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EXHIBIT A

FINAL ORDER OF DISMISSAL DATED SEPTEMBER 19, 2025.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	
)	
Eugene D. Green,)	Case No.: 2020-CP-14-00075
S.C.D.C. No. 275500,)	
)	
Applicant,)	
)	FINAL ORDER OF DISMISSAL
v.)	
)	
State of South Carolina)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an application for post-conviction relief filed on February 13, 2020. Respondent made its return on or about February 26, 2024, requesting the application be summarily dismissed as untimely, successive, and for failing to establish a *prima facie* case of newly discovered evidence.

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 signed February 29, 2024, and filed March 4, 2024, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. A Final Order of Dismissal was issued by this Court on May 29, 2024. Applicant filed a Motion to Reconsider on June 25, 2024. On May 7, 2025, this Court granted Applicant's motion, the Final Order of Dismissal was vacated, and Applicant was granted additional time in which to file his response to the Conditional Order of Dismissal.

On June 10, 2025, Applicant responded by filing a document entitled "Memorandum in Support of Applicant's Opposition to Respondent's Return and Motion to Dismiss." In this document, Applicant reasserts the same argument that his co-defendant recanted his trial testimony

Therefore, this Court finds a sufficient reason has not been shown 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.**

AND IT IS SO ORDERED this 19th day of September, 2025.

Sumter, South Carolina.

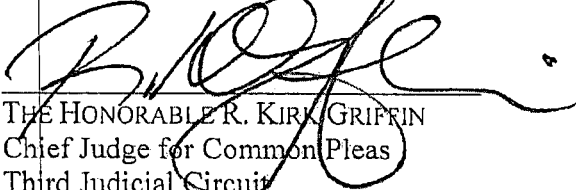

THE HONORABLE R. KIRK GRIFFIN
Chief Judge for Common Pleas
Third Judicial Circuit

EXHIBIT B

ORDER DATED MAY 7, 2025 VACATING PRIOR DISMISSAL.

DATE 05/07/2025

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT OF COURT
) CLARENDON COUNTY, SC

Eugene D. Green,
S.C.D.C. No. 275500,

) Case No.: 2020-CP-14-00075

Applicant,

v.

) ORDER GRANTING APPLICANT'S MOTION
) TO RECONSIDER AND VACATING FINAL
) ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) SCRCPP filed by Eugene D. Green (Applicant) on June 25, 2024. This Court grants Applicant's motion to reconsider and vacates the final order of dismissal for the limited purpose of affording Applicant additional time in which to file a response to the conditional order of dismissal for the following reason:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed on February 13, 2020. Responded made its return on or about February 26, 2024, requesting the application be summarily dismissed as untimely, successive, and for failing to establish a *prima facie* case of newly discovered evidence.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a conditional order of dismissal signed on February 29, 2024, and filed March 4, 2024, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. The conditional order of dismissal mistakenly directed Applicant to send any

Shanita Brangman, CLK-Clarendon SC
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responses to the conditional order of dismissal to the Sumter County Clerk of Court. The Court issued a final order of dismissal signed May 29, 2024, and filed June 6, 2024, dismissing this action with prejudice.

II.

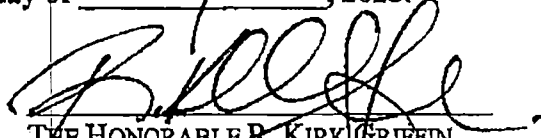
In his motion, Applicant requests that this Court vacate the final order of dismissal and grant Applicant an appropriate extension of time to file an opposition to Respondent's return. Applicant contends the conditional order of dismissal filed on March 4, 2024, mistakenly directed him to file any responses he may have with the Sumter County Clerk of Court. This Court agrees and finds the conditional order of dismissal should have directed Applicant to submit any responses with the Clarendon County Clerk of Court. This Court finds Applicant has demonstrated a good faith effort to comply with the conditional order of dismissal but was unable to do so due to the clerical error regarding the proper filing location.

In light of this, this Court finds Applicant's motion for reconsideration shall be granted, and the final order of dismissal vacated for the limited purpose of affording Applicant additional time to respond to the conditional order of dismissal. This Court hereby grants Applicant twenty (20) days from the date of service of this Order upon him to show why the conditional order of dismissal filed on March 4, 2024, should not become final. Applicant shall file any reasons he may have with the Clarendon County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
T. Cruise Mitchell, Esquire
PCR Division – 3rd Circuit
P.O. Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be received by the Clarendon County Clerk of Court and opposing counsel within twenty (20) days from the date of the service of this Order, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 1st day of May, 2025.


THE HONORABLE R. KIRK GRIFFIN
Chief Judge for Common Pleas
Third Judicial Circuit

Spartanburg, South Carolina

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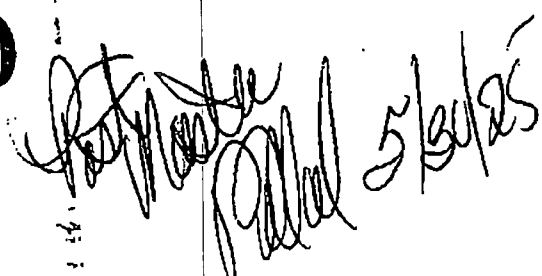


EXHIBIT C

RESPONSE TO CONDITIONAL ORDER FILED JUNE 10, 2025

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

EUGENE D. GREEN, # 275500
APPLICANT,

V.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT

CASE No.: 2020-CP-14-00075

APPLICANT'S OPPOSITION TO RESPONDENT'S
RETURN AND MOTION TO DISMISS

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 06.10.2025

Shanita Brannan
CLERK OF COURT
CLARENDON COUNTY, SC

IN RESPONSE TO RESPONDENT'S RETURN AND MOTION TO DISMISS, I, EUGENE GREEN, THE APPLICANT IN THIS CASE, VEHEMENTLY OPPOSE THE DISMISSAL OF MY PCR APPLICATION. THE PURPOSE OF THIS RESPONSE IS TO PROVIDE SPECIFIC REASONS, BOTH FACTUAL AND LEGAL, AS TO WHY THE APPLICATION SHOULD NOT BE DISMISSED AND TO ASK THE COURT TO DENY RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL.

FACTUAL BACKGROUND

THE FACTUAL BACKGROUND OF THIS CASE INVOLVES THE CONVICTION OF THE APPLICANT FOR MURDER AND KIDNAPPING IN 2001, BASED ON TESTIMONY FROM A CO-DEFENDANT, GIBREEL NICHOLS. DESPITE MULTIPLE APPEALS AND POST-CONVICTION RELIEF EFFORTS, THE CONVICTIONS WERE UPHELD. HOWEVER, A RECENT DEVELOPMENT HAS EMERGED, WHERE NICHOLS RECANED HIS TESTIMONY AND ADMITTED TO LYING ABOUT THE APPLICANT'S INVOLVEMENT IN THE CRIMES, IMPLICATING THE PROSECUTOR IN HIS DECEIT. THIS NEW EVIDENCE HAS RAISED SERIOUS DOUBTS ABOUT THE FAIRNESS OF THE TRIAL AND THE ACCURACY OF THE CONVICTION. THE APPLICANT FILED A PCR PETITION IN, 2020, CITING NEW EVIDENCE AND PROSECUTORIAL MISCONDUCT. THE FILING OF THE PCR PETITION TRIGGERED THE STATE COURT'S RESPONSIBILITY TO RESPOND TO THE PETITION. THE RESPONDENT, DESPITE THE RULE REQUIRING A

RESPONSE WITHIN 90 DAYS, FAILED TO REPLY. AFTER SEVERAL ATTEMPTS TO OBTAIN A RESPONSE, THE RESPONDENT FINALLY FILED A RETURN SEEKING TO DISMISS THE PETITION AS UNTIMELY AND SUCCESSIVE. RESPONDENT ARGUES THAT NO PURPOSE WOULD BE SERVED BY FURTHER PROCEEDINGS AND REQUESTS A CONDITIONAL ORDER OF DISMISSAL.

GIVEN THE SIGNIFICANCE OF NICHOLS' RECANTATION AND THE POTENTIAL IMPACT ON THE CONVICTION, IT SEEMS CRUCIAL FOR THE COURT TO CONSIDER THE NEW EVIDENCE PRESENTED BY THE APPLICANT AND THOROUGHLY EVALUATE THE GROUNDS FOR THE PCR PETITION. THE ISSUES RAISED ABOUT THE FAIRNESS OF THE TRIAL AND THE CREDIBILITY OF THE KEY WITNESS SHOULD BE CAREFULLY EXAMINED BEFORE MAKING A DECISION ON THE DISMISSAL MOTION.

ARGUMENTS IN OPPOSITION TO THE MOTION TO DISMISS

A. TIMELINESS:

THE RESPONDENT'S CLAIM THAT THE PETITION IS UNTIMELY IS UNFOUNDED AND SHOULD BE REJECTED. THE TIMELINE OF EVENTS CLEARLY SHOWS THAT THE NEW EVIDENCE PRESENTED WAS NOT DISCOVERED BY THE APPLICANT UNTIL AFTER FEBRUARY 12, 2019, AND THE APPLICATION WAS FILED ON FEBRUARY 13, 2020. ACCORDING TO RULE 71.1 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, A PCR APPLICATION MUST BE FILED WITHIN ONE YEAR OF THE DISCOVERY OF NEW EVIDENCE. THEREFORE, THE APPLICATION WAS TIMELY FILED WITHIN THE STATUTORY LIMITATIONS.

RULE 12(c) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE STIPULATES THAT THE RESPONDENT MUST RESPOND WITHIN 90 DAYS OF SERVICE OF THE APPLICATION. DESPITE THE APPLICANT'S DILIGENT EFFORTS TO SEEK A RESPONSE FROM THE RESPONDENT, NO REPLY OR ACKNOWLEDGEMENT WAS RECEIVED FOR OVER 4 YEARS.

THE RESPONDENT'S ARGUMENT THAT THE COURT MAY EXTEND THE TIME FOR FILING A RESPONSE IS NOT APPLICABLE IN THIS CASE. THE RESPONDENT FAILED TO PROVIDE A VALID REASON FOR THE DELAY IN RESPONDING TO THE PETITION,

AND THERE IS NO EVIDENCE OF ANY EXTENUATING CIRCUMSTANCES THAT WOULD JUSTIFY SUCH LENGTHY DELAY. FURTHERMORE, THE RESPONDENT'S ASSERTION THAT NO DEMONSTRABLE PREJUDICE OCCURRED AS A RESULT OF THE DELAY IS UNSUBSTANTIATED AND OVERLOOKS THE SIGNIFICANT IMPACT ON THE APPLICANT'S RIGHT TO A FAIR AND TIMELY REVIEW OF THEIR CASE.

IN ADDITION, THE RESPONDENT'S ATTEMPT TO DISMISS THE APPLICANT'S CLAIMS BASED ON PROCEDURAL BARS AND LACK OF PRIMA FACIE EVIDENCE IS MISGUIDED. THE NEW EVIDENCE PRESENTED BY NICHOLS TO STILLINGER INVESTIGATIONS RAISES SERIOUS DOUBTS ABOUT THE CREDIBILITY OF THE KEY WITNESS IN THE CASE AND THE FAIRNESS OF THE TRIAL ITSELF. THE RESPONDENT'S INSISTENCE ON DISMISSING THE APPLICATION WITHOUT A HEARING OR FURTHER REVIEW DEPRIVES THE APPLICANT OF THEIR RIGHT TO DUE PROCESS AND A FAIR EVALUATION OF THEIR CLAIMS.

OVERALL, THE RESPONDENT'S CLAIM THAT THE PETITION IS UNTIMELY IS WITHOUT MERIT AND SHOULD BE REJECTED. THE APPLICANT FOLLOWED THE PROPER PROCEDURES AND TIMELINES FOR FILING THEIR PCR APPLICATION, AND THE RESPONDENT'S FAILURE TO RESPOND IN A TIMELY MANNER SHOULD NOT BE USED AS JUSTIFICATION FOR DISMISSING THE APPLICANT'S CLAIMS. THE COURT MUST CAREFULLY CONSIDER THE NEW EVIDENCE PRESENTED AND ENSURE THAT THE APPLICANT RECEIVES A FAIR AND JUST REVIEW OF THEIR CASE.

B. SUCCESSIVENESS:

THE ARGUMENT THAT THE PETITION IS SUCCESSIVE IS NOT VALID IN THIS CASE FOR SEVERAL REASONS. FIRST AND FOREMOST, THE NEW EVIDENCE PRESENTED BY NICHOLS IN THE INTERVIEW WITH STILLINGER INVESTIGATIONS RAISES SERIOUS CONCERNS ABOUT THE CREDIBILITY OF HIS TRIAL TESTIMONY, WHICH WAS THE KEY PIECE OF EVIDENCE THAT LED TO THE APPLICANT'S CONVICTION. THIS NEW EVIDENCE IS CRUCIAL AND HAS THE POTENTIAL TO

OVERTURN THE CONVICTION, MAKING IT A MATTER OF JUSTICE TO CONSIDER IT.

SECONDLY, THE RESPONDENT'S FAILURE TO RESPOND TO THE PCR APPLICATION IN A TIMELY MANNER, DESPITE MULTIPLE ATTEMPTS BY THE APPLICANT TO SEEK A RESPONSE, FURTHER COMPLICATES THE SITUATION. THE LACK OF RESPONSE AND THE SUBSEQUENT DELAY IN FILING THE RETURN CANNOT BE ATTRIBUTED TO THE APPLICANT AND SHOULD NOT BE USED AGAINST THEM IN THIS CONTEXT.

FURTHERMORE, THE RESPONDENT'S ARGUMENT THAT THE INTERVIEW BETWEEN NICHOLS AND STILLINGER INVESTIGATIONS CONSTITUTES INADMISSIBLE HEARSAY IS NOT A SUFFICIENT REASON TO DISMISS THE APPLICATION. THE SWORN AFFIDAVIT TRANSCRIBED BY MR. AUSTIN HENDERSON SHOULD BE CONSIDERED AS EVIDENCE, ESPECIALLY GIVEN THE CIRCUMSTANCES UNDER WHICH IT WAS CONDUCTED (VIA TELEPHONE DUE TO PANDEMIC RESTRICTIONS). THE POTENTIAL IMPACT OF THIS NEW EVIDENCE ON THE FAIRNESS OF THE TRIAL AND THE CREDIBILITY OF THE KEY WITNESS WARRANTS A CLOSER EXAMINATION AND CANNOT BE DISMISSED LIGHTLY.

IN CONCLUSION, THE CIRCUMSTANCES SURROUNDING THE NEW EVIDENCE PRESENTED IN THE INTERVIEW WITH NICHOLS, COUPLED WITH THE LACK OF RESPONSE FROM THE RESPONDENT AND THE POTENTIAL IMPLICATIONS FOR THE FAIRNESS OF THE TRIAL, MAKE IT ESSENTIAL TO CONSIDER THE PCR APPLICATION ON ITS MERITS. THE ARGUMENT FOR SUCCESSIVENESS IN THIS CASE DOES NOT HOLD UP UNDER SCRUTINY, AND THE APPLICANT SHOULD BE GIVEN THE OPPORTUNITY TO PRESENT THEIR CASE AND SEEK JUSTICE.

C. PRIMA FACIE CASE OF NEWLY DISCOVERED EVIDENCE:

IN RESPONSE TO RESPONDENT'S RETURN AND MOTION TO DISMISS, APPLICANT CONTENTS THAT A PRIMA FACIE CASE OF NEWLY DISCOVERED EVIDENCE HAS BEEN ESTABLISHED, NECESSITATING FURTHER REVIEW BY THE COURT.

THE ADMISSION BY NICHOLS TO STILLINGER INVESTIGATIONS IS PIVOTAL EVIDENCE THAT DIRECTLY CHALLENGES THE CREDIBILITY OF HIS TRIAL TESTIMONY. NICHOLS' CONFESSION THAT HE FABRICATED THE APPLICANT'S INVOLVEMENT IN THE CRIMES AND CONFESSED TO COMMITTING THEM HIMSELF RAISES SUBSTANTIAL DOUBTS REGARDING THE CONVICTION'S VALIDITY. THIS CONFESSION STRIKES AT THE CORE OF THE CASE AND DIRECTLY CONTRADICTS THE TESTIMONY THAT LED TO THE APPLICANT'S CONVICTION.

WHILE RESPONDENT ARGUES THAT THE INTERVIEW BETWEEN NICHOLS AND STILLINGER INVESTIGATIONS SHOULD BE DEEMED INADMISSIBLE HEARSAY, IT IS ESSENTIAL TO RECOGNIZE THAT NICHOLS HIMSELF MADE THIS ADMISSION, WHICH CALLS INTO QUESTION HIS CREDIBILITY AS A WITNESS. NICHOLS' CONFESSION TO LYING ABOUT THE EVENTS RAISES SERIOUS CONCERNS ABOUT THE TRIAL'S FAIRNESS AND THE VERDICT'S ACCURACY.

RESPONDENT'S OBJECTION TO THE AFFIDAVIT BY AUSTIN HENDERSON NOT BEING A CERTIFIED TRANSCRIPT OR SWORN TESTIMONY IS INSUFFICIENT TO DISMISS THE APPLICANT'S CLAIMS. MR. HENDERSON'S AFFIDAVIT ACCURATELY REFLECTS NICHOLS' ADMISSIONS DURING THE INTERVIEW AND SERVES AS CRITICAL EVIDENCE IN SUPPORT OF THE APPLICANT'S CASE.

MOREOVER, THE TESTIMONY OF WITNESSES, SUCH AS CHRISTINA NICHOLS AND FELICIA GREEN ([D]ELICIA GREEN), CORROBORATES NICHOLS' CONFESSION AND STRENGTHENS THE APPLICANT'S ARGUMENT THAT FALSE TESTIMONY WAS KNOWINGLY PRESENTED BY THE PROSECUTION. THESE WITNESSES REVEALED INFORMATION ABOUT NICHOLS CONFESSING TO THE MURDER IMMEDIATELY AFTER COMMITTING IT, WHICH WAS NOT DISCLOSED TO THE JURY DURING TRIAL, RAISING SUSPICIONS ABOUT THE TRIAL'S FAIRNESS AND THE INTENTIONAL WITHHOLDING OF CRUCIAL INFORMATION.

THE RESPONDENT CONTENDS THAT MS. NICHOLS DID NOT ATTEND THE APPLICANT'S TRIAL AND THAT THE APPLICANT'S LAWYER TRIED TO PRESENT MS. NICHOLS' STATEMENTS THROUGH ANOTHER WITNESS, DELICIA GREEN.

NONETHELESS, THIS SITUATION HIGHLIGHTS THE ARGUMENT THAT THIS INFORMATION WAS NOT EASILY ACCESSIBLE TO THE APPLICANT PRIOR TO THE TRIAL. IT IS CRUCIAL TO NOTE THAT, IN CONTRAST TO THE RESPONDENT'S CLAIM, NOT ONLY WAS MS. NICHOLS PRESENT AT THE APPLICANT'S TRIAL, BUT SHE ALSO PROVIDED TESTIMONY. THE DEFENSE ATTORNEY WAS UNAWARE OF THE MAGNITUDE OF HER TESTIMONY AS IT WAS WITHHELD BY THE PROSECUTOR.

ADDITIONALLY, THE POLYGRAPH EXAMINATION RESULTS INDICATING THAT THE APPLICANT WAS NOT THE TRIGGERMAN AND THE TESTIMONY OF WITNESSES WHO HEARD NICHOLS CONFESS TO THE MURDER PROVIDE FURTHER SUBSTANTIATION FOR NICHOLS' CONFSSION TO INVESTIGATOR A. HENDERSON.

DESPITE RESPONDENT'S CLAIM THAT MS. NICHOLS DIDN'T TESTIFY AT THE TRIAL, THE FAILURE TO DISCLOSE HER INFORMATION REGARDING HER BROTHER'S CONFSSION AND DELICIA GREEN'S CORROBORATING STATEMENT RAISES QUESTIONS ABOUT THE TRIAL'S FAIRNESS. CODEFENDANT NICHOLS' RECANITATION TO STILLINGER INVESTIGATIONS FURTHER SUPPORTS THE ARGUMENT THAT THE APPLICANT MAY HAVE BEEN WRONGLY CONVICTED.

THE APPLICANT'S PERSISTENT EFFORTS TO PROMPT A RESPONSE FROM THE RESPONDENT AND MOVE THE CASE FORWARD WERE MET WITH SILENCE AND DELAYS. DESPITE FILING A MOTION FOR DEFAULT JUDGMENT ENTRY AND CONTACTING THE ATTORNEY GENERAL'S OFFICE MULTIPLE TIMES, THE RESPONDENT DID NOT PROVIDE A TIMELY RESPONSE, INDICATING A LACK OF COOPERATION AND TRANSPARENCY.

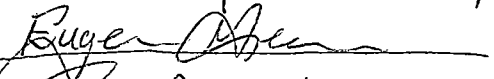
CONSIDERING THE NEWLY DISCOVERED EVIDENCE AND RESPONDENT'S LACK OF COOPERATION, THE APPLICANT HAS SUCCESSFULLY ESTABLISHED A PRIMA FACIE CASE FOR RELIEF. THE COURT SHOULD NOT DISMISS THE APPLICANT'S CLAIM BUT SHOULD ALLOW HIM TO PRESENT HIS CASE AND SEEK JUSTICE IN LIGHT OF NICHOLS' CONFSSION, SUPPORTED BY WITNESSES TESTIMONIES AND RESPONDENT'S INADEQUATE RESPONSE.

CONCLUSION

IN CONCLUSION, THE RESPONDENT'S MOTION TO DISMISS SHOULD BE DENIED BASED ON THE COMPELLING EVIDENCE PRESENTED BY THE APPLICANT. THE RECONTATION BY KEY WITNESS NICHOLS, ALONG WITH SUPPORTING WITNESS TESTIMONIES AND EVIDENCE, RAISES SERIOUS DOUBTS ABOUT THE ACCURACY AND FAIRNESS OF THE APPLICANT'S TRIAL AND CONVICTION. THE FAILURE OF THE RESPONDENT TO RESPOND IN A TIMELY MANNER AND ADDRESS THE ISSUES RAISED BY THE APPLICANT FURTHER UNDERSCORES THE NEED FOR A FULL AND FAIR CONSIDERATION OF THE APPLICANT'S PETITION FOR POST-CONVICTION RELIEF. IT IS IMPERATIVE THAT THE COURT ACKNOWLEDGES THE SIGNIFICANCE OF THE NEW EVIDENCE PRESENTED AND CONDUCTS A THOROUGH EXAMINATION TO ENSURE JUSTICE IS SERVED. THE APPLICANT'S RIGHT TO A FAIR TRIAL AND THE TRUTH MUST PREVAIL IN THIS CASE.

DATED: JUNE 2, 2025

RESPECTFULLY SUBMITTED,



EUGENE D. GREEN, # 275500
KERSHAW CORRECTIONAL INSTITUTION
4848 GOLD MINE HWY. (GAK-A-49)
KERSHAW, SOUTH CAROLINA 29067

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

EUGENE D. GREEN, # 275500,)
APPLICANT,)

V.)

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT

CASE No.: 2020-CP-14-00075

CERTIFICATE OF SERVICE

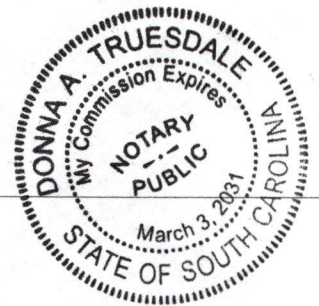
I, EUGENE GREEN, DECLARE UNDER PENALTY OF PERJURY THAT ON THIS 3RD DAY OF JUNE, 2025, I HAVE SERVED A COPY OF THE APPLICANT'S OPPOSITION TO RESPONDENT'S RETURN AND MOTION TO DISMISS ALONG WITH A LEGAL MEMORANDUM ON THE OPPOSING PARTY OR THEIR ATTORNEY VIA POSTAL SERVICE. THE ENVELOPES WERE PROPERLY ADDRESSED, AND POSTAGE WAS PAID FOR. THE FOLLOWING ADDRESS WERE CLEARLY INDICATED ON THE ENVELOPES:

CERTIFIED TRUE COPY
ORIGINAL FILED IN THIS OFFICE

DATE 06-10-2025

Shanita Brangman
CLERK OF COURT
CLARENDON COUNTY, SC

T. CRUISE MITCHELL, ESQUIRE
OFFICE OF THE ATTORNEY GENERAL
PCR DIVISION - 3RD CIRCUIT
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211



THIS 3RD DAY OF JUNE, 2025.

Donna A. Truesdale

NOTARY PUBLIC FOR SOUTH CAROLINA.

MY COMMISSION EXPIRES: _____.

RESPECTFULLY SUBMITTED,
Eugene Green
EUGENE D. GREEN, # 275500

PRO-SE
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Shanita Brangman, Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT

EUGENE D. GREEN, # 2755
APPLICANT

CASE No. : 2020-CP-14-00075

V.

STATE OF SOUTH CAROLINA,
RESPONDENT.

MEMORANDUM IN SUPPORT OF
APPLICANT'S OPPOSITION TO
RESPONDENT'S RETURN AND
MOTION TO DISMISS

DATE: 06-10-2025
 CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 Shantia Brangman
 CLERK OF COURT
 CLARENDON COUNTY, SC

IN THE RELENTLESS PURSUIT OF JUSTICE AND EQUITY, THE APPLICANT HEREM SUBMITS THIS LEGAL MEMORANDUM TO CONTEST THE RESPONDENT'S RETURN AND MOTION TO DISMISS THE APPLICANT'S POST-CONVICTION RELIEF APPLICATION VEHEMENTLY. THIS RESISTANCE IS ANCHORED IN A FORTIFIED BELIEF IN THE ADMINISTRATION OF JUSTICE, THE SANCTITY OF TRUTH, AND THE CRITICAL IMPORTANCE OF RECTIFYING MISARRANGES OF JUSTICE THAT TARNISH THE LEGAL SYSTEMS INTEGRITY. THE MEMORANDUM SEEKS TO ILLUMINATE THE SUBSTANTIVE AND PROCEDURAL FALLACIES INHERENT IN THE RESPONDENT'S MOTION, UNDERPINNED BY A COMPELLING NARRATIVE OF NEWLY DISCOVERED EVIDENCE THAT FUNDAMENTALLY CHALLENGES THE RELIABILITY OF THE CONVICTION AGAINST THE APPLICANT.

AT THE HEART OF THE APPLICANT'S ARGUMENT IS THE GLARING REVELATION BROUGHT FORTH THROUGH THE CONFESSION OF GIBREEL NICHOLS - ORIGINALLY THE STATE'S LINCHPIN WITNESS - WHOSE RECENT ADMISSION TO STILLINGER INVESTIGATIONS INCONTROVERTIBLY UNDERMINES THE INTEGRITY OF HIS TRIAL TESTIMONY. MR. NICHOLS' ADMISSION NOT ONLY CASTS A PROFOUND SHADOW OVER THE CREDIBILITY OF THE EVIDENCE THAT LED TO THE APPLICANT'S CONVICTION BUT ALSO RAISES

IRREFUTABLE QUESTIONS REGARDING PROSECUTORIAL CONDUCT DURING THE TRIAL. FURTHERMORE, THE INEXPLICABLE DELAY AND ABSENCE OF RESPONSE TO THE APPLICANT'S DILIGENT EFFORTS FOR POST-CONVICTION RELIEF NOT ONLY DEPICT AN EGREGIOUS DISREGARD FOR PROCEDURAL REQUIREMENTS BUT ALSO UNDERSCORE A MISARRANGE OF JUSTICE THAT THIS HONORABLE COURT MUST PROMPTLY ADDRESS.

THROUGH THIS MEMORANDUM, THE APPLICANT AIMS TO SYSTEMATICALLY DECONSTRUCT THE RESPONDENT'S ARGUMENTS FOR DISMISSAL, HIGHLIGHTING CRITICAL LEGAL AND FACTUAL MISAPPREHENSIONS, INCLUDING THE MISCHARACTERIZATION OF THE NEWLY DISCOVERED EVIDENCE AS INADMISSIBLE HEARSAY. THE MEMORANDUM WILL DEMONSTRATE THAT THE EVIDENCE IN QUESTION IS NOT ONLY MATERIAL BUT PIVOTAL TO THE APPLICANT'S CLAIM FOR RELIEF. IT WILL ARGUE THAT THIS EVIDENCE, COUPLED WITH PROCEDURAL MISSTEPS BY THE RESPONDENT, WARRANTS NOT DISMISSAL BUT A THOROUGH REEXAMINATION OF THE APPLICANT'S CONVICTION IN THE INTEREST OF JUSTICE.

MOREOVER, THIS MEMORANDUM WILL ELUCIDATE THE ESSENTIAL POINTS OF CONTENTION, NAMELY THE ADMISSIBILITY AND WEIGHT OF NICHOLS' CONFESSION AND SUBSEQUENT AFFIDAVIT, THE PROSECUTORIAL MISCONDUCT ALLUDED TO BY NICHOLS' RECANTATION, AND THE PROCEDURAL FAILURES THAT HAVE COMPOUNDED THE DENIAL OF JUSTICE TO THE APPLICANT. IT WILL ASSERT THAT THE COLLECTIVE IMPACT OF THESE ISSUES NOT ONLY MEETS THE THRESHOLD FOR THE ESTABLISHMENT OF A PRIMA FACIE CASE FOR RELIEF BUT EMPHATICALLY CALLS FOR IT.

IN CULMINATION, THIS MEMORANDUM AMBITIOUSLY ENDEAVORS TO PERSUADE THIS HONORABLE COURT OF THE NECESSITY TO LOOK BEYOND PROCEDURAL FORMALITIES AND CONSIDER THE SUBSTANTIAL MERITS OF THE APPLICANT'S ARGUMENTS. IT SEEKS TO ESTABLISH BEYOND REASONABLE DOUBT

THAT JUSTICE, FAIRNESS, AND THE PRINCIPLES UPON WHICH THE LEGAL SYSTEM STANDS, DEMAND THAT THE APPLICANT'S OPPOSITION BE GIVEN DUE CONSIDERATION, THEREBY ENSURING THAT THE SCALES OF JUSTICE ARE RIGHTLY BALANCED IN FAVOR OF TRUTH, EQUITY, AND THE FUNDAMENTAL RIGHT TO A FAIR TRIAL.

STATEMENT OF FACTS

IN THE JANUARY 2001 SESSION OF THE CLARENDON COUNTY GRAND JURY, THE APPLICANT, ALONG WITH GIBREEL NICHOLS, WAS OFFICIALLY INDICTED FOR MURDER, KIDNAPPING, AND THE ILLEGAL POSSESSION OF A WEAPON AMIDST A VIOLENT ACT (CASE No. : 2001-GS-14-00017). THE TRIAL WAS SET FOR MAY 22, 2001. BEFORE IT BEGAN, NICHOLS ADMITTED GUILTY TO THE CHARGES OF MURDER AND KIDNAPPING, SECURING A PLEA DEAL FOR A THIRTY-YEAR (30) SENTENCE IN RETURN FOR HIS TESTIMONY IMPLICATING THE APPLICANT AS THE PRIMARY PERPETRATOR. NICHOLS TESTIFIED THAT HE WITNESSED THE APPLICANT ABDUCT THE VICTIM AT GUNPOINT, TAKE HIM TO A SECLUDED AREA, AND LATER RETURN ALONE IMPLIEDLY AFTER A GUNSHOT WAS HEARD, SUGGESTING A MURDER HAD TAKEN PLACE.

ACCORDING TO NICHOLS' TESTIMONY, AFTER APPLICANT RETURNED TO THE DECEDENT'S CAR, HE (NICHOLS) DROVE TO LAKEBROOK APARTMENT COMPLEXES WHERE HIS SISTER, CHRISTINA NICHOLS, LIVED WITH APPLICANT'S SISTER, FELICIA GREEN ([D]ELICIA GREEN). UPON GETTING OUT OF THE CAR, NICHOLS CLAIMED THAT HE WAS CONFRONTED BY DELICIA WHO ASKED ABOUT THE ORIGIN OF THE VEHICLE. NICHOLS CLAIMED THAT HE SHOUTED OUT A REFERENCE TO THE TEN COMMANDMENTS. FOLLOWING THIS ENCOUNTER, NICHOLS TESTIFIED THAT HE WAS ONCE AGAIN DRIVING THE DECEDENT'S CAR AND FOLLOWING A BURGUNDY EXPLORER WHILE ATTEMPTING TO PURCHASE MARIJUANA. HOWEVER, HE ENDED UP CRASHING THE DECEDENT'S CAR. FOR A FULL ACCOUNT, SEE THE ORIGINAL STATEMENT GIVEN TO DETECTIVES AS WELL AS NICHOLS TRIAL TESTIMONY IN EXHIBIT A.

AFTER NICHOLS TESTIFIED, NO ADDITIONAL EVIDENCE WAS PRESENTED TO SUBSTANTIATE HIS CLAIM. THE PROSECUTOR CONCLUDED THEIR CASE, LEAVING

NICHOLS' TESTIMONY AS THE SOLE ACCOUNT OF THE EVENTS IN QUESTION. THERE WERE NO SUPPORTING WITNESSES, PHYSICAL EVIDENCE, OR FORENSIC ANALYSIS PRESENTED TO BOLSTER NICHOLS' ASSERTIONS.

ON MAY 24, 2001, BASED PREDOMINATELY ON NICHOLS TESTIMONY, THE APPLICANT WAS CONVICTED OF MURDER AND KIDNAPPING, WHILE BEING ACQUITTED OF THE CHARGE OF POSSESSING A WEAPON DURING THE COMMISSION OF A CRIME. CONSEQUENTLY, HE WAS SENTENCED TO 37-YEARS IMPRISONMENT FOR MURDER AND 30-YEARS CONCURRENT FOR KIDNAPPING.

A SIGNIFICANT TURN OF EVENTS OCCURRED POST-CONVICTION WHEN NICHOLS, IN A 2019 TELEPHONE INTERVIEW CONDUCTED BY STILLINGER INVESTIGATIONS DUE TO PANDEMIC CONSTRAINTS, RECANTED HIS TRIAL TESTIMONY. HE ADMITTED TO BEING THE ACTUAL SHOOTER, ALLEGING PROSECUTORIAL COMPLICITY IN HIS DECEIT. THESE CLAIMS WERE FORMALLY REPORTED IN A SWORN AFFIDAVIT BY AUSTIN HENDERSON OF STILLINGER INVESTIGATIONS, FEBRUARY 12, 2019. IN RESPONSE TO THESE DEVELOPMENTS, THE APPLICANT SOUGHT PCR, WITHIN A YEAR OF DISCOVERY, CITING PROSECUTORIAL MISCONDUCT AND THE EMERGENCE OF NEW EVIDENCE THAT COULD POTENTIALLY VACATE THE EARLIER CONVICTION.

DESPITE THESE EFFORTS AND PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, RULE 12 (D), REQUIRING AN ANSWER OR PLEA WITHIN 90 DAYS OF SERVICE, THE RESPONDENT FAILED TO ACKNOWLEDGE THE APPLICANT'S PCR APPLICATION IN A TIMELY MANNER. SUBSEQUENT MOTIONS FILED BY THE APPLICANT, INCLUDING MOTIONS FOR ENTRY OF DEFAULT JUDGMENT AND FOR A STATUS UPDATE, WERE SIMILARLY IGNORED UNTIL FEBRUARY 27, 2024, WHEN THE RESPONDENT FINALLY FILED A RETURN, MOVING TO DISMISS THE APPLICANT'S APPLICATION ON PROCEDURAL AND EVIDENTIARY GROUNDS. THE RESPONDENT CONTESTED THE ADMISSIBILITY OF THE NEW EVIDENCE PRESENTED BY THE APPLICANT, DEEMING IT HEARSAY AND QUESTIONING ITS VALIDITY DUE TO LACK OF FORMAL CERTIFICATION AND DIRECT

CONFIRMATION FROM NICHOLS.

CONTRARY TO THE RESPONDENT'S ASSERTIONS REGARDING THE ADMISSIBILITY AND SUFFICIENCY OF THE EVIDENCE, IT IS IMPERATIVE TO CONSIDER THE CORROBORATIVE TESTIMONIES OF CHRISTINA NICHOLS AND DELICIA GREEN, WHICH DIRECTLY SUPPORT NICHOLS' RECANTATION AND SUGGEST THAT THE APPLICANT MAY HAVE BEEN WRONGFULLY CONVICTED. CHRISTINA NICHOLS, THOUGH MARGINALIZED BY THE RESPONDENT AS INADMISSIBLE HEARSAY, PROVIDED EARLY TESTAMENT OF HER BROTHER'S GUILT, A CLAIM SUPPORTED BY DELICIA GREEN.

ARGUMENTS

A. NEWLY DISCOVERED EVIDENCE

THE RECANTATION OF NICHOLS IS A SIGNIFICANT DEVELOPMENT THAT MUST BE CONSIDERED AS NEW EVIDENCE IN THE APPLICANT'S CASE. NICHOLS' ADMISSION THAT HE LIED DURING HIS TRIAL TESTIMONY AND ACTUALLY COMMITTED THE CRIMES HIMSELF HAS THE POTENTIAL TO COMPLETELY CHANGE THE OUTCOME OF THE TRIAL. THIS NEW EVIDENCE DIRECTLY CHALLENGES THE CREDIBILITY OF NICHOLS AS A WITNESS AND RAISES SERIOUS CONCERNS ABOUT THE FAIRNESS OF THE TRIAL THAT LED TO THE APPLICANT'S CONVICTION. FOR FULL DETAILS OF NICHOLS' INTERVIEW CONDUCTED WITH STILLINGER INVESTIGATIONS, PLEASE REFER TO EXHIBIT B. THIS DOCUMENT PROVIDES COMPREHENSIVE INSIGHTS INTO NICHOLS' RECANTATION, A CRUCIAL DEVELOPMENT THAT COULD SIGNIFICANTLY IMPACT THE CASE. NICHOLS' ADMISSION OF LYING DURING HIS TRIAL TESTIMONY AND HIS CONFESSSION TO COMMITTING THE CRIMES HIMSELF ARE PIVOTAL REVELATIONS THAT QUESTION HIS CREDIBILITY AS A WITNESS AND HIGHLIGHT POTENTIAL INJUSTICES IN THE TRIAL'S PROCEEDINGS, THEREBY AFFECTING THE OUTCOME OF THE APPLICANT'S CONVICTION.

LEGAL STANDARD

THE PROVISIONS OUTLINED IN THE UNIFORM POST-CONVICTION PROCEDURE ACT SERVE AS A GUIDING FRAMEWORK FOR EVALUATING THE ADMISSIBILITY

AND RELEVANCE OF NEWLY DISCOVERED EVIDENCE IN THE PURSUIT OF POST-CONVICTION RELIEF. ACCORDING TO THE ACT, A PERSON MAY INITIATE A SUBSEQUENT PCR ACTION IF THERE IS EVIDENCE OR MATERIAL FACTS THAT WERE NOT PREVIOUSLY BROUGHT FORTH AND CONSIDERED, NECESSITATING THE VACATION OF THE CONVICTION OR SENTENCE IN THE INTEREST OF JUSTICE. SEE S.C. CODE ANN. §17-27-20 (A)(4). IN CASES WHERE THE APPLICANT ASSERTS THE EXISTENCE OF MATERIAL FACTS THAT WERE NOT PREVIOUSLY PRESENTED, THE ACT MANDATES THAT THE PCR APPLICATION MUST BE FILED WITHIN ONE YEAR OF THE APPLICANT'S ACTUAL DISCOVERY OF THE PERTINENT FACTS OR WITHIN ONE YEAR OF THE DATE WHEN SUCH FACTS COULD HAVE BEEN REASONABLY ASCERTAINED THROUGH DILIGENT INQUIRY AND INVESTIGATION. SEE S.C. CODE ANN. §17-27-45 (C).

IN ORDER FOR NEW EVIDENCE TO BE ADMISSIBLE, IT MUST MEET CERTAIN CRITERIA. FOR THE ADMISSION OF NEW EVIDENCE, THE APPLICANT MUST SHOW THAT THE EVIDENCE:

1. COULD LIKELY ALTER THE OUTCOME IF A NEW TRIAL WERE HELD;
2. WAS DISCOVERED AFTER THE ORIGINAL TRIAL;
3. COULD NOT HAVE BEEN DISCOVERED BEFORE THE TRIAL WITH REASONABLE DILIGENCE;
4. IS RELEVANT TO DETERMINING GUILT OR INNOCENCE; AND,
5. IS NOT MERELY ADDITIONAL TO EXISTING EVIDENCE OR AIMED AT DISCREDITING.

STATE V. MERGER, 381 S.C. 149, 672 S.E.2d 556 (2009); STATE V. SPANN, 334 S.C. 618, 513 S.E.2d 98 (1999); CLARK V. STATE, 315 S.C. 385, 434 S.E.2d 266 (1993); STATE V. KELLY, 285 S.C. 373, 329 S.E.2d 442 (1985).

IN THE CASE AT HAND, NICHOLS' CONFESSION TO STILLINGER INVESTIGATIONS HIGHLIGHTS CRITICAL EVIDENCE UNDERMINING THE APPLICANT'S CONVICTION. ARGUABLY, THIS REVELATION IS NEWLY DISCOVERED AS DEFINED BY POST-CONVICTION RELIEF STANDARDS BECAUSE:

1. DUE DILIGENCE COULDN'T HAVE UNCOVERED THE EVIDENCE PRIOR. THE CONFESSION AROSE FROM AN INDEPENDENT INVESTIGATION CONDUCTED

YEARS AFTER THE TRIAL, DEMONSTRATING THAT SUCH INFORMATION WAS NOT ACCESSIBLE OR DISCOVERABLE AT THE TIME OF TRIAL DESPITE DUE DILIGENCE BY THE DEFENSE.

2. **MATERIALITY AND OUTCOME DETERMINATIVE:** NICHOLS' TESTIMONY WAS PIVOTAL IN SECURING THE CONVICTION AGAINST THE APPLICANT. HIS ADMISSION NULLIFIED HIS ORIGINAL TESTIMONY AND PLACED THE ENTIRE BASIS OF THE CONVICTION INTO QUESTION. AS SUCH, THIS EVIDENCE IS NOT ONLY MATERIAL BUT LIKELY OUTCOME DETERMINATIVE, SATISFYING THE REQUIREMENT FOR PCR.

ADDITIONALLY, THE NEW EVIDENCE MUST BE CREDIBLE AND RELIABLE. IN THIS CASE, THE ADMISSION BY NICHOLS WAS MADE IN A SWORN AFFIDAVIT TRANSCRIBED BY A REPUTABLE INVESTIGATOR FROM STILLINGER INVESTIGATIONS. NICHOLS' CONFESSION WAS MADE VOLUNTARILY AND APPEARS TO BE A GENUINE ADMISSION OF GUILT. THIS LENDS CREDIBILITY TO THE NEW EVIDENCE AND SUPPORTS ITS ADMISSIBILITY IN THE APPLICANT'S POST-CONVICTION RELIEF APPLICATION.

MORE TO THE POINT, THE CONFESSION BY NICHOLS TO LYING ABOUT THE APPLICANT'S INVOLVEMENT IN THE CRIMES AND IMPLICATING THE PROSECUTOR, ALONG WITH THE TESTIMONIES OF OTHER WITNESSES, MEETS THE NECESSARY CRITERIA FOR GRANTING POST-CONVICTION RELIEF. THE RECANTATION BY NICHOLS DIRECTLY CONTRADICTS HIS TRIAL TESTIMONY, RAISES DOUBTS ABOUT THE ACCURACY OF THE EVIDENCE PRESENTED, AND CALLS INTO QUESTION THE CREDIBILITY OF THE PROSECUTOR'S CASE. THE ADDITIONAL WITNESS TESTIMONIES AND EVIDENCE FURTHER SUPPORT NICHOLS' CONFESSION AND PROVIDE A BASIS FOR REEVALUATING THE FAIRNESS OF THE TRIAL.

THEREFORE, BASED ON THE EVIDENCE PRESENTED AND THE LEGAL STANDARD FOR GRANTING POST-CONVICTION RELIEF IN SOUTH CAROLINA, THE APPLICANT'S PETITION FOR RELIEF SHOULD BE CONSIDERED AND THOROUGHLY EXAMINED BY THE COURT TO ENSURE A FAIR TRIAL AND UPHOLD THE PRINCIPLES

1. SCRUTINY OF NICHOLS' TESTIMONY

THE RELIABILITY OF GIBREEL NICHOLS' TESTIMONY AGAINST THE APPLICANT IS OF PARAMOUNT IMPORTANCE DUE TO THE GRAVITY OF THE CHARGES AND THE SEVERE CONSEQUENCES FACED BY THE ACCUSED. NICHOLS' DECISION TO PLEAD GUILTY TO REDUCED CHARGES AND TESTIFY AGAINST THE APPLICANT IN EXCHANGE FOR A LESSER SENTENCE RAISES SIGNIFICANT CONCERNS ABOUT HIS CREDIBILITY AND POTENTIAL BIAS.

NICHOLS' CONFLICTING INTERESTS, AS EVIDENCED BY HIS PLEA DEAL WITH THE PROSECUTION, CREATE A CLEAR CONFLICT OF INTEREST THAT COULD HAVE INFLUENCED HIS TESTIMONY AGAINST THE APPLICANT. BY AGREEING TO TESTIFY IN EXCHANGE FOR A REDUCED SENTENCE, NICHOLS MAY HAVE BEEN INCENTIVIZED TO PROVIDE A NARRATIVE THAT FAVORED THE PROSECUTION, REGARDLESS OF ITS ACCURACY OR TRUTHFULNESS. THIS CONFLICT OF INTEREST CALLS INTO QUESTION THE RELIABILITY OF NICHOLS' TESTIMONY AND WARRANTS A THOROUGH EXAMINATION BY THE COURT.

FURTHERMORE, THE LACK OF CORROBORATIVE EVIDENCE SUPPORTING NICHOLS' CLAIMS RAISES ADDITIONAL DOUBTS ABOUT THE VERACITY OF HIS TESTIMONY. IN THE ABSENCE OF SUPPORTING WITNESSES, PHYSICAL EVIDENCE, OR FORENSIC ANALYSIS, NICHOLS' ACCOUNT OF EVENTS BECOMES THE SOLE BASIS FOR THE APPLICANT'S CONVICTION. GIVEN NICHOLS' ADMISSION OF LYING ABOUT THE APPLICANT'S INVOLVEMENT IN THE CRIMES IN A SUBSEQUENT INTERVIEW WITH STILLINGER INVESTIGATIONS, IT IS CRUCIAL FOR THE COURT TO REEVALUATE THE VALIDITY OF HIS TESTIMONY AND THE FAIRNESS OF THE TRIAL. MOREOVER, NICHOLS IMPLICATED PROSECUTORIAL MISCONDUCT, INDICATING A COMPLEX LAYER OF INJUSTICE THAT EXTENDS BEYOND MERE RECANTATION. SEE EXHIBIT B, AFFIDAVIT

OF AUSTIN HENDERSON AT PG. 1 QUESTION #2.

THE REVELATION OF NICHOLS' CONFESSION, MADE UNDER OATH AND DOCUMENTED BY A REPUTABLE INVESTIGATIVE TEAM, RAISES SERIOUS CONCERNS ABOUT THE INTEGRITY OF THE TRIAL PROCEEDING AND THE ACCURACY OF THE VERDICT. THE APPLICANT'S PCR PETITION, CITING NEW EVIDENCE AND ALLEGATIONS OF PROSECUTORIAL MISCONDUCT, UNDERSCORES THE NEED FOR A THOROUGH REEXAMINATION OF THE CASE TO ENSURE THAT JUSTICE IS SERVED.

IN LIGHT OF THESE CIRCUMSTANCES, IT IS IMPERATIVE THAT THE COURT CONDUCTS A STRINGENT EXAMINATION OF NICHOLS' TESTIMONY, CONSIDERING THE MOTIVATIONS BEHIND HIS STATEMENTS AND THE LACK OF CORROBORATING EVIDENCE. THE POTENTIAL IMPLICATIONS OF NICHOLS' FALSE TESTIMONY ON THE APPLICANT'S CONVICTION CANNOT BE UNDERSTATED, AND IT IS ESSENTIAL FOR THE COURT TO ADDRESS THESE CONCERNS IN THE PURSUIT OF TRUTH AND JUSTICE.

2. WITNESSES' ACCOUNTS

APPLICANT PRESENTS THE TESTIMONY OF TWO WITNESSES, ONE OF WHOM IS CHRISTINA NICHOLS, THE BIOLOGICAL SISTER OF CO-DEFENDANT NICHOLS, PROVIDING ADDITIONAL SUPPORT FOR NICHOLS' CONFESSION. THESE WITNESSES CAME FORWARD WITH INFORMATION ABOUT NICHOLS CONFESSING TO THE MURDER FOLLOWING IMMEDIATELY AFTER COMMITTING IT.

CHRISTINA NICHOLS, IN HER ATTACHED AFFIDAVIT, CONFIRMS HER BROTHER'S ADMISSION OF SOLE RESPONSIBILITY FOR THE MURDER. FOR MORE DETAILS, PLEASE REFER TO EXHIBIT C FOR THE AFFIDAVIT AND TRIAL TESTIMONY OF CHRISTINA NICHOLS.

IN ADDITION, DELICIA GREEN, THE BIOLOGICAL SISTER OF THE APPLICANT, ALSO PROVIDED A STATEMENT TO DETECTIVES, RECOUNTING NICHOLS INFORMING HER THAT HE HAD TO KILL SOMEONE BECAUSE THEY

HAD SEEN HIS FACE. PLEASE REFER TO EXHIBIT D FOR THE VOLUNTARY STATEMENT AND TRIAL TESTIMONY OF DELICIA GREEN.

THE JURY NEVER GOT TO HEAR THE ACCOUNTS FROM THESE WITNESSES, EVEN THOUGH THEIR STATEMENTS COULD HAVE BEEN CONSIDERED AS "EXCITED UTTERANCES" AND USED AS EVIDENCE. BOTH WITNESSES WERE ON THE ROSTER TO TESTIFY FOR THE STATE AT TRIAL, BUT WHEN NICHOLS ACCEPTED A PLEA DEAL, THE STATE TRIED TO HIDE THE FACT THAT ITS MAIN WITNESS HAD CONFESSED TO COMMITTING THE SAME MURDER FOR WHICH HE BLAMED THE APPLICANT. THIS RAISES CONCERNS ABOUT THE FAIRNESS OF THE TRIAL AND SUGGESTS THAT CRUCIAL INFORMATION REGARDING NICHOLS' CONFESSION WAS INTENTIONALLY WITHHELD.

B. PROCEDURAL DUE PROCESS AND DELAY IN RESPONDENT'S FILING

IN 2019, GIBREEL NICHOLS RECALLED HIS TRIAL TESTIMONY IN A INTERVIEW CONDUCTED BY STILLINGER INVESTIGATIONS, CLAIMING HE WAS THE ACTUAL SHOOTER AND ALLEGING PROSECUTORIAL COMPLICITY IN HIS DECEIT. THIS WAS FORMALIZED IN A SWORN AFFIDAVIT BY AUSTIN HENDERSON OF STILLINGER INVESTIGATIONS ON FEBRUARY 12, 2019. SEE EXHIBIT B.

THE APPLICANT SUBMITTED A PCR APPLICATION ON FEBRUARY 4, 2020, WHICH WAS OFFICIALLY CLOCK-STAMPED BY THE CLERK OF COURT ON FEBRUARY 13, 2020, CLAIMING TWO GROUNDS FOR RELIEF. FIRST, THEY CITED THE EXISTENCE OF NEW EVIDENCE OF MATERIAL FACTS THAT WERE NOT PREVIOUSLY PRESENTED AND HEARD, NECESSITATING THE VACATION OF THE CONVICTION IN THE INTEREST OF JUSTICE. SECOND, THEY ALLEGED PROSECUTORIAL MISCONDUCT.

DESPITE NUMEROUS ATTEMPTS DOCUMENTED IN EXHIBIT E TO ELICIT A RESPONSE, THE APPLICANT HAS CONSISTENTLY FAILED TO SECURE

ONE. EFFORTS TO OBTAIN A STATUS UPDATE AND ADDRESS THE COMMUNICATION VOID WERE MET WITH SILENCE, AND IT WASN'T UNTIL FOUR YEARS LATER THAT ANY SUBSTANTIVE COMMUNICATION WAS RECEIVED.

LEGAL STANDARD

THE LEGAL SYSTEM IN THE UNITED STATES IS FOUNDED UPON THE PRINCIPLES OF FAIRNESS, DUE PROCESS, AND TIMELY RESOLUTION OF LEGAL MATTERS. RULE 12 (c) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE CLEARLY OUTLINES THE REQUIREMENT FOR TIMELY RESPONSES TO LEGAL APPLICATIONS, SUCH AS A PCR APPLICATION.

BY FAILING TO ADHERE TO THE PROCEDURAL TIMELINES SET FORTH IN RULE 12 (c), THE RESPONDENT IS NOT ONLY DISRESPECTING THE LEGAL SYSTEM BUT ALSO UNDERMINING THE VERY ESSENCE OF JUSTICE. PROTRACTED DELAYS IN RESPONDING TO LEGAL APPLICATIONS CAN HAVE SERIOUS CONSEQUENCES, INCLUDING PROLONGED INCARCERATION FOR INDIVIDUALS WHO MAY HAVE BEEN WRONGFULLY CONVICTED.

THE APPLICANT IN THIS CASE HAS DEMONSTRATED DILIGENCE IN THEIR EFFORTS TO OBTAIN A RESPONSE TO THE PCR APPLICATION. MULTIPLE FILINGS AND ATTEMPTED COMMUNICATIONS SHOW A COMMITMENT TO SEEKING JUSTICE AND ADDRESSING CRUCIAL CLAIMS OF INNOCENCE. HOWEVER, THE RESPONDENT'S FAILURE TO RESPOND IN A TIMELY MANNER HAS HINDERED THE PROGRESS OF THE LEGAL PROCEEDINGS AND POTENTIALLY DENIED THE APPLICANT THE OPPORTUNITY TO PRESENT THEIR CASE EFFECTIVELY.

THE RESPONDENT'S INABILITY TO PROVIDE A TIMELY RESPONSE, AS REQUIRED BY RULE 12 (c) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, AND THE FURTHER DELAYS, VIOLATE THE APPLICANT'S RIGHT TO PROCEDURAL DUE PROCESS. THIS VIOLATION IS UNDERSCORED BY CASE LAW SUCH AS LOGAN V. ZIMMERMAN BRUSH CO., 455 U.S. 422, 102 S.Ct. 1148

(1982), WHICH ESTABLISHES THAT EXCESSIVE DELAYS IN LEGAL PROCESSES BREACH THE DUE PROCESS CLAUSE, HIGHLIGHTING THE IMPORTANCE OF PROMPT PROCEEDING IN APPLICATIONS FOR POST-CONVICTION RELIEF.

IN HERRING V. STATE, 262 S.C. 597, 206 S.E.2d. 885 (S.C. 1974), THE SUPREME COURT HELD THAT A DELAY IN JUDICIAL PROCEEDINGS DOES NOT VIOLATE DUE PROCESS UNLESS THE DELAY RESULTS IN ACTUAL PREJUDICE TO THE DEFENDANT'S ABILITY TO DEFEND THEMSELVES. IN THIS CASE, THE RESPONDENT ARGUES THAT THE APPLICANT HAS NOT SUFFERED ANY ACTUAL PREJUDICE AS A RESULT OF THE DELAY IN FILING A RESPONSE.

HOWEVER, THE APPLICANT VEHEMENTLY DISAGREES WITH THE RESPONDENT'S ARGUMENT. THE FAILURE OF THE RESPONDENT TO FILE A TIMELY RESPONSE AS MANDATED BY RULE 12(a) HAS SEVERELY HINDERED THE APPLICANT'S ABILITY TO SEEK JUSTICE AND DEFEND HIMSELF AGAINST THE CONVICTION. THE DELAY IN RESPONDING TO THE PCR PETITION HAS PREVENTED THE APPLICANT FROM PRESENTING HIS CASE IN A TIMELY MANNER AND HAS HINDERED HIS ABILITY TO GATHER EVIDENCE AND WITNESSES TO SUPPORT THEIR CLAIMS.

FURTHERMORE, THE STARTLING REVELATION FROM NICHOLS, THE KEY WITNESS IN THE CASE, RAISES SERIOUS CONCERNS ABOUT THE FAIRNESS OF THE TRIAL AND THE CREDIBILITY OF THE PROSECUTION. THE APPLICANT HAS A RIGHT TO A FAIR AND IMPARTIAL HEARING, AND THE DELAY IN RESPONDING TO THE PCR PETITION HAS IMPEDED THEIR ABILITY TO PRESENT THIS CRUCIAL NEW EVIDENCE TO THE COURT.

IN CONCLUSION, THE RESPONDENT'S FAILURE TO FILE A TIMELY RESPONSE TO THE PCR PETITION, AS MANDATED BY RULE 12(a), HAS INFRINGED UPON THE APPLICANT'S RIGHT TO PROCEDURAL DUE PROCESS. THE DELAY IN RESPONDING HAS PREVENTED THE APPLICANT FROM SEEKING JUSTICE AND DEFENDING THEMSELVES AGAINST THE CONVICTION, AND HAS HINDERED THEIR ABILITY TO PRESENT CRUCIAL

NEW EVIDENCE THAT COULD POTENTIALLY OVERTURN THE CONVICTION. THE COURT MUST RECOGNIZE THE IMPORTANCE OF TIMELY ADJUDICATION IN POST-CONVICTION RELIEF APPLICATIONS AND ENSURE THAT THE APPLICANTS' RIGHTS ARE PROTECTED IN THIS CASE.

C. PROSECUTORIAL MISCONDUCT

1. IMPLICATIONS OF KNOWINGLY USING FALSE TESTIMONY

THE ALLEGATION OF PROSECUTORIAL MISCONDUCT, ROOTED IN NICHOLS' CLAIM THAT THE PROSECUTOR WAS AWARE OF HIS INTENTION TO LIE, INVOKES SIGNIFICANT LEGAL CONCERN. THE SUPREME COURT HAS LONG HELD IN *NAPUE V. ILLINOIS*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed. 1217 (1959), THAT A CONVICTION OBTAINED BY THE KNOWING USE OF FALSE TESTIMONY VIOLATES FUNDAMENTAL FAIRNESS AS ARTICULATED IN THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. FURTHERMORE, IN *UNITED STATES V. AGURS*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed. 342 (1976), THE COURT FURTHER CLARIFIED THAT PROSECUTORS HAVE A DUTY TO DISCLOSE EVIDENCE THAT IS FAVORABLE TO THE DEFENDANT, EVEN IF THE DEFENSE HAS NOT SPECIFICALLY REQUESTED IT.

IN NICHOLS' CASE, IF THE PROSECUTOR WAS INDEED AWARE OF HIS INTENTION TO LIE ON THE STAND AND DID NOT TAKE ANY STEPS TO PREVENT OR EXPOSE THE FALSEHOOD, THIS WOULD CONSTITUTE A CLEAR VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS. BY ALLOWING FALSE TESTIMONY TO BE PRESENTED TO THE JURY, THE PROSECUTOR UNDERMINES THE INTEGRITY OF THE LEGAL SYSTEM AND JEOPARDIZES THE FAIRNESS OF THE TRIAL.

FURTHERMORE, IF THE PROSECUTOR KNOWINGLY ALLOWED FALSE TESTIMONY TO BE PRESENTED, IT RAISES QUESTIONS ABOUT THE PROSECUTOR'S ETHICS AND INTEGRITY. PROSECUTORS HAVE A DUTY TO SEEK JUSTICE, NOT SIMPLY TO SECURE CONVICTIONS AT ANY COST. ALLOWING FALSE TESTIMONY TO STAND NOT ONLY HARMS THE DEFENDANT IN THE CASE AT HAND, BUT ALSO ERODES PUBLIC TRUST IN THE CRIMINAL JUSTICE SYSTEM AS A WHOLE.

IN CONCLUSION, THE ALLEGATION OF PROSECUTORIAL MISCONDUCT IN APPLICANT'S CASE IS A SERIOUS MATTER THAT MUST BE THOROUGHLY INVESTIGATED. IF IT IS FOUND THAT THE PROSECUTOR KNOWINGLY ALLOWED FALSE TESTIMONY TO BE PRESENTED, THIS WOULD BE A CLEAR VIOLATION OF THE APPLICANT'S DUE PROCESS RIGHTS AND A BETRAYAL OF THE PROSECUTOR'S ETHICAL DUTIES. THE SUPREME COURT HAS MADE IT CLEAR THAT SUCH ACTIONS ARE UNACCEPTABLE, AND IT IS ESSENTIAL THAT PROSECUTORS ADHERE TO THESE STANDARDS IN ORDER TO UPHOLD THE INTEGRITY OF THE LEGAL SYSTEM.

2. POLYGRAPH EXAMINATION

THE PROSECUTOR WAS AWARE OF NICHOLS' DECEIT BASED ON VARIOUS FACTORS, INCLUDING THE APPLICANT PASSING A POLYGRAPH TEST. THE RESULTS OF THE TEST, FOUND IN EXHIBIT F, CONFIRM THE APPLICANT'S HONESTY ABOUT NOT SHOOTING DONTAY WALKER, CONTRADICTING NICHOLS' TESTIMONY AND UNDERMINING HIS CREDIBILITY. POLYGRAPH EXAMINATIONS ARE WIDELY REGARDED AS RELIABLE INDICATORS OF TRUTHFULNESS.

IN THE CASE AT HAND, THE PROSECUTION RELIED HEAVILY ON NICHOLS' TESTIMONY TO SECURE A CONVICTION AGAINST THE APPLICANT. HOWEVER, THE FACT THAT APPLICANT SUCCESSFULLY PASSED A POLYGRAPH EXAMINATION, WHICH INDICATED THAT HE DID NOT FIRE THE FATAL SHOT, UNDERMINES THE CREDIBILITY OF NICHOLS' TESTIMONY AND RAISES DOUBTS ABOUT APPLICANT'S GUILT.

THE POLYGRAPH EXAMINATION, WHILE NOT ADMISSIBLE AS EVIDENCE IN COURT, IS A VALUABLE TOOL USED BY LAW ENFORCEMENT AGENCIES AND INVESTIGATORS TO DETERMINE THE TRUTHFULNESS OF INDIVIDUALS. IT MEASURES PHYSIOLOGICAL RESPONSES SUCH AS CHANGES IN BLOOD PRESSURE, HEART RATE, AND RESPIRATION, WHICH ARE INDICATORS OF DECEPTION. IN THIS CASE, THE POLYGRAPH EXAMINATION REVEALED THAT APPLICANT WAS TELLING THE TRUTH WHEN HE DENIED BEING THE TRIGGERMAN IN THE MURDER OF WALKER.

THE PROSECUTION WAS WELL AWARE OF THE RESULTS OF THE POLYGRAPH EXAMINATION, YET THEY CHOSE TO PRESENT NICHOLS' TESTIMONY THAT IMPLICATED APPLICANT AS THE TRIGGERMAN. SEE EXHIBIT A (NICHOLS TRIAL TESTIMONY AT PG 216, LINES 1-12). THIS RAISES QUESTIONS ABOUT THE PROSECUTOR'S ETHICS AND THEIR COMMITMENT TO SEEKING JUSTICE RATHER THAN SECURING A CONVICTION AT ANY COST. BY PRESENTING TESTIMONY THAT CONTRADICTED THE RESULTS OF THE POLYGRAPH, THE PROSECUTION UNDERMINED THE CREDIBILITY OF THEIR OWN CASE.

FURTHERMORE, NICHOLS' TESTIMONY SHOULD BE VIEWED WITH SKEPTICISM GIVEN HIS OWN INVOLVEMENT IN THE CRIME. AS A CODEFENDANT, NICHOLS HAD A MOTIVE TO SHIFT BLAME ONTO APPLICANT IN ORDER TO MINIMIZE HIS OWN ROLE AND POTENTIAL PUNISHMENT. IT IS NOT UNCOMMON FOR CODEFENDANTS TO PROVIDE FALSE OR EXAGGERATED TESTIMONY IN EXCHANGE FOR LENIENCY OR REDUCED CHARGES.

THE FACT THAT THERE WERE ONLY THREE INDIVIDUALS PRESENT AT THE SCENE OF THE CRIME FURTHER STRENGTHENS THE ARGUMENT THAT NICHOLS' TESTIMONY SHOULD BE TREATED WITH CAUTION. WITH THE POLYGRAPH EXAMINATION RULING OUT APPLICANT AS THE TRIGGERMAN, IT LOGICALLY FOLLOWS THAT NICHOLS IS THE ONLY REMAINING SOURCE WHO COULD HAVE COMMITTED THE MURDER. THIS RAISES SERIOUS DOUBTS ABOUT THE ACCURACY AND RELIABILITY OF NICHOLS' TESTIMONY AND HIGHLIGHTS THE NEED FOR A THOROUGH REEVALUATION OF THE EVIDENCE PRESENTED AT TRIAL.

BASED ON THESE FACTS, IT'S EVIDENT THAT THE APPLICANT'S POLYGRAPH TEST, ALONG WITH NICHOLS' ADMISSION TO PULLING THE TRIGGER AND BLAMING THE APPLICANT, SHOULD PROMPT A REVIEW OF THE CONVICTION. THE POLYGRAPH RESULTS STRONGLY SUGGEST THAT THE APPLICANT DIDN'T FIRE THE FATAL SHOT, IMPLICATING NICHOLS AS THE LIKELY PERPETRATOR, GIVEN HIS CONFESSION. IT'S CRUCIAL TO ENSURE JUSTICE BY RE-EXAMINING THE EVIDENCE AND SERIOUSLY CONSIDERING THE POLYGRAPH FINDINGS.

3. PROCEDURAL OVERSIGHT AND UNFAIRNESS

IN UNITED STATES V. BAGLEY, 473 U.S. 667, 105 S.Ct. 3375, 87 LEd. 2d 481 (1985), THE SUPREME COURT HELD THAT THE PROSECUTION HAS A CONSTITUTIONAL DUTY TO DISCLOSE EVIDENCE THAT IS FAVORABLE TO THE DEFENDANT AND MATERIAL TO GUILT OR PUNISHMENT. IN THIS CASE, THE TESTIMONY OF CHRISTINA NICHOLS AND DELICIA GREEN COULD HAVE BEEN CRUCIAL TO THE APPLICANT'S DEFENSE AND SHOULD HAVE BEEN DISCLOSED TO THE DEFENSE PRIOR TO TRIAL.

THE FAILURE TO DISCLOSE THIS EVIDENCE DEPRIVED THE APPLICANT OF A FAIR TRIAL AND THE OPPORTUNITY TO PRESENT CRUCIAL EVIDENCE IN THEIR DEFENSE. THE FACT THAT THE PROSECUTION DECIDED NOT TO PRESENT THIS EVIDENCE TO THE JURY FURTHER HIGHLIGHTS THE SIGNIFICANCE OF THIS OVERSIGHT.

IN CONCLUSION, THE ASSERTION THAT THE APPLICANT COULD HAVE OBTAINED THIS INFORMATION THROUGH DUE DILIGENCE PRIOR TO TRIAL OVERLOOKS THE PROCEDURAL OVERSIGHT THAT DEPRIVES THE APPLICANT OF PRESENTING CRUCIAL EVIDENCE. THE FAILURE TO DISCLOSE KEY WITNESS TESTIMONY UNDERMINES THE FAIRNESS OF THE TRIAL AND RAISES QUESTIONS ABOUT THE INTEGRITY OF THE JUDICIAL PROCESS. THE APPLICANT SHOULD BE GRANTED THE OPPORTUNITY TO PRESENT THIS EVIDENCE AND HAVE THEIR CASE RECONSIDERED IN LIGHT OF THIS INFORMATION.

4. PROSECUTORIAL DISCRETION CONCERNS

FIRST AND FOREMOST, THE DECISION TO WITHHOLD THE TESTIMONIES OF CHRISTINA NICHOLS AND DELICIA GREEN DEPRIVES THE JURY OF POTENTIALLY CRUCIAL EVIDENCE THAT COULD IMPACT THE OUTCOME OF THE TRIAL. BOTH WITNESSES ARE BELIEVED TO HAVE INFORMATION THAT COULD

SUPPORT THE APPLICANT'S INNOCENCE OR AT THE VERY LEAST, PROVIDE A DIFFERENT PERSPECTIVE ON THE EVENTS IN QUESTION. BY NOT ALLOWING THEIR TESTIMONIES TO BE PRESENTED, THE PROSECUTOR IS ESSENTIALLY LIMITING THE JURY'S ABILITY TO MAKE AN INFORMED AND FAIR DECISION BASED ON ALL AVAILABLE EVIDENCE.

FURTHERMORE, THE DECISION TO WITHHOLD THIS EVIDENCE RAISES CONCERNS ABOUT THE INTEGRITY OF THE TRIAL PROCEEDINGS AND THE PURSUIT OF JUSTICE. THE PROSECUTION HAS A DUTY TO DISCLOSE ALL RELEVANT EVIDENCE TO THE DEFENSE IN ORDER TO ENSURE A FAIR TRIAL. BY INTENTIONALLY WITHHOLDING POTENTIALLY EXCULPATORY EVIDENCE, THE PROSECUTION IS NOT ONLY VIOLATING THIS DUTY BUT ALSO UNDERMINING THE FUNDAMENTAL PRINCIPLES OF FAIRNESS AND DUE PROCESS.

THE ARGUMENT THAT CHRISTINA NICHOLS' TESTIMONY SHOULD BE DISMISSED ON HEARSAY GROUNDS ALONE IS NOT SUFFICIENT JUSTIFICATION FOR WITHHOLDING IT FROM THE JURY. THE CORROBORATION OF HER ACCOUNT BY ANOTHER WITNESS, THE TIMING OF HER STATEMENT, AND THE PROCEDURAL MISTEPS IN DISCLOSING THIS EVIDENCE PRE-TRIAL ALL SUGGEST THAT HER TESTIMONY HOLDS SUBSTANTIVE VALUE AND SHOULD BE CONSIDERED IN THE TRIAL PROCEEDINGS.

IN CONCLUSION, THE DECISION BY THE PROSECUTOR NOT TO PRESENT THE TESTIMONIES OF CHRISTINA NICHOLS AND DELICIA GREEN TO THE JURY RAISES SIGNIFICANT CONCERNS ABOUT FAIRNESS AND THE PURSUIT OF JUSTICE IN THIS CASE. IT IS IMPERATIVE THAT ALL RELEVANT EVIDENCE BE PRESENTED AND CONSIDERED IN ORDER TO ENSURE A FAIR TRIAL FOR THE APPLICANT. THE COURT SHOULD CAREFULLY EVALUATE THE ARGUMENTS PRESENTED AND DENY THE RESPONDENT'S MOTION TO DISMISS BASED ON THE ISSUE OF CHRISTINA NICHOLS' TESTIMONY.

COUNTERARGUMENTS TO THE RESPONDENT'S POSITION

A. HEARSAY AND THE ADMISSIBILITY OF THE NICHOLS CONFESSION

IN OPPOSITION TO THE RESPONDENT'S ASSERTION THAT NICHOLS' INTERVIEW AND SUBSEQUENT AFFIDAVIT CONSTITUTE INADMISSIBLE HEARSAY, IT'S PERTINENT TO INVOKE EXCEPTIONS TO THE HEARSAY RULE THAT MAY APPLY, SUCH AS STATEMENTS AGAINST INTEREST UNDER RULE 804(b)(3) OF THE FEDERAL RULES OF EVIDENCE, AS ADOPTED BY SOUTH CAROLINA. NICHOLS' ADMISSION, IMPLICATING HIMSELF IN THE COMMISSION OF THE CRIME, SQUARELY FALLS WITHIN THIS EXCEPTION.

IN *UNITED STATES V. BAGLEY*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), THE SUPREME COURT HELD THAT THE PROSECUTION HAS A CONSTITUTIONAL DUTY TO DISCLOSE EXCULPATORY EVIDENCE TO THE DEFENSE. THE FAILURE TO DO SO CAN RESULT IN A VIOLATION OF THE DEFENDANT'S DUE PROCESS RIGHTS. IN THIS CASE, THE INFORMATION PROVIDED BY NICHOLS TO STILLINGER INVESTIGATIONS AND THE STATEMENTS MADE BY CHRISTINA NICHOLS AND DELICIA GREEN COULD BE CONSIDERED EXCULPATORY EVIDENCE THAT WAS NOT DISCLOSED TO THE DEFENSE DURING THE TRIAL.

FURTHERMORE, NICHOLS' CONFESSION TO STILLINGER INVESTIGATIONS FALLS WITHIN THE HEARSAY EXCEPTION FOR STATEMENTS AGAINST INTEREST UNDER RULE 804(b)(3) OF THE FEDERAL RULES OF EVIDENCE. THIS RULE ALLOWS FOR THE ADMISSION OF STATEMENTS MADE BY A DECLARANT THAT ARE AGAINST THEIR OWN INTEREST, SUCH AS ADMITTING TO COMMITTING A CRIME. NICHOLS' ADMISSION THAT HE LIED ABOUT THE APPLICANT'S INVOLVEMENT AND CONFESSED TO PULLING THE TRIGGER HIMSELF CLEARLY FALLS WITHIN THIS EXCEPTION. THE FACT THAT NICHOLS MADE THIS ADMISSION TO A NEUTRAL THIRD PARTY, STILLINGER INVESTIGATIONS, ADDS CREDIBILITY TO HIS CONFESSIONS.

THE STATEMENTS MADE BY CHRISTINA NICHOLS AND DELICIA GREEN COULD ALSO BE ADMISSIBLE UNDER THE RULE FOR PRESENT SENSE IMPRESSION

OR EXCITED UTTERANCE, AS THEY WERE MADE IMMEDIATELY FOLLOWING THE CRIME AND UNDER THE STRESS OF THE SITUATION. THESE STATEMENTS PROVIDE ADDITIONAL CORROBORATION OF NICHOLS' CONFESION AND RAISE SERIOUS DOUBT ABOUT THE FAIRNESS OF THE TRIAL PROCEEDINGS. PLEASE REFER TO EXHIBIT C AND D FOR THE TESTIMONIES OF CHRISTINA NICHOLS AND DELICIA GREEN.

IN LIGHT OF THE NEWLY DISCOVERED EVIDENCE AND THE POTENTIAL VIOLATIONS OF THE APPLICANT'S DUE PROCESS RIGHTS, IT IS CRUCIAL THAT THE COURT CAREFULLY CONSIDER THE ADMISSIBILITY OF THE STATEMENTS MADE BY NICHOLS, CHRISTINA NICHOLS, AND DELICIA GREEN. THESE STATEMENTS COULD HAVE A SIGNIFICANT IMPACT ON THE FAIRNESS OF THE TRIAL AND THE VALIDITY OF THE APPLICANT'S CONVICTION. THEREFORE, IT IS IMPERATIVE THAT THE COURT ALLOWS THIS EVIDENCE TO BE CONSIDERED AND THOROUGHLY EVALUATED IN THE INTEREST OF JUSTICE.

B. PROCEDURAL BARS AND THE PRIMA FACIE CASE

THE ASSERTION THAT THE APPLICANT FAILS TO OVERCOME PROCEDURAL BARS AND ESTABLISH A PRIMA FACIE CASE OVERLOOKS THE SUBSTANTIAL JUSTICE PRINCIPLE EMBEDDED WITHIN THE POST-CONVICTION RELIEF FRAMEWORK. THE REVELATIONS FROM NICHOLS AND THE CORROBORATING SILENCE FROM THE PROSECUTORIAL SIDE OFFER A SUBSTANTIAL FOUNDATION CHALLENGING THE PROSECUTION'S NARRATIVE AND SUFFICIENCY OF THE ORIGINAL TRIAL'S VERDICT.

THE APPLICANT WAS CONVICTED BASED PRIMARILY ON THE TESTIMONY OF GIBREEL NICHOLS, WHO LATER ADMITTED TO LYING ABOUT THE APPLICANT'S INVOLVEMENT IN THE CRIMES AND CONFESSED TO PULLING THE TRIGGER HIMSELF. THIS CRITICAL INFORMATION WAS NOT DISCLOSED TO THE JURY DURING THE TRIAL, RAISING SERIOUS CONCERNS ABOUT THE FAIRNESS AND ACCURACY OF THE CONVICTION.

FURTHERMORE, THE LACK OF RESPONSE FROM THE RESPONDENT AND THE COURT'S

DELAY IN ADDRESSING THE APPLICANT'S PCR APPLICATION DEMONSTRATE A DISREGARD FOR THE ESTABLISHED TIMELINE FOR RESPONDING TO SUCH PETITIONS. THE APPLICANT HAS MADE DILIGENT EFFORTS TO SEEK A RESPONSE AND MOVE THE CASE FORWARD, BUT THEIR ATTEMPTS HAVE BEEN MET WITH SILENCE AND INACTION. SEE EXHIBIT E

THE INTRODUCTION OF NEW EVIDENCE, SUCH AS NICHOLS' RECANTATION AND THE CORROBORATING STATEMENTS FROM CHRISTINA NICHOLS AND DELICIA GREEN, FURTHER UNDERMINES THE PROSECUTION'S CASE AND SUGGESTS THAT THE APPLICANT MAY HAVE BEEN WRONGFULLY CONVICTED. THIS EVIDENCE SHOULD BE CONSIDERED IN THE INTEREST OF SUBSTANTIAL JUSTICE AND FAIRNESS.

IN LIGHT OF THESE DEVELOPMENTS, IT IS CLEAR THAT THE APPLICANT HAS PRESENTED A PRIMA FACIE CASE FOR POST-CONVICTION RELIEF AND SHOULD BE GIVEN THE OPPORTUNITY TO HAVE THEIR CASE HEARD IN COURT. THE FAILURE TO DO SO WOULD BE A MISCARRIAGE OF JUSTICE AND A VIOLATION OF THE PRINCIPLES OF FAIRNESS AND DUE PROCESS.

C. DISTINCTION BETWEEN PRESENCE AND ACTIVE PARTICIPATION

RELEVANT FACTS

DESPITE HAVING SUBSTANTIAL EVIDENCE SUGGESTING THAT NICHOLS ACTUALLY PULLED THE TRIGGER, THE PROSECUTOR CONTENDED TO THE JURY THAT HE DID NOT KNOW WHO SHOT DONTAY WALKER, THE VICTIM. FURTHERMORE, HE EXPLICITLY INSTRUCTED THE JURY NOT TO FOCUS ON "WHO PULLED THE TRIGGER". INSTEAD, HE EMPHASIZED THAT THE JURY'S TASK WAS TO DETERMINE WHO WAS PRESENT AT THE SCENE AND WHO PARTICIPATED IN THE EVENTS THAT UNFOLDED.

THE JUDGE SUBSEQUENTLY INSTRUCTED THE JURY ON THE PRINCIPLE OF "THE HAND OF ONE IS THE HAND OF ALL", IMPLYING THAT ALL INDIVIDUALS PRESENT AT THE CRIME SCENE COULD BE HELD RESPONSIBLE FOR THE CRIMES COMMITTED. THIS INSTRUCTION RAISED CONCERNS AMONG THE DEFENSE COUNSEL

REGARDING THE POTENTIAL MISINTERPRETATION OF THE APPLICANT'S MERE PRESENCE AS SUFFICIENT EVIDENCE OF HIS GUILT.

DEFENSE COUNSEL SOUGHT CLARIFICATION FROM THE JUDGE REGARDING WHETHER HE HAD CHARGED THE JURY WITH "MERE PRESENCE". THE JUDGE RESPONDED THAT HE DID NOT BELIEVE A "MERE PRESENCE" INSTRUCTION WAS APPROPRIATE IN LIGHT OF THE APPLICANT'S STATEMENTS AND TESTIMONY. DEFENSE COUNSEL ARGUED THAT WHILE THE APPLICANT ADMITTED TO BEING PRESENT, IT WAS CRUCIAL FOR THE JURY TO UNDERSTAND THAT MERE PRESENCE AT THE SCENE OF A CRIME WAS NOT ENOUGH TO CONVICT SOMEONE.

THE PROSECUTOR, IN AGREEMENT WITH THE JUDGE, STATED THAT HE ALSO BELIEVED THAT A "MERE PRESENCE" INSTRUCTION WAS NOT APPROPRIATE IN THE CASE. CONSEQUENTLY, THE JUDGE RULED THAT HE WOULD NOT CHARGE THE JURY WITH "MERE PRESENCE", AND DEFENSE COUNSEL TOOK EXCEPTION TO THIS RULING. SEE TRIAL TRANSCRIPT AT PAGE 461-464, LINES 1-23

DISCUSSION

THE DISTINCTION BETWEEN THE APPLICANT'S PRESENCE AT THE SCENE OF THE CRIME AND HIS ACTIVE PARTICIPATION IN THE WRONGDOING IS CRUCIAL IN DETERMINING HIS GUILT OR INNOCENCE. IN THIS CASE, THE CONSISTENT NARRATIVE PROVIDED BY THE APPLICANT, ALONG WITH THE RECENT RECANTATION BY THE KEY WITNESS, NICHOLS, RAISES SERIOUS DOUBTS ABOUT THE FAIRNESS OF THE TRIAL AND THE ACCURACY OF THE CONVICTION.

THE APPLICANT MAINTAINED THROUGHOUT THE TRIAL THAT HE WAS PRESENT AT THE SCENE OF THE CRIME BUT WAS NOT ACTIVELY INVOLVED IN PLANNING OR COMMITTING THE MURDER. HE CLAIMED TO HAVE TRIED TO DISSUADE NICHOLS FROM CARRYING OUT THE ACT AND EVEN ATTEMPTED TO LEAVE BEFORE THE FATAL SHOT WAS FIRED. THIS ASSERTION IS SUPPORTED BY THE RECENT ADMISSION BY NICHOLS THAT HE LIED ABOUT THE APPLICANT'S INVOLVEMENT AND CONFESSED TO PULLING THE TRIGGER HIMSELF. FURTHER INSIGHTS INTO THE APPLICANT'S TESTIMONY CAN BE FOUND IN THE TRANSCRIPT PROVIDED IN

EXHIBIT G AT PAGES 292-397.

FURTHERMORE, THE PROSECUTOR'S KNOWLEDGE OF NICHOLS' DECEIT, AS EVIDENCED BY THE PROSECUTOR'S AWARENESS OF THE APPLICANT PASSING A POLYGRAPH EXAMINATION, RAISES CONCERNS ABOUT THE RELIABILITY OF THE INITIAL TESTIMONY. THE TESTIMONY OF ADDITIONAL WITNESSES, INCLUDING CHRISTINA NICHOLS AND DELICIA GREEN, FURTHER SUPPORTS NICHOLS' CONFESSION AND IMPLICATES HIM AS THE SOLE PERPETRATOR OF THE CRIME.

THE DENIAL OF A "MERE PRESENCE" INSTRUCTION BY THE COURT DURING THE INITIAL TRIAL DEPRIVED THE JURY OF CONSIDERING THAT MERE PRESENCE AT THE SCENE DOES NOT EQUATE TO GUILT OR ACTIVE PARTICIPATION. GIVEN THE EMERGING EVIDENCE AND WITNESS TESTIMONIES, IT IS IMPERATIVE THAT THE COURT RECONSIDERS ITS DECISION AND ALLOWS THE JURY TO FULLY EVALUATE ALL THE RELEVANT INFORMATION.

IN LIGHT OF THESE CIRCUMSTANCES, THE APPLICANT RESPECTFULLY REQUESTS A REEVALUATION OF HIS CONVICTION BASED ON THE NEW EVIDENCE AND THE NEED FOR A FAIR TRIAL. THE RECANTATION BY NICHOLS AND THE SUPPORTING EVIDENCE HIGHLIGHT THE IMPORTANCE OF DISTINGUISHING BETWEEN MERE PRESENCE AND ACTIVE PARTICIPATION IN DETERMINING THE APPLICANT'S GUILT OR INNOCENCE. IT IS ESSENTIAL THAT JUSTICE IS SERVED BY CONSIDERING ALL THE AVAILABLE INFORMATION AND ENSURING A FAIR AND IMPARTIAL REVIEW OF THE CASE.

D. THE ABSENCE OF CORROBORATIVE EVIDENCE

THE RELIANCE ON NICHOLS' SOLITARY TESTIMONY, WITHOUT ANY CORROBORATING PHYSICAL EVIDENCE OR UNBIASED WITNESS TESTIMONY, SIGNIFICANTLY WEAKENS THE CREDIBILITY OF THE CASE AGAINST THE APPLICANT. NICHOLS HAD A CLEAR INCENTIVE TO MINIMIZE HIS OWN INVOLVEMENT IN THE CRIMES BY SHIFTING BLAME ONTO THE APPLICANT IN EXCHANGE FOR A REDUCED SENTENCE. THIS GLARING CONFLICT OF INTEREST

SHOULD HAVE RAISED RED FLAGS FOR THE PROSECUTION AND THE COURT, AND WARRANTED A MORE THOROUGH INVESTIGATION INTO THE VERACITY OF NICHOLS' CLAIMS.

THE RECENT CONFESSION BY NICHOLS TO SULLINGER INVESTIGATIONS, IN WHICH HE ADMITS TO LYING ABOUT THE APPLICANT'S INVOLVEMENT AND CONFESSES TO COMMITTING THE MURDER HIMSELF, FURTHER UNDERMINES THE RELIABILITY OF HIS TRIAL TESTIMONY. THIS NEW EVIDENCE DIRECTLY CONTRADICTS NICHOLS' ORIGINAL TESTIMONY AND RAISES SERIOUS DOUBTS ABOUT THE ACCURACY OF HIS ACCOUNT.

IN LIGHT OF THESE DEVELOPMENTS, IT IS IMPERATIVE THAT THE COURT RECONSIDER THE APPLICANT'S CONVICTION AND GRANT HIM THE OPPORTUNITY FOR POST-CONVICTION RELIEF. THE LACK OF EVIDENTIARY SUPPORT, THE PROSECUTORIAL MISCONDUCT, AND THE NEWLY DISCOVERED EVIDENCE ALL POINT TO A MISARRIAGE OF JUSTICE IN THIS CASE. THE APPLICANT'S RIGHT TO A FAIR TRIAL AND DUE PROCESS HAS BEEN COMPROMISED, AND IT IS ESSENTIAL THAT THE COURT RECTIFY THIS INJUSTICE BY VACATING THE CONVICTION AND ALLOWING FOR A NEW TRIAL WITH ALL THE RELEVANT EVIDENCE PRESENTED. ULTIMATELY, JUSTICE DEMANDS THAT THE APPLICANT BE GIVEN THE CHANCE TO PROVE HIS INNOCENCE AND SEEK REDRESS FOR THE WRONGFUL CONVICTION BASED ON A FLAWED AND UNRELIABLE CASE BUILT SOLELY ON THE TESTIMONY OF A SELF-SERVING WITNESS.

ARGUMENT IN SUPPORT OF THE APPLICANT'S POSITION

1. CREDIBILITY OF NICHOLS' TESTIMONY

NICHOLS' RECANTATION IS A CRITICAL DEVELOPMENT THAT CANNOT BE DISMISSED LIGHTLY. HIS ADMISSION TO LYING ABOUT THE APPLICANT'S INVOLVEMENT DIRECTLY CHALLENGES THE VERACITY OF THE EVIDENCE USED TO CONVICT THE APPLICANT. THE FACT THAT NICHOLS HAS ADMITTED TO THE CRIME HIMSELF, AND IMPLICATED THE PROSECUTORIAL TEAM IN THE PROPAGATION OF HIS DECEIT,

CASTS SIGNIFICANT DOUBT ON THE FAIRNESS OF THE TRIAL. THIS ALONE NECESSITATES A RECONSIDERATION OF THE APPLICANT'S CONVICTION.

2. CRITICAL CORROBORATIVE INSIGHT

CHRISTINA NICHOLS' AFFIDAVIT, DATED FEBRUARY 19, 2013, PROVIDES CRUCIAL INSIGHT INTO THE ACTIONS AND MINDSET OF GIBREEL NICHOLS IMMEDIATELY FOLLOWING THE CRIME. HER AFFIRMATION OF HER BROTHER'S ADMISSION OF SOLE RESPONSIBILITY FOR THE MURDER IS NOT MERE HEARSAY BUT A FIRSTHAND ACCOUNT OF A POST-CRIME CONFESSION, WHICH CAN SERVE AS RELIABLE EVIDENCE OF GUILT. HOWEVER, HER TESTIMONY AT TRIAL DID NOT INCLUDE THE CRUCIAL INFORMATION OF HER BROTHER'S POST-CRIME CONFESSION, AS THE PROSECUTOR CHOSE NOT TO PRESENT IT TO THE JURY.

THE ADMISSION OF SOLE RESPONSIBILITY FOR THE MURDER BY GIBREEL NICHOLS TO HIS SISTER IMMEDIATELY FOLLOWING THE CRIME IS NOT MERE HEARSAY. IT IS A FIRSTHAND ACCOUNT OF A CONFESSION, WHICH HOLDS SIGNIFICANT WEIGHT IN DETERMINING GUILT. CHRISTINA NICHOLS' AFFIDAVIT PROVIDES CRUCIAL INSIGHT INTO THE ACTIONS AND MINDSET OF GIBREEL NICHOLS AT THE TIME OF THE CRIME, SHEDDING LIGHT ON HIS TRUE INVOLVEMENT AND CULPABILITY.

FURTHERMORE, THE TESTIMONY OF DELICIA GREEN, THE BIOLOGICAL SISTER OF APPLICANT'S, FURTHER SUPPORTS HIS CONFESSION. HER STATEMENT TO DETECTIVES ABOUT NICHOLS ADMITTING TO THE MURDER BECAUSE SOMEONE HAD BEEN HIS FACE ADDS TO THE CREDIBILITY OF HIS CONFESSION. THE FACT THAT BOTH WITNESSES INDEPENDENTLY CAME FORWARD WITH SIMILAR ACCOUNTS OF NICHOLS' CONFESSION STRENGTHENS THE RELIABILITY OF THEIR TESTIMONIES.

THE FAILURE OF THE PROSECUTOR TO PRESENT THIS CRUCIAL EVIDENCE TO THE JURY DEPRIVED THE APPLICANT OF A FAIR TRIAL. THE WITHHOLDING OF SUCH VITAL INFORMATION COULD HAVE POTENTIALLY SWAYED THE JURY'S DECISION AND AFFECTED THE OUTCOME OF THE TRIAL. IT IS ONLY FAIR THAT THIS EVIDENCE BE CONSIDERED IN THE PURSUIT OF JUSTICE FOR ALL PARTIES INVOLVED.

IN CONCLUSION, CHRISTINA NICHOLS' AFFIDAVIT, ALONG WITH DELICIA GREEN'S STATEMENT, PROVIDES COMPELLING EVIDENCE OF GIBREEL NICHOLS' GUILT IN THE MURDER CASE. THIS INFORMATION WAS NOT AVAILABLE TO THE APPLICANT AT THE TIME OF TRIAL, AND ITS OMISSION FROM THE PROCEEDINGS HAS RESULTED IN A MISARRIAGE OF JUSTICE. IT IS IMPERATIVE THAT THIS EVIDENCE BE GIVEN DUE CONSIDERATION IN THE REEVALUATION OF THE CASE.

LEGAL STANDARDS AND EVIDENTIARY CONCERNS

HEARSAY AND NEW EVIDENCE

IN THE APPLICANT'S CASE, THE RESPONDENT ARGUES THAT NICHOLS' RECANTATION SHOULD BE DISMISSED AS INADMISSIBLE HEARSAY, AS THERE ARE CRITICAL EXCEPTIONS TO THE HEARSAY RULE THAT ALLOW FOR THE INTRODUCTION OF STATEMENTS AGAINST INTEREST BY AN UNAVAILABLE DECLARANT. IN THIS CASE, NICHOLS' RECANTATION IMPLICATES HIMSELF IN A CRIME, MAKING IT A STATEMENT AGAINST HIS OWN INTEREST. THIS EXCEPTION TO THE HEARSAY RULE SHOULD BE RECOGNIZED AS VALID EVIDENCE IN COURT, AS IT ADDS WEIGHT TO THE ARGUMENT THAT THE INITIAL CONVICTION MAY HAVE BEEN FLAWED.

FURTHERMORE, THE SWORN AFFIDAVIT FROM AUSTIN HENDERSON, ALONG WITH CORROBORATIVE STATEMENTS FROM CHRISTINA NICHOLS AND DELICIA GREEN, PRESENTS A COMPELLING, MULTIFACETED ACCOUNT THAT CHALLENGES THE VALIDITY OF THE INITIAL CONVICTION. HENDERSON'S STATEMENT PROVIDES ADDITIONAL CONTEXT AND INSIGHT INTO THE EVENTS LEADING UP TO THE CONVICTION, WHILE NICHOLS AND GREEN'S CORROBORATIVE STATEMENTS LEND CREDIBILITY TO THE RECANTATION AND RAISE DOUBTS ABOUT THE ACCURACY OF THE ORIGINAL TESTIMONY.

IN LIGHT OF THESE FACTORS, IT IS CLEAR THAT NICHOLS' RECANTATION SHOULD NOT BE SUMMARILY DISMISSED AS INADMISSIBLE HEARSAY. THE COMBINATION OF STATEMENTS FROM MULTIPLE SOURCES, INCLUDING A STATEMENT AGAINST INTEREST BY THE DECLARANT, PRESENTS A STRONG CASE FOR REEVALUATING THE CONVICTION. IN THIS CASE, IT IS ESSENTIAL THAT ALL AVAILABLE EVIDENCE, INCLUDING POTENTIALLY EXCULPATORY TESTIMONY, BE CONSIDERED IN ORDER TO ENSURE A

FAIR AND JUST OUTCOME FOR THE APPLICANT.

DUE DILIGENCE AND THE DISCOVERY OF NEW EVIDENCE

THE RESPONDENT'S CLAIM THAT THE APPLICANT COULD HAVE DISCOVERED THIS EVIDENCE THROUGH DUE DILIGENCE BEFORE THE TRIAL FAILS TO HOLD WATER. THE INFORMATION THAT HAS EMERGED WAS NOT AVAILABLE OR KNOWN TO THE APPLICANT UNTIL AFTER THE CONCLUSION OF THE TRIAL, AS VERIFIED BY THE TIMELINE OF NICHOLS' CONFESSIONS AND SUBSEQUENT INVESTIGATIONS.

CONCLUSION

IN CONCLUSION, IT IS IMPERATIVE FOR THE COURT TO GIVE DUE CONSIDERATION TO THE NEW EVIDENCE AND THE SERIOUS ALLEGATIONS OF PROSECUTORIAL MISCONDUCT THAT HAVE SURFACED SINCE THE APPLICANT'S TRIAL. THE REVELATIONS FROM GIBREEL NICHOLS, THE KEY WITNESS, ADMITTING TO FABRICATING HIS TESTIMONY AND POINTING OUT THE INVOLVEMENT OF THE PROSECUTOR RAISE SIGNIFICANT DOUBTS ABOUT THE FAIRNESS AND ACCURACY OF THE CONVICTION.

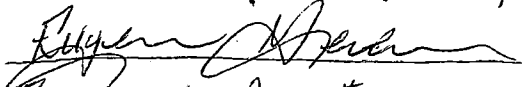
GIVEN THE GRAVITY OF THE SITUATION AND THE POTENTIAL MISCARRIAGE OF JUSTICE, IT IS CRUCIAL FOR THE COURT TO DENY THE RESPONDENT'S MOTION TO DISMISS AND INSTEAD PROCEED WITH AN EVIDENTIARY HEARING TO THOROUGHLY INVESTIGATE THE MERITS OF THE PCR APPLICATION. THIS COURSE OF ACTION IS ESSENTIAL TO ENSURE A JUST AND FAIR ASSESSMENT OF ALL THE AVAILABLE EVIDENCE, INCLUDING THE NEWLY DISCOVERED FACTS THAT QUESTION THE INTEGRITY OF THE TRIAL PROCEEDINGS.

BY ALLOWING AN EVIDENTIARY HEARING, THE COURT CAN UPHOLD THE PRINCIPLES OF JUSTICE AND PROVIDE THE APPLICANT WITH THE OPPORTUNITY TO PRESENT THE FULL SCOPE OF EVIDENCE THAT COULD POTENTIALLY EXONERATE THEM. THUS, IT IS URGED THAT THE COURT ACTS IN THE INTEREST OF JUSTICE BY REJECTING THE MOTION TO DISMISS AND COMMITTING TO A COMPREHENSIVE

REEVALUATION OF THE CONVICTION BASED ON THE NEWFOUND INFORMATION
AND CLAIMS OF MISCONDUCT.

DATE: JUNE 2, 2025

RESPECTFULLY SUBMITTED,



EUGENE D. GREEN, #275500
KERSHAW CORRECTIONAL INSTITUTION
4848 GOLDMINE HWY. (OAK-A-49)
KERSHAW, SOUTH CAROLINA 29067

EXHIBIT D

REANIMATION AFFIDAVIT OF AUSTIN HENDERSON

STILLINGER INVESTIGATIONS

1416 Park Street, Columbia, SC 29201 | www.investigateSC.com | Office: (803) 400-1974 | Facsimile: (803) 400-1975 | PI@investigateSC.com



March 19, 2019

Lorianne Miller
5600 Dorchester Rd, Apt 1201
North Charleston, South Carolina 29418

Dear Ms. Miller,

Enclosed you will find the affidavit for the telephone interview from investigator Austin Henderson, conducted on Mr. Gibreel Nichols.

It was a pleasure working with you and I look forward to working with you in the near future. If you have any questions, please do not hesitate to contact me.

Sincerely,

Katie D. McClaran
Office Administrator &
Assistant to Brian L. Stillinger
Stillinger Investigations, Inc.

BLS/kdm
Enclosure

STILLINGER INVESTIGATIONS

1416 Park Street, Columbia, SC 29201 | Office: (803) 400-1974 | Toll Free: (888) 699-3350 | Facsimile: (803) 400-1975 | PI@InvestigateSC.com



State of South Carolina)
)
County of Richland)

Affidavit

Personally, appeared before me, Austin Henderson, who first being duly sworn, deposes and says:

I, Austin Henderson, a registered private investigator with the South Carolina Law Enforcement Division, and General Manager of Stillinger Investigations. On Tuesday, February 12, 2019, I conducted a phone interview with Mr. Gibreel Nichols.

Tuesday, February 12, 2019
3:10p.m.-3:23p.m.

Interviewer: Investigator A. Henderson
Interviewee: Mr. Gibreel Nichols, Inmate Number: 253482

Question 1:

In your previous testimony, you point the finger at Mr. Green being the trigger man. However, in our last interview, you stated something different, was Mr. Green the one who shot the victim?
-Mr. Nichols stated that he pulled the trigger and lied on the stand. Mr. Nichols stated that Mr. Green did not know that Mr. Nichols was going to kill the victim.

Question 2:

Why did you testify at trial that Eugene committed the act?
-Mr. Nichols stated that at the time, he did not want to get on the stand, so he lied. Mr. Nichols also stated that the prosecution knew that he lied.

Question 3:

In our last interview you said that you shot the victim and that Mr. Green did not know you were going to do it? Is that what you still claim?
-Mr. Nichols stated that Mr. Green did not know that Mr. Nichols was going to shoot the victim. Mr. Nichols also claimed that he then turned the gun onto Mr. Green as well, and that Mr. Green was scared. Mr. Nichols then stated that he (Mr. Nichols) did not kill Mr. Green because he was dating Mr. Nichols' sister at the time.

Question 4:

So, did you kill the victim or did Mr. Green?
-Mr. Nichols stated that he (himself) killed the victim, without hesitation and that he (Mr. Nichols) was paying for it. Mr. Nichols stated that Mr. Green did not have anything to do with it.

Question 5:

What was your motivation for your testimony at trial?

-Mr. Nichols stated that he was not a snitch, that because Mr. Green took them (the prosecution) to the crime scene, he decided to let Mr. Green take the blame. Mr. Nichols claimed that the motivation for the testimony that he gave was because he did not want to "go down" by himself.

Question 6:

What happened to the murder weapon?

-Mr. Nichols stated that he said that he got rid of it.

Question 7:

How did you get rid of the murder weapon?

-Mr. Nichols stated that he took it back to Greensboro (North Carolina) when he left the state (South Carolina).

Question 8:

What did you do with the murder weapon?

-Mr. Nichols stated that he (Mr. Nichols) got rid of it.

Question 9:

How did you get rid of the murder weapon?

-Mr. Nichols stated that he (Mr. Nichols) threw it (the murder weapon) in a lake.

Question 10:

Do you remember what lake it was?

-Mr. Nichols stated that he did not remember what lake the weapon was thrown into.

Question 11:

Was killing the victim an agreed upon decision between yourself and Mr. Green?

-Mr. Nichols stated that it was not, that it was only agreed upon with himself, nobody knew that he (Mr. Nichols) was going to do anything.

Question 12:

How did the victim's vehicle get wrecked?

-Mr. Nichols stated that he did not recall how the vehicle got wrecked but he does recall that he set the car on fire.

Question 13:

How did you set the car on fire?

-Mr. Nichols stated that he put gasoline all over the car, inside and out.

Question 14:

Did you pay anyone with drugs to remove items from the victim's car and place them into Eugene's?

-Mr. Nichols stated that he did pay someone with drugs to do it (remove the items from the victim's vehicle).

Question 15:

Do you remember who you paid to do it?

-Mr. Nichols stated that it was a Caucasian male and that he does not recall any more detail than that.

Question 16:

What drugs did you pay him (the individual that he paid) with?

-Mr. Nichols stated that it was crack (cocaine).

Question 17:

What items did he (the individual that he paid with crack) take out of the vehicle?

-Mr. Nichols claimed that a radio or stereo system, rims, amplifiers and speakers were removed from the vehicle.

Question 18:

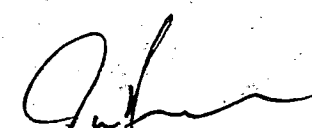
Do you have an attorney?

-Mr. Nichols stated that he did not have an attorney.

Mr. Nichols asked that Mr. Robinson send a letter to him regarding advise in retaining an attorney. (I.E. should he retain an attorney?)

End of interview.

Austin Henderson, first duly sworn, deposes and states that the above is an accurate summary of records maintained in the regular course of business pertaining to the investigation conducted by Stillinger Investigations, Inc.


Austin Henderson, RPI
General Manager
Stillinger Investigations, Inc.

Sworn and Subscribed before me this 18th day of March, 2019
My Commission Expires:

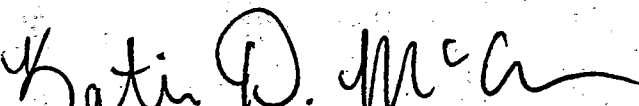

Notary Public for the State of South Carolina
My Commission Expires: / /

EXHIBIT E

RULE 59(e) MOTION FILED OCTOBER 16, 2025 AND AMENDMENT
DATED OCTOBER 31, 2025.

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT

EUGENE D. GREEN, #275500,
APPLICANT,

CASE No. : 2020-CP-14-00075

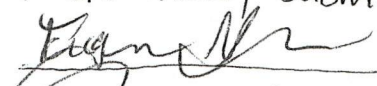
v.

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,
RESPONDENT.

I, EUGENE GREEN, HEREBY CERTIFY THAT ON THIS 10TH DAY OF OCTOBER, 2025, I SERVED A COPY OF THE MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRCP, UPON THE RESPONDENT BY MAILING A COPY, POSTAGE PREPAID, TO:

T. CRUISE MITCHELL, ESQUIRE
OFFICE OF THE ATTORNEY GENERAL
PCR DIVISION - 3RD CIRCUIT
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

RESPECTFULLY SUBMITTED,

EUGENE D. GREEN, #275500

THIS 10 DAY OF Sept, 2025

D. Chambus

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: Sept 3, 2024

2025 OCT 16 AM 11:51
Shanifa Brangman, CLK - Clarendon SC

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 10-14-2025

Shanifa Brangman
CLERK OF COURT

CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

EUGENE D. GREEN, 275800
APPLICANT,

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 10-14-2025

Shanita Brangman
CLERK OF COURT
CLARENDON COUNTY, SC

V.
STATE OF SOUTH CAROLINA
RESPONDENT.

**MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO
RULE 59(e), SCRPC**

COMES NOW, THE APPLICANT, EUGENE GREEN, PROCEEDING PRO SE, PURSUANT TO RULE 59(e), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, AND RESPECTFULLY MOVES THIS HONORABLE COURT TO ALTER OR AMEND THE FINAL ORDER OF DISMISSAL SIGNED ON SEPTEMBER 19, 2025, AND RECEIVED BY APPLICANT ON OCTOBER 7, 2025. APPLICANT REQUESTS THE COURT VACATE THE FINAL ORDER OF DISMISSAL AND ISSUE A NEW ORDER ADDRESSING ALL MATERIAL CLAIMS, SPECIFICALLY THE CLAIM OF PROSECUTORIAL MISCONDUCT.

1. FACTUAL AND PROCEDURAL BACKGROUND

1. APPLICANT WAS CONVICTED OF MURDER AND KIDNAPPING IN 2001. HIS PCR PETITION, FILED ON FEBRUARY 13, 2020, WAS BASED ON NEWLY DISCOVERED EVIDENCE—THE RECATATION OF CO-DEFENDANT GIBREEL NICHOLS—AND A CLAIM OF PROSECUTORIAL MISCONDUCT BASED ON NICHOLS' ADMISSION THAT THE PROSECUTOR WAS IMPLICATED IN HIS DECEIT.

2. THE PCR COURT ISSUED A FINAL ORDER OF DISMISSAL ON SEPTEMBER 19, 2025, DENYING THE PCR APPLICATION.

3. IN THE FINAL ORDER, THE COURT ADDRESSED THE RECATATION TESTIMONY (NEW EVIDENCE CLAIM), FINDING IT INADMISSIBLE HEARSAY AND/OR UNRELIABLE, AND NOTING THAT THE UNDERLYING CONVICTION WAS

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Shanita Brangman, CLK - Clarendon SC

SUPPORTABLE UNDER AN ACCOMPLICE LIABILITY THEORY REGARDLESS OF WHO WAS THE "TRIGGERMAN".

4. THE COURT'S ORDER OF DISMISSAL DOES NOT ADDRESS OR MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPLICANT'S CLAIM OF PROSECUTORIAL MISCONDUCT, WHICH WAS PROPERLY RAISED IN THE PCR APPLICATION.

5. SPECIFICALLY, APPLICANT ALLEGED THAT THE PROSECUTOR ENGAGED IN MISCONDUCT BY KNOWINGLY PRESENTING FALSE TESTIMONY, AND WITHHOLDING EXCULPATORY EVIDENCE. THIS CLAIM WAS SET FORTH IN THE APPLICANT'S POST-CONVICTION RELIEF APPLICATION FILED IN 2020 AND REITERATED IN SUBSEQUENT FILINGS. HOWEVER, THE COURT'S FINAL ORDER CONTAINS NO FINDINGS OF FACT OR CONCLUSIONS OF LAW ADDRESSING THIS CLAIM.

6. THE FAILURE TO MAKE SPECIFIC FINDINGS ON EACH ISSUE RAISED AND RULED UPON AT THE PCR LEVEL CONSTITUTES REVERSIBLE ERROR UNDER S.C. CODE ANN. §17-27-80 AND RULE 52(a), SCRCP, AND PREVENTS MEANINGFUL APPELLATE REVIEW.

II. ARGUMENT

THE FAILURE OF THE PCR COURT TO ADDRESS THE APPLICANT'S CLAIM OF PROSECUTORIAL MISCONDUCT CONSTITUTES A MANIFEST ERROR OF LAW AND REQUIRES THE JUDGMENT TO BE ALTERED OR AMENDED. THE FINAL ORDER OF DISMISSAL, WHILE EXTENSIVE IN ITS TREATMENT OF THE RECANTATION EVIDENCE AND ITS IMPACT ON THE "TRIGGERMAN" ISSUE, COMPLETELY OMITTS ANY DISCUSSION OR RULING REGARDING THE ALLEGATION THAT THE PROSECUTOR WAS IMPLICATED IN NICHOLS' ORIGINAL FALSE TESTIMONY.

RULE 59(e) RELIEF IS APPROPRIATE:

A MOTION UNDER RULE 59(e) IS PROPERLY GRANTED WHEN THE COURT HAS FAILED TO RULE ON A MATERIAL ISSUE BEFORE IT. SEE GENERALLY

RULE 59(e), SCRCP. THE CLAIM OF PROSECUTORIAL MISCONDUCT— AN ALLEGATION THAT THE STATE SUBORNED PERJURY OR WAS OTHERWISE INVOLVED IN THE CO-DEFENDANT'S DECEIT— IS A DISTINCT, SERIOUS, AND MATERIAL CLAIM OF A CONSTITUTIONAL VIOLATION SEPARATE FROM THE MERE DISCOVERY OF RECATATION EVIDENCE.

A MATERIAL CLAIM WAS OMITTED:

THE CLAIM OF PROSECUTORIAL MISCONDUCT, AS ALLEGED IN THE PCR PETITION, IS NOT MERELY A SUBSET OF THE RECATATION CLAIM. IT ASSERTS A FUNDAMENTAL FLAW IN THE ORIGINAL PROCEEDINGS INVOLVING THE INTEGRITY OF THE STATE'S CONDUCT. A COURT MUST ADJUDICATE ALL MATERIAL ISSUES RAISED IN A PETITION. THE TOTAL FAILURE TO ADDRESS THIS ISSUE LEAVES A MATERIAL ASPECT OF THE APPLICANT'S CASE UNRESOLVED, MAKING THE FINAL ORDER INCOMPLETE AND ERRONEOUS.

NEED FOR ADJUDICATION:

APPLICANT IS ENTITLED TO A RULING ON WHETHER THE FACTS PRESENTED, IF TRUE, RISE TO THE LEVEL OF A DUE PROCESS VIOLATION UNDER BRADY V. MARYLAND OR NAPUE V. ILLINOIS, OR ANY OTHER APPLICABLE PRECEDENT CONCERNING THE STATE'S DUTY TO ENSURE A FAIR TRIAL AND NOT USE FALSE EVIDENCE.

WHEREFORE, APPLICANT RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT:

- a. ALTER OR AMEND THE FINAL ORDER OF DISMISSAL TO INCLUDE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE CLAIM OF PROSECUTORIAL MISCONDUCT, OR IN THE ALTERNATIVE,
- b. REOPEN THE MATTER TO ALLOW FULL CONSIDERATION AND RULING ON SAID CLAIM, AND
- c. GRANT SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND

PROPER.

DATE: OCTOBER 9, 2025

RESPECTFULLY SUBMITTED,

Eugene D. Green

EUGENE D. GREEN #275500 (PROSE)

KERSHAW CORRECTIONAL INSTITUTION
4848 GOLDMINE HWY. (MAG-A-04)
KERSHAW, SOUTH CAROLINA 29067

CC: T. CRUISE MITCHELL, ESQUIRE

RETAINED IN PERSONAL FILE

HONORABLE R. KIRK GRIFFIN

2025 OCT 16 AM 11:55
Shanita Brangman, CLK - Clarendon SC

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

EUGENE D. GREEN, #275500
APPLICANT,

v.

STATE OF SOUTH CAROLINA
RESPONDENT.

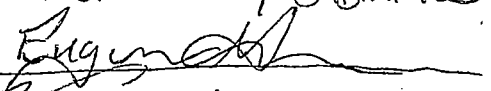
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE No.: 2020-CP-14-0075

CERTIFICATE OF SERVICE

I, EUGENE GREEN, DECLARE UNDER PENALTY OF PERJURY THAT ON THIS 28TH DAY OF OCTOBER, 2025, I HAVE SERVED A TRUE COPY OF THE AMENDED MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) ON THE FOLLOWING PERSONS VIA UNITED STATES MAIL, POSTAGE PREPAID, AND ADDRESSED AS FOLLOWS:

T. CRUISE MITCHELL, ESQUIRE
OFFICE OF THE ATTORNEY GENERAL
PCR-DIVISION-3RD CIRCUIT
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

RESPECTFULLY SUBMITTED

EUGENE D. GREEN, #275500
PRO SE

2025 OCT 31 PM 12:22
Shanita Brangman, CLK-Clarendon SC

THIS 22 DAY OF Oct, 2025.

D. Chambers

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: Sept 3, 2034.

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

EUGENE D. GREEN, #275500,
APPLICANT,

V.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE No.: 2020-CP-14-0075

AMENDED MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULE 59(e)

COMES NOW, THE APPLICANT, EUGENE GREEN, PROCEEDING PRO SE, PURSUANT TO RULE 59(e), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, RESPECTFULLY MOVING THIS HONORABLE COURT TO ALTER OR AMEND THE FINAL ORDER OF DISMISSAL SIGNED ON SEPTEMBER 19, 2025, AND RECEIVED BY APPLICANT ON OCTOBER 7, 2025. THIS AMENDED MOTION SPECIFICALLY SUPPLEMENTS THE ORIGINAL GROUNDS FOR RELIEF AND REQUESTS THE COURT TO VACATE THE FINAL ORDER OF DISMISSAL AND ISSUE A NEW ORDER ADDRESSING ALL MATERIAL CLAIMS, SPECIFICALLY THE CLAIM OF PROSECUTORIAL MISCONDUCT, AND/OR TO CONDUCT THE REQUIRED EVIDENTIARY HEARING.

GROUND FOR RELIEF

APPLICANT SEEKS AMENDMENT OF THE COURT'S FINAL ORDER ON THE FOLLOWING GROUNDS:

1. THE COURT FAILED TO ADDRESS ALLEGATIONS OF PROSECUTORIAL MISCONDUCT

APPLICANT SPECIFICALLY RAISED, WITHIN HIS PCR PLEADINGS AND SUPPORTING AFFIDAVITS, THAT THE SOLICITOR ENGAGED IN PROSECUTORIAL MISCONDUCT BY:

- KNOWINGLY PRESENTING OR FAILING TO CORRECT FALSE TESTIMONY FROM THE STATE'S KEY WITNESS,

* SUPPRESSING OR WITHHOLDING MATERIAL EXCULPATORY EVIDENCE FAVORABLE TO THE DEFENSE, AND

* ENGAGING IN CONDUCT THAT RESULTED IN A FUNDAMENTALLY UNFAIR TRIAL IN VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 119, 410 L.Ed.2d 215

THE COURT'S FINAL ORDER, HOWEVER, FAILS TO MAKE ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW REGARDING THESE ALLEGATIONS, AS REQUIRED BY S.C. CODE ANN. § 17-27-80 AND RULE 52(c), SCRCP.

FAILURE TO ADDRESS MATERIAL CLAIMS RAISED IN THE PCR RECORD CONSTITUTES ERROR ON THE FACE OF THE ORDER, WARRANTING RECONSIDERATION UNDER RULE 59(e). SEE PRUITT V. STATE, 310 S.C. 254, 423 S.E.2d 127 (1992).

2. THE COURT ERRED IN FAILING TO CONDUCT AN EVIDENTIARY HEARING

APPLICANT FURTHER ASSERTS THAT THE COURT'S DISMISSAL WITHOUT AN EVIDENTIARY HEARING WAS IMPROPER GIVEN THE NEWLY DISCOVERED EVIDENCE AND WITNESS RECANTATIONS PRESENTED.

UNDER RULE 71.1(c), SCRCP, AND ESTABLISHED PRECEDENT (CAPROOD V. STATE, 338 S.C. 103, 525 S.E.2d 514 (2000)), WHEN MATERIAL ISSUES OF FACT ARE IN DISPUTE—PARTICULARLY WHERE A WITNESS'S CREDIBILITY IS CENTRAL TO THE CLAIM—AN EVIDENTIARY HEARING IS REQUIRED.

APPLICANT PRESENTED SWORN AFFIDAVITS AND NEW EVIDENCE CHALLENGING THE INTEGRITY OF THE ORIGINAL CONVICTION, INCLUDING RECANTATION TESTIMONY AND CORROBORATING STATEMENTS. THE COURT'S SUMMARY DISMISSAL WITHOUT FACTUAL DEVELOPMENT OR LIVE TESTIMONY CONSTITUTES AN ABUSE OF DISCRETION AND A DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE 1, § 3 OF THE SOUTH CAROLINA CONSTITUTION.

3. MANIFEST ERROR AND INJUSTICE

THE FAILURE TO ADDRESS THE CLAIMS OF PROSECUTORIAL MISCONDUCT AND TO HOLD AN EVIDENTIARY HEARING AMOUNTS TO MANIFEST ERROR OF LAW AND FACT, RESULTING IN A MISCARRIAGE OF JUSTICE.

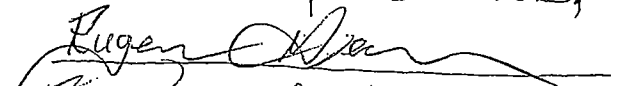
THE OMISSION OF THESE DETERMINATIONS PREVENTS MEANINGFUL APPELLATE REVIEW AND LEAVES UNRESOLVED FACTUAL DISPUTES THAT GO DIRECTLY TO THE VALIDITY OF APPLICANT'S CONVICTION.

PRAYER FOR RELIEF

WHEREFORE, APPLICANT RESPECTFULLY PRAYS THAT THIS HONORABLE COURT:

1. GRANT THIS MOTION TO AMEND UNDER RULE 59(c), SCRCP;
2. AMEND OR VACATE ITS PRIOR FINAL ORDER OF DISMISSAL;
3. CONDUCT AN EVIDENTIARY HEARING ON THE ISSUES OF PROSECUTORIAL MISCONDUCT, NEWLY DISCOVERED EVIDENCE, AND WITNESS RECANTATION; AND
4. GRANT SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

RESPECTFULLY SUBMITTED,


EUGENE D. GREEN, #275500

KERSHAW CORRECTIONAL INSTITUTIONAL
4848 GOLDMINE HWY. (MA-A-04)
KERSHAW, SOUTH CAROLINA 29067
(PRO SE)