

Whether TRIAL COURT WAS IN ERROR TO GRANT THE STATES MOTION TO AMEND THE INDICTMENT WHERE THE AMENDMENT WAS AN UNACCEPTABLE RISK OF CONVICTING THE INNOCENT?

YES THE TRIAL COURT WAS IN ERROR OF GRANTING THE STATES MOTION TO AMEND THE INDICTMENT AT THE CLOSE OF ITS CASE OVER TRIAL COUNSEL'S OBJECTION BECAUSE

TIME IS A ELEMENT OF THE CRIME OF MURDER THAT MUST NOT ONLY BE PROVED, BEFORE A PERSON ACCUSED MAY BE LAWFULLY CONVICTED, BUT IT MUST BE ALLEGED IN THE INDICTMENT RETURNED AGAINST THE ACCUSED BY THE GRAND JURY. THE PROVISIONS OF THE CONSTITUTION, RECOGNIZING AND FOLLOWING THE PRINCIPLES OF THE COMMON LAW, REQUIRE THE INDICTMENT TO CONTAIN ALLEGATIONS TO THESE EFFECTS.

BY THE TRIAL COURT ALLOWING THE AMENDMENT VIOLATES DUE PROCESS... BECAUSE THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT EVERY FACT NECESSARY TO CONSTITUTE A CRIME WITH WHICH A DEFENDANT WAS CHARGED.

PROCEDURAL DUE PROCESS OF LAW REQUIRES 1.) ADEQUATE NOTICE; 2.) OPPORTUNITY TO BE HEARD; 3.) RIGHT TO INTRODUCE EVIDENCE; 4.) RIGHT TO CROSS EXAMINE AND CONFRONT WITNESSES.

DUE PROCESS MEANS NOTICE AND AN OPPORTUNITY TO RESPOND. NOTICE MUST BE SUFFICIENT TO MAKE THE OPPORTUNITY USEFUL.

A SAFELY GUARDED EMBODIMENT OF THE SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS IS THE RIGHT OF A CRIMINAL DEFENDANT TO HAVE NOTICE OF THE CHARGES PENDING AGAINST HIM. COLE V. ARKANSAS, 333 U.S. 196, 68 S. CT 514, 92 L. ED. 644 (1948) ("NO PRINCIPLE OF PROCEDURAL DUE PROCESS IS MORE CLEARLY ESTABLISHED THAN THAT NOTICE OF THE SPECIFIC CHARGE, AND A CHANCE TO BE HEARD IN A TRIAL OF THOSE ISSUES RAISED BY THAT CHARGE, IF DESIRED, ARE AMONG THE CONSTITUTIONAL RIGHTS OF EVERY ACCUSED IN A CRIMINAL PROCEEDING IN ALL COURTS, STATE OR FEDERAL.")

IN SOUTH CAROLINA, SOUTH CAROLINA CONSTITUTION ARTICLE ONE SECTION ELEVEN PROVIDES: "NO PERSON MAY BE HELD TO ANSWER FOR ANY CRIME THE JURISDICTION OVER WHICH IS NOT WITHIN THE MAGISTRATE'S COURT, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY OF THE COUNTY WHERE THE CRIME HAS BEEN COMMITTED, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES OR IN THE MILITIA WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER."

THIS RIGHT TO BE CHARGED BY AN INDICTMENT IS ALSO CODIFIED IN S.C. CODE ANN. SECTION 17-19-10 (2003) ("NO PERSON SHALL BE HELD TO ANSWER IN ANY COURT FOR AN ALLEGED CRIME OR OFFENSE, UNLESS ON INDICTMENT BY A GRAND JURY" EXCEPT IN SPECIFIED INSTANCES).

THE SUPREME COURT OF S.C. HAS HELD THAT "[A] DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO BE TRIED ON THE CHARGES SET FORTH IN THE INDICTMENT." MUMF, 357 S.E.2D AT 462.

AT APPELLANT TRIAL APPELLANT WAS ORIGINALLY CHARGED WITH THE OFFENSES OF MURDER, OF ARMED ROBBERY, OF CRIMINAL CONSPIRACY AND OF POSSESSION OF A WEAPON DURING A VIOLENT CRIME THAT ALLEGED TO HAVE OCCURRED ON OR ABOUT FEBRUARY 17, 2003.

APPELLANT ELECTED TRIAL UPON THE INDICTMENT THAT WAS RETURNED BY THE LAWFUL GRAND JURY AND PLED NOT GUILTY TO THE CHARGES ALLEGED IN THAT INDICTMENT PLACING THE BURDEN ON THE STATE TO WHICH THEY ARE ENTITLED TO PROVE BEYOND A REASONABLE DOUBT TO THE JURY SO THAT THE DEFENDANT MAY BE LAWFULLY CONVICTED ONCE ALL ELEMENTS ARE PROVED AND THE JURY IS SATISFIED AS TO THE GUILT OF THE APPELLANT AND THUS RETURN A GUILTY VERDICT.

IF CAN NOT PROVE THEIR CASE BEYOND A REASONABLE DOUBT APPELLANT IS ENTITLED TO A NOT GUILTY VERDICT.

DUE TO THAT INDICTMENT BEING RETURNED BY THE GRAND JURY STATING THE OFFENSE OF MURDER, THE COURT ONLY HAD SUBJECT MATTER JURISDICTION OVER THE SUBJECT MATTER OF MURDER OF THE VICTIM OF THE DUE PROCESS OF LAW RIGHTS GUARANTEE BY NOTICE OF THE ALLEGED DATE (TIME) OF FEBRUARY 17, 2003 THEN ALL OF THE DUE PROCESS OF LAW RIGHTS KICK IN WHICH APPELLANT EXERCISED AS TO ELECT TRIAL (OPPORTUNITY TO BE HEARD ONLY ON INDICTED CHARGES BY THE GRAND JURY WHICH WAS ALL CHARGES OF FEBRUARY 17, 2003).

(1.)

ONCE THE JURY BEEN PICKED AND THE JURY IS SWORN IN THE STATE IS NOT TO PROVE NO OTHER FACTS THAN THAT ALLEGED IN THE INDICTMENT AND THE RECORD BECAUSE IF PROVING OTHER FACTS WILL VIOLATE APPELLANT'S PROCEDURAL DUE PROCESS OF RIGHTS TO HAVE A FAIR TRIAL UPON RECEIVING NOTICE BY A GRAND JURY TO EITHER ELECT TRIAL OR PLEAD GUILTY, CONFRONT AND CROSS-EXAMINE THE WITNESSES IN THAT CASE OF FACTS NOT INDICTED OF AND WOULD MOST DEFINITELY VIOLATE THE BEST EVIDENCE THAT APPELLANT MAY OFFER WHICH IS TO HAVE THE JURY CHARGED WITH HIS PRESUMPTION OF INNOCENCE AS HE IS AUTOMATICALLY IS AS APPEARED TO BE.

IN SOUTH CAROLINA, S.C. STATUTORY LAW PROVIDE THE FOLLOWING:

### AMENDMENTS TO INDICTMENT AND PROCEEDINGS THEREAFTER.

IF (A) THERE BE A DEFECT IN FORM IN ANY INDICTMENTS OR (B) ON THE TRIAL OF ANY CASE THERE SHALL APPEAR TO BE ANY VARIANCE BETWEEN THE ALLEGATIONS OF THE INDICTMENT AND THE EVIDENCE OFFERED IN PROOF THEREOF, THE COURT BEFORE WHICH THE TRIAL SHALL BE HAD MAY AMEND THE INDICTMENT (ACCORDING TO THE PROOF, IF THE AMENDMENT BE BECAUSE OF A VARIANCE) IF SUCH AMENDMENT DOES NOT CHANGE THE NATURE OF THE OFFENSE CHARGED. AFTER SUCH AMENDMENT THE TRIAL SHALL PROCEED IN ALL RESPECTS AND WITH THE SAME CONSEQUENCES AS IF THE INDICTMENT HAD ORIGINALLY BEEN RETURNED AS SO AMENDED, UNLESS SUCH AMENDMENT SHALL OPERATE AS A SURPRISE TO THE DEFENDANT, IN WHICH CASE THE DEFENDANT SHALL BE ENTITLED, UPON DEMAND, TO A CONTINUANCE OF THE CAUSE.

S.C. CODE ANN. SECTION 17-19-100.

AS THE AMENDMENT STATUTE REQUIRES THE AMENDMENT SUPPOSED TO BE DONE BEFORE THE JURY IS SWORN IS (ACCORDING TO THE PROOF, IF THE AMENDMENT BE BECAUSE OF A VARIANCE)... MUST/MAY BE DONE BEFORE WHICH THE TRIAL SHALL BE HAD MAY AMEND...

IN APPELLANT'S TRIAL MAY 23, 2005 THE STATE FAILED TO ABIDE BY THE LAW IF THEY WANTED TO AMEND THE INDICTMENT AND AMENDED IT BEFORE THE JURY WAS SWORN IN THEREFORE APPELLANT WOULD'VE PROBABLY COME WITH DIFFERENT EVIDENCE OR IT WOULD'VE BEEN WEIGHED RIGHT THEN AND THERE WHETHER THE AMENDMENT WAS PROPER OR NOT.

AS TO THE AMENDMENT OF THE MURDER CHARGE, THE AMENDMENT VIOLATES DUE PROCESS OF LAW AND THE SUFFICIENCY OF THE INDICTMENT. THE DISTRICT COURT MENTIONED THE SIXTH AMENDMENT, IT STATED THAT THE SIXTH AMENDMENT IS A "CRITERIA AGAINST WHICH THE SUFFICIENCY OF AN INDICTMENT MUST BE MEASURED":

THE SIXTH AMENDMENT DOES NOT APPLY TO THE STATES THE SAME CRITERIA THAT ARE (ARE) USED TO JUDGE A FEDERAL INDICTMENT BASED ON BOTH THE FIFTH AND SIXTH AMENDMENTS.

ALTHOUGH THE SIXTH AMENDMENT HAS BEEN USED TO HELP DESCRIBE WHAT MUST BE CONTAINED IN AN INDICTMENT WHEN THE FIFTH AMENDMENT REQUIRES ONE TO ISSUE, THE FEDERAL CASES INVOLVING INDICTMENTS ARE OF LITTLE VALUE WHEN EVALUATING THE SUFFICIENCY, UNDER THE SIXTH AMENDMENT ALONE.

IN SOUTH CAROLINA, SUFFICIENT OR PLAIN OUT AS IT STATES:

### ALLEGATIONS SUFFICIENT FOR MURDER PROVIDES AS FOLLOWS:

EVERY INDICTMENT FOR MURDER SHALL BE DRAFTED AND ADJUDGED SUFFICIENT AND GOOD IN LAW WHICH IN ADDITION TO SETTING FORTH THE TIME AND PLACE, TOGETHER WITH A PLAIN STATEMENT, DIVESTED OF ALL USELESS PHRASIOLOGY, OF THE MANNER IN WHICH THE DEATH OF THE DECEASED WAS CAUSED, CHARGES THE DEFENDANT DID FELICIOUSLY, WILFULLY, AND OF HIS MALICE AFORETHOUGHT KILL AND MURDER THE DECEASED.

S.C. CODE ANN. SECTION 17-19-30.

SECTION 17-19-30 IS A PROCEDURAL STATUTE NOT INTENDED TO ALTER THE ELEMENTS OF THE OFFENSE OF MURDER.

AT THE CLOSE OF THE STATES CASE AFTER RESTING ON THE RECORD THE TRIAL JUDGE DISMISSED THE JURY SO THAT A LEGAL MATTER COULD HAVE BEEN RESOLVED WHICH CAME THE STATE MOTION TO AMEND THE INDICTMENT TO CORRECT A CLERICAL ERROR AND REFLECT TO THE APPROPRIATE DATE FROM FEBRUARY 17, 2003 TO FEBRUARY 18, 2003.

TRIAL COUNSEL OBJECTED STATING THAT APPELLANT WAS INFORMED OF FEBRUARY 17, 2003 THAT'S WHAT HE WAS PUT ON NOTICE TO DEFEND AND THAT IT VIOLATES DUE PROCESS OF LAW.

SOUTH CAROLINA SUPREME COURT HELD: AMENDMENTS USUALLY ARE PERMITTED FOR PURPOSES OF CORRECTING AN ERROR OF FORM, SUCH AS A SCRIVENER'S OR CLERICAL ERROR. CUTNER, 354 S.C. AT 155, 580 S.E.2D AT 122. THUS, A MOTION TO AMEND AN INDICTMENT SHOULD BE GRANTED WHEN THE PROPOSED AMENDMENT DOES NOT CHANGE THE NATURE OF THE OFFENSE OR AFFECT THE SUFFICIENCY OF THE INDICTMENT. SEE FOR EXAMPLE STATE V. QUARLES, 261 S.C. 413, 416-17, 200 S.E.2D 384, 385-86 (1973)

(INDICTMENT MAY BE AMENDED TO STATE THE CORRECT TIME OR DATE OF THE ALLEGED CRIME WHEN TIME OR DATE IS NOT OF THE ESSENCE OF THE CRIME)

JUSTICE PLEICONES GAVE GREAT CREDENCE TO THE TIME AS BEING THE ESSENCE OF THE CRIME OF MURDER BY STATUTE:

THE CRIME OF MURDER IS A COMPOSITE ONE. IT INCLUDES THE ASSAULT COMMITTED UPON A PERSON... AND THE RESULTING DEATH FROM THAT ASSAULT. THE STATE MUST PROVE NOT ONLY THE ASSAULT AND THE DEATH OCCURRING FROM IT, BUT THE TIME OF THE ASSAULT AND THE TIME OF THE DEATH AS TIME IS RECOGNIZED IN THE LAW. IN ADDITION, THE STATE (SIC) MUST PROVE THE PLACE OF THE ASSAULT AND THE PLACE OF DEATH. THESE NECESSARY ELEMENTS OF THE CRIME OF MURDER MUST NOT ONLY BE PROVED, BEFORE A PERSON ACCUSED MAY BE LAWFULLY CONVICTED, BUT THEY MUST BE ALLEGED IN THE INDICTMENT RETURNED AGAINST THE ACCUSED BY THE GRAND JURY. THE PROVISIONS OF THE CONSTITUTION, RECOGNIZING AND FOLLOWING THE PRINCIPLES OF THE COMMON LAW, REQUIRE THE INDICTMENT TO CONTAIN ALLEGATIONS TO THOSE EFFECTS.

TIME IS RECOGNIZED IN THE LAW TO MAKE UP THE SUFFICIENCY OF THE CRIME/OFFENSE OF MURDER.

THEREFORE IF THE AMENDMENT IS TO BE ALLOWED IT WILL AFFECT THE SUFFICIENCY OF THE INDICTMENT UPON A CHARGE OF FACTS AND CIRCUMSTANCES THAT WAS NOT FOUND BY THE GRAND JURY IN ORDER TO HAVE A FAIR TRIAL AS IS THE SIXTH AMENDMENT ITSELF AND IS REQUIRED BY THE SIXTH AMENDMENT.

THEREFORE IF THE AMENDMENT IS TO BE ALLOWED BEFORE THE JURY WAS SWORN IN IT WOULD VIOLATE ARTICLE 1 SECTION 11 "NO PERSON MAY BE HELD TO ANSWER FOR ANY CRIME THE JURISDICTION... UNLESS UPON RETURN OF A GRAND JURY OF THE COUNTY WHERE THE CRIME WAS/HAS BEEN COMMITTED... AND S.C. CODE ANN. SECTION 17-17-10 (2005) "NO PERSON SHALL BE HELD TO ANSWER IN ANY COURT FOR AN ALLEGED CRIME OR OFFENSE," UNLESS UPON INDICTMENT BY GRAND JURY," EXCEPT IN SPECIFIED INSTANCES."

THE AMENDMENT WILL VIOLATE THE SIXTH AMENDMENT PROVISION WHICH REQUIRES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT... TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION... AND AGAIN THE RIGHT TO A JURY TRIAL UPON THE ALLEGATIONS OF THAT SPECIFIC INDICTMENT.

DUE PROCESS MEANS NOTICE AND AN OPPORTUNITY TO RESPOND. NOTICE MUST BE SUFFICIENT TO MAKE THE OPPORTUNITY USEFUL.

WHILE TIME (DATE) REQUIREMENTS HAVE BEEN MORE LIBERALLY CONSTRUED (I.E. ON OR ABOUT A PARTICULAR DATE) AND BETTER CHARACTERIZE AS A **QUESTION OF NOTICE**.

THE OPPORTUNITY APPELLANT HAD TO RESPOND TO WAS ONLY THE INDICTMENT WITH THE CHARGE OF MURDER (COUNT ONE) THAT ALLEGEDLY STATED THAT A CRIME HAPPENED ON OR ABOUT FEBRUARY 17, 2003 WHICH WAS THE ONLY SUFFICIENT INDICTMENT RETURNED TO APPELLANT BY A GRAND JURY SO THAT APPELLANT MAY BE HEARD ON THE FACTS AND CIRCUMSTANCES OF THE OFFENSE OF MURDER AS CHARGED. THE TIME STATED IN THE INDICTMENT WAS SUFFICIENTLY USEFUL FOR THE OPPORTUNITY OF THE TRIAL TO BE HEARD UPON OF THAT MURDER AT THE MAY 23, 2005 TRIAL.

FEBRUARY 17, 2003 OFFENSE OF MURDER ALLEGED IN THE INDICTMENT IS THE ONLY DATE SUBJECT MATTER THE STATE AND THE TRIAL COURT HAD JURISDICTION OVER UPON THE STATE PROVING ITS BURDEN OF PROOF BEYOND A REASONABLE DOUBT IN ORDER FOR APPELLANT TO BE LAWFULLY CONVICTED AND FOR THE JUDGE TO CHARGE TO THE JURY THE ELEMENTS REQUIRED TO BE PROVEN BY THE STATE TO THE FACTPANELS IN ORDER TO RETURN A GUILTY OR NOT GUILTY VERDICT.

APPELLANT WAS UNDER THE PRESUMPTION OF INNOCENCE OF ALL CHARGES ALLEGED IN THAT INDICTMENT AT THE BEGINNING OF THE TRIAL OF HOW THE TRIAL JUDGE CHARGED THE JURY BUT THE STATE WAS PROVING FACTS OUTSIDE OF THE **INDICTMENT** THAT APPELLANT NEVER BEEN INDICTED FOR.

AT THE TRIAL APPELLANT WAS ENTITLED TO A FAIR TRIAL. AT THAT TRIAL AT STAKE WAS CONSTITUTIONAL PROTECTIONS OF SURPASSING IMPORTANCE: THE PROSCRIPTION OF ANY DEPRIVATION OF LIBERTY WITHOUT "DUE PROCESS OF LAW," AMENDMENT 14, AND THE GUARANTEE THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A PUBLIC TRIAL, BY AN IMPARTIAL JURY" AMENDMENT 6.

APPELLANT RELIES ENTIRELY ON THE FACT THAT THE "DUE PROCESS OF LAW" THAT THE 14<sup>TH</sup> AMENDMENT REQUIRES THE STATES TO PROVIDE TO PERSONS ACCUSED OF CRIME ENCOMPASSES THE RIGHT TO A TRIAL BY JURY.

TAKEN TOGETHER, THESE RIGHTS INDISPUTABLY ENTITLE A CRIMINAL DEFENDANT TO "A JURY DETERMINATION THAT [HE] IS GUILTY OF EVERY ELEMENT OF THE CRIME WITH WHICH ~~HE~~ IS CHARGED, BEYOND A REASONABLE DOUBT." U.S. V. GUILDFIN, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L. ED. 2D 444 (1995); See Also SULLIVAN V. LOUISIANA, 508 U.S. 275, 278, 113 S.Ct. 2078, 124 L. ED. 2D 182 (1993); WISNITZKY, 397 U.S. At 364, 90 S.Ct. 1068 ("THE DUE PROCESS CLAUSE PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED").

TRIAL BY JURY HAS BEEN UNDERSTOOD TO REQUIRE THAT "THE TRUTH OF EVERY ACCUSATION, WHETHER REFERRED IN THE SHAPE OF INDICTMENT, INFORMATION, OR APPEAL, SHOULD AFTERWARDS BE CONFIRMED BY THE UNANIMOUS SUFFRAGE OF TWELVE OF [THE DEFENDANT'S] EQUALS AND NEIGHBOURS...." 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 343 (1769).

EQUALLY WELL FOUNDED IS THE COMPANION RIGHT TO HAVE THE JURY VERDICT BASED ON PROOF BEYOND A REASONABLE DOUBT. "THE DEMAND FOR A HIGHER DEGREE OF PERSUASION IN CRIMINAL CASES WAS RECURRENTLY EXPRESSED FROM ANCIENT TIMES, [THOUGH] ITS CRYSTALLIZATION INTO THE FORMULA "BEYOND A REASONABLE DOUBT" SEEMS TO HAVE OCCURRED AS LATE AS 1798. IT IS NOW ACCEPTED IN COMMON LAW JURISDICTIONS AS THE MEASURE OF PERSUASION BY WHICH THE PROSECUTION MUST CONVINCE THE TRIP OF ALL THE ESSENTIAL ELEMENTS OF GUILT." C. MCCORMICK, EVIDENCE SECTION 321, PP. 681-682 (1954); See Also 9 J. WISMORE, EVIDENCE SECTION 2497 (3D ED. 1940); WISNITZKY, 397 U.S. At 361, 90 S.Ct. 1068. WE WENT ON TO EXPLAIN THAT THE REFERENCE ON THE "REASONABLE DOUBT" STANDARD AMONG COMMON LAW JURISDICTIONS "REFLECTS A PROFOUND JUDGEMENT ABOUT THE WAY IN WHICH LAW SHOULD BE ENFORCED AND JUSTICE ADMINISTERED." ID. At 361-362, 90 S.Ct. 1068 (QUOTING DUNCAN, 391 U.S. At 155, 88 S.Ct. 1444).

ANY POSSIBLE DISTINCTION BETWEEN AN "ELEMENT" OF A FELONY OFFENSE AND A "SENTENCING FACTOR" WAS UNKNOWN TO THE PRACTICE OF CRIMINAL INDICTMENT, TRIAL BY JURY, AND JUDGEMENT BY COURT AS IT EXISTED DURING THE YEARS SURROUNDING OUR NATION'S FOUNDING.

AS A GENERAL RULE, CRIMINAL PROCEEDINGS WERE SUBMITTED TO A JURY AFTER BEING INITIATED BY AN INDICTMENT CONTAINING "ALL THE FACTS AND CIRCUMSTANCES WHICH CONSTITUTE THE OFFENSE... STATED WITH SUCH CERTAINTY AND PRECISION, THAT THE DEFENDANT... MAY BE ENABLED TO DETERMINE THE SPECIES OF OFFENSE THEY CONSTITUTE, IN ORDER THAT HE MAY PREPARE HIS DEFENCE ACCORDINGLY... AND THAT THERE MAY BE NO DOUBT AS TO THE JUDGEMENT WHICH SHOULD BE GIVEN, IF THE DEFENDANT BE CONVICTED." J. ARELLED, PLEADING AND EVIDENCE IN CRIMINAL CASES 44 (15th ED. 1862). THE DEFENDANT'S ABILITY TO PREDICT WITH CERTAINTY THE JUDGEMENT FROM THE FACE OF THE FELONY INDICTMENT FLOWED FROM THE INVIOLABLE LINKAGE OF PUNISHMENT WITH CRIME. See 4 BLACKSTONE 369-370 (AFTER VERDICT, AND EXERCISING A DEFECT IN THE INDICTMENT, PARDON, OR BENEFIT OF CLERGY, "THE COURT MUST PRONOUNCE THAT JUDGEMENT, WHICH THE LAW HATH ANNEXED TO THE CRIME").

BUT PRACTICE MUST AT LEAST ADHERE TO THE BASIC UNDERLYING THE REQUIREMENTS OF TRYING TO A JURY ALL FACTS NECESSARY TO CONSTITUTE A STATUTORY OFFENSE, AND PROVING THOSE FACTS BEYOND REASONABLE DOUBT. AS WAS MADE CLEAR IN WISNITZKY, THE "REASONABLE DOUBT" REQUIREMENT "HAS [A] VITAL ROLE IN OUR CRIMINAL PROCEDURE FOR COBENT REASONS": 397 U.S. At 363, 90 S.Ct. 1068. PROSECUTION SUBJECTS THE CRIMINAL DEFENDANT BOTH TO THE POSSIBILITY THAT HE MAY LOSE HIS LIBERTY UPON CONVICTION AND ... THE CERTAINTY THAT HE WOULD BE STIGMATIZED BY THE CONVICTION." *IBID.*

THE U.S. SUPREME COURT HAS REQUIRED THIS, AMONG OTHER, PROCEDURAL PROTECTIONS IN ORDER TO "PROVIDE CONCRETE SUBSTANCE FOR THE PRESUMPTION OF INNOCENCE," AND TO REDUCE THE RISK OF IMPOSING SUCH DEPRIVATIONS ERRONEOUSLY. *IBID.* IF A DEFENDANT FACES PUNISHMENT BEYOND THAT PROVIDED BY STATUTE WHEN AN OFFENSE IS COMMITTED UNDER CERTAIN CIRCUMSTANCES BUT NOT OTHERS, IT IS OBVIOUS THAT BOTH THE LOSS OF LIBERTY AND THE STIGMA ATTACHING TO THE OFFENSE ARE HEIGHTENED; IT NECESSARILY FOLLOWS THAT THE DEFENDANT SHOULD NOT - AT THE MOMENT THE STATE IS PUT TO PROOF OF THOSE CIRCUMSTANCES - BE DEPRIVED OF PROTECTIONS THAT HAVE, UNTIL THAT POINT, UNQUESTIONABLY ATTACHED.

SINCE WISNITZKY, WE HAVE MADE CLEAR BEYOND peradventure THAT WISNITZKY'S DUE PROCESS AND ASSOCIATED JURY PROTECTIONS EXTEND, TO SOME DEGREE, "TO DETERMINATIONS THAT DO NOT TO A DEFENDANT'S GUILT OR INNOCENCE, BUT SIMPLY TO THE LENGTH OF HIS SENTENCE." *UN*

AN 1872 TREATISE BY ONE OF THE LEADING AUTHORITIES OF THE ERA IN CRIMINAL LAW AND PROCEDURE CONFIRMS THE COMMON LAW UNDERSTANDING APPELLANT DEMONSTRATED CASE.

THE TREATISE CONDENSED THE TRADITIONAL UNDERSTANDING REGARDING THE INDICTMENT, AND THIS REGARDING

THE ELEMENTS OF A CRIME, TO THE FOLLOWING: "COME INDICTMENT MUST ALLEGE WHATEVER IS IN LAW ESSENTIAL TO THE PUNISHMENT SOUGHT TO BE INFLECTED." 1. J. BISHOP, LAWS OF CRIMINAL PROCEDURE 50 (7D ED. 1872). SEE ID., SECTION 81, AT 51 ("THE INDICTMENT MUST CONTAIN AN ALLEGATION OF EVERY FACT WHICH IS LEGALLY ESSENTIAL TO THE PUNISHMENT TO BE INFLECTED")...

BISHOP GROUNDED HIS DEFINITION IN BOTH A GENERALIZATION FROM WELL-ESTABLISHED COMMON-LAW PRACTICE, 1 BISHOP, CRIMINAL PROCEDURE SECTIONS 81-84, AT 51-53, AND IN THE PROVISIONS OF FEDERAL AND STATE CONSTITUTIONS GUARANTEEING NOTICE OF AN ACCUSATION IN ALL CRIMINAL CASES, INDICTMENT BY A GRAND JURY FOR SERIOUS CRIMES, AND TRIAL BY JURY. WITH REGARD TO THE COMMON LAW, HE EXPLAINED THAT HIS RULE WAS "NOT MADE APPARENT TO OUR UNDERSTANDING BY A SINGLE CASE ONLY, BUT BY ALL THE CASES." ID. SECTION 81, AT 51, AND WAS FOLLOWED "IN ALL CASES, WITHOUT ONE EXCEPTION," ID. SECTION 84, AT 53.

AGAIN, FOR FEBRUARY 17, 2003 THERE WAS APPROPRIATE DUE PROCESS MEASURES DONE ACCORDINGLY UNTIL THE STATE STARTED PREPARING UNINDICTED OFFENSES OVER THE JURY WAS SWORN IN AT THE TRIAL THAT SUPPOSE TO HAVE BEEN ARRANGED FOR FEBRUARY 17, 2003 ALLEGATIONS ONLY.

APPELLANT WAS DEPRIVED OF A FAIR TRIAL OF FEBRUARY 17, 2003 OFFENSES AS WAS INDICTED BECAUSE THE STATE BEEN PREPARING UNINDICTED OFFENSES VIOLATING DUE PROCESS OF RIGHTS OF BOTH TRIALS. THE UNINDICTED OFFENSES AND THE INDICTED OFFENSES.

AS TO THE UNINDICTED OFFENSES, AT THE TRIAL OF FEBRUARY 17, 2003 OFFENSES AT THE MAY 23-25, 2005 TRIAL, APPELLANT COULD HAVE HAD THE INDICTMENT PROPERLY AMENDED AS TO THE CHARGES/OFFENSES OF ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME CHARGES ONLY BECAUSE TIME IS NOT AN ELEMENT OF ANY OF THE NAMED OFFENSES NOR IS TIME THE ESSENTIAL ELEMENT OF THE NAMED OFFENSES.

IF THE STATE WOULD HAVE ASKED FOR THE AMENDMENT ACCORDING TO THE LAW WHICH IS BEFORE THE JURY WAS SWORN IN, THE ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME WOULD HAVE BEEN PROPER FOR APPELLANT TO STAND TRIAL FOR THOSE OFFENSES OF FEBRUARY 18, 2003 IF THATS WHAT THE STATE BEEN INTENDING TO PROVE BEYOND A REASONABLE DOUBT.

IF THOSE OFFENSES WERE PROPERLY AMENDED BEFORE THE JURY WAS SWORN IN IN ACCORDANCE WITH S.C. STATUTORY LAW THEN THE STATE WOULD NOT HAVE A MURDER CHARGE TO PROVE MALICE AFORETHOUGHT NOR A MURDER TO THE JURY BEYOND A REASONABLE DOUBT AS THEY ARE ENTITLED TO DO BECAUSE TIME (DATE) IS AN ELEMENT THAT MUST BE PROVED ONCE ITS STATED IN THE INDICTMENT AND RETURNED BY THE GRAND JURY AND IT JUST CAN NOT AND MAY NOT BE CHANGED ESPECIALLY ONCE THE TRIAL HAS STARTED AND THE JURY IS SWORN IN BECAUSE TIME MAKES UP THE SUFFICIENCY OF THE INDICTMENT WHICH APPELLANT HAS A RIGHT TO BE INFORMED OF ALL THE ELEMENTS BY INDICTMENT IN ORDER FOR APPELLANT TO PLEAD GUILTY OR NOT GUILTY UPON INDICTED ELEMENTAL ALLEGATIONS STATED WITHIN AND THE COURT WOULD ONLY HAVE JURISDICTION ONLY OVER THE SUBJECT MATTER(S) OF WHATS ALLEGED IN THAT INDICTMENT RETURNED BY THE GRAND JURY AND TO WHAT THE APPELLANT PLED NOT GUILTY TO, ONLY, AND NOT NOTHING ELSE UNLESS APPELLANT HAS BEEN SUBJECTED OF THOSE OFFENSES OF WHAT THE STATE IS INTENDING TO PROVE AT A TRIAL ENSURING DUE PROCESS OF LAW IS NOT VIOLATED.

IN THE EYES OF THE LAW APPELLANT WOULD BE PRESUMED INNOCENT AS I AM NOW TO THE UNINDICTED OFFENSE OF MURDER WHICH WOULD PLACE THE BURDEN OF PROOF ON THE STATE TO PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT (FACT) TO THE FACTFINDERS IN ORDER TO LAWFULLY CONVICED APPELLANT OF MURDER AND THE STATE WILL NOT, AS IT IS CLEARLY SHOWING NOW, HAVE NO INDICTMENT FOR THE CRIME/OFFENSE OF MURDER TO HAVE APPELLANT CALLED TO TRIAL TO PLEAD GUILTY OR NOT GUILTY TO, IN ORDER TO EXERCISE ANY OF THE PERSONAL RIGHTS THAT(S) CONSTITUTIONALLY SAFEGUARDED, WHICH APPELLANT IS AUTOMATICALLY IS WHICH IS AGAIN PRESUMED INNOCENT UNTIL GUILT IS PROVEN BEYOND A REASONABLE DOUBT TO THE JURY BY THE PROSECUTOR AND NOT ONLY MUST THE OFFENSE OF MURDER MUST BE PROVEN, IT MUST ALSO BE ALLEGED IN A SUFFICIENT INDICTMENT RETURNED BY A GRAND JURY PUTTING APPELLANT ON NOTICE OF THE TIME AND PLACE OF THE VICTIMS DEATH AND THE MURDER IN WHICH THE VICTIM WAS KILLED, AS THE UNITED STATES CONSTITUTION, SOUTH CAROLINA CONSTITUTION, AND SOUTH CAROLINA STATUTORY LAWS REQUIRES/DEMANDS FOR IT TO BE FOLLOWING THE PRINCIPLES OF THE COMMON-LAW.

THEREFORE IF BY LAW THE STATE WAS NOT ALLOWED TO AMEND A MURDER ELEMENT AS WAS DONE IN APPELLANT TRIAL THEN APPELLANT WOULD NOT AND WOULD NOT HAVE A MURDER CHARGE FOR THE TRIAL JUDGE TO CHARGE TO THE JURY THE ELEMENTS OR STATUTORY DEFINITION OF MURDER TO THE JURY FOR THEM TO CONSIDER THOSE ELEMENTS FROM THE STATES EVIDENCE AND TESTIMONY THAT WAS PRESENTED BY THE STATE TO THE JURY IN ORDER FOR THE FACTFINDERS TO FIND

## APPELLANT GUILTY OF THE OFFENSE OF MURDER.

THEREFORE IF THE STATE CAN NOT AMEND THE INDICTMENT OFFENSE OF MURDER AND CAN NOT PROVE MURDER THAT APPELLANT IS NOT INDICTED FOR THE. JUDGE CANNOT CHARGE THAT CHARGE TO THE JURY TO REACH A VERDICT OF GUILTY THEN APPELLANT WILL NOT HAVE A MURDER CHARGE THAT WILL CONVICT AND SENTENCE APPELLANT TO THE DEPARTMENT OF CORRECTIONS TO A, FOR A PRISON A LIFE SENTENCE.

THE AMENDMENT THAT WAS ALLOWED OVER TRIAL COUNSEL'S OBJECTION CLEARLY PREJUDICED APPELLANT CASE AND VIOLATED DUE PROCESS OF LAW TO HAVE ADEQUATE NOTICE OF A MURDER CHARGE AFFIRMING APPELLANT OF THE ELEMENTS AND THE RIGHT TO A TRIAL BY JURY OF THE ALLEGATIONS OF MURDER ALLEGED IN THE INDICTMENT RETURNED BY THE GRAND JURY AND THE RIGHT TO CONFRONT THE WITNESSES THAT THE STATE IS INTENDING TO CALL TO TRIAL TO PROVE ITS CASE AND THE RIGHT TO CROSS-EXAMINE THOSE WITNESSES AND THE RIGHT TO PROVIDE EVIDENCE IF NEEDED EVEN THOUGH APPELLANT IS PRESUMED INNOCENT UNTIL PROVEN GUILTY AND TO HAVE THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL THAT THE SIXTH AMENDMENT REQUIRES IN ORDER TO MAKE THE ADVERSARY PROCESS WORK FAIRLY MERELY TRIAL COUNSEL SHOULD HAVE MOTIONED TO DISMISS COURT ONE MURDER OF APPELLANT INDICTMENT ENSURING THAT APPELLANT MEET THE STATES CASE AS TO WHAT THEY ARE ENTITLED TO PROVE TO UPHOLD THEIR BURDEN OF PROOF AND TO ENSURE APPELLANT RECEIVE NOTICE, TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION THATS INTENDED TO BE PROVEN IN ORDER TO LAWFULLY CONVICT APPELLANT BY WHICH HE WAS <sup>100%</sup> INDICTED. (TO MAKE THE ADVERSARY PROCESS WORK FAIRLY SO THAT MY DUE PROCESS OF LAW COULD WORK A THAT FAIR TRIAL SO THAT APPELLANT WONT BE HELD ON UNPROVED OFFENSES TO DEPRIVE HIM OF HIS LIFE & LIBERTY UPON UNLAWFUL CONVICTIONS)

AT APPELLANT TRIAL APPELLANT RECEIVED THROUGH A CONSTRUCTIVE AMENDMENT OF AN INDICTMENT - WHICH IS A CLEAR VIOLATION OF ONE OF THE MOST SAFEGUARDED RIGHTS EMBODIED IN THE SIXTH AND FOURTEENTH AMENDMENTS - WOULD RESULT IN A MISCARriage OF JUSTICE.

DUE PROCESS; DUE TO THE SIXTH AND FOURTEENTH AMENDMENT VIOLATION APPELLANT CASE/CLAIM IS A STRAIGHT DUE PROCESS CASE IN WHICH APPELLANT CONTENDS THAT INADEQUATE NOTICE LED TO A TRIAL WITH AN UNACCEPTABLE RISK OF CONVICTING THE INNOCENT.

APPELLANT NEVER RECEIVED DUE PROCESS OF LAW TO BE ACTUALLY CONVICTED OF MURDER OF FEBRUARY 18, 2003. APPELLANT NEVER RECEIVED AN INDICTMENT BY A LEGAL GRAND JURY TO ELECT TRIAL UPON AND PLEAD NOT GUILTY TO TO EXERCISE THE PERSONAL RIGHT OF NOT GUILTY TO CHARGE TO THE JURY, BY THE JUDGE, PRESUMPTION OF INNOCENCE AND THAT THE BURDEN OF PROOF IS ON THE STATE TO PROVE APPELLANT GUILTY BEYOND A REASONABLE DOUBT TO YOU THE FACTFINDERS.

THE TRIAL COURT VIOLATED APPELLANT DUE PROCESS OF LAW WHICH IS RIGHT TO INDICTMENT ALLEGING ALL THE ALLEGATIONS TO BE PROVED BEYOND A REASONABLE DOUBT BY THE STATE TO THE JURY, THE RIGHT TO A FAIR TRIAL UPON THAT INDICTMENT, THE RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES, AND THE RIGHT TO PRESENT EVIDENCE IN ONES FAVOR BY AMENDING, THE STATE REQUEST, THE INDICTMENT TO REFLECT TO FEBRUARY 18, 2003 FROM FEBRUARY 17, 2003 RELIEVING THE STATE OF THEIR BURDEN OF PROOF OF PROVING BEYOND A REASONABLE DOUBT OF THE INDICTED OFFENSES IN THE ORIGINAL INDICTMENT PLUS THE AMENDMENT WAS NOT TIMELY AS STATUTORY LAW REQUIRES THE AMENDMENT TO BE DONE BEFORE THE TRIAL MAY BE HAD.

IN ST. V. MEANS THE SUPREME COURT HELD ITS NOT WHETHER OR NOT THE AMENDMENT WAS TIMELY MADE BUT WHETHER THE AMENDMENT VIOLATES DUE PROCESS AND NOTICE.

IN APPELLANT CASE AS TO THE MURDER CHARGE, BOTH DUE PROCESS AND NOTICE HAS BEEN VIOLATED AND THE TIME OF THE AMENDMENT BEING ALLOWED HAS BEEN VIOLATED AS THE LAW REQUIRES FOR IT TO BE MADE.

THE TRIAL COURT VIOLATED APPELLANT DUE PROCESS OF LAW BY CHARGING TO THE JURY WITH THE MURDER CHARGE OF AN INDICTMENT NOT RETURNED BY A LAWFUL GRAND JURY THAT THE TRIAL COURT NEVER HAD JURISDICTION OVER THE SUBJECT MATTER OF FEBRUARY 18, 2003 OFFENSE OF MURDER.

IN THE EYES OF THE LAW, AFFILANT IS AUTOMATICALLY PRESUMED INNOCENT TO ANY UNINDICTED CRIME PERIOD. WITHOUT AN INDICTMENT THE ACCUSED MAY NOT STEP FOOT IN THE COURTROOM UPON ANY CHARGES TO EXERCISE HIS PERSONAL RIGHT OF NOT GUILTY BECAUSE HE IS AUTOMATICALLY PRESUMED INNOCENT.

THEREFORE THE COURT HAS NO JURISDICTION OVER UNINDICTED SUBJECT MATTER(S) WHICH IS IN AFFILANT CASE MURDER OF FEBRUARY 18, 2003 BECAUSE AFFILANT HAS DUE PROCESS RIGHTS SAFEGUARDED HIM OF A UNLAWFUL CONVICTION.

THEREFORE IF THERE IS NO INDICTMENT FOR THAT OFFENSE OF MURDER OF FEBRUARY 18, 2003 TO STAND TRIAL FOR FOR THE STATE TO PROVE BEYOND A REASONABLE DOUBT TO THE JURY TO UPHOLD THEIR BURDEN OF PROOF THEN AFFILANT MAY NOT RECEIVE A SECOND MOST MAXIMUM PENALTY OF THAT CRIME WHICH IS LIFE WITHOUT THE POSSIBILITY OF PAROLE BECAUSE THE STATE DID NOT CARRY OUT HIS BURDEN OF PROOF BEYOND A REASONABLE DOUBT TO THE FACTFINDERS TO RETURN A GUILTY VERDICT BECAUSE THERE IS NO INDICTMENT CHARGING AFFILANT OF AN OFFENSE OF MURDER OF FEBRUARY 18, 2003 NOR DID THE COURT HAVE SUBJECT MATTER JURISDICTION OVER THAT MURDER CHARGE REFERRING TO FEBRUARY 18, 2003.

ON A NEW TRIAL OR IN A NEW TRIAL THE PROCEEDING MAY GOES AS FOLLOWS:

AFFILANT RECEIVE A NEW TRIAL UPON THE ORIGINAL INDICTMENT OF FEBRUARY 17, 2003 AND EITHER MOTION TO DISMISS COUNT ONE MURDER OF THE INDICTMENT AND IF THAT MOTION IS DENIED THEN AFFILANT WILL PROCEED TO TRIAL UPON INDICTED OFFENSES PLACING THE BURDEN ON THE STATE TO PROVE THAT A MURDER OCCURRED ON THE DATE ALLEGED IN THE INDICTMENT.

NO CRIME HAPPENED ON FEBRUARY 17, 2003 FOR THE STATE TO UPHOLD THEIR BURDEN OF PROOF THAT THE STATE CAN PROVE BEYOND A REASONABLE DOUBT TO THE JURY TO OBTAIN A LAWFUL CONVICTION ON THAT MURDER CHARGE. THEREFORE AFFILANT WILL NOT NOR WOULD NOT RECEIVE A LIFE SENTENCE.

THEN THAT WILL PLACE AFFILANT TO EXERCISE HIS PERSONAL RIGHT TO BE SAFEGUARDED BY THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION BECAUSE THAT IS A SUFFICIENT INDICTMENT RETURNED BY A GRAND JURY STATING THE OFFENSE OF THE FEBRUARY 17, 2003.

THEREFORE AFFILANT WILL NOT HAVE A LIFE SENTENCE FOR A MURDER CHARGE.

AFFILANT IS BRINGING A STRAIGHT DUE PROCESS CASE IN WHICH AFFILANT CONTENTS INADEQUATE NOTICE LED TO A TRIAL WITH AN UNACCEPTABLE RISK OF CONVICTING THE INNOCENT, BY ALLOWING THAT AMENDMENT TO THE MURDER CHARGE AND THE TRIAL JUDGE CHARGING MURDER TO THE JURY THAT I NEVER BEEN INDICTED FOR.

LOOKING AT HIS ISSUE AND JUDGING THIS ISSUE FROM AN OBJECTIVELY STANDARD OF REVIEW:

DID THE CHARGE ENABLE AN INNOCENT ACCUSED TO MOUNT AN ADEQUATE DEFENSE? (THAT THE PROSECUTOR HAVE A HARD TIME FRAMING A CHARGE THAT ALLOWS AN ADEQUATE DEFENSE IS NO REASON TO CUT DOWN THE PROTECTIONS ACCORDED TO SUSPECTS)

YES, THE INDICTMENT OF FEBRUARY 17, 2003 ENABLED AFFILANT THE INNOCENT ACCUSED TO MOUNT AN ADEQUATE DEFENSE AT THAT TRIAL WHICH WAS NOT GUILTY AND PRESUME INNOCENT UNTIL PROVEN GUILTY, IF THE STATE CAN NOT PROVE MURDER BEYOND A REASONABLE DOUBT TO THE JURY THEN THE INNOCENT DEFENDANT IS ENTITLED TO A NOT GUILTY VERDICT.

ONCE A NOT GUILTY VERDICT IS ANNOUNCED THE AFFILANT WILL NOT HAVE TO WORRY ABOUT THE CHARGE BEING PUT IN JEOPARDY FOR THE SAME OFFENSE PREVIOUSLY TRIED IN ANY JURISDICTION. AFFILANT WILL NOT HAVE A LIFE SENTENCE THAT HE HAS NOW, UNLAWFULLY IN THE EYES OF THE LAW.

THIS OBJECTIVE, DEFENDANT-CENTERED APPROACH PROTECTS SUSPECTS IN HARD CASES BECAUSE (I) AFFILANT IS INNOCENT BOTH WAYS TO THE MURDER OF THE VICTIM MEXUSING IN THE EYES OF THE LAW AND PHYSICALLY BECAUSE I DID NOT MURDER NO ONE EVER IN MY LIFE.

Let Look At This ISSUE AND JUDGING THIS ISSUE FROM AN OBJECTIVELY STANDARD OF REVIEW OF FEBRUARY 18, 2003:

DID THE CHARGE ENABLE AN INNOCENT ACCUSED TO MOUNT AN ADEQUATE DEFENSE?  
(THAT THE PROSECUTOR MAY HAVE A HARD TIME FRAMING A CHARGE THAT ALLOWS AN ADEQUATE DEFENSE IS NO REASON TO CILT DOWN THE PROTECTIONS ACCORDED TO SUBJECTS)

NO, THE FEBRUARY 17, 2003 INDICTMENT ENABLE APPELLANT TO MOUNT AN ADEQUATE DEFENSE FOR THE MURDER OF FEBRUARY 18, 2003 BECAUSE DUE PROCESS OF LAW ENTITLE APPELLANT TO "NO PERSON MAY BE HELD TO ANSWER FOR ANY CRIME THE JURISDICTION OVER WHICH IS NOT WITHIN THE MAGISTRATE'S COURT, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY OF THE COUNTY WHERE THE CRIME HAS BEEN COMMITTED..."

THEREFORE APPELLANT WAS NOT INDICTED FOR FEBRUARY 18, 2003 OFFENSE OF MURDER TO PREPARE AN ADEQUATE DEFENSE TO STAND TRIAL UPON.

APPELLANT WAS ALREADY ACCUSED OF A CRIME OF FEBRUARY 18, 2003 BUT WAS NEVER INTENTIONALLY INDICTED BY A GRAND JURY TO PLACE THE INNOCENT ACCUSED IN LEGAL JEOPARDY TO MOUNT AN ADEQUATE DEFENSE OR TO EVEN ESTABLISH A DEFENSE IN A COURT ROOM.

THE INDICTMENT DID NOT MOUNT AN INNOCENT ACCUSED OF THE CHARGE OF MURDER OF FEBRUARY 17, 2003 OF THE FEBRUARY 18, 2003 CRIME BECAUSE OF THE SAFEGUARDED RIGHTS PROTECTED BY THE CONSTITUTION.

DUE PROCESS WAS VIOLATED AND APPELLANT RECEIVED AN UNLAWFUL LIFE SENTENCE OF MURDER AND NOW IS SEEKING A NEW TRIAL TO GET THE UNLAWFUL LIFE SENTENCE OFF OF HIM.

APPELLANT IS REQUESTING BECAUSE OF PROOF PROVEN OF A VIOLATION OF DUE PROCESS OF LAW AND IS REQUESTING A NEW TRIAL UPON THE MURDER CHARGE.

PREJUDICE IS CLEARLY PRESUMED IN APPELLANT CASE.

IN THE CONSTITUTIONAL SENSE, TRIAL BY JURY IN A CRIMINAL CASE NECESSARILY IMPLIES AT THE VERY LEAST THAT THE EVIDENCE DEVELOPED AGAINST A DEFENDANT SHALL COME FROM THE WITNESS STAND IN A PUBLIC COURTROOM WHERE THERE IS FULL JUDICIAL PROTECTION OF THE DEFENDANT'S RIGHT OF CONFRONTATION, OF CROSS-EXAMINATION, AND OF COUNSEL AFTER FIRST RECEIVING NOTICE BY INDICTMENT.

THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION IS ONE OF THE FUNDAMENTAL GUARANTEES OF LIFE AND LIBERTY AND A RIGHT LONG DEEMED SO ESSENTIAL FOR THE DUE PROTECTION OF LIFE AND LIBERTY THAT IS GUARDED AGAINST LEGISLATIVE AND JUDICIAL ACTION BY PROVISIONS IN THE CONSTITUTION OF THE UNITED STATES AND IN THE CONSTITUTIONS OF MOST, IF NOT OF ALL, THE STATES COMPOSING THE UNION.

NOTICE IS ONE OF THE SAFEGUARDED ESSENTIAL TO A FAIR TRIAL.

NOTICE IS THE FUNDAMENTAL REQUIREMENT FOR THE KIND OF FAIR TRIAL WHICH IS THIS COUNTRY'S CONSTITUTIONAL GOAL.

IN RE OLIVER, 333 U.S. 257, 68 S.Ct. 499, 92 L.ED. 682, THE UNITED STATES COURT OF AMERICA SAID:

'A PERSON'S RIGHT TO REASONABLE NOTICE OF A CHARGE AGAINST HIM, AND AN OPPORTUNITY TO BE HEARD IN HIS DEFENSE - A RIGHT TO HIS DAY IN COURT - ARE BASIC IN OUR SYSTEM OF JURISPRUDENCE; AND THESE RIGHTS INCLUDE, AS A MINIMUM, A RIGHT TO EXAMINE THE WITNESSES AGAINST HIM, TO OFFER TESTIMONY, AND TO BE REPRESENTED BY COUNSEL.' 333 U.S., AT 273, 68 S.Ct. AT 507.

APPELLANT DID NOT RECEIVE THOSE GUARANTEES FOR THE OFFENSES OF FEBRUARY 18, 2003 BECAUSE APPELLANT DID NOT RECEIVE LAW ABIDING REASONABLE NOTICE AS THE (8.) LAW REQUIRES.

After a careful review of Appellant's Trial record of the MURDER TRIAL, in the light most favorable to the state, the state has been proving a murder that occurred on a different date than that date set forth in the indictment which also substantial evidence presented to the jury to prove that a murder occurred as indicted.

The state failed to offer substantial evidence from which the jury could determine that the appellant intentionally killed the victim with malice, premeditation and deliberation.

The state is violating appellant's right to a fair trial and all other constitutional rights guaranteed to him pertaining to February 18, 2003 offenses because appellant was never indicted for any offense of February 18, 2003. To stand trial upon nor to step foot in the courtroom to give the trial court power to hear and determine the case of that proceeding is a question of whether or not the state can prove appellant guilty of a murder elements to the jury beyond a reasonable doubt.

The indictment was sufficient only for February 17, 2003 and not to February 18, 2003.

The state just failed to uphold their burden of proof of proving each element to the jury beyond a reasonable doubt to the jury of indicting offenses returned by a properly constituted grand jury that appellant stood trial upon. The state just flat out failed to indict appellant of the February 18, 2003 offense of murder properly.

Trial counsel failed to object to the sufficiency of the indictment when the trial judge verbally changed the date after February 17, 2003 had been announced first then immediately behind that February 18th was announced and the state proceeds as if it was timely amended or as if the amendment timely made.

That proceeding went as follows:

MR. SABB (PROSECUTOR): THANK YOU, YOUR HONOR. IF IT PLEASES THE COURT. AT THIS TIME THE STATE WOULD CALL INDICTMENT NUMBER 04-132, THE STATE VERSUS TASHON SAMPSON AND JOSEPH WILSON. YOUR HONOR, IT'S AN INDICTMENT FOR MURDER, ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME. MR. JOSEPH WILSON IS REPRESENTED BY ATTORNEY CHARLES DAVID BARR. MR. TASHON SAMPSON IS REPRESENTED BY ATTORNEY LEGRAND CARRAWAY. AND YOUR HONOR, WE ARE READY FOR TRIAL.

THE COURT: I AM GOING TO HAVE YOU CALL THAT OUT, THOUGH.

MR. SABB: YES, MA'AM. I HAVE A COPY.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY PANEL, YOU HAVE HEARD THE STATE CALL THE CASE OF THE STATE VERSUS TASHON SAMPSON AND JOSEPH WILSON. THEY HAVE BEEN CHARGED WITH THE OFFENSES OF MURDER, ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

NOW, I TELL YOU THIS TO ASK YOU THIS QUESTION. LET ME ALSO STATE THAT IT WAS ALLEGED THAT THESE OFFENSES DID OCCUR ON OR ABOUT FEBRUARY 17th, 2003. IT IS ALLEGED THAT THE DEFENDANTS DID KILL AN INDIVIDUAL NAMED LILA FERRY.

I TELL YOU THIS TO ASK YOU THIS QUESTION. IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS ANY INFORMATION WHATSOEVER REGARDING THESE ALLEGED OFFENSES, AGAIN ALLEGED TO HAVE OCCURRED ON OR ABOUT FEBRUARY 18th OF 2003. IF SO, PLEASE STAND....

TRIAL COUNSEL SHOULD HAVE OBJECTED ONCE THE DATE WAS VERBALLY CHANGED BY THE TRIAL COURT JUDGE.

THE GROUNDS FOR THE OBJECTION SHOULD HAVE BEEN AS FOLLOWS:

MY OBJECTION IS TO THE SUFFICIENCY OF THE INDICTMENT BECAUSE TO MY KNOWLEDGE OF THE CASE, MY CLIENT WAS PUT ON NOTICE TO DEFEND THE CHARGES ALLEGED OF FEBRUARY 17, 2003 AND THIS IS A SUFFICIENT INDICTMENT, IN FACT THE ONLY INDICTMENT SUFFICIENTLY RETURNED BY A LAWFUL LEGAL GRAND JURY AND IF ANYTHING ELSE IS INTENDED TO BE PROVEN OTHER THAN THAT ALLEGED IN THIS PARTICULAR INDICTMENT THEN THAT WILL VIOLATE DUE PROCESS OF LAW BECAUSE MY CLIENT HAS A CONSTITUTIONAL AND STATUTORY RIGHT TO DEMAND THAT A PROPERLY CONSTITUTED GRAND JURY CONSIDER HIS CASE AND DECIDE WHETHER TO ISSUE A SUFFICIENT INDICTMENT.

"THE PRIMARY PURPOSES OF AN INDICTMENT ARE TO PUT THE DEFENDANT ON NOTICE OF WHAT HE IS CALLED UPON TO ANSWER, THAT IS, TO APPRISE HIM OF THE ELEMENTS OF THE OFFENSE AND ALLOW HIM TO DECIDE WHETHER TO PLEAD GUILTY OR STAND TRIAL, AND TO ENABLE THE CIRCUIT COURT TO KNOW WHAT JUDGEMENT TO PRONOUNCE IF THE DEFENDANT IS CONVICTED."

WELL THIS INDICTMENT IS SUFFICIENT TO PUT MY CLIENT ON NOTICE OF THE OFFENSES OF FEBRUARY 17, 2003 AND A SUFFICIENT INDICTMENT PREVENTS (A) LATER RETRIALS FOR THE SAME OFFENSE IN CONTRAVENTION OF THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY AND PREVENTS A PROSECUTOR FROM USURPING THE POWER OF THE GRAND JURY BY ENSURING A DEFENDANT IS TRIED FOR THE CRIME FOR WHICH HE WAS INDICTED.

IF THE STATE CAN NOT PROVE THESE ALLEGATIONS AS INDICTED THEN MY CLIENT IS ENTITLED TO A NOT GUILTY VERDICT OR A DISMISSAL OF ALL CHARGES.

AS MY UNDERSTANDING OF THE LAW, THE TIME IS THE SUFFICIENCY OF THE OFFENSE OF MURDER THAT MAY NOT BE AMENDED. TIME IS AN ESSENTIAL ELEMENT AND IS RECOGNIZED IN THE S.C. STATUTORY LAW SECTION 17-11-30 THAT MUST BE PROVEN BEYOND A REASONABLE DOUBT BY THE STATE TO THE JURY. IF NOT CAN BE PROVEN AS INDICTED THEN MY CLIENT IS ENTITLED TO A DISMISSAL ~~OR A NOT GUILTY VERDICT~~ OF NOT GUILTY. ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME MAY BE AMENDED BEFORE THE JURY MAY BE SWORN IN LEAVING OUT THE MURDER CHARGE. IF THAT'S WHAT YOU WANT TO DO BUT TO THIS MURDER CHARGE ITS EITHER THE STATE PROVE THESE ELEMENTS OF MURDER AS INDICTED TO THE JURY BEYOND A REASONABLE DOUBT HERE TODAY OR THE COURT SHALL FILE AND ACCEPT MY MOTION TO DISMISS COUNT ONE MURDER OF THE INDICTMENT AND ALLOW THE AMENDMENT OF THE REMAINING CHARGES SO THAT MY CLIENT MAY BE CONSTITUTIONALLY PROTECTED AND MEET THE STATE'S CASE TO WHICH THEY ARE ENTITLED TO PROVE BEYOND A REASONABLE DOUBT.

HAD TRIAL COUNSEL WOULD HAVE EFFECTIVELY ASSISTED APPELLANT AS THE SIXTH AMENDMENT DEMANDS OF HIM IN THAT MATTER APPELLANT WOULD NOT HAVE RECEIVED AN UNLAWFUL LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE TO AN UNINDICTED MURDER CHARGE.

APPELLANT IS SEEKING A NEW TRIAL ON/UPON THE MURDER CONVICTION BECAUSE THE MURDER CHARGE IS DAMAGING TO APPELLANT RIGHTS OF PROCEDURAL DUE PROCESS OF LAW WHICH THE STATE MUST PROVE BEYOND A REASONABLE DOUBT, AS INDICTED.

TRIAL COUNSEL DID NOT LECTURE APPELLANT ABOUT NONE THE LAW BEFORE TRIAL IN ORDER FOR AN ADEQUATE DEFENSE BE SHOWN IN ACCORDANCE WITH APPELLANT PRESUMPTION OF INNOCENCE DEFENSE.

APPELLANT LEARNED THE LAW ON HIS OWN OVER A PERIOD OF EIGHT GOING ON NINE YEARS NOW.

BEINGS THAT DUE PROCESS OF LAW ALONE WAS VIOLATED APPELLANT DESERVES A NEW TRIAL TO THE MURDER CHARGE.

APPELLANT DOES NOT MIND SUSTAINING THE ARMED ROBBERY, CRIMINAL CONSPIRACY, POSSESSION OF A WEAPON DURING A VIOLENT CRIME CONVICTION AS GOING ON NOW BECAUSE IF A NEW TRIAL WAS GRANTED OF ALL CHARGES THEN THE STATE MAY ASK FOR AN AMENDMENT BEFORE THE JURY IS SWORN IN THEN SEEK TO FIND GUILT. PLUS TIME IS NOT AN ESSENTIAL ELEMENT TO THESE OFFENSES.

APPELLANT IS WILLING TO ACCEPT THE PUNISHMENT AS HE IS DOING HERE IN LEE CORRECTIONAL INSTITUTION UPON THE ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF A WEAPON

DURING A VIOLENT CRIME EVEN THOUGH HE HAS NOT PARTICIPATED IN THE CRIME NONE AT ALL AS THE PROSECUTOR BECK INTENDING TO PROVE TO THE JURY BEYOND A REASONABLE DOUBT OF THE ORIGINAL DATE OF FEBRUARY 18, 2003.

APPELLANT IS AWARE OF WHAT THE STATE CAN AND CANNOT DO WITH THE CASE UPON A WHOLE REVERSE AND REMAND TO THE LOWER COURT.

APPELLANT SEES THAT IN THE EYES OF THE LAW THE MURDER CONVICTION IS HIGHLY UNLAWFUL AND PREJUDICIAL AND HAS APPELLANT SITTING ON AN UNLAWFUL CONVICTION IN PRISON.

TO PRESERVE AN ERROR FOR DIRECT APPELLATE REVIEW IN LIGHT OF CENTRY THE OBJECTION WAS TO BE MADE BEFORE THE JURY WAS SWORN IN AND NOT AFTERWARDS LIKE THE TRIAL COUNSEL DONE AT APPELLANT TRIAL WHICH IS MISCONSTRUED AS AN CONTEMPORANEOUSLY OBJECTION WHICH IS NOT.

THE PCR COURT'S DECISION WAS BASED OFF OF THE DIRECT APPEALS DECISION AND SAID THAT TRIAL COUNSEL MADE AN CONTEMPORANEOUS OBJECTION TO THE AMENDMENT.

TRIAL COUNSEL SHOULD HAVE KNOWN THE APPLICABLE LAWS OF SOUTH CAROLINA STATUTORY LAW THAT PROVIDES THE FOLLOWING:

EVERY OBJECTION TO ANY INDICTMENT FOR ANY DEFECT APPARENT ON THE FACE THEREOF, SHALL BE TAKEN BY DEMURRER OR ON MOTION TO QUASH SUCH INDICTMENT BEFORE THE JURY SHALL BE SWORN AND NOT AFTERWARDS.  
S.C. CODE ANN. SECTION 17-19-90.

AT THE TIME THE JUDGE VERBALLY CHANGED THE DATE TRIAL COUNSEL SHOULD HAVE OBJECTED TO THE VERBAL DATE CHANGE BY THE JUDGE BECAUSE IT ALLOWED THE PROSECUTOR TO PROCEED UPON PROVING THE DATE OF FEBRUARY 18, 2003 OFFENSES INSTEAD OF THE INDICTED OFFENSE OF MURDER.

TRIAL COUNSEL FAILED TO ENSURE APPELLANT RIGHTS BE PROTECTED AT EVERY STAGE OF THE TRIAL BY EXERCISING HIS REASONABLE PROFESSIONAL JUDGEMENT IN MAKING ALL SIGNIFICANT DECISIONS IN THE CASE AND THROUGHOUT THE TRIAL.

HAD TRIAL COUNSEL WOULD HAVE TIMELY OBJECTED IN ACCORDANCE WITH S.C. CODE ANN. SECTION 17-19-100 (2003) TO THE SUFFICIENCY OF THE INDICTMENT, BEFORE THE JURY IS SWORN, A RULING THAT AN INDICTMENT IS NOT SUFFICIENT WILL RESULT IN THE QUASHING OF THE INDICTMENT UNLESS THE DEFENDANT WAIVES PRESENTMENT TO THE GRAND JURY AND PLEADS GUILTY. THE DEFENDANT ORDINARILY WILL BE FREE TO LATER SUBMIT A PROPERLY DRAFTED INDICTMENT TO THE GRAND JURY FOR ITS CONSIDERATION.

IN APPELLANT CASE, THE QUASHING OF COUNT ONE MURDER WOULD HAVE BEEN SUSTAINED AND COULD NOT HAVE BEEN PROPERLY DRAFTED BECAUSE TIME IS AN ELEMENT OF MURDER THAT CAN NOT BE CHANGED IN NO SHAPE, FORM, OR FASHION. TIME OF DEATH MAKES THE SUFFICIENCY OF THE INDICTMENT ONCE PASSED UPON BY THE GRAND JURY.

APPELLANT DID NOT EVER WAIVE ANY OF HIS CONSTITUTIONAL RIGHTS ESPECIALLY HIS RIGHT TO A FAIR TRIAL UPON INDICTED OFFENSES RETURNED AGAINST HIM BY THE CONSTITUTED GRAND JURY.

IF TRIAL COUNSEL WOULD HAVE OBJECTED TO THE SUFFICIENCY OF THE INDICTMENT UPON THE TRIAL JUDGE VERBAL CHANGE OF THE DATE THAT WOULD HAVE FORCED THE STATE TO MOVE BEFORE TRIAL TO AMEND THE INDICTMENT PREVIOUSLY ISSUED OR "TRUE BILLED" BY THE GRAND JURY. THE COURT WOULD HAVE FIRST SHOULD DETERMINE WHETHER THE EXISTING INDICTMENT IS SUFFICIENT TO PLACE THE DEFENDANT ON NOTICE OF A PARTICULAR OFFENSE, AND IDENTIFY THE NATURE OF THAT OFFENSE.

SECOND, THE COURT SHOULD DETERMINE WHETHER THE AMENDED INDICTMENT WOULD BE SUFFICIENT TO PLACE THE DEFENDANT ON NOTICE OF A PARTICULAR OFFENSE AND, IF SO, IDENTIFY THE NATURE OF THAT OFFENSE.

THIRD, THE COURT SHOULD DETERMINE WHETHER THE PROPOSED AMENDMENT CHANGES THE NATURE OF THE OFFENSE SET FORTH IN THE ORIGINAL INDICTMENT. IF IT DOES, THE MOTION TO AMEND MUST BE DENIED UNLESS THE AMENDED INDICTMENT STATES A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED IN THE ORIGINAL INDICTMENT OR THE DEFENDANT CHOOSES TO WAIVE PRESENTMENT OF THE AMENDED INDICTMENT TO THE GRAND JURY AND PLEAD GUILTY.

TO RULE OTHERWISE WOULD VIOLATE THE DEFENDANT'S STATUTORY AND CONSTITUTIONAL RIGHT TO DEMAND THAT A PROPERLY CONSTITUTED GRAND JURY CONSIDER HIS CASE AND DECIDE WHETHER TO ISSUE A SUFFICIENT INDICTMENT.

THE AMENDMENT WOULD HAVE VIOLATED THE STATUTORY AND CONSTITUTIONAL RIGHT TO DEMAND THAT A PROPERLY CONSTITUTED GRAND JURY CONSIDER APPELLANT CASE BECAUSE THE INDICTMENT WAS ALREADY SUFFICIENT.

THE AMENDMENT ALLOWED SINCE THE STATE TESTED THEIR CASE ON THE RECORD WAS VERY PREJUDICIAL AND WAS NOT A LESSER INCLUDED OFFENSE OF MURDER AND CHANGED THE VERDICT FROM NOT GUILTY TO A GUILTY CHARGED VERDICT WITHOUT AN INDICTMENT AS WAS DONE AT APPELLANT TRIAL BECAUSE THE AMENDMENT CAME FROM A CRIME THAT DID NOT HAPPEN AT ALL TO A CRIME THAT DID HAPPEN.

THE ALLEGATIONS THAT MAKES UP THE SUFFICIENCY OF THE INDICTMENT IS TIME OF DEATH THAT MUST BE PROVEN BY THE PROSECUTOR TO THE JURY BEYOND A REASONABLE DOUBT BECAUSE APPELLANT ELECTED TRIAL UPON THE INDICTED STATUTORY OFFENSES AND FOR THE OFFENSE OF MURDER TIME IS A ELEMENT OF THE OFFENSE OF MURDER THAT MUST BE ALLEGED IN THE INDICTMENT RETURNED BY THE GRAND JURY AND THE STATE MUST PROVE THOSE ALLEGATIONS AS INDICTED.

THE STATE VIOLATED DUE PROCESS OF LAW ASSURING A FAIR TRIAL AS THEY RETURNED THE INDICTMENT TO APPELLANT BY THE GRAND JURY.

THE STATE FAILED TO PROVE THE OFFENSE OF MURDER BEYOND A REASONABLE DOUBT TO THE JURY AS INDICTED. THE STATE DID NOT PROVIDE A FAIR TRIAL AS THE 6<sup>th</sup> AMENDMENT REQUIREMENT DEMANDS. THE STATE DID NOT FURNISH APPELLANT WITH THE WITNESSES AND EVIDENCE TO PROVE ITS CASE AS INDICTED / INDICTMENT WAS SERVED.

THE STATE FAILED TO PROVIDE AN FAIR TRIAL.

THE STATE HAS TO ABIDE BY DUE PROCESS OF LAW PROCEDURES OF THE SIXTH AMENDMENT AS WELL AS TRIAL COUNSEL'S DECISIONS MUST REVOLVE AROUND THAT TRIAL TO MAKE SURE THAT ALL RIGHTS ARE NOT VIOLATED AT THE TRIAL.

FOR FEBRUARY 17, 2003 I DID NOT RECEIVE A TRIAL PERIOD TO THOSE ALLEGATIONS TO WHERE I, APPELLANT HAD A CHANCE TO CONFRONT WITNESSES TO CROSS EXAMINE TO THE ALLEGATIONS OF THE TRUTH OF WHAT ALLEGED TO HAVE OCCURRED IN THE INDICTMENT, DID NOT SEE ANY EVIDENCE THE STATE HAD TO PRESENT TO THE JURY AS TO PROVE MALICE AFORETHOUGHT, DID NOT HAVE A JURY IN THE COURT ROOM FOR ME TO PLEAD NOT GUILTY AND THE STATE PRESENT EVIDENCE AND TESTIMONY TO THAT JURY TO PROVE THEIR CASE BEYOND A REASONABLE DOUBT IN ORDER FOR APPELLANT TO BE LAWFULLY CONVICTED TOGETHER, IN LEE COUNTY CORRECTIONAL INSTITUTION.

THE STATE FAILED TO PROVIDE A FAIR TRIAL AS INDICTED.

FOR FEBRUARY 18, 2003 APPELLANT DID NOT HAVE NOTICE BY THE GRAND JURY FOR THE COURT TO HEAR THE SUBJECT MATTER OF FEBRUARY 18, 2003 OFFENSES BECAUSE APPELLANT WAS NOT INDICTED BY A LEGAL GRAND JURY IN ORDER TO HAVE A FAIR TRIAL UPON THOSE ALLEGATIONS TO PUT THE STATE TO ITS BURDEN OF PROOF OF THE ALLEGATIONS STATED IN THE INDICTMENT THAT WAS NEVER GIVEN TO APPELLANT TO CONFRONT THE WITNESSES AND CROSS EXAMINE THEM AND TO INTRODUCE EVIDENCE IN HIS FAVOR WHICH HE IS AUTOMATICALLY IS WHICH IS PRESUMED INNOCENT UNTIL GUILT IS PROVEN BY THE STATE AND HAVE THE JUDGE TO CHARGE THAT JURY WITH THE RULE OF LAW OF EVIDENCE BECAUSE THERE WAS NO JURY IN THE JURY BOX TO CHARGE THE JURY WITH ELEMENTS OF MALICE AFORETHOUGHT SO THAT THE JURORS MAY RENDER A VERDICT OF GUILT FOR THE TRIAL JUDGE TO SENTENCE APPELLANT TO LIFE IMPRISONMENT.

THERE WAS NEVER A FAIR IMPARTIAL AND PUBLIC JURY TRIAL OF MY PEERS IN ORDER TO RENDER A GUILTY VERDICT UPON FINDING MALICE AFORETHOUGHT AT THAT PARTICULAR TRIAL OF FEBRUARY 18, 2003 TO HAVE APPELLANT SERVING A LIFE SENTENCE.

APPELLANT WAS NEVER INDICTED OF THE OFFENSE OF MURDER OF FEBRUARY 18, 2003.

APPELLANT DID NOT HAVE A DUE PROCESS OF LAW FAIR TRIAL AS TO THE FEBRUARY 18, 2003 OFFENSE OF MURDER.

TRIAL COUNSEL DID NOT RENDER ADEQUATE ASSISTANCE AND EXERCISED REASONABLE PROFESSIONAL JUDGMENT IN MAKING ALL SIGNIFICANT DECISIONS IN THE CASE BY ENSURING AND PROTECTING APPELLANT CONSTITUTIONAL RIGHT TO DEMAND THAT A GRAND JURY WHICH IS PROPERLY ESTABLISHED AND CONSTITUTED UNDER THE LAW CONSIDER THE CRIMINAL ALLEGATIONS AGAINST HIM. See 9th CONST. ARTICLE I. SECTION 11 AND ARTICLE 5 SECTION 22. "NONE WHO DEMANDS AND IS REFUSED THE RIGHT TO BE TRIED FOR CRIME CHARGED AGAINST HIM ONLY UPON AN INDICTMENT PRESENTED BY A LEGAL GRAND JURY, IN INSTANCES WHERE SUCH INDICTMENT IS REQUIRED, MAY THEREAFTER JUSTLY TAKE THE POSITION THAT HE HAS BEEN DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW" IN VIOLATION OF THE STATE CONSTITUTION.

TRIAL COUNSEL DID NOT CARE ABOUT APPELLANT HAVING A FAIR TRIAL AS INDICTED.

TRIAL COUNSEL FAILED TO ENSURE APPELLANT RECEIVE A FAIR TRIAL AS INDICTED.

HAD TRIAL COUNSEL WOULD HAVE WOULD PROTECT APPELLANT RIGHT TO A FAIR TRIAL AS INDICTED APPELLANT WOULD HAVE A NOT GUILTY VERDICT AS INDICTED OF ALL CHARGES BUT AS TO THE MURDER CHARGE APPELLANT WOULD RECEIVE A NOT GUILTY VERDICT.

TRIAL COUNSEL FAILED TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL AS THE SIXTH AMENDMENT REQUIRES.

THE SIXTH AMENDMENT REQUIRES A FAIR TRIAL THAT COUNSEL MUST PROTECT TO RENDER A JUST VERDICT.

HAD TRIAL COUNSEL WOULD HAVE DISMISSED COUNT ONE MURDER OF THE INDICTMENT BEFORE THE JURY WAS SWORN IN APPELLANT WOULD NOT HAVE A LIFE SENTENCE FOR MURDER BECAUSE DUE TO HIS INVESTIGATION OF THE CIRCUMSTANCES OF THE CASE IT WOULD HAVE REVEALED THAT NO MURDER OCCURRED ON FEBRUARY 17, 2003 AS INDICTED, GIVING ALL RIGHTS TO DISMISS THE COUNT DUE TO THE FACT THAT THE STATE WILL NOT BE ABLE TO PROVE MURDER TO THE JURY BEYOND A REASONABLE DOUBT AS THE STATE IS ENTITLED TO PROVE BY LAW IN ORDER TO CONVICT.

THE PCR JUDGE FAILED TO FIND TRIAL COUNSEL ~~ARRAIGNED~~ INEFFECTIVE OF HIS PERFORMANCE AT TRIAL MAY 23-25, 2005.

OVERALL DUE PROCESS OF LAW BEEN VIOLATED IN APPELLANT'S CASE WHICH AUTOMATICALLY SHOULD REVERSE APPELLANT MURDER CHARGE AND GRANT A NEW TRIAL UPON AS INDICTED AND NOT AS UNINDICTED.

APPELLANT SHOULD RECEIVE A FAIR TRIAL REVERSAL OF MURDER TO RENDER A JUST VERDICT BY AN IMPARTIAL AND PUBLIC TRIAL OF A JURY OF APPELLANT PEERS AS INDICTED.

THE INDICTMENT IS THE CHARGE OF THE STATE AGAINST THE DEFENDANT, THE PLEADING BY WHICH HE IS INFORMED OF THE FACT AND THE NATURE AND SCOPE OF THE ACCUSATION. WHEN THAT INDICTMENT IS PRESENTED, THAT ACCUSATION MADE, THAT PLEADING FILED, THE ACCUSED HAS TWO COURSES OF PROCEDURE OPEN TO HIM. HE MAY QUESTION THE PROPERNESS OF THE ACCUSATION, THE MANNER IN WHICH IT HAS BEEN PRESENTED, THE SOURCE FROM WHICH IT PROCEEDS, AND HAVE THESE MATTERS PROMPTLY AND PROPERLY DETERMINED; OR, WAIVING THEM, HE MAY PUT IN ISSUE THE TRUTH OF THE ACCUSATION, AND DEMAND THE JUDGEMENT OF HIS PEERS ON THE MERITS OF THE CHARGE. IF HE OMMITS THE FORMER, AND CHOOSES THE LATTER, HE CANNOT, WHEN DEFEATED ON THE LATTER, -- WHEN FOUND GUILTY OF THE CRIME CHARGED, -- TO BE PERMITTED TO GO BACK TO THE FORMER, AND INQUIRE AS TO THE MANNER AND MEANS BY WHICH THE CHARGE WAS PRESENTED.

APPELLANT TRIAL COUNSEL DID ALLOW APPELLANT TO GO TO TRIAL UPON THE TRUTH OF THE ACCUSATION MADE OF FEBRUARY 17, 2003 AND DEMAND THE JUDGEMENT OF HIS PEERS ON THE MERITS OF THE CHARGE.

THE STATE VIOLATED BY NOT PROVING THOSE ELEMENTS OF THE OFFENSE OF MURDER AS INDICTMENT ALLEGE TO THE JURY BEYOND A REASONABLE DOUBT AT THAT SUPPOSED TO BE FAIR TRIAL MAY 23-25, 2005.

A DEFENDANT HAS BEEN ACCUSED OF A SERIOUS CRIME, AND THIS IS THE TIME AND PLACE SET FOR HIM TO BE TRIED BY A JURY OF HIS PEERS AND FOUND EITHER GUILTY OR NOT GUILTY BY THAT JURY. TO THE GREATEST EXTENT POSSIBLE ALL ISSUES WHICH BEAR ON THIS CHARGE SHOULD BE DETERMINED IN THIS PROCEEDING: THE ACCUSED IS IN THE COURT-ROOM, THE JURY IS IN THE BOX, THE JUDGE IS ON THE BENCH, AND THE WITNESSES, HAVING BEEN SUBPOENAED AND DULY SWORN, AWAIT THEIR TURN TO TESTIFY. SOCIETY'S RESOURCES HAVE BEEN CONCENTRATED AT THAT TIME AND PLACE IN ORDER TO DECIDE, WITHIN THE LIMITS OF HUMAN FALLIBILITY, THE QUESTION OF GUILT OR INNOCENCE OF ONE OF ITS CITIZENS. ANY PROCEDURAL RULE WHICH ENCOURAGES THE RESULT THAT THOSE PROCEEDINGS BE AS FREE OF ERROR AS POSSIBLE IS THOROUGHLY DESIRABLE, AND THE CONTEMPORANEOUS OBJECTION RULE SURELY FALLS WITHIN THIS CLASSIFICATION.

THE AMENDMENT VIOLATED DUE PROCESS OF LAW AND APPELLANT RIGHT TO A FAIR JURY TRIAL AS INDICTED WHEN APPELLANT HAS A RIGHT TO BE TRIED ONLY FOR CHARGES AS INDICTED.

THE P.C.R COURT DECISION SHALL BE OVERTURNED BECAUSE APPELLANT INDICTMENT DID NOT STATE TIME AND PLACE OF DEATH THAT THE STATE BEEN INTENDING TO PROVE AT TRIAL TO HAVE A FAIR TRIAL UPON TO LAWFULLY CONVICT APPELLANT TO MURDER AND SENTENCE APPELLANT TO LIFE IMPRISONMENT.

APPELLANT DID NOT HAVE A JURY TRIAL YET IN THE CONSTITUTIONAL SENSE THAT WAS FAIR UPON AN INDICTMENT.

APPELLANT MURDER CONVICTION SHALL BE  
VACATED

AND A NEW TRIAL ORDER FOR MURDER.

THE 5<sup>th</sup> 6<sup>th</sup> AND 14<sup>th</sup> AMENDMENT RIGHTS BEEN VIOLATED AND THE STATE GAVE UNACCEPTABLE NOTICE THAT CONVICTED THE INNOCENT.

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SC Court of Appeals

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