STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Greenville County
Honorable Grace G. Knie, Circuit Court Judge
Appellate Case No.: 2024-000567

The State, Respondent,

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SC Court of Appeals

v.

In re Denardis James Kilgo, Appellant.

SUPPLEMENTAL BRIEF

Denardis J. Kilgo
SCDC# 359897
Lieber Corr. Inst.
Post Office Box 205
Ridgeville, SC 29472
Ex Parte

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QUESTIONS PRESENTED

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STATEMENT OF THE CASE

On March 28, 2024 Petitioner Denardis J. Kilgo, was convicted of murder and kidnap and was sentenced to serve a term of Thirty (30) years ran concurrent to a Life Imprisonment. On direct appeal, his appeal is pending, filed within ten (10) calendar days, before this Honor-able Court is timely file upon the Clerk of This Court.

The Appellate Court of Record, Gary H. Johnson, had Petitioner's case file and trial transcript with the evidence for eleven (11) months before submitting the initial brief of Appellant upon the South Carolina Court of Appeals.

The distorting effects of hindsight of Appellate Counsel of Record, his performance failure to reconstruct the circumstances of Counsels of Record challenged conducts inactions and omissions at trial upon evaluation, and the conduct from Appellate Counsel's perspective at the time Counsels had the set of facts before him denied Petitioner fair presentation of federal issues that is subject to forfeiture, waiver, and default by not presenting such issues properly before this Court.

Therefore, this Supplemental brief filing ex parte its in necessity to raise issues through a showing of cause and actual prejudice or a fundamental miscarriage of justice of structural errors.

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I. Whether Petitioner was afforded fair presentation by direct review of the conviction that have been deemed forfeited, waived, or defaulted on independent and adequate State procedural grounds?

The Petitioner appears ex parte on the basis of exhaustion principles of State remedies made available or that no adequate State remedies are available or effective to protect the Petitioner's rights afforded by direct review of conviction of fair presentation to federal issues Appellate Counsel of Record Gary H. Johnson and Elizabeth Blackhell has not preserved or Counsel Aaron Debruin presented properly before the trial Court and Court of Appeals. See 28 U.S.C.A. § 2254.

Thus, Petitioner's federal issues are subject to default on State procedural grounds that is independent if it relies on State law, rather than federal law, as the basis for this decision.

ARGUMENT

Petitioner's trial Counsel of record Aaron De bruin, moved before the 13th, Thirteenth Judicial Circuit Court of General Sessions upon grounds raising (1) Motion To Sequester, (2) Evidentiary motion of suppression and destruction of evidence, (3) Jackson v. Denno, material witness suppression of Statements Motion, (4) Third-party guilt Motion, (5) Motion to Suppress prior bad acts of defendant, and the Appellate Counsel of Record Gary H. Johnson, failure

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to preserve Petitioner's Federal Issues. The Appellate Counsel decided without informed consent raised three (3) trial court errors and not preserving Petitioner's State and Federal Rights deprived him of a full appellate review and fairness.

LAW AND ANALYSIS

"A State procedural ground is independent if it relies on State law, rather than federal law, as the basis for the decision." English v. Cody, 146 F. 3d 1257, 1259 (10th Cir. 1998). "A State procedural ground is adequate 'if it was firmly established and regularly followed.'" Beard v. Kindler, 558 U.S. 53, 60 (2009) (internal quotation marks omitted); see also James v. Kentucky, 466 U.S. 341, 348, 104 S.Ct. 1830, 80 L.Ed. 2d 346 (1984).

DISCUSSION

The State of South Carolina has long recognized the law, legislation, and the intent of both the General Assembly and the United States Continental Congress rule of finality and exhaustion principles. See Rule 242(c), SCACR; 28 U.S.C.A. § 1257(a); and 28 U.S.C.A. § 2254(b)(1).

The Petitioner has initiated the legal right upon invoking review on the exhaustion principles that this Honorable Court vested its inherent power by parties seeking direct appellate review within its

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jurisdiction has firmly established and regularly followed issues preservation before the trial court as finality.

The Petitioner informs the Court that on direct appeal, Appellate Counsel of Record has sought three (3) trial Court errors within the trial record, lawyers case files, and evidence to raise before this Court without informed consent. By presentation, Counsel of Record, Knowingly raised grounds upon presentation before this Court without preserving substantial rights of Petitioner and abandoned Petitioner's claims of actual innocence.

Although there is grounds to raise issues of prejudicial impacts caused by crime scene photographs to incite and inflame petit jurors' emotions, prison informant misleading jurors, and double jeopardy prejudice does not negate Counsel of record during Appellate Review to sand bag Petitioner's claims without a showing of preserving Petitioner's Federal rights.

Counsel of Record, during Appellate Review understands that whatsoever is raised in the initial brief has formulated the law of the review and the limited review is bound by the record before the Court and in this instance will Petitioner claims will be forfeited, waived, and

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defaulted.

The Petitioner directs the Court's Attention to the identifying of Constitutional Rights that of Petitioner have been violated and the failure of Appellate Counsel of Record to presented at the Appellate Court of Appeal. On March 26, 2024, Trial Counsel Aaron Debruhl challenged the State's prosecution evidence that was either suppressed in light of prosecutorial completion of misconduct and destruction of evidence in bad faith to which are acts of spoliation to marshal false testimony or testimonials known to be false.

The Prosecution took steps to mislead the jury upon facts only known to the prosecution prior to trial that the DNA Analysis regarding the Defendant's Kilgo DNA were absent in the interior of a pair of orange and white gloves upon information that of his co-defendant Amanda Scott provided to the prosecution of such gloves were used to clean up the Victim's Carolyn Felicia Jackson's blood.

However, the prosecution possessed and controlled the SLED Laboratory DNA tested results, exculpatory in nature to prove Appellant's non-involvement; but took measured steps to conceal the evidence from the defense. Although testimonials of Co-defendant Amanda Scott and

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Analyst Timothy Nafeiger were profer at trial to implicate Appellant's involvement in the murder of Carolyn Felicia Jackson, the prosecution failure to correct this testimony known to be false provides crucible acts of bad faith in which is as reprehensible as its presentation. See Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70, 2006 WL 1389541.

The prosecution knowingly used false testimony in light of known facts that Appellant's DNA was on the exterior of the orange and white gloves, a(n) item profer as evidence, while Co-defendant Amanda Scott were discovered on the interior of the gloves with the exclusion of any whatsoever DNA of Victim Carolyn Jackson not discovered, but also absent on the gloves altogether. The profer of this evidence was to mislead the jury as it was identified as a(n) exhibit and introduce or submitted as evidence to implicate Appellant's involvement. See Trial Transcript pages 146-147; see also Trial Transcript pages 318-319.

The significance of these errors were not cured by the trial court whereas the jury instructions was erroneous. For the trial Court jury instruction, to use testimonial of experts as they see fit after knowingly being made aware of the destruction and suppression of evidence.

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while permitting inadmissible of evidence show a prejudicial impact affecting Appellant's substantial rights and unfairness. See Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 98 A.L.R. 406, It is a requirement that cannot be deemed be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Herein this Case the prosecuting officers were acting on behalf of South Carolina when the State prosecution gave notice of indictment had a hearing on the evidentiary issues, but stopped to correct known perjured testimonials constituted State action within the purview of the Fourteenth Amendment show a denial of due process in the circumstances set forth in this petition. This argument does not fall within the premise of Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582, 59 L.Ed. 969; Moore v. Dempsey, 261 U.S. 86, 90, 43 S.Ct. 265, 67 L.Ed. 543.

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The Appellant aver that upon the State courts, equally rests the obligation to guard and enforce every right secured by South Carolina Constitution Article I § 3 and the Fourteenth Amendment, United States Constitution.

The Appellant aver that thirty-six (36) latent finger prints was collected and ten (10) was discarded and destroyed without the defense having had the opportunity to examine, to authenticate the State's evidence, and prepare for his defense and preparation for cross-examination. The defense could not test nor obtain comparable evidence to link Co-defendant Amanda Scott with "Ld" and Jason to establish that there was a link between Amanda Scott and Felicia Jackson that was missing. California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984).

However, a Napue v. Illinois issue exist and because of such false testimony had a real effect on the outcome of the trial and the reasonable likelihood could have affected the judgment of the jury. id., 360 U.S. at 269, 79 S.Ct. 1173; citing Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972).

Nevertheless, the prosecution willingness curtailed the trial Court's instructions to not use Appellant's prior bad acts of Appellant's drug abuse or addiction and assaultive behavior without substantive evidence

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of any whatsoever existence of an assault explains that the materiality were the beneficiary to prove beyond a reasonable doubt that Appellant acts contributed to the verdict obtained. See Glossip v. Oklahoma, 604 U.S. 226, 145 S.Ct. 612, 221 L.Ed. 2d 90. Trial Counsel knew the risks and dangers of the prosecution evidence when not balanced by a just weight would have tip the scales creating undue prejudice and unfairness. The likelihood of raising objections and continuing objections by trial counsel failed to move to strike answers and move for a mistrial, where the scope of these objections raised and sustained throughout the entire trial provided a(n) available remedy, yet counsel of record did not pursue such courses of actions nor did the Appellate Counsel of Record submit a Rule 29 Motion for new trial. Rule 29(a), SCR Crim P.

The Appellant aver that the exhaustion requirement has now been satisfied and because the federal claims of Actual Innocence, Prosecutorial Misconduct upon acts of selective prosecution, police suppression and destruction of exculpatory evidence subjecting Petitioner to be malicious prosecuted, and trial court error for not making curative instructions to the jury due to the entry of Petitioner's prior bad acts of drug abuse and assaults in the petit jurors presence and hearing is clear structural errors.

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Howbeit, the Appellate Counsel of Record Gary H. Johnson, performance deserves a fair assessment in the Court of error, that requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct and to evaluate the conduct from counsel's perspective at the time. See Strickland v. Washington, 466 U.S. 668 (1984), 82-1554, 104 S.Ct. 2052, 80 L.Ed. 2d 674.

More recent line of authority indicates that to affect a "substantial right", a ruling must significantly impair the defense of an action, strike at the root of a cause of action or defense, or effectively prevent a party from presenting his case. Mid-State Distribs v. Century Importers, 310 S.C. 330, 426 S.E.2d 777 (1993).

Such decisions have allowed appeal from a order compelling discovery of documents in an action that concerned the substantive issue have allowed appeal from a pre-trial order suppressing key evidence in a criminal prosecution, State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985).

The Appellant faced testimonials concerning the substantive issue about the prosecution on cross examination, place before the Appellant inadmissible evidence and ask him a question which would necessarily require Appellant to either testify truthfully or to perjure himself. The Appellate Counsel saw the formulation of the discovery that became lawand he

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failed to recognized not the impeachment of perjurious testimony but the cognizable claim that entailed it as solicitation of perjury through the introduction of inadmissible evidence that made the prosecutor a(n) architect.

Had the Appellate Counsel investigated into the set of facts, he would have drawn the conclusion whether trial counsel failed to investigate and present evidence which could have mitigated the sentence weighing the prejudicial impact or concluded Counsel fail to impeach Co-defendant Amanda Scott and Timothy Nafeiger with available and known evidence using the prejudicial impact to strike answers and move for mistrial.

After outlining standards for judging whether appellate counsel fulfilled the duty owed to Petitioner to preserve his constitutional rights safeguarded by the United States Fourteenth Amendment and S.C. Const. Art. I § 3, and whether counsel's errors were sufficiently prejudicial to justify the hearing of these merits for cause and a demonstration of prejudice; See Murray v. Carrier, 477 U.S. 478, 496, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986), cannot be taken lightly given the factors of experts conflicting testimonials.

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The SLED Analysis and the Greenville County Laboratory Analysis contrast Appellant's DNA from Co-defendant's Amanda Scott DNA, seized and collected evidence items 16A and 16C, DA-E23a-DA-E23C; DA-E28, Crime Scene Investigative Report, that conflicted with the State's prosecution evidence and Scott's testimonial.

Amanda Scott admitted to prosecutors and in open court at Appellant's trial that she put the tarp in the trunk, trial transcript pages 116 Ln 14-17; pg. 117 Ln 5-22, to explain the forensic analysis extraction of latent print(s) on the Victim's trunk handle submitted by Responding Officer Darbi Harriman Jackson; trial transcipt pages 265 Ln 6-14; pg. 272 Ln 5-15; pg. 275 Ln 8-12. Appellant learned for the first time at his trial appearance that Expert Darbi Harriman-Jackson, tested the trunk for DNA and there were positive hits through CODIS, but this evidence was destroyed.

The Appellant learned at trial that Expert Chris Gary, Analyst admitted to be in possession and control of collected finger prints to perform analysis, Tr. Trans. pg. 286 Ln 25; p287 Ln 1-6, Ln 7-12, Ln 21-25; and pg. 288 Ln 1-4, and throwing away finger prints which were evidence discarded and destroyed without a Court order creating a Tombretta Issue for the defense. See California vs Tombretta, 467 U.S. 479, 104 S.Ct. 2528, 81 L.E.2d 413.

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(1984). The defense could not obtain other comparable evidence that was not preserved to be examined nor field tested to prepare for a defense.

The Appellant further learned that Lead Investigator Alvin Tracy King, had other exculpatory evidence within his possession and control, Trial Transcript pg(s). 396 Ln 10-16, Ln 17, Ln 22-24; pg. 404 Ln 8-23, only to destroy every evidence the police had to implicate Amanda Scott as the real killer while destroying key evidence of the potential link between Scott, LA, and Jason.

Overall, the collection of evidence by the prosecution were either excluded at trial of Appellant and not used or destroyed created a Barbee Issue that was ruled one year after Brady, see Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842. For the defense of Appellant was impacted by police suppression and destruction of exculpatory evidence that could have exculpate Appellant that ultimately affected the jury's verdict as unreliable.

The prosecution's affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th Century strictures against misrepresentation and is of course most prominently associated with this Court's decision in Brady v. Maryland, 373 U.S. 83, (1963), see, Kyles v. Whitely, 514 U.S. 419, relying on Mooney v. Holohan, 294 U.S. 103, 112 (1935), and Pyle v. Kansas, 317 U.S. 213, 215-216, (1942).

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Brady held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 87; see Moore v. Illinois, 403 U.S. 786, 794-795 [*]433 (1972).

In United States v. Agurs, 427 U.S. 97 (1976), however, it became clear that a defendant's failure to request favorable evidence did not leave the Government free of all obligation. There, the Court distinguished three situations in which a Brady Claim might arise: first (1st), where previously undisclosed evidence revealed that the prosecution introduced trial testimony that it knew or should have known was perjured, 427 U.S., at 103-104; Second (2nd), where the Government failed to accede to a defense request for disclosure of some specific kind of exculpatory evidence, id., at 104-107, and third (3), where the Government failed to volunteer exculpatory evidence never requested or requested only in a general way. The Court found a duty on the part of the Government even in this last situation, though only when suppression of the evidence would be "of sufficient significance to result in the denial of the defendant's right to a fair trial.

In third prominent case on the way to current Brady law, United States v. Bagley, 473 U.S. 667 (1985), the Court disavowed any difference

between exculpatory and impeachment evidence for Brady purposes, and it abandoned the distinction between the second and third Agurs circumstances, i.e., the "specific request" and "general-or no-request" situations. Bagley held that regardless of request, favorable evidence is material, and constitutional error results from its suppression by the Government, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *434, 473 U.S., at 682 (opinion of Blackmun, J. id., at 685 (White, J. concurring in part and concurring judgment).

Four aspects of materiality under Bagley bear emphasis. Although the constitutional duty is triggered by the potential impact of favorable but undisclosed evidence, a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal whether based on the presence of reasonable doubt or acceptance of an explanation for the crime that does not inculpate the defendant. Id., at 682, opinion of Blackmun, J.; adopting formulation announced in Strickland v. Washington, 466 U.S. 668, 694 (1984); Bagley, supra, at 685, White J., concurring in part and concurring in judgment (same); see 473 U.S., at 680 (opinion of Blackmun, J.).

Agurs "rejected a standard that would require the defendant to demonstrate that the evidence if disclosed, probably would have resulted in acquittal"; cf. Strickland, supra, at 693, "We believe that a defendant need not show that counsels deficient conduct more likely than not altered the outcome in the case." Nix v. Whiteside, 475 U.S. 157, 175 (1986) "A defendant need not establish that the attorney's deficient performance more likely than not altered the outcome in order to establish prejudice under Strickland."

Bagley's touchstone of materiality is a "reasonable probability" of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." Bagley, 473 U.S., at 678.

The second aspect of Bagley materiality bearing emphasis here is that it is not a sufficiency of evidence test. A defendant need not demonstrate that after discounting the inculpatory *435 evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. One does not show a Brady violation by demonstrating that some of the

inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

In this instance, the latent finger-prints analysis placed Amanda Scott finger prints on the trunk of victim's car excluding Appellant. See DH-E5; Crime Scene Investigation Report. Amanda Scott admitted at being at the two (2) grave sites while implicating Appellant when Appellant was in another location at the time of Amanda Scott's version of events. The exclusion of the evidence and destruction put the whole case in such a different light as to undermine confidence in the verdict due to it was favorable evidence to the defense and the Appellant could not obtain comparable evidence to the defense and the Appellant could not obtain comparable evidence irrespective of bad faith. See also, Miller v. Pate, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed. 2d 690.

Third, the Appellant ask this Court to take judicial notice that once this Honorable Court review contrary to the assumption made by the trial court applying Bagley has found constitutional error there is no need for further harmless-error review. Assuming, arguendo that a harmless-error enquiry were to apply, a Bagley error could not be treated as harmless, since "a reasonable probability that, had the evidence been disclosed to the defense the result of the proceeding would have been different," 473 U.S., at 682, opinion of Blackmun, J.; See also

Kyle v. Whitely, at 685, White J., concurring in part and concurring in judgment, necessity entails the conclusion that the suppression must have had "substantial and injurious effect or influence in determining the jury's verdict."

The Appellant contends that the gloves entered as evidence was more likely than a reasonable probability to identify Appellant used to clean up the victim's blood when given the account from forensics that the glove described by Co-defendant was absent DNA Analysis who swore an oath that it was used to clean up blood. This was substantial and had a injurious effect or influence in determining the jury's verdict because how could the defense "unring the bell" to inadmissible evidence that was not a part of a crime he had no involvement in.

The forensic evidence excluded Petitioner/Appellant and the prosecution vouched for Amanda Scott during closing arguments that "Amanda Scott lied at first, but told the truth later." Trial Transcript pg. 440, Ln 1-10. This vouching was inconsistent with the limited instruction on cross-examination due to at the time of Amanda Scott testimonial before the trial court, the State had already given Amanda Scott a deal and the cross-examination was not discoverable in scope of the current charges of accessory after the fact of murder to the defense. The structural error removed the defense third-party guilt and alibi of the Appellant to be probed, whereby, the prosecution suppressed the alibi to subvert Appellant to put forth his testimonial after the destruction of Amanda Scott's text messages that were held as potential exculpatory evidence in which was favorable to Appellant.

In Accordance to Brecht v. Abrahamson, 507 U.S. 619, 623 (1993), quoting Kotteakos v. United States, 328 U.S. 750, 776 (1946). This case amply confirmed by the development of the respective governing standards. Although *436 Chapman v. California, 386 U.S. 18, 24 (1967), held that a conviction tainted by constitutional error must be set aside unless the error complained of "was harmless beyond a reasonable doubt," we held in Brecht that the standard of harmlessness generally to be applied in habeas cases is the Kotteakos formulation previously applicable only in reviewing nonconstitutional errors on direct appeal. Agurs, however, had previously rejected Kotteakos as the standard governing constitutional disclosure claims, reasoning that "the constitutional standard of materiality must impose a higher burden on the defendant." Agurs, 427 U.S., at 112.

The fourth and final aspect of Bagley materiality to be stressed here is its definition in terms of suppressed evidence considered collectively, not item by item. It must also be understood as imposing a corresponding burden. The prosecution is assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of "reasonable probability" is reached. The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation whether, that is, a failure to disclose is in good faith *438 or bad faith, see Brady, 373 U.S., at 87, the prosecution's

responsibility for failing to disclose known favorable evidence rising to a material level of importance is inescapable.

The rule found in Murray v. Carrier, or known as the fundamental miscarriage of justice exception, is grounded in the 'equitable discretion' to see that federal constitutional errors do not result in the incarceration of innocent persons. Carrier, 106 S.Ct. 2639.

The Appellant ask the Court to consider how he was deprive of liberty not only by a free standing of actual innocence to allow Petitioner to bypass the procedural bar under the doctrine of hybrid-representation but also to expound on the facts of receiving a fair and efficient administration of justice. To demonstrates by a showing of prejudice in the context of appellate representations a petitioner must establish a "reasonable probability" he would have prevailed on his appeal, "but for his counsel's unreasonable failure to raise an issue." Smith v. Robbins, 528 U.S. 259, 285-286, 120 S.Ct. 786, 145 L.Ed. 756 (2000); United States v. Rangel, 781 F.3d 736 (8th Cir. 2015). The test for prejudice under Strickland analysis is not whether petitioner would likely prevail upon remand, but whether the Court would have likely reversed and ordered a remand had the issue been raised on direct appeal. ibid.

The Appellant has satisfy this prerequisite but explains further several factors that the Court needs to assess to determine herein and below:

(1) Appellate Counsel knew trial Counsel Aaron Debruin and Elizabeth Blackhall had requested for a directed verdict pursuant to Rule 19, SCRCrimP., in light of the States burden of proof beyond a reasonable doubt standard of guilt that did not shifted the burden of proof to trigger or cause Appellant to defend his actual innocence because the non-existence of evidence at trial of Appellant's guilt and the existence excluded at trial were grounds for a directed verdict. See Trial Transcript page 413 Ln 18-19, & Ln 22-25.

(2) Appellate Counsel also knew that the State's Witness Timothy Natziger testified he never received the CODIS notification from Analyst Therese Thomas, tr. tran. pp. 318, 319, and this testimonial proffer was false and the fabrication did prejudicially affected defendant's substantial right due to the prosecution was indicative of prosecutorial vindictiveness. The defendant's constitutional rights were violated when the trial Court abused its discretion to allow proffer of defendant's DNA while the prosecution assisted the Court in making reversible error of inadmissible gloves not used in the crime to cast guilt of accessory to or murderer.

(3) Appellate Counsel, furthermore, knew of trial Counsel's renewal of the trial attorneys defense objections and continuing objections throughout trial to preserved the record, trial transcript page 423 Ln 20-25, demonstrates that appellate counsel knowingly forfeited Appellant's substantial rights to appeal upon having a full review in fairness due to not raising issues.

(4) Appellate Counsel had actual knowledge of Appellant issues that were Constitutional errors and failed to present it - this is unsatisfactory because the amount of evidence before the Appellate Counsel shows he was unwilling to present and preserve Appellant's Constitutional Rights.

The issues presented informs the Court that trial Counsel was ineffective not striking irrelevant evidence that were presented to the trial Court and failure to request a tailored jury instruction were basis for grounds on direct appeal to consider not harmless and determined whether Appellant suffered real harm or prejudicial impact.

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II. Whether Petitioner was selective prosecuted for Felony murder and kidnap unfairly due to the suppression and destruction of material exculpatory evidence that ultimately denied Petitioner a fair trial?

The Appellant Denardo Kilgo moves before this Court by a showing of Clear and convincing evidence or information establishing that he is the criminal defendant in the prosecutor's jurisdiction was convicted of murder and kidnap that he did not commit wherein this Court must enforce the prosecutor, who shall make reasonable efforts to remedy the Conviction, to provide a(n) adequate remedy.

ARGUMENT

The State prosecution Courtney Landsverk, Assistant Solicitor, Caroline Davis, Assistant Solicitor, Alvin Tracy King, Former Lead Investigator, of Greenville Sheriff's Office, and Linuel Blake Richards, Former Deputy of Greenville Sheriff's Office, possessed and controlled evidence to marshal facts within their knowledge would not lead a reasonable person to believe Petitioner was guilty of murder and kidnap of Victim Carolyn Felicia Jackson.

LAW AND ANALYSIS

Issue preservation requires that a(n) issue be raised to and ruled upon by the trial judge, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. See Malloy v. Thompson, 762 S.E. 2d 690 (S.C. 2014); Herron v. Century BMW, 719 S.E. 2d 640.

The appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution. United v. Agurs, 427 U.S. at 104, 112-113, 96 S.Ct. at 2397, 2401-2402.

DISCUSSION

Former Greenville Sheriff's Office Deputies Alvin Tracy Kings, and Linuel Blake Richards destroyed exculpatory evidence within this high alpha criminal case that aided their demise due to abuse of process and perversion of process that ultimately denied Petitioner of fairness and a conviction of a life sentence illegally.

Malicious Prosecution is also abuse of process and the perversion of process for an unlawfully warranted end. 72 CJS. Process, §119 et seq. The prosecution knew the difficulty of prosecuting Appellant and developed two (2) tactical illegal maneuvers by weaponizing a known jailhouse informant of information only known to the prosecution to encounter Appellant to elicit facts known to the prosecution and unknown to Appellant, and giving Co-defendant Amanda Scott a offer to a separate charge outside the scope of murder and kidnap to accessory after the fact after knowing that Co-defendant participated in murder and kidnap.

How can a criminal defendant be prosecuted on known evidence to be false filed by police investigators who failed to investigate plausible leads and destroyed evidence to selective prosecute such defendant? When this happens, does the Court not act to deter prosecutorial misconduct?

Lead Investigator Alvin Tracy King was given testimonial by Appellant under real fear of Lorianne "LA" Scopa and Jason because of Co-defendant Amanda Scott and Victim Carolyn Jackson used LA and Jason were defrauding from Scopa and Jason by crediting drugs with no intentions to pay it back. The debt totaled $30,000.00, Thirty-thousand dollars, due to fraudulent check and credit fraud schemes between parties.

Co-defendant Amanda Scott learned of the affair of victim and Appellant and started stealing from Carolyn Jackson to provoke a confrontation. Carolyn Jackson had confided in Appellant about the danger Co-defendant Scott and Victim Jackson had done using Scopa and Jason while at the kitchen sink when helping washing dishes after the grocery store shopping from Wal-Mart three (3) weeks prior to her disappearance.

Nonetheless, during trial, Co-defendant testified and admitted Felicia and Co-defendant Amanda Scott had put Defendant's life in danger, Tr. Transcript page 110 Ln 11-22, but the Lead Investigator and the State's prosecution rested in the assumption that Appellant and Co-defendant was

at odds for drug induced ingestion, pg. 107 Ln 17-19, against Carolyn Felicia Jackson, and bench warrants as a fugitive of the law, pg. 111 Ln 18-24, just days before Ms. Jackson was killed.

The prosecution was deliberate and intentional doing wrongful acts by destroying evidence that were potential evidence to exculpate Appellant. See Trial Transcript pages 399 Ln 10-25; pg. 400 Ln 1-14; pg 401 Ln 3-25; pg. 402 Ln 23-25; pg. 403 Ln 6-9; pg. 405 Ln 5-25; pg 406 Ln 1-13; pg. 408 Ln 13-25; pg. 409 Ln 1-25; pg. 410 Ln 21-23; pg. 412 Ln 13-22.

CONCLUSION

The Petitioner aver these are serious accounts from cell of mere suspicion to suspected being a murderer who have been not once identified other than by Co-defendant Scott. The prosecution knew this and attempted to house a known jailhouse informant around Petitioner/Appellant, to elicit facts known to the prosecution and unknown to Appellant. See Simmons v. State, 416 S.C. 584, 788 S.E. 2d 220.

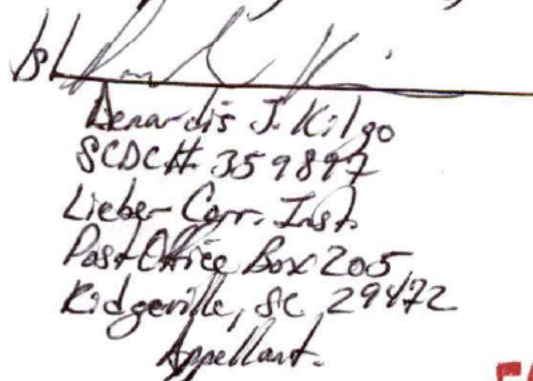
Herein this case the police which is a part of the prosecution, Barbee v. Warden, Maryland Penitentiary, 331 F. 2d 842, acted in bad faith to suppress DNA Laboratory Reports of collected evidence of gloves described as red and white to clean up blood by Co-defendant Scott, Tr. Trans. pg. 146 Ln 13-14, & Ln 24-25, State's Exhibit 14 and the prosecution misled the jury

to believe Petitioner used orange and white gloves, pg. 270 Ln. 13-19, State's Exhibit 34, created a California v. Trombetta, issue. id., 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984). Nonetheless, Victim Carolyn F. Jackson blood was excluded as conclusive, a positive match, nor was any blood d.n.a. tested in scope of Ms. Jackson founder establish on the pair of gloves admitted into evidence in this case.

The Prosecution selective Prosecute Appellant denying Appellant a fair trial and depriving the petit jurors of relevant facts to prevent jurors from being impartial, all of which affected the outcome of trial.

WHEREUPON, the above legal premise the Appellant Denardis J. Kilgo respectfully ask this Honorable Court to consider the merits before this Court and adjudicate the legal matters promptly.

Done This 10 Day of April, 2026.
Respectfully Submitted,



Denardis J. Kilgo
SCDC# 359897
Lieber Corr. Inst.
Post Office Box 205
Ridgeville, SC 29472
Appellant.

FOR LEGAL USE ONLY

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Greenville County
Honorable Grace G. Knie, Circuit Court Judge
Appellate Case No.: 2024-000567

The State, Respondent,

RECEIVED
APR 29 2026
SC Court of Appeals

v.

In re Denardis Jamont Kilgo, Appellant.

SUPPLEMENTAL BRIEF
PROOF OF SERVICE

I, Denardis J. Kilgo, do hereby, certify that on this 10 day of April, 2024, served the foregoing instrument upon Gary H. Johnson, Attorney for Appellant and The Clerk of this Court addressed to Gary H. Johnson Esq. at S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211-1589, and Clerk Jenny A. Kitchings, at S.C. Court of Appeals, Office of the Clerk, Post Office Box 11629, Columbia, SC 29211, by depositing a true copy of the same in the internal mailing system at Lieber, Correctional Institution

Denardis J. Kilgo
SCDC# 359897
Corr. Inst.
, SC

FOR LEGAL USE ONLY

Denardis Kilgo
SCDC # 358897
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

April 10, 2026

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Office of the Clerk
Post Office Box 11629
Columbia, SC 29211

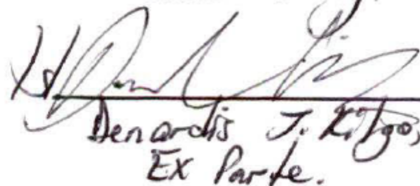
RECEIVED
APR 29 2026
SC Court of Appeals

Re: The State v. Denardis J. Kilgo
Appellate Case No.: 2024-000567

Dear Madam Clerk:

ENCLOSED PLEASE WILL YOU FIND One (1) EX PARTE Communication, Supplemental Brief. Would this Office file this brief within the Court of Appeals due to a conflict of interest and reasonable grounds to protect my individual constitutional rights. I thank you in advance and again for your cooperation and service.

Yours Truly,



Denardis J. Kilgo,
Ex Parte.

FOR LEGAL USE ONLY

Denardis J. Kilgo, # 359897
LRU-Max A # 10V
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

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SC Court of Appeals

Jenny A. Kitchings, Clerk
S.C. Court of Appeals
Office of the Clerk
Post Office Box 11629
Columbia, SC 29211

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APR 27 2026
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