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January 15, 2014

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JAN 21 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

RE: The State, Respondent, v. Norris Earl White, Appellant, Case No. 2010-CP-10-9745.

Dear Mr. Shearouse:

Regarding the above-captioned matter, please find enclosed for filing is the original and six (6) copies of Petitioner's Reply to Respondent's Motion to Strike, and proof of service of the same. Please feel free to reach me with any questions or concerns.

With kindest regards, I am

Sincerely,



Milton D. Stratos
Attorney for Appellant

MDS/amd

cc: Office of Attorney General
Attn: Ashleigh Wilson
Post Office Box 11549
Columbia, South Carolina 29211
(803)734-3737
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2010-CP-10-9745

Norris Earl White Jr.

Petitioner,

v.

State of South Carolina,

Respondent.

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S.C. Supreme Court

PETITIONER'S REPLY TO RESPONDENT'S MOTION TO STRIKE
PETITIONER'S EVIDENCE

COMES NOW, Petitioner, above named, by and through undersigned counsel, in reply to Respondent's Motion to Strike Pursuant to Rule 243(f) of the South Carolina Appellate Court Rules. The Petitioner respectfully shows this Court:

I.

The Petitioner respectfully submits that the evidence included in Petitioner's Appendix (hereinafter referred to as "evidence") and presented to this Court on Writ of Certiorari are properly before the Court. Since the claim of newly discovered evidence was properly raised within the statute of limitations Petitioner contends he is entitled to a full evidentiary review of the evidence, and that this right is not precluded on procedural grounds where Petitioner has not been afforded an

evidentiary hearing, nor a hearing on the merits.

Respondent alleges the lower court record does not reflect the documents contained in the Appendix. Petitioner concedes the documents listed in the Appendix were not included as attachments in Petitioner's post-conviction relief application, and are not attached to the trial transcript. However, the evidence listed in Respondent's Motion to Strike was not known nor made available to Petitioner at the time of filing the PCR Application. Hence, the evidence which is the basis of Petitioner's after-discovered evidence claim, and the subject of Respondent's Motion to Strike, could not have been attached.

Moreover, the evidence is not attached to the trial transcript because Petitioner's PCR claim was summarily dismissed without an evidentiary hearing. During the initial PCR hearing Counsel for Petitioner was prepared to offer into evidence all materials contained in the Appendix, including video evidence. However, in sidebar prior to the start of the hearing the PCR court made it clear that that the PCR hearing was not one in which evidenced would be proffered until the court determined whether the PCR claim was properly before it. This fact is supported by oral argument in the PCR hearing: "[w]ell, after-discovered evidence that we want to present to this court wasn't even discovered until January of this year." App. 23, 7-10. Counsel for the State was also well aware of the evidence. This is reflected in Respondent's oral argument in the PCR hearing, "[w]hat I'm given to understand is that the after-discovered evidence they plan on submitting is, in a nutshell, that the officer perjured himself." App. 21, 19-22.

In addition, Respondent maintains that Petitioner's Supplemental Memorandum in Support of Post-Conviction Relief does not provide reference to the evidence. The following are relevant excerpts from Petitioner's Memorandum that clearly provide reference to the evidence:

(1) "Applicant contends that evidence discovered after the date of his trial, including but not limited to evidence that Officer Shiver's gave perjured testimony of material facts to obtain conviction, warrants a reversal of the finding of guilt."

(2) "Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence. Evidence implicating fraudulent prosecution, state misconduct, and presentation of false evidence were uncovered after obtaining evidence through the filing of a FOIA, request of information. Said evidence was recovered in April 2012, pursuant to the filing of a FOIA request of information with North Charleston Police Department and contemporaneous motion to compel, filed on March 1, 2012."

(3) "The response contained an audible file of petitioner's trial, as well as information known to the prosecution and never disclosed to petitioner prior to or after trial following numerous requests for the same. The results of the FOIA disclose that The City of North Charleston, North Charleston Police Department, Office of Professional conduct, and members of North Charleston Police Department, to include Chief Zumolt, had actual knowledge and evidence of constructive misconduct and violations of due process, and this evidence was not disclosed by the State for nearly three years. In addition, the FOIA results prove that false testimony and false evidence was presented by prosecuting Officer Shiver's, the arresting officer,

and that this evidenced was the basis of a guilty finding.”

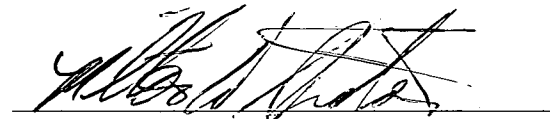
App. 35.

II.

For the foregoing reasons and the reasons stated in Applicant’s PCR application and Petitioner’s Memorandum, Petitioner respectfully requests that the Court deny Respondent’s motion.

III.

WHEREFORE, it is respectfully requested that this motion be denied.



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CERTIFICATE OF SERVICE

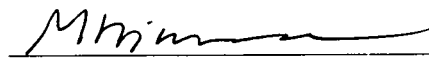
The undersigned hereby certifies that a true copy of the foregoing **Reply to Respondent's Motion to Strike** has been served upon the following parties by delivery or by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 15th day of January 2014.

South Carolina Supreme Court
Clerk of Court
Attn: Della White
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Ashleigh R. Wilson
Assistant Attorney General
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BY:



Malena Dinwoodie, Paralegal