

THE STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to Marlboro County
Honorable George M. McFaddin, Jr., Post-Conviction Relief Judge

Appellate Case No. 2025-000136

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

Petitioner,

v.

State of South Carolina,

Respondent.

**RETURN TO PETITIONER'S MOTION FOR COURT
TO GRANT LEAVE TO RAISE ISSUE BEFORE COURT
IN ITS ORIGINAL JURISDICTION**

On October 2, 2025, Petitioner, through his wife Lori Stewart, filed his Motion for Court to Grant Leave to Raise Issue Before Court in its Original Jurisdiction. Respondent construes Petitioner's motion as a Petition for Extraordinary Writ pursuant to Rule 245, SCACR, wherein Petitioner moves this Court to exercise its original jurisdiction over one of Petitioner's previous post-conviction relief cases (2018-CP-34-00121) out of Marlboro County.¹

Accordingly, this Return follows, and Respondent asks this Court to deny Petitioner's request because the matter could have been easily resolved during the pendency of the 2018-CP-

¹ On October 6, 2025, Applicant, through his wife, filed a letter clarifying that the motion was to be filed under the current writ of certiorari and not to be construed as a separate action.

34-00121 case in the circuit court and on appeal. Furthermore, this Court should deny Petitioner's request as there is no extraordinary reason to exercise this Court's original jurisdiction.

PROCEDURAL HISTORY

Petitioner's extensive procedural history is as follows:

- During its October 2002 term of the Marlboro County Grand Jury for murder (2002-GS-34-01919), and desecration of human remains (2002-GS-34-01918). On July 28, 2003, Petitioner pled guilty to desecration of human remains and proceeded to trial on the murder charge. The jury found Petitioner guilty of the lesser-included offense of voluntary manslaughter, and Judge Burch sentenced Petitioner to imprisonment for consecutive terms of thirty (30) years for voluntary manslaughter and nine (9) years for desecration of human remains. Petitioner subsequently appealed. On April 20, 2005, Petitioner's convictions and sentences were affirmed in an unpublished opinion. State v. Stewart, Op. No. 2005-UP-284 (S.C. Ct. App. filed April 20, 2005). The Remittitur was returned on May 23, 2005.
- Petitioner filed his *first* application for post-conviction relief on April 18, 2006 (2006-CP-34-00125). Following an evidentiary hearing on November 15, 2006, the post-conviction relief court denied and dismissed the application by written order dated January 8, 2007. Petitioner subsequently filed a notice of appeal and petitioned this Court for certiorari. On March 18, 2009, this Court denied Petitioner's petition by unpublished order. Stewart v. State, S.C. Sup. Ct. Order filed March 18, 2009. The Remittitur was returned on April 3, 2009.
- Petitioner 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). The State 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 the State'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 Petitioner'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). Petitioner filed a notice of his appeal to the Fourth Circuit Court of Appeals; and the Fourth Circuit dismissed Petitioner's appeal on February 17, 2011, for want of a certificate of appealability. Stewart v. Bodison, 412 Fed.Appx. 633 (4th Cir. 2011).
- Petitioner subsequently filed a motion for a new trial dated February 9, 2015. On May 26, 2016, Petitioner appeared before the Honorable Paul M. Burch on that motion. Judge Burch orally denied Petitioner's motions from the bench.
- Petitioner subsequently filed another motion for a new trial on or about May 7, 2018. The 2018 motion appears to remain pending on the Marlboro County Public Index.

- On June 5, 2018, Petitioner filed a *second* post-conviction relief application (2018-CP-34-00121). 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 Petitioner's motion for discovery and the State's motion to dismiss. At the conclusion of the hearing, Judge Goldsmith denied Petitioner's motion for discovery and granted the State's motion to dismiss. Counsel for Petitioner 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, Petitioner filed a motion for reconsideration. Judge Goldsmith denied Petitioner's motion by filed order on January 9, 2020. Petitioner subsequently filed a timely Notice of Appeal. On June 20, 2020, Counsel filed a motion to be relieved as Petitioner wished to proceed in his appeal *pro se*. On July 10, 2020, Counsel filed the Explanation Pursuant to Rule 243(c), SCACR. On August 10, 2020, this Court dismissed the appeal for failing to show an arguable basis for asserting the determination of the lower court was improper. Counsel filed a Motion to Reinstate on August 24, 2020. That motion was denied by filed order on October 19, 2020. The Remittitur was returned on October 19, 2020.
- Petitioner 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 (Case No. 21-278). On December 1, 2021, the State filed its response to Petitioner's motion. On December 7, 2021, Petitioner 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 Petitioner. On July 25, 2022, Petitioner filed his Opening Brief in support of his motion. 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, Petitioner 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. On August 21, 2023, by **published** opinion, the Fourth Circuit Court of Appeals denied Petitioner's motion to file a successive federal habeas. In re Stewart, 78 F.4th 690 (4th Cir. 2023).
- On October 30, 2023, Petitioner filed his *third* post-conviction relief application (2023-CP-34-00282). On April 1, 2024, Petitioner filed his Motion for Court to Grant Leave to Conduct Discovery. On April 18, 2024, Petitioner filed his Memorandum of Facts In Support of Motion for Leave to Conduct Discovery. On May 3, 2024, the State filed its Return and Motion to Dismiss and Return to Motion for Discovery. On June 10, 2024, Petitioner filed his Response to Proposed Conditional Order of Dismissal and Denial of Discovery. On August 12, 2024, the Honorable George M. McFaddin, Jr., issued the Conditional Order of Dismissal and Denial of Motion for Discovery in Successive PCR Action. On September 8, 2024, Petitioner filed his Supplemental Response to Conditional Order of Dismissal and Denial of Discovery. On September 22, 2024, Petitioner filed his Motion for Leave to Supplement Filed Response, his proposed Order of Denial of Summary Dismissal and Granting Leave to

Conduct Discovery, and his proposed Order to Examine Autopsy Materials by Retained Pathologist. On October 15, 2024, Judge McFaddin issued the Final Order of Dismissal. On November 7, 2024, Petitioner filed his Motion to Alter/Amend Judgement Pursuant to Rule 59(e). On November 20, 2024, the State filed its Return to Applicant's Motion Pursuant to Rule 59(e), SCRCF. On December 3, 2024, Petitioner filed his Reply to Respondent's Return Pursuant to Rule 59(e), SCRCF. On December 13, 2024, Judge McFaddin issued the Order Denying Applicant's Motion Pursuant to Rule 59(e), SCRCF. This appeal follows.

SUMMARY OF FACTS

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

Petitioner opted to represent himself at his jury trial, held from July 28 to August 1, 2003. The local public defender acted as standby counsel. Prior to trial, on October 17, 2002, Petitioner was arraigned on both charges and pleaded guilty to the charge of desecration. Petitioner 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." (App'x pp. 61–63). No action was taken on the murder indictment challenge at the October 2002 proceedings.

During pre-trial proceedings in December 2002, Petitioner moved to interview the autopsy pathologist. Petitioner indicated that he had reviewed the autopsy report and noted that the stated cause of death was blunt force trauma. It did not indicate anything about the possibility that the cause of death was burning, yet he argued that the prosecutor had stated that possibility in the indictment. (App'x pp. 82–87). The judge inquired whether Petitioner would like to rethink

having counsel, "who could not only interview this pathologist, but seek out another pathologist?" Id. at 88. Petitioner declined, and the judge ordered that Petitioner be provided an opportunity to personally interview the autopsy pathologist concerning his opinion on the cause of death. (App'x pp. 82–89).

In a June 2003 hearing, Petitioner 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. (Respondent's Attachment 1, pp. 22–26)². Petitioner declared: "it is the contention of the defense that the victim's death was unintentional." Id. at 26. Petitioner moved for a forensic pathologist to assist him. Id. at 22-23. The prosecution noted that Petitioner had not yet spoken to the autopsy pathologist, but would be able to do so under the prior court order. Id. at 24. While the judge denied Petitioner's motion at the time, he cautioned that he would "not ... contend that Petitioner cannot bring it back up, but," instead, he thought it was prudent to wait for Petitioner to complete the interview. He explained that after Petitioner interviewed the autopsy pathologist, "may or may not leave Petitioner needing to come back and renew [the] motion...." Id. at 29–30. Petitioner did not renew the motion.³

At trial, Petitioner repeatedly told the jury he was the only surviving witness to what happened, which he described in detail as an accident. (App'x pp. 232–233; 522–531; 735; 761.⁴

² Upon preparation of this return, Respondent discovered that Petitioner failed to include the June 26, 2003, transcript of record before the Honorable John M. Milling in the Appendix, Supplemental Appendix, or the Motion Appendix. Notably, this transcript was before the 2023-CP-34-00282 post-conviction relief court. Pursuant to Rule 240, SCACR, and Rule 245(b), SCACR, Respondent provides the transcript as Respondent's Attachment 1 in this Return.

³ Petitioner 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, Petitioner "believed that the matter for which he had requested a forensic pathologist had been resolved." (Supp. App'x p. 19).

⁴ Consistently, Petitioner 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

The jury, during deliberations, even requested to rehear Petitioner'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 Petitioner, she had quietly left her house that night voluntarily to clandestinely meet with Petitioner for sex;
- That Petitioner 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 Petitioner "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 Petitioner "tripped and fell with her in [his] arms over one of the sticks in the path." Petitioner 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."

(App'x pp. 814–820).

In his trial testimony, Petitioner further asserted that the victim had previously been pregnant by Petitioner but had an abortion that she regretted. (App'x p. 915). Petitioner claimed they were attempting to have another child. Id. at 917. However, he asserted that on the night of her death, the victim became morose when Petitioner showed her a "memorial" to the child she had aborted. Id. at 930. Petitioner 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 Petitioner, 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 930–935. He claimed he was attempting to carry her, but she was not calming down, and she began to twist around. Id. at 934–935. Petitioner claimed he caught his right foot "on something" and then "stumble[d]" and eventually fell. According to Petitioner, the victim fell out of his arms, and he fell on top of her. Id. at 936.

caused by myself." (App'x p. 454).

Petitioner testified that "she turn[ed] over and she [sat] up." Id. Petitioner asserted that though she would "usually just jump[] right back up" if she fell, this time, she did not stand. Petitioner testified that instead, she twice called his name and asked for help, but, thinking it to be a "hard to get" ploy, Petitioner did not respond. Id. at 936–937. Petitioner 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 937. Petitioner testified that he saw blood coming from her mouth, "realized something was wrong with her," and started toward a nearby home. Id. at 937–939. As he carried her, he smelled urine and a bowel movement, then laid her back down. Id. Petitioner 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 939. Petitioner testified that he left to find his friend "Bo" (Stanton Wright). Petitioner had a beer and was looking for his cigarettes when he saw Wright driving nearby. Id. at 940. When he connected with Wright, he took him to see the body. Id. at 940–942. Petitioner claimed that he told Wright he had tripped as an explanation for what happened. Id. at 943.

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. (App'x p. 278). Dr. Harley ruled out injury for certain

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]" (App'x pp. 274–275). Petitioner did not object to Dr. Harley's qualification as an expert in forensic pathology. Id. at 276.

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 278–279. 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 279. 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 279–280. 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 280. Dr. Harley concluded that his opinion of the cause of death was "blunt force trauma to the right parietal." Id. at 281.

Under cross-examination by Petitioner, the doctor agreed that it was possible that the skull fracture could have occurred as a result of a fall. Id. at 282–283. 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 283.

On redirect, the pathologist stated the victim would have had to fall on something hard enough, like a root or a rock, for such an 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 284.

On re-cross by Petitioner, Dr. Harley confirmed that the 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 Petitioner 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 284–286.

Stanton Wright testified and confirmed that Petitioner called him and that he went to meet Petitioner at Petitioner's request. Wright recalled that Petitioner provided two flashlights, and together they walked toward the wood-lined path. Wright testified that on the way, Petitioner asked if Wright was his "homeboy, right?" Id. at 307–309. Petitioner shone a light on the victim's body, and Wright became upset. Id. at 308 and 312. 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 311. Wright testified that Petitioner asked him to help Petitioner move the victim's body. Id. at 316.

On cross-examination by Petitioner, Wright agreed that the victim appeared to want to see Petitioner when they were initially meeting that night and did not appear "upset about anything." Id. at 322–323. Although on cross-examination, Wright also agreed with Petitioner when asked if Petitioner could have said "tripped" instead of "flipped" (Id. at 327), when pressed on redirect, Wright testified, "If I recall, he said he flipped." Id. at 334. Wright testified that he did not see the victim's "head area" when Petitioner showed him the body. Id. at 336. Wright further testified that he never saw the victim with a box cutter. Id. at 337.

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 Petitioner had threatened

him (calling multiple times) but also that he heard Petitioner on a phone call threatening the victim should she see another man. Id. at 417–418; 420–421. Anthony stated Petitioner was angry because the victim was seeking another man. Id. at 419–420. Anthony confirmed that he had been intimate with the victim for a "[m]onth or longer" before she died. Id. at 422. Anthony testified that he also received threatening calls after Petitioner was in jail, indicating Anthony was "next and all that." Id. at 420–421.

Deloris Watson, Anthony's mother, similarly testified about the phone calls she made 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 Petitioner'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 431–433; 437; 440. Deloris clarified on redirect that she received calls from Petitioner at her home both before and after the victim's death. Id. at 443.

Officer John Boston testified that Petitioner first told him that Petitioner and the victim "got into an argument" at approximately 4 a.m. while on a path behind Petitioner's house, and "that she pulled a knife on him." Id. at 491. As he tried to hold her, the victim fell, and Petitioner 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. "Petitioner mentioned something about she had got mad about another female." Id. In a written statement, Petitioner claimed the victim had a razor blade but reiterated that they had struggled. He then claimed he tripped and fell on top of the victim. Id. at 496. The officer testified that Petitioner 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 496–498.

Officer John Valdaleso testified that he spoke to Petitioner when he responded to a call for police aid at Petitioner's house after Petitioner burned the body. According to the officer, Petitioner insisted that he wanted to tell Officer Valdaleso what happened, and Petitioner declared that he and the victim had argued, that she fell and made "funny sounds," he then walked to his house, but when he later returned, she was no longer breathing. Petitioner told the officer he panicked and tried to dispose of the body. Id. at 517–520.

Officer Dallas Gurley testified to one writing from Petitioner mailed to her and one Petitioner hand-delivered. The mailed document indicated Petitioner was enraged over the victim's involvement with another man. Id. at 573. The other document stated the possibility of shifting blame to another and suggested how to interview for favorable facts, even though Petitioner had not previously indicated that someone else may have killed the victim. Id. at 579; 584–589.

Also of note, Petitioner questioned Monique Bright, who was in the car with Petitioner and Wright when they picked up the victim, about the victim's mood. Bright testified, in response to Petitioner's own questioning, that the victim was "happy" she and Petitioner "were playing around." Id. at 352.

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THE REQUEST FOR ORIGINAL JURISDICTION SHOULD BE DENIED

Petitioner contends this Court should exercise its original jurisdiction and grant him injunctive relief in the form of "an order that the 2018 PCR order, summarily dismissing the scene notes newly discovered evidence claim, is void[,] [and] further moves the Court to grant him leave to raise this claim before the Court in its original jurisdiction." (Petitioner's October 2, 2025, Motion pp. 3–4). Alternatively, Petitioner seeks injunctive relief in the form of this "Court to remand his case to the lower court with instructions for the court to grant discovery and an evidence [sic] hearing for this claim in an expedited manner." (Petitioner's October 2, 2025, Motion p. 4). Respondent construes this request as one where Petitioner seeks this relief pursuant to Rule 245, SCACR, S.C. Const. art. V, § 5, and S.C. Code Ann. § 14-3-310.

Petitioner argues that the State committed fraud in the 2018-CP-34-00121 action by not including an attachment in its return, which the State "claimed was material to conclusively refuting [Petitioner]'s crime scene notes newly discovered evidence claim." (Petitioner's October 2, 2025, Motion p. 3). While Respondent cannot definitively assert—over six years after the hearing in question—that the attachment was or was not missing from the return and judge's packet, that is not the only evidence that would address the claim here. Respondent will demonstrate that Petitioner's claim of fraud in this case is baseless and misleading, given that the 2018-CP-34-00121 post-conviction relief judge specifically referenced evidence in detail in the order of dismissal.

The record before this Court indicates that a hearing on the matter was held before Judge Goldsmith on August 22, 2019. (App'x pp. 1251–1284). Packets were handed up to Judge Goldsmith by both parties, and, for the reason stated above, Respondent cannot conclusively say what was or was not within those packets. However, Judge Goldsmith was clear in his Order of

Dismissal, wherein he made the following findings:

As to the purported notes of SLED investigators, Applicant asserts without basis that the notes were wrongfully withheld from him. To the contrary, correspondence from Assistant Solicitor Dan Blake to Applicant shows he was provided the officer's notes in 2003. Additionally, the notes do not reveal anything which would either change the result if a new trial were conducted, nor anything material to the question of guilt or innocence, nor anything beyond the thinnest possible basis for impeachment. Applicant protests the notes show certain articles and refuse identified at the crime scene were not collected. Such protest is merely impeaching *at best*, and Applicant primarily emphasizes the value of the evidence for its possible use to damage "the credibility of Agent Elvington[.]" [] Put another way, Applicant presents only purported evidence of lack of evidence, which has *never* been sufficient to secure so much as a hearing, let alone a new trial. Furthermore, Applicant *did* argue and argumentatively question the inadequacy of the investigation in his lengthy closing argument at trial. [] Applicant can hardly contend he was not aware, or could not have been aware, of what the State's case against him lacked. Consequently, the State argued any deficiencies in the investigation were the consequence of Applicant's own efforts to destroy evidence and mess up the crime scene. [] Given Allen's corpse was *immolated*, the argument was well enough made.

(App'x p. 1297) (alteration in original). From the record, it is evident that Judge Goldsmith reviewed correspondence from Assistant Solicitor Blake that showed Petitioner was provided the complained-of notes in 2003. Moreover, the reference was neither summary nor superficial; instead, the judge referenced the assistant solicitor who provided the material and the year of the letter. Furthermore, Judge Goldsmith went on to flesh out how the complained-of notes were not newly discovered evidence, which required review of the contents of the officer's notes and comparison with the facts presented at trial. Thus, this precludes the necessity of any remand on this matter, because it was properly ruled upon by Judge Goldsmith, where he found the complained-of notes not to be newly discovered evidence. (App'x p. 1297).

Further, Petitioner raised the notes issue in his Rule 59(e), SCRCF, motion before Judge Goldsmith, and asserted the following:

On page 13, the Order fails to specifically address Applicant's allegation that SLED Agent Al Stuckey's notes were withheld from Applicant. Instead, the Order

vaguely states that "correspondence from Assistant Solicitor Dan Blake to Applicant shows he was provided the officer's notes in 2003." While it is true that the State provided Applicant with some of the officer's notes in 2003 (i.e. Bobby Elvington). Applicant's claim is in part based upon the State's withholding of Agent Stuckey's notes. Applicant submitted with his PCR Brief correspondence from the Solicitor dated July 01, 2003 (27 days before Applicant's trial) showing that Agent Stuckey's notes were never disclosed to Applicant.

(App'x p. 1314).

In response to Petitioner's Rule 59(e), SCRCF, the State replied with the following:

Applicant argues against the Order's finding "that 'Applicant could have sought this relief long ago, prior to trial, by the exercise of diligence[.]'" Applicant once again attempts to convert his failure to pursue the evident and plainly stated ambiguities in the forensic report into a claim that the State committed a violation by failing to tell him each and every way in which the forensic report could be attacked. Brady⁶ and Gibson⁷ do not compel the State to appraise defendants of every conceivable weakness which may be extrapolated from the evidence available in its prosecutions; it only has the obligation to make evidence available. Indeed, Applicant's absurd claims of prosecutorial misconduct are premised on a theory that would put prosecutors in the untenable position of acting both as prosecutor and counsel to the defendant.

Additionally, the number of ways in which evidence may be interpreted are defined by the other available facts which may provide the necessary context through which evidence may be interpreted—Applicant's various claims, including those of prosecutorial misconduct, are premised on his own outlandish revision of his recollection of events as contrary to those he advanced at trial. The importance of this observation is on full display in Applicant's arguments on pages 8 through 12. Applicant condemns his own direct, first-hand trial testimony of what happened *as hearsay*. Applicant notes the Court's observation that he has cagily refrained from stating how the victim killed herself, and then persists in refraining from explaining how she supposedly killed herself—the alleged cause of his "suppressed" memories—leaving open his ability to amend his ever-changing memory to conform with the evidence he seeks to obtain. The State presented its best theory of events, which resulted in Applicant's conviction, and stands by them, but the number of possible arguments against the State's theory are functionally infinite and are constrained only by the ability of Applicant's own imagination to produce new, alternative facts. Thus, it would be an impossible burden for the State to communicate every conceivable interpretation of evidence to Applicant, or any other defendant; that impossibility is precisely why the State need not prove a defendant's guilt to an absolute certainty, but rather beyond a reasonable doubt.

As to Applicant's argument regarding Al Stuckey's notes, the Order is an

⁶ Brady v. Maryland, 373 U.S. 83 (1963).

⁷ Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999).

accurate assessment and summation of the totality of the record before the Court. Additionally, Applicant made *no effort* during the hearing on the competing motions to argue with respect to the investigative notes allegedly not turned over, functionally abandoning the issue to focus on what he deemed to be his best argument.

Applicant's motion for reconsideration is, in sum total, nothing more than yet another restatement of the arguments he has now repeatedly submitted to the Court, or had the opportunity to submit to the Court. Applicant offers nothing to justify reconsideration of the Order, and the motion should be denied.

(App'x pp. 1323–1325). After consideration of the briefs submitted by the parties, Judge Goldsmith ultimately denied Petitioner's Rule 59(e), SCRPC, by filed order on January 9, 2020. (App'x p. 1328).

Thereafter, Petitioner filed an appeal of Judge Goldsmith's orders, and Petitioner raised the same issue regarding the notes in his Rule 243(c), SCACR, explanation to this Court in the following:

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

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

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

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

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

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

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

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

(App'x pp. 1363–1364). On August 10, 2020, this Court issued its Order dismissing the appeal for failing to show there was an arguable basis for asserting the determination by the lower court was improper. (App'x p. 1366).

On August 24, 2020, Petitioner filed a Motion to Reinstate and Renewal of Motion to Be Relieved As Counsel with this Court, wherein he argued the following as his Argument II:

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

Some records from South Carolina Law Enforcement Division ("SLED") were provided to Petitioner prior to trial. Others, with exculpatory and impeaching information, were withheld in violation of Brady v. Maryland, 373 U.S. 83 (1963) and Gibson v. State, 344 S.C. 515 (1999), namely the notes recorded by Agent Al Stuckey. Petitioner filed a freedom of information act (FOIA) request, which provided all SLED records relating to its investigation of Petitioner's case,

including Agent Stuckey's notes. The results of this request were mailed to Petitioner's wife on June 7, 2017. These notes contain information that contradicts the State's theory at trial. Specifically, the notes reflect that the crime scene investigator meticulously searched the scene but found no evidence of a violent struggle. Furthermore, there is no indication in the notes that the crime scene investigator attributed the lack of physical and forensic evidence to the fire, especially noteworthy as the investigator noted that the body was burned over a hundred feet from where the victim died.

The burden is on the State to turnover to the defense material evidence which is exculpatory and impeaching. A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Kyles v. Whitley, 514 U.S. 419 (1995); State v. Von Dohlen, 322 S.C. 234, 241 (1996). This rule applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667, 676 (1985).

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

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

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

(App'x pp. 1372–1373). By Order filed October 19, 2020, this Court denied Petitioner's motion to reinstate and denied the motion to be relieved as moot. (App'x p. 1376).

At its core, Petitioner's time to complain about the missing "Attachment" from the State's

return was six years ago, during the pendency of his 2018-CP-34-00121 post-conviction relief proceedings and the appeal—not six years later in a separate action on appeal where the complaint was not raised to the 2023-CP-34-00282 post-conviction relief court.

Additionally, Petitioner is mistaken in interpreting Rule 243(f)(1), SCACR. This rule explicitly requires only the record from the lower court to be included in the Appendix for the 2023-CP-34-00282 post-conviction relief action. Respondent's invocation of *laches* as a defense was justified, as it acknowledged the possibility of lost records over time. Crucially, the missing "Attachment" from the State's return in the 2018-CP-34-00121 post-conviction relief action was never part of the record before the 2023-CP-34-00282 post-conviction relief court, which negates Petitioner's argument.

Nevertheless, Respondent submits this Petition fails to meet this Court's requirements for granting original jurisdiction because no "extraordinary reason such as a question of significant public interest or an emergency" exists. Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991). Petitioner has failed to show any extraordinary reason justifying the exercise of the Court's original jurisdiction in this case. Additionally, Petitioner has failed to show a significant public interest in his claims or that any emergency exists for this Court to exercise its original jurisdiction.⁸

[CONCLUSION & SIGNATURE PAGE FOLLOWS]

⁸ Rule 245, SCACR, also provides that "[i]f the public interest is involved or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the reasons must be stated in the petition with supporting affidavits." Petitioner has failed to make such a showing.

CONCLUSION

WHEREFORE, Respondent requests that the Court deny Petitioner's request for relief in the Court's original jurisdiction and any other further relief this Court deems necessary.

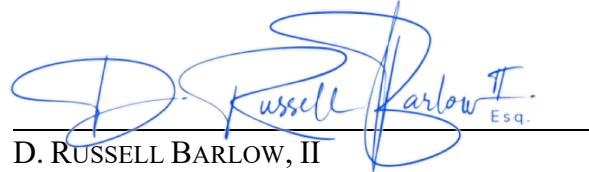
Respectfully submitted,

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BY:



A handwritten signature in blue ink, reading "D. Russell Barlow II Esq.", is written over a horizontal line. The signature is stylized and cursive.

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October 13, 2025