN OF THE JURY.

APPELLANT WAS DEPRIVED OF A **FAIR TRIAL** DUE TO COUNSEL'S FAILURE TO MAKE A TIMELY MOTION BY LAW.

PREJUDICE

Appellant Trial Counsel Failed To Object To The Count One Murder of The Indictment Before The Jury was sworn in in accordance with Statutory Laws of S.C. Code Ann. Section 17-19-90.

Had Trial Counsel object to Count One Murder And Motion To Quash Count One Murder, The Trial Judge would have ruled in Trial Counsel's favor Then Instruct The Prosecutor To Hand Down A Properly Drafted Indictment.

The Second Indictment would have to be A Lesser Included Offense of Murder Presented To Appellant Charging Appellant with Manslaughter (voluntary or involuntary).

Now lets sit Counsel's Error To The Side And Ask the Question Is There Any other Evidence Available To Find Appellant Guilty of the Crime/Offense of Murder That The State May Present To The Jury To Find Appellant Guilty, The Answer Is **No.**

There Is No Evidence there To Find Appellant Guilty of the Crime of Murder Because The Original Indictment Charged that Appellant Committed Murder on or About February **17**, 2003 when **No** Crime Happened on February 17, 2003.

There Is No Evidence Whatsoever To Prove That Any Crime Happened on February 17, 2003 Because All of the States Evidence was Pointing Towards February 18, 2003.

Time Is A Element That Is Recognized In The Law That Must Be Proved To The Jury Beyond A Reasonable Doubt That A Crime Happened on that Date Alleged In The Indictment, In order for Appellant To Be Lawfully Convicted of Indicted Charges.

The Amendment To The Indictment Crime/Offense of Murder was A Violation of the Due Process Required Notice Component that is Accorded Every Criminal Defendant.

If the Evidence of the Amendment Does Not Come Into The Trial then Appellant Would Have Been Going To Trial Upon An Improper Charge. While the State was Presenting Evidence Already Irrelevant To The Issue that was Inadmissible To The Murder Charge To What Appellant **Pled Not Guilty** To.

Without the Aid of Counsel Appellant Did Lack Both the Skill And Knowledge Adequately To Prepare His Defense Which was To Object To The Murder Charge, Motion To Quash Count One Murder Then Appellant Surely Would Not Have A Life Sentence Nor Would Appellant Would Have A Murder Charge To Stand Trial For on The Second Indictment If the State Had elected To Return A Second Indictment.

The Perfect Defense was for Counsel To Explain To Appellant His Fifth, Sixth, And Fourteenth Amendment Rights then Trial Counsel And I Develop the Best Defense To Receive the Favorable Verdict For Appellant.

Appellant Would Not Have Had A Life Sentence Because No Crime Happened on the Date Alleged In Appellants Original Indictment.

HAD TRIAL COUNSEL OBJECTED TO THE INDICTMENT IN ACCORDANCE WITH S.C. STATUTORY LAW THERE IS A VERY HIGH REASONABLE PROBABILITY THAT THE RESULT AT TRIAL WOULD HAVE BEEN DIFFERENT.

Appellant Contends Trial Counsel Should Have Informed Appellant of The Following:

Procedural Due Process Requires 1) Adequate Notice; 2) Adequate Opportunity To Be Heard; 3.) The Right To Introduce Evidence; And 4.) The Right To Confront And Cross Examine Witnesses.

The Sixth And Fourteenth Amendment Require That A State Charging Document Include All Elements Of The Charging Offense.

Elementary Principles Of Due Process Require That An Accused Be Informed Of The Specific Charge Against Him. See Cole v. Arkansas, 333 U.S. 196, 201, 68 S.Ct. 514, 92 L.Ed 644 (1948); See Also, In Re Oliver, 333 U.S. 257, 273, 68 S.ct. 499, 92 L.Ed 682 (1948) ("A Person's Right To Reasonable Notice Of A Charge Against Him, And An Opportunity To Be Heard In His Defense ... Are Basic In Our System Of Jurisprudence..."). This Requirement Is Also Imposed By The Sixth Amendment, Which Provides, In Relevant Part, That "[I]n All Criminal Prosecutions The Accused Shall Enjoy The Right... To Be Informed Of The Nature And Cause Of The Accusation". U.S. Const. Amend VI. In This Regard, The Due Process Clause And The Sixth Amendment Provide Essentially The Same Protection To Defendants.

Due To Trial Counsel Having To Invesigate The Facts Of The Case And All The Applicable Law Of The State Of South Carolina And Federal Law.

There Is Statutory Laws That Govern Indictment Allegations Being Sufficient For Murder And If Any Defect Is In The Indictment For Any Offense What Procedures Must Be Done To Have Such Indictment Motion To Be Quashed Or Motion to Be Dismissed.

Trial Counsel Should Have Informed Appellant these same exact words or words Along these lines To Assist Appellant In Making A Proper Defense To The Charges Of Being Indicted For At Trial, :

"The Charging form Of The Indictment / Notic Document Is Defective As To What The State Is Intending To Prove Today Here In Trial. I Can either Motion To Dismiss Your Murder Charge Due To The Fact That Time (Date) Is Recognized In The Law Of S.C. Code Ann. Section 17-19-30 Allegations Sufficient For Murder As To When the Victim Actually Was Assaulted And Killed Because In A Recent Decide Post Conviction Relief Case I Came Across Says Time (Date) Requirements Have Been More Liberally Construed (i.e., on or About A Particular Date) And Would Better Characterized As A Question Of Notice And It Must Be Alleged In The Indictment Returned Against The Defendant (Accused) By the Grand Jury In Order For Us Or You To Prepare A Defense Of Alibi Or Not Guilty Under the Presumption Of Innocence Or Motion To Dismiss Or Motion To Quash Count One Murder Of The Indictment Placing the Burden Of Proof on the State To Prove All elements Of The Offense Of Murder To All Of The Allegations Alleged In That Indictment For Murder Stating The Time Of Death And the Place Of Death either they will come with A lesser Included offense Or A Not Guilty Verdict will Weigh In Your Favor."

Trial Counsel Failed To Inform Appellant Of the Applicable Law Pertaining To Appellants Case.
Trial Counsel Poor Trial Strategy Was To Let Appellant Plead Not Guilty To the Sufficiently Defective Indictment.

Although Appellant Pled Not Guilty To The Indictment At Trial A Defendant's Right To Plead Not Guilty Has Been Carefully Guarded By the Courts See Wiley v. Sowders, 647 F.2d 642 (6th Cir. 1981). When A Defendant enters A Plea Of Not Guilty, He preserves Two Fundamental Rights. First, He Preserves The Right To A Fair Trial As Provided By The Sixth Amendment. Second, He Preserves the Right To Hold The Government To Proof Beyond A Reasonable Doubt.

Appellant Trial Counsel Must Have Been Depending Upon This Language In Order To Receive A Just Favorable Verdict Of Not Guilty Because He Knew From the Motion For Discovery That The State Could Not Prove those Allegations Alleged In the Murder Indictment To The Jury Beyond A Reasonable Doubt Which Was A Alright Trial Strategy But Not the Best Strategy To Receive A Just Favorable Verdict Of the Outcome Of the Trial.

Trial Transcript Page 7 And Page 8 Alleges As Follows:

Pg. 7

1: Solicitor Mr. Sabb: Thank You, Your Honor. If It Pleases
2: The Court. At This Time The State Would Call
3: Indictment Number 04-132, The State Versus Tashon (Sampson An)
4: Sampson And Joseph Wilson. Your Honor, It's An
5: Indictment For Murder, Armed Robbery, Criminal
6: Conspiracy, And Possession Of A Weapon During A
7: Violent Crime.
8: Mr. Joseph Wilson Is Represented By Attorney
9: Charles David Barr. Mr. Tashon Sampson Is
10: Represented By Attorney LeGrand Carraway.. And Your
11: Honor, We Are Ready For Trial.
12: The Court: I'm Going To Have You Call That Out,
13: Though.
14: Mr. Sabb: Yes Ma'am. I Have A Copy
15: The Court: All Right. Ladies And Gentlemen Of
16: The Jury Panel, You Have Heard The State Call The
17: Case Of The State Versus Tashon Sampson And Joseph

18: WILSON. THEY HAVE BEEN CHARGED WITH THE OFFENSES OF
19: MURDER, ARMED ROBBERY, CRIMINAL CONSPIRACY, AND
20: POSSESSION OF A WEAPON DURING A VIOLENT CRIME.
21: NOW, I TELL YOU THIS TO ASK YOU THIS QUESTION.
22: LET ME ALSO STATE THAT IT WAS ALLEGED THAT THESE
23: OFFENSES DID OCCUR ON OR ABOUT FEBRUARY 17th 2003.
24: IT IS ALLEGED, THAT THE DEFENDANTS DID KILL A (INDIVIDUAL)
25: INDIVIDUAL NAMED LILA PERRY.

CONT. PAGE 8

1: I TELL YOU THIS TO ASK YOU THIS QUESTION. IS
2: THERE ANY MEMBER OF THE JURY PANEL WHO HAS ANY
3: INFORMATION WHATSOEVER REGARDING THESE ALLEGED
4: OFFENSES, AGAIN ALLEGED TO HAVE OCCURRED ON OR ABOUT
5: FEBRUARY 18th of 2003. IF SO, PLEASE STAND.
6: AT THIS TIME IM GOING TO HAVE THE DEFENDANTS
7: STAND, MR. SAMPSON, MR. WILSON. FIRST MR. SAMPSON.
8: (MR. SAMPSON COMPLIED.)

TRIAL COUNSEL SHOULD OBJECTED AND ASKED FOR A MOTION TO DISMISS OR MOTION TO QUASH DUE TO THE FACT THAT HIS INVESTIGATION OF THE FACTS TO THE CASE, THE FACTS SHOWS THAT AN INDIVIDUAL WAS MURDERED IN WILLIAMSBURG COUNTY, SOUTH CAROLINA ON FEBRUARY 18, 2003 DUE TO THE AUTOPSY REPORT AND THE CO-DEFENDANT STATEMENTS.

TRIAL COUNSEL SHOULD HAVE PLEASED THE COURT WITH THE MOTION TO DISMISS OR MOTION TO QUASH COUNT ONE MURDER OF THE INDICTMENT, BECAUSE SOUTH CAROLINA LAW DEMANDS SUFFICIENT NOTICE OF WHAT THE STATE IS INTENDING TO PROVE BEYOND A REASONABLE DOUBT TO THE JURY ALL ESSENTIAL ELEMENTS OF THE OFFENSE AND S.C. CODE ANN. SECTION 17-19-30 REQUIRE THE DATE (TIME) TO BE ALLEGED IN THE INDICTMENT BY THE GRAND JURY IN ORDER FOR APPELLANT TO DEFEND AGAINST WITH A FAIR EFFECTIVE TRIAL.

TRIAL COUNSEL SHOULD HAVE LET APPELLANT KNOW THAT "I CAN MAKE A MOTION TO DISMISS COUNT ONE MURDER OF THE INDICTMENT DUE TO THE LACK OF NOTICE OF THAT OFFENSE CALLED UPON TO ANSWER TODAY AND IF HER HONOR DENIES MY MOTION TO DISMISS THEN I CAN MOTION TO QUASH COUNT ONE MURDER OF THE INDICTMENT AND IF THAT MOTION IS DENIED THAT ISSUE WILL BE PRESERVED FOR DIRECT APPELLATE REVIEW BECAUSE IN ORDER TO PRESERVE THE ISSUE FOR DIRECT APPELLATE REVIEW THE SOUTH CAROLINA SUPREME COURT RULED MARCH 7, 2005 JUST PASSED THAT ANY CHALLENGE TO THE SUFFICIENCY OF THE INDICTMENT DUE TO ANY DEFECT MUST BE MADE BEFORE THE JURY IS SWORN IN AND NOT AFTERWARDS, IN ACCORDANCE WITH S.C. CODE ANN. SECTION 17-19-90.

TRIAL COUNSEL SHOULD HAVE KNOWN THAT LAW BEFORE THE TRIAL HAD STARTED. THE LAW OF S.C. CODE ANN. SECTION 17-19-30; S.C. CODE ANN. SECTION 17-19-90; SOUTH CAROLINA RULING IN ST. V. GENTRY; SOUTH CAROLINA SUPREME COURT RULING IN WINNS V. ST. THE ATTORNEY MUST BE CONVERSANT WITH CONSTANTLY NEW INTERPRETATIONS OF CONSTITUTIONAL LAW BY NOT ONLY THE UNITED STATES SUPREME COURT, BUT BY COURTS OF ALL JURISDICTIONS, BOTH FEDERAL AND STATE.

MOREOVER, IN PREPARATION FOR TRIAL, HE MUST INVESTIGATE THE FACTS AND CIRCUMSTANCES OF THE ALLEGED CRIME WITH NO LESS VIGOR AND THOROUGHNESS THAN THE PUBLICLY COMPENSATED SOLICITOR, WHO HAS AT HIS DISPOSAL THE ENTIRE ARRAY OF STATE, COUNTY, AND MUNICIPAL LAW ENFORCEMENT.

TRIAL COUNSEL SHOULD HAVE KNOWN THAT S.C. STATUTORY LAW IS A PROCEDURAL STATUTE NOT INTENDED TO ALTER THE ELEMENTS OF THE OFFENSE OF MURDER. S.C. STATUTORY LAW 17-19-30.

TRIAL COUNSEL SHOULD HAVE KNOWN OF THE RULING FILED IN WINNS V. ST 363 S.C. 414, 611 S.E. 2D 901 BY THE SOUTH CAROLINA SUPREME COURT FILED MARCH 28, 2005 THAT CHIEF JUSTICE TOAL DELIVERED THE OPINION IN THAT CASE THAT THE ONLY LOGICAL READING OF THE INDICTMENT AS TO THE TIME OF DEATH WAS OCTOBER 4, 1997 AND THE PLACE OF DEATH THE BELANGIA APARTMENTS, ST. STEPHENS, S.C. INDICATING THAT THE INDICTMENT STATES THE OFFENSE OF MURDER WITH SUFFICIENT CERTAINTY AND PARTICULARITY SUCH THAT WINNS KNEW WHAT HE WAS BEING CALLED UPON TO ANSWER. ACCORDINGLY, THE INDICTMENT WAS NOT DEFECTIVE.

JUSTICE PLEICONES DISSENTING OPINION GIVES CREDENCE TO THE P.C.R COURT RULING THAT APPLY TO APPELLANTS CASE STATED AS FOLLOWS:

I RESPECTFULLY DISSENT. IN REVIEWING THE SUFFICIENCY OF AN INDICTMENT, WE LOOK SOLELY TO THE WORDS USED THEREIN AND NOT TO THE EVIDENCE ADDUCED AT TRIAL. HERE, THE POST CONVICTION RELIEF (PCR) JUDGE, RELYING UPON THIS COURT'S LONG-ESTABLISHED PRECEDENT, FOUND THE MURDER INDICTMENT INVALID BECAUSE IT FAILED TO SUFFICIENTLY ALLEGE THE TIME AND PLACE OF THE VICTIM'S DEATH AS REQUIRED BY S.C. CODE ANN. SECTION 17-19-30 (1985). I AGREE, AND WOULD THEREFORE AFFIRM.

TIME AND PLACE OF DEATH REQUIREMENT FOUND IN SECTION 17-19-30 MERELY CODIFIES THE COMMON LAW. STATE V. RECTOR, 158 S.C. 212, 155 S.E. 385 (1930). WHERE THE INDICTMENT REFERENCES THE

Place and Date of the Assault, and alleges that the Victim Died "then and there," this requirement has been satisfied. Id.; See also State v. Platt, 154 S.C. 1, 151 S.E. 206 (1930); State v. Blakeley, 33 S.C. 111, 11 S.E. 637 (1890).

The present Indictment alleges the time and place of the Assault, but is silent on the time and place of the Victim's Death. As the Court said in State v. Rector:

The crime of murder is a composite one. It includes the assault committed upon a person... and the resulting death from that assault. The State must prove not only the assault and the death occurring from it, but the time of the assault and the time of the death, as time is recognized in the law. In addition, the State [sic] must prove the place of the assault and the place of death. These necessary elements of the crime of murder must not only be proved, before a person accused may be lawfully convicted, but the must be alleged in the indictment returned against the accused by the grand jury. The provisions of the constitution, recognizing and following the principles of the common law, require the indictment to contain allegations to those effects.

The PCR judge correctly vacated Respondent-Petitioner's murder conviction, there being no valid indictment charging him with that offense...

Also in Joseph v. State, the Supreme Court acknowledged in that case that the indictment contained not only the time and place of the Assault, but also the time and place of the death that proximately resulted from the act alleged.

Trial counsel should have known the State must prove the necessary element(s) of the time of the victims death to the jury beyond a reasonable doubt in order to obtain a lawful conviction as justice requires but not only must the State prove those elements to the jury the elements of time and place of the victims death must be alleged in the indictment returned against the accused so that the accused may prepare a defense to the alleged allegations charged.

Trial counsel should have known that all the essential ingredients of the offense charged must be stated in the indictment, embracing with reasonable certainty the particulars of time and place that the accused may be enabled to prepare his defense, and avail himself of his acquittal or conviction against any further prosecution for the same cause.

Trial counsel waived Appellant right to a fair trial upon his poor trial strategy following the other trial counsel lead that was not representing Appellant.

Trial counsel poor trial strategy was to allow Appellant to go to trial upon an sufficient defective indictment, of which he should have objected to before the jury was sworn in and motion to dismiss or motion to quash.

Trial counsel knew that the indictment was sufficent for the offense of murder of February 17, 2003 if a crime was alleged to have happened on that date because the indictment sufficiently went through the Grand Jury.

Trial counsel knew that of course if the State been intending to prove that a murder occurred on or about February 17, 2003 with the evidence to support its contention at trial to the jury beyond a reasonable doubt then the indictment is sufficent to place Appellant on notice of the offense charged against him apprising him of all the elements for the court to know what judgement to pronounce the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution.

By Winns v. State, if the State been intending to prove that an offense of murder had occurred on February 17, 2003 in Williamsburg County and the State prove the other allegations to the jury of the manner in which the deceased was killed, of how the indictment explains and the jury find Appellant guilty then that conviction would stand by law for the offense of murder. And the final conclusion would be the indictment is sufficent to sustain (uphold) the conviction.

Therefore, the indictment by law, is sufficent for February 17, 2003 offense of murder for Appellant to prepare a defense against and no other date/time.

By law Appellant was called upon trial to defend himself against the offense of murder alleged in the indictment and that again places the burden of proof on the State to prove against the date of February 17, 2003 because the Defendant:

Pled not guilty to the indictment preserves two fundamental rights.

First, he preserves the right to a fair trial as provided by the Sixth Amendment. Second, he preserves the right to hold the Government (State) to proof beyond a reasonable doubt.

Therefore those rights attach to that indictment allegations only. By law those rights been violated by the court and the State by allowing an amendment thats not valid.

As the United States Supreme Court stated in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment since access to counsel's skill and knowledge is necessary to accord defendants the **amle opportunity to** meet the case of the prosecution to which they are entitled;

Then trial counsel should have objected to count one murder of the **indictment** and motion to dismiss or motion to quash to accord the appellant that ample opportunity to meet the case of the prosecution to which they were entitled to prove to the jury beyond a reasonable doubt that a crime alleged to have happened on February 18, 2003.

By trial counsel objecting to the indictment in accordance with the law would have placed the burden on the prosecution to come with a valid indictment of what they are intending to prove beyond a reasonable doubt to the jury as **procedural due process require** and appellant would have a chance to prepare his defense to meet the prosecutions case.

Had trial counsel objected to the indictment count one murder and motion to quash or motion to dismiss then appellant would not have received a life sentence for murder because there will be no murder charge to stand trial against.

The indictment is defective because it fail to state the **time** and place of the victim's death as required by S.C. Code Ann. Section 17-19-30 (1985).

Trial **counsel** allowed appellant to proceed **to** trial upon the insufficient indictment as to what the State been intending to prove at trial and the State rested there case on the record and out of the presence **of** the jury the State asked the judge **to amend** the indictment to reflect to the appropriate date upon the clerical error.

See trial transcript page **484** and 485. (Also 486, 487, and **488** is where the amending actually stops at with the murder indictment being the last amendment.)

Trial counsel should have known in Cutner v. State, the Supreme Court ruled and said amendments usually are permitted for purposes of correcting an error of form such as a scriveners or clerical error. Cutner, 354 S.C. at 155, 580 S.E.2d at 122. Thus, a motion to amend an indictment should be granted when the proposed amendment does not change the nature of the offense or affect the **sufficiency** of the **indictment**. See for example State v. Quarles, 261 S.C. 413, 416-17, 200 S.E.2d 384, 385-86 (1973) (Indictment may be amended to state the correct time or date of the alleged crime when time or date is not of the essence of the crime)

Trial counsel should have known time/date is the essence of the crime of murder that **is** a statutory allegation to the sufficiency of the indictment to place appellant on notice to defend the offense that the State must prove to the jury beyond a reasonable **doubt** that someone had gotten murdered on that date alleged **in** the **indictment**

Trial counsel only objected to the amending of the **indictment** but did not make a motion for directed verdict.

Trial counsel should have known that the indictment without the amendment was at fatal variance with the proof on the essential allegation as to the time of the death of the deceased, that the motion for a directed verdict **in** favor of appellant should have been granted upon motion filed.

A contemporaneous objection must be made when the **evidence** is offered in order to be preserved for appellate review.

In the recently decide case State v. Gentry, the S.C. Supreme Court ruled/held that in order for a defendant to preserve a **indictment** issue for direct appellate

Review the Accused Must object To The Insufficient Indictment Before the Jury Is Sworn In In Accordance With S.C. Code Ann. Section 17-19-90.

I Hate To Repeat this But I Have No other Choice. It Is Evident That Before An Attorney Can Make A Sound Decision They Must First Fully Investigate All the facts of the Case, Applicable Law, Potential Defenses And Consult With experts Relevant To The Case.

This Standard Applies To Both Trial And In Making Intelligent Decisions Concerning Preservation of Claims For Future Appellant Reasons. Courts Across the Nation view Investigations of the Facts And Laws To Be one of Counsel's Primary And Most Important Duties, Because Without Such, Intelligent Decisions Cannot Be Made. Counsel Was Found Ineffective For Failure To Investigate, Failed To Prepare And Failed To Provide Defendant A Vital Defense;

In The Instant Case Trial Counsel's Conduct In Failing To Make Motion To Quash Indictment UNDERMINED THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT THE TRIAL CANNOT BE RELIED UPON AS HAVING PRODUCED A JUST RESULT.

Had the Motion Been Made Properly By Trial Counsel then The eyewitness would Not Have Had A Chance To Even Make A Misidentification of Appellant.

Appellant Trial Was Not fair At All By the Sixth Amendment.

I meant to reveal to the Supreme Court that in Appellants case from the beginning Appellant told the investigators where he was at at the time of the crime.
Appellant gave the investigators the name and location of where he was at at the time of the crime was alleged to have happened.
Investigator Michael Larrimore went to Conway, S.C. February 20, 2003 and questioned her. They say she said I was not at her house at the time of the crime and he referred to the crime happening on February 17, 2003.

My trial counsel made a motion for discovery and in the motion for discovery returned to counsel, upon the April 2004 request, in July 2004 the motion for discovery was sent to trial counsel with: 1.) Autopsy report relating to February 18, 2003; 2.) Co-Defendants statement; 3.) Appellant statement; 4.) and the identification line-up against co-defendants Joseph Wilson and Raymond Mack:

So I got stuck with a life sentence for a murder I did not commit.

So I filed a claim on my lawyer in the Disciplinary Counsel Committee in Columbia S.C. about not receiving a full motion for discovery, so he sent me a paper stating he filed a motion for discovery with the prosecutor and these are the following things that was returned and it was numbered 1-16 (or 14) and on that list was my alibi statement and in the envelope was only that statement (of me seeing for the very first time in 2007) and nothing else of the motion for discovery items.

So I reads the statement and its referring to the date of February 17, 2003.

After seeing that date on the alibi statement, I concluded that the date of February 17, 2003 had been placed on the indictment because the prosecutor or somebody must have had the statement in front of them and since that was my alibi the person put on the indictment February 17, 2003.

This is something that I have never seen happen before. Dealing with a date of the murder being on the indictment different from the date it actually happened on.

When I Received The letter In 2007 It All Came Clear To Me, then At that Time I Did Not Know the 2 Prong Test of Strickland v. Washington.

To Me Its Evident that whomever Wrote up the Indictment To Present It To The Grand Jury To Be True Billed Had to Have That Alibi Statement In Their Hand To Simply Say "I Got Your A**!"
I Hate To Say It like that But That's Just How I see it.
I Was Deprived of A Fair Trial Due To That Move.

I'm Not the Greatest In the Law Like Y'All Judges Is But I'm Trying my Best To Argue This Because my life Is on the line for A Murder I Did Not Commit And for me Not even Having A Fair Trial Due To The Evidence And Due To the Allegations Alleged In The Indictment.

TASHON SAMPSON #261273
Lee C.I / Ash South-190
990 Wisacky Hwy.
Bishopville, S.C. 29010

DANIEL SHEARHOUSE
Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

LEGAL MAIL ONLY