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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Petition for Writ of Certiorari to the Court of Common Pleas
Appeal from Greenville County
Honorable B. Alex Hyman, Post-Conviction Relief Judge

Appellate Case No. 2025-002475

BRAXTON L. HARE, #373172,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE ON PETITION FOR CERTIORARI

Whether Hare's case should be remanded to the post-conviction relief court for the limited purpose of issuing a supplemental order where the post-conviction relief court failed to make findings of fact and conclusions of law addressing each issue presented pursuant to S.C. Code Ann. § 17-27-80 (2014) and in accordance with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and its progeny.

STATEMENT OF THE CASE

Respondent Braxton L. Hare (Hare) was indicted at the May 2016 term of the Greenville County Grand Jury for attempted murder (2015-GS-23-9117), the possession of a weapon during the commission of a violent crime (same), and the failure to stop for a blue light (2015-GS-23-9118). Hare was represented by Ernest Hamilton, Esquire (trial counsel). Thirteenth Circuit Assistant Solicitors L. Mark Moyer and Brann W. Fowler prosecuted the case.

On July 12, 2017, through July 13, 2017, Hare proceeded to a jury trial with the Honorable Edward W. Miller presiding. At the conclusion of the trial, the jury found Hare guilty of the failure to stop for a blue light, not guilty of attempted murder, and guilty of assault and battery of a high and aggravated nature, the lesser-included offense of attempted murder. Judge Miller sentenced Hare to imprisonment for twenty years for assault and battery of a high and aggravated nature and for three years for the failure to stop for a blue light. On July 14, 2017, the State dismissed the charge for the possession of a weapon during the commission of a violent crime due to prosecutorial discretion.

Trial counsel filed a timely notice of appeal. Appellate Defenders Robert M. Pachak and Taylor Davis Gilliam, both of the South Carolina Commission on Indigent Defense, represented Hare on appeal. Pachak filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on Hare's behalf and moved to be relieved as counsel. Pachak argued therein that the trial court erred in failing to instruct the jury that the specific intent to kill is an element of attempted murder. Hare did not file a pro se response. The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. State v. Hare, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019) (per curiam). The Remittitur was returned on February 26, 2019.

Hare filed his application for post-conviction relief on February 5, 2020 (2020-CP-23-00737). He alleged the following grounds for relief in his application:

1. Trial counsel was constitutionally ineffective for:
 - a. Failing to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial;
 - b. Failing to move for a hearing before trial, pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), in order to determine whether Applicant was competent to stand trial;
 - c. Failing to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense;
 - d. Failing to properly argue and preserve for appellate review the issue of requesting a jury instruction on the specific intent to kill;
 - e. Failing to object and preserve for appellate review the trial court's jury instruction regarding intent where the charged offense required a jury charge on the specific intent to kill;
 - f. Failing to request a jury instruction on first-degree assault and battery, the lesser-included offense of attempted murder; and
 - g. Failing to present all reasonable and necessary evidence during the sentencing phase of trial in mitigation; and
2. Appellate counsel was constitutionally ineffective for:
 - a. Failing to file a merits brief and a petition for rehearing arguing the trial court erred in not instructing the jury that the specific intent to kill is an element of attempted murder, if trial counsel preserved the issue for appellate review.

The State made its return and motion for a more definite statement on May 18, 2020. On March 15, 2023, Hare, through counsel, filed an amended application for post-conviction relief alleging the following grounds:

1. Trial counsel was constitutionally ineffective for:
 - a. Trial Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial prior to his trial.
 - b. Trial Counsel failed to move for a Blair hearing prior to trial to determine Applicant's competency to stand trial. See State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981); Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.

- c. Trial Counsel failed to properly prepare for trial, meet with Applicant, and provide adequate/accurate advice to Applicant prior to trial.
- d. Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
- e. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See Wiggins v. Smith, 539 U.S. 510 (2003); Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008); McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
- f. Trial Counsel failed to properly move for and preserve for appellate the severance of Applicant's Failure to Stop for Blue Light charge.
- g. Trial Counsel failed to submit to any voir dire questions to elicit bias from the venire to ensure Applicant received a fair and impartial jury.
- h. Trial Counsel failed to object to the Trial Court's decision to limit the number of peremptory strikes Trial Counsel had during jury selection.
- i. Trial Court failed to properly move for and preserve for appellate review the suppression of pre-trial identification procedures for Applicant.
- j. Trial Counsel improperly commented during his opening statement that Applicant and his Co-Defendant was doing nothing good (prejudicial attack on Applicant's character).
- k. Trial Counsel improperly commented during his opening statement that Applicant was going to testify despite that he had a right not to testify or present any evidence. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges.").
- l. Trial Counsel improperly conceded Applicant's guilt on the failure to stop for a blue light charge during opening statement.
- m. Trial Counsel failed to move for a continuance and recusal the Trial Counsel who took the Co-Defendant's plea after jury selection and sentencing was deferred until after the co-defendant's testimony in this trial, and when the Trial Court presented the indictment for attempted murder to the jury prior to Co-Defendant's guilty plea to Assault and

Battery of a High and Aggravated Nature, and the jury being notified that the Co-Defendant had pled guilty during the break.

- n. Trial Counsel failed to properly object and preserve for appellate review the Trial Court's admission of the car door when it was in the possession of the victim's family member and not in the custody of the police (implicating possible discovery (Brady and Rule 5, SCRCrimP) violation and chain of custody issues).
- o. Trial Counsel routinely failed to put bench conferences on the record to preserve the arguments and rulings for appellate review (no explanation or proffer on the record).
- p. Trial Counsel failed to properly challenge the ballistics evidence using supplemental motions of discovery or through adequate cross-examination.
- q. Trial Counsel improperly stipulated to the car chase video recording when there was no proper foundation, and the charge should have been severed prior to trial.
- r. Trial Counsel failed to object to the State's questioning of witness Salter about whether he had ever previously seen Applicant with a gun under Rules 403 and 404(B), SCRE.
- s. Trial Counsel failed to object to Darwin Shaw's testimony regarding the firing of weapons into metal when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area under Rules 701 and 702, SCRE.
- t. Trial Counsel failed to properly impeach the alleged victim on cross-examination when he subsequently tried to admit into evidence a video recorded interview through witness Dave Warner, and Trial Counsel refused his request.
- u. Trial Counsel failed to move for a mistrial, or at a minimum, a curative instruction, after the State elicited irrelevant and unduly prejudicial testimony from Matt Owens regarding two bandanas being inside the bookbag found in Applicant's vehicle. when the Trial Court had previously ruled that the bandanas were not admissible.
- v. Trial Counsel failed to object to Matt Owens's testimony regarding the firing the weapons into metal and distances when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area.
- w. Trial Counsel improperly questioned Applicant on direct examination regarding propensity character evidence about him shoplifting under Rules 401, 403, and 404(b), SCRE.

- x. Trial Counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery that occurred when he was a juvenile under Rules 403 and 404(B), SCRE.
- y. Trial Counsel failed to move for a directed verdict and a new trial after the close of the Defendant's case.
- z. Trial Counsel failed to object to Prosecutor's improper burden-shifting example of reasonable doubt and comparing it to a loan during the State's closing argument in violation of Applicant's Due Process right to a fair trial.
- aa. Trial Counsel failed to and properly preserve for appellate review the Prosecutor's improper comments on inferring malice from use of the deadly weapon.
- bb. Trial Counsel improperly conceded Applicant's guilt to the charge of Assault and Battery of a High and Aggravated Nature during his closing argument.
- cc. Trial Counsel improperly referred to Applicant as a juvenile delinquent in his closing argument (prejudicial propensity character).
- dd. Trial Counsel improperly conceded Applicant's malice to damage the alleged victim's property during closing argument.
- ee. Trial Counsel improperly presented Applicant as a troubled child of mixed race who was not good in school during his closing argument.
- ff. Trial Counsel failed to request and properly argue for a jury instruction on self-defense (under the "any evidence" standard) based on Applicant's testimony that he was acting on appearances. See State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989); Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998).
- gg. Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction ("any evidence" standard).
- hh. Trial Counsel failed to request and properly argue for a jury instruction on acting on appearances for self-defense.
- ii. Trial Counsel failed to request and properly argue for a jury instruction on being lawfully armed in self-defense.
- jj. Trial Counsel failed to request and properly argue for the Logan circumstantial evidence jury instruction.
- kk. Trial Counsel failed to object to and preserve for appellate review the unduly prejudicial inferred malice jury instruction on the use of a deadly weapon.
- ll. Trial Counsel failed to object to and preserve for appellate review the accomplice liability jury instruction.

- mm. Trial Counsel failed to request a jury instruction for Assault and Battery, First Degree, as a lesser-included offenses of Attempted Murder when the Trial Court agreed to charge ABHAN. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”); Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that “labeling counsel's actions as “trial strategy” does not automatically immunize an attorney's performance from sixth amendment challenges.”).
 - nn. Trial Counsel failed to present all reasonable and necessary evidence to the Trial Court during the sentencing phase in mitigation of Applicant's potential sentence.
 - oo. Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox’s report.
2. Appellate counsel was constitutionally ineffective for:
- a. If Trial Counsel did preserve the issue of whether the Trial Court erred in refusing to submit the jury instruction for self-defense to the jury, Appellate Counsel failed to file merits brief in the South Carolina Court of Appeals raising this issue on the "any evidence" standard and failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant's ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court.

An evidentiary hearing was convened at the Greenville County Courthouse on May 13, 2024, before the Honorable B. Alex Hyman. Hare was present and represented by Dayne C. Phillips, Esquire (PCR Counsel). Assistant Attorney General Julianna Battenfield represented the State. Hare, forensic psychiatrist Donna Maddox, former Appellate Defender Taylor Gilliam, Trial Counsel, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing.

On September 12, 2024, via email, Judge Hyman identified the following ten grounds on which it was granting post-conviction relief: 1m, 1w, 1x, 1bb, 1cc, 1ee, 1ff, 1gg, 1hh, and 1kk. The post-conviction relief court granted relief by filed order on November 26, 2025. The State

made its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, on May 9, 2025. Hare made his Return to Respondent's Rule 59(e) Motion to Alter or Amend Judgment on May 19, 2025. On November 26, 2025, by filed Form 4 Order, Judge Hyman denied the State's Rule 59(e), SCRCP, motion. A second copy of the Form 4 Order was also filed on December 4, 2025. On December 15, 2025, the State filed its Notice of Appeal.

This Petition for Writ of Certiorari follows.

STATEMENT OF FACTS

On September 1, 2015, at approximately 10:30 a.m., Brett Kingwill (Kingwill), a driving instructor for the Greenville Driving School, was driving a bright yellow Toyota Corolla marked with red company stickers on Mills Avenue in Greenville County. (App'x p. 40). While traveling in the middle lane, a late-model black Mercedes E-Class sedan pulled alongside him in the right lane. The driver and front-seat passenger pointed firearms at Kingwill. The passenger pointed a black handgun first, followed by the driver pointing a stainless-steel handgun. Kingwill heard a gunshot and immediately called 911. (App'x pp. 40–41; 44–47).

Kingwill testified that he had a clear, unobstructed view of both occupants because his passenger window was partially down, the Mercedes windows were down, and the vehicles were traveling side-by-side at close range, approximately 8 feet apart. (App'x pp. 44–47). He described the driver as a light-skinned Black male, tall, approximately 19–20 years old, and the passenger as a darker-skinned Black male, approximately 17–18 years old. (App'x p. 47).

Later the same day, Kingwill viewed photographic lineups at the law enforcement center. He identified Hare from the first lineup as the driver and shooter, writing on the form that Hare was “the driver of the vehicle. He was aggressive and the shooter.” He testified he had no doubt about the identification. (App'x pp. 42–49). The following day, he identified the passenger from a second lineup. (App'x pp. 53–55).

Approximately one hour after the shooting, the black Mercedes was observed by law enforcement, and a high-speed chase ensued, ending when the vehicle crashed. Hare, the driver, was taken into custody that same day. (App'x pp. 60–61).

At trial, Hare testified in his own defense. He admitted he was driving the Mercedes and that he fired *one shot* toward the victim’s vehicle. (App'x p. 314). He claimed the victim had

swerved in front of him, almost causing a collision, then flipped him off and laughed. Hare stated that when the victim reached down, he believed the victim was reaching for a weapon. He testified he fired the shot at the tire/wheel to scare the victim and create distance so he could get away in heavy traffic. He denied intending to kill or seriously injure Kingwill and denied aiming at him. (App'x pp. 313–317). Hare also admitted he later fled from police in the Mercedes because he did not have a driver's license. (App'x pp. 317–318).

The jury found Hare not guilty of attempted murder but guilty of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN). The jury also found him guilty of failure to stop for a blue light. (App'x p. 397). He was subsequently sentenced to twenty years imprisonment for ABHAN and three years imprisonment for failure to stop for blue light. All sentences to run concurrently.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180–81, 810 S.E.2d at 839–40. However, pure questions of law will be reviewed *de novo* without deference to the post-conviction relief court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Hare's case should be remanded to the post-conviction relief court for the purpose of issuing a supplemental order where the post-conviction relief court failed to make findings of fact and conclusions of law addressing each issue presented pursuant to S.C. Code Ann. § 17-27-80 (2014) and in accordance with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and its progeny.

The State asserts that this Court should remand this matter back to the post-conviction relief court for a supplemental order for additional findings of fact and conclusions of law where the post-conviction court failed to address all the issues raised by Hare pursuant to S.C. Code Ann. § 17-27-80 (2014) and in accordance with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and its progeny. More precisely, the post-conviction relief court's order granting post-conviction relief fails to make *any* specific findings of fact and conclusions of law relating to *any* issue presented, as mandated by law. Accordingly, this Court should remand this matter to the post-conviction relief court for a supplemental order addressing each and every duly raised allegation with specific findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-80 (2014) and in accordance with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and its progeny.

In Fishburne, this Court addressed the post-conviction relief court's orders for failing to address all duly raised allegations. 427 S.C. at 517, 832 S.E.2d at 590 (remanding the matter "to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order"). The Fishburne Court noted that "[t]he [PCR] court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." Id. at 512, 832 S.E.2d at 587 (quoting S.C. Code Ann. § 17-27-80 (2014)). The Fishburne Court further noted "[t]he South Carolina Rules of Civil Procedure apply to PCR matters." Id.; Rule 71.1(a), SCRPC. "Rule 52(a)

provides in pertinent part, 'In all actions tried upon the facts without a jury..., the court shall find the facts specially and state separately its conclusions of law thereon.' " Id.; Rule 52(a), SCRCP.

Notably, the Fishburne Court held the following:

We do not place the blame on a single party below for an insufficient PCR order. The preparation and finalization of a PCR order is often a collaborative effort. We recognize the prevailing party often prepares a proposed order for the PCR court. See Hall v. Catoe, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004) ("[I]t is common practice for judges to ask a party to draft a proposed order for the sake of efficiency."). When counsel for either side prepares the proposed order, the order must include findings of fact and conclusions of law as to all issues raised by an applicant. [...]

Once a proposed order is finalized, signed by the PCR judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed as required by section 17-27-80 and Rule 52(a); if they were not, a timely Rule 59(e) motion should be filed, requesting the PCR court to address the appropriate issues. When these steps are ignored on the front end, we find ourselves having to remand a case, as we do today.

Id., 427 S.C. 505, 516, 832 S.E.2d 584, 589–90 (2019).

Prior to Fishburne, in Pruitt v. State, this Court vacated the post-conviction relief court's order and remanded the matter because it had not addressed the allegations presented to it. 310 S.C. 254, 255, 423 S.E.2d 127, 127-28 (1992). The Pruitt Court explained in pertinent part:

We take this opportunity to express our concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant. Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the rulings which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a), SCRCP.

Id. at 255-56, 423 S.E.2d at 128.

In this case, the post-conviction relief court's twelve-page order granting relief recites the procedural history, summarizes portions of the evidentiary hearing testimony, sets forth general principles of law under Strickland v. Washington, 466 U.S. 668 (1984), and then reaches a global conclusion that trial counsel's performance was deficient and that Hare was prejudiced. (App'x pp. 599–610). The order does not, however, make specific findings of fact or conclusions of law relating to each of the numerous issues presented in the original and the amended post-conviction relief applications. Hare's amended application raised approximately forty-two separate grounds of ineffective assistance of counsel. As previously indicated *supra*, on September 12, 2024, Judge Hyman emailed that he was granting post-conviction relief on ten specific allegations and requested a proposed order. See App'x p. 598. The order does not address these claims individually with findings on the two prongs of Strickland, deficiency and prejudice, as required.

Instead, the order contains only a generalized finding that "Trial Counsel's performance fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for [counsel's] unprofessional errors, the result of the proceeding would have been different." This type of conclusory, global finding, without specific analysis of each claim, is precisely what Fishburne and its progeny prohibit. The absolute lack of any specific findings of fact or conclusions of law prevents the State from properly raising any issues with this Court for meaningful review.

Moreover, the State properly filed a Rule 59(e), SCRCP, motion emphasizing the significant deficiencies in the order granting post-conviction relief for failing to address *any and all* allegations presented to the post-conviction relief court. (App'x pp. 611–18). The post-conviction relief court had a clear opportunity to correct these deficiencies by entering a supplemental order with the required specific findings. Instead, the post-conviction relief court

issued a Form 4 Order denying the motion. The failure to cure the statutory defect after it was specifically called to the post-conviction relief court's attention makes remand all the more appropriate.

Lastly, remand is not only authorized but required under the cited authorities. It is the most efficient and appropriate remedy because it allows the post-conviction relief court, which heard the evidence and is best positioned to make the required findings, to fulfill its statutory duty. This Court should not be required to review the merits of dozens of ineffective assistance of counsel claims on a record that lacks the statutorily mandated findings. The post-conviction relief court is the fact-finder that observed the witnesses; it is uniquely positioned to make the specific findings the law demands.

Because the post-conviction relief court erred in ensuring that the order was complete with findings of fact and conclusions of law on all issues raised to it as previously noted *supra*, the State respectfully requests that this Court remand the matter back to the post-conviction relief court for a supplemental order addressing all allegations raised at the evidentiary hearing pursuant to S.C. Code Ann. § 17-27-80 (2014) and in accordance with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and its progeny.

CONCLUSION

For the reasons stated above, this Court should remand the matter back to the post-conviction relief court for a supplemental order addressing all allegations raised at the evidentiary hearing pursuant to S.C. Code Ann. § 17-27-80 (2014) and in accordance with Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and its progeny.

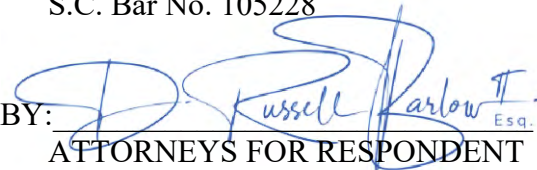
Respectfully submitted,

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A handwritten signature in blue ink that reads "D. Russell Barlow II, Esq." with a horizontal line underneath the signature.

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