3-27-2014

DEAR CLERK.

PLEASE FIND ENCLOSED IS

APPELLANTS TIMELY WRITTEN EXPLANATION
PURSUANT TO S.C. APP. CT. RULE 243(C)
IN CASE NO: 2014-000407 HUDSON V. STATE

PLEASE FORWARD ME A COPY
BACK STAMP-CLOCKED OR A LETTER
LETING ME KNOW THAT IT HAVE
BEEN TIMELY FILED.

THANK YOU FOR YOUR ASSISTANCE
IN THIS MATTER

DARNELL E HUDSON

IN THE SUPREME COURT OF SOUTH CAROLINA

THE COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI TO

GREENVILLE COUNTY COURT OF COMMON PLEAS

HON. G EDWARD WEIMAKER, CIR CT. JUDGE

IN CASE NO: 2013-CP-23-0993

APPELLATE CASE NO: 2014-000407

RECEIVED

MAR 31 2014

S.C. SUPREME COURT

DARNELL E. HUDSON #227328 . . . . . APPELLANT,

VS.

STATE OF SOUTH CAROLINA . . . . . RESPONDENT.

A PETITION FOR WRIT OF CERTIORARI

PURSUANT TO S.C. APP. CT. RULE 243(C)

APPELLANT SUBMIT : HIS WRITTEN

EXPLANATION AS TO WHY THE P.C.R.

COURT DETERMINATION WAS IMPROPER.

COUNSEL FOR RESPONDENT

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RIDGEVILLE S.C. 29472

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PAGES:

EXHIBITS TO BE INCLUDED AS PART OF THE RECORD FOR REVIEW.

EXHIBITS (A) (B) (C) (D) (E) (F) (G) (H)

ISSUE PRESENTED

ISSUE(A) THE P.C.R. COURT ERRED IN DISMISSING APPELLANT'S MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE AS BEING UNTIMELY FILED.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

APPELLANT IS CONFIND IN THE SOUTH CAROLINA DEPT. OF CORR. PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR GREENVILLE COUNTY. APPELLANT WAIVED PRESENTMENT OF INDICTMENTS TO THE GREENVILLE COUNTY GRAND JURY FOR ARMED ROBBERY (1995-GS-23-6102) AND FOR ASSAULT AND BATTERY WITH THE INTENT TO KILL (1995-GS-23-6103). APPELLANT WAS REPRESENTED BY MR. HAL W. ROACH ESQ. ON OCTOBER 26, 1995 APPELLANT PLED GUILTY TO ARMED ROBBERY AND ASSAULT AND BATTERY OF AN HIGH AND AGGREVATED NATURE (ABHAN). APPELLANT WAS SENTENCED BY THE HON. MARC WESTBROOK UNDER THE YOUTHFUL OFFENDER ACT TO CONCURRENT TERMS NOT TO EXCEED SIX YEARS FOR THE ARMED ROBBERY AND NOT TO EXCEED SIX YEARS SUSPENDED TO FIVE YEARS PROBATION FOR THE (ABHAN). APPELLANT DID NOT APPEAL.

ON THE DATE OF FEBRUARY 19, 2013 APPELLANT FILED UPON THE COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) ALLEGING THE FOLLOWING TO SUPPORT HIS CLAIMS FOR RELIEF:

(A) NEWLY - AFTER DISCOVERED EVIDENCE
(B) PROSECUTION FAILED TO DISCLOSE FAVORABLE EVIDENCE PURSUANT TO S.C.R. CRIM. P. RULE 5 BRADY DISCLOSURE.

(C) INVOLUNTARY GUILTY PLEA.

ATTACHED UPON SAID MOTION WAS APPELLANT'S SWORN AFFIDAVIT TO SUPPORT MOTION FOR NEW TRIAL.

THE RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS ON THE DATE OF AUGUST 5, 2013

APPELLANT WAS SERVED WITH A CONDITIONAL ORDER OF DISMISSAL ON THE DATE OF AUGUST 15, 2013 WHICH GRANTED APPELLANT 20 DAYS TO RESPOND TO THE CONDITIONAL ORDER OF DISMISSAL.

ON THE DATE OF SEPT 21, 2013 APPELLANT SUBMITTED THE TIMELY RESPONSE TO THE RESPONDENT CONDITIONAL ORDER OF DISMISSAL, INCLUDED WAS EXHIBITS PRESENTED UPON THE COURT TO SUPPORT HIS ENTITLEMENT TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL.

ON THE DATE OF DECEMBER 19, 2013 AN HEARING WAS HELD AT THE GREENVILLE COURTHOUSE CONCERNING THE STATUTE OF LIMITATION. THE RESPONDENT WAS REPRESENTED BY MS. KAREN C. RATIGAN ESQ. FOR THE ATTORNEY GENERAL OFFICE. APPELLANT APPEARED AND REPRESENTED HIS SELF PRO SE. THE HON. G EDWARD WEIMAKER, PRESIDING JUDGE HEARD TESTIMONY FROM BOTH PARTIES IN THAT MATTER.

ON THE DATE OF JANUARY 22, 2014 THE HON. G EDWARD WELMAKER ORDER APPELLANT P.C.R. APPLICATION IN CASE NO: 2013-CP-23-0993 DISMISSED WITH PREJUDICE.

APPELLANT FILED TIMELY NOTICE OF APPEAL UPON THE PARTIES ON THE DATE OF FEBRAURY 28, 2014. THIS PETITION FOR WRIT OF CERTIORARI NOW FOLLOWS.

APPELLANT PRESENT EXPLANATION AS TO WHY THE P.C.R. COURT DETERMINATION WAS IMPROPER PURSUANT TO S.C. APP. CT. RULE 243(C).

STATEMENT OF FACTS.

ON THE DATE OF MARCH 13, 1995 MR. HASHAWSAN K. BROWN REPORTED TO THE GREENVILLE CITY POLICE DEPT "OFC. JT BURGESS" THAT HE WAS ROBBED AT GUN POINT AND ASSAULTED BY BEING HIT IN HIS HEAD WITH A GUN BY TWO UNKNOWN BLACK INDIVIDUALS. HE "THE VICTIM" GAVE THE GREENVILLE CITY POLICE DEPT A DESCRIPTION OF THE TWO INDIVIDUALS THAT HE ALLEGED ARMED ROBBED HIM AND ASSAULTED HIM. THE VICTIM GAVE A SWORN STATEMENT TO THE GREENVILLE CITY POLICE DEPT AND WAS SHOWN A PHOTO-LINE UP AND IDENTIFIED THE SAID APPELLANT DARNELL E HUDSON AS ONE OF THE ARMED ROBBERS AND THE ONE WHO ASSAULTED HIM. THE VICTIM NEVER KNOWN OF APPELLANT PRIOR TO HIS STATEMENT AND IDENTIFICATION OF APPELLANT. OFFICER JT. BURGESS WAS THE OFC. INVOLVED IN THE INVESTIGATION OF THE CASE. ON OR ABOUT MARCH

13-14 1995 THE GREENVILLE CITY POLICE DEPT OBTAINED A SEARCH WARRANT FOR APT 40-E WOODLAND HOMES IN GREENVILLE COUNTY AND ON THAT NIGHT BY EXCUTING THE SEARCH WARRANT THE GREENVILLE CITY POLICE DEPT APPREHENDED APPELLANT AND ARRESTED AND CHARGED APPELLANT WITH (1) COUNT OF ARMED ROBBER AND (1) COUNT OF ASSAULT AND BATTERY WITH THE INTENT TO KILL. UPON THE SEARCH OF THE APT THE GREENVILLE CITY POLICE DEPT FOUNDED NO EVIDENCE TO LINK APPELLANT TO THE ALLEGED ARMED ROBBER AND ASSAULT. APPELLANT WAS APPOINTED COUNSEL, MR. HAL W. ROACH BY THE GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE ON THE DATE OF OCTOBER 16, 1995 TO REPRESENT APPELLANT ON ALL CHARGES. SHORTLY AFTER ATTORNEY HAL ROACH WAS APPOINTED TO REPRESENT APPELLANT HE CAME TO THE DETENTION CENTER TO CONSULT WITH APPELLANT. APPELLANT WAS TOLD BY ATTORNEY HAL ROACH THAT IF APPELLANT WAS TO GO TO TRIAL ON THE CHARGES (IF) FOUNDED GUILTY APPELLANT COULD BE SENTENCED TO 30 YEARS ON THE ARMED ROBBERY CHARGE AND SENTENCED TO 25 YEARS ON THE ASSAULT AND BATTERY WITH THE INTENT TO KILL CHARGE. APPELLANT TOLD ATTORNEY HAL ROACH SEVERAL TIMES THAT HE WAS INNOCENCE OF THE CHARGES. ATTORNEY HAL ROACH TOLD APPELLANT THAT THE VICTIM HAD WROTE A STATEMENT AND PICKED APPELLANT OUT OF A PHOTO-LINE UP AND THAT EVIDENCE ALONE COULD CONVICT APPELLANT BY A JURY. ATTORNEY HAL ROACH TOLD APPELLANT THAT BEING THAT APPELLANT WAS 17 YEARS OLD AT THE TIME OF THE INCIDENT HE COULD GET APPELLANT A YOA SENTENCE AND PROBATION FOR THE CHARGES IF HE WAS TO PLEA GUILTY SO HE COULD GET BACK TO HIS NEW

BORN CHILD AND FAMILY SOONER. APPELLANT THROUGHT ABOUT THE 30 YEAR SENTENCE PLUS THE 25 YEAR SENTENCE AND SPENDING ALL THAT TIME IN PRISON AND THAT THE STATEMENT FROM THE VICTIM AND PHOTO LINE-UP COULD HAVE HIM FOUNDED GUILTY BY A JURY IF HE WENT TO TRIAL SO APPELLANT TOLD ATTORNEY HAL ROACH THAT HE WOULD PLEA GUILTY FOR THE YOA 1-6 AND PROBATION. ABOUT 10 DAYS AFTER ATTORNEY HAL ROACH WAS APPOINTED TO REPRESENTED MR. HUDSON, THE APPELLANT OF ALL THE CHARGES HE TOOK APPELLANT IN FRONT OF JUDGE MARC WESTBROOK AT A GUILTY PLEA HEARING. AT THE PLEA HEARING JUDGE WESTBROOK QUESTION APPELLANT ON THE RECORD HOW DO YOU PLEA AND APPELLANT STATED TO THE JUDGE, YOUR HONOR I DID NOT COMMIT THE CHARGES AGAINST ME. THE JUDGE THEN TOLD APPELLANT THAT IF YOU WAS TO GO TO TRIAL FOR THESE CHARGES, IF FOUNDED GUILTY, HE COULD SENTENCE APPELLAT TO 30 YEARS FOR THE ARMED ROBBERY AND 25 YEARS FOR THE ASSAULT AND BATTERY WITH THE INTENT TO KILL SO APPELLANT TOLD THE JUDGE I WILL PLEA JUST TO GET IT OVER WITH SO I CAN GET BACK TO MY CHILD AND LOVE ONES SOON, SO ON THE DATE OF OCTOBER 26, 1995 JUDGE WESTBROOK ACCEPTED APPELLANT'S PLEA AND SENTENCED APPELLANT TO A YOA (1-6) YEAR SENTENCE FOR THE ARMED ROBBERY CHARGE AND 5 YEAR PROBATION FOR ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE. AT NO TIME PRIOR TO THE GUILTY PLEA HEARING DID THE PROSECUTION DISCLOSE TO THE DEFENSE THAT THE VICTIM HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE 14 MONTHS PRIOR TO HIM PICKING APPELLANT

OUT OF A PHOTO LINE-UP AND WRITING A STATEMENT AGAINST APPELLANT. ON THE DATE OF JANUARY 23, 2013 APPELLANT DISCOVERED THIS EVIDENCE ABOUT THE VICTIM SHOOTING HIMSELF IN HIS HEAD AND SUFFERING FROM BRAIN DAMAGE DEFECTS WHICH AFFECTED HIS MEMORY AND THAT THE VICTIM HAS A MENTAL DISABILITY. APPELLANT DISCOVERED THIS INFORMATION BY TALKING TO A CLOSE FRIEND OF THE VICTIM WHICH IS FROM GREENVILLE. HIS NAME IS JERMAN BARTON. APPELLANT NEVER SEEN THIS VICTIM NOR KNEW ANY THING ABOUT THE ALLEGED VICTIM PRIOR TO THIS NEWLY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED.

ISSUE: (A)

THE P.C.R. COURT ERRED IN DISMISSING APPELLANT'S MOTION FOR NEW TRIAL BASED ON NEWLY AFTER-DISCOVERED EVIDENCE PURSUANT TO S.C.R.CRIM. P. RULE 29 (B) AS BEING UNTIMELY FILED.

STANDER OF REVIEW

PURSUANT TO S.C.R.CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE READS AS FOLLOWS:

A MOTION FOR A NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE MUST BE MADE WITHIN A REASONABLE PERIOD OF TIME AFTER THE DISCOVERY OF THE EVIDENCE; PROVIDED, HOWEVER, THAT A MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE MAY NOT

BE MADE WHILE THE CASE IS ON APPEAL UNLESS THE APPELLATE COURT, UPON MOTION, HAS SUSPENDED THE APPEAL AND GRANTED LEAVE TO MAKE THE MOTION. LEAVE OF APPELLATE COURT IS NOT REQUIRED IF NO APPEAL HAS BEEN TAKEN OR IF THE APPEAL HAS BEEN FINALLY DECIDED IN THE APPELLATE COURT.

PURSUANT TO THAT PROVISION OF S.C.R. CRIM.P. RULE 29 (B) PLACE NO LIMITATIONS ON A MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE; STATE V. SPANN, 513 SE 2d. 98 (S.C. 1999) GRANTING MOTION FOR NEW TRIAL WHERE NEW EVIDENCE WAS DISCOVERED EIGHTEEN YEARS AFTER THE ORIGINAL TRIAL. HOWEVER, UNDER THAT PROVISION OF S.C.R. CRIM.P. RULE 29 (B) IT DO REQUIRE THAT THE MOTION BE FILED WITHIN A REASONABLE TIME AFTER THE DISCOVERY OF THE EVIDENCE. TOWN OF HILTON HEAD ISLAND V. GODWIN 634 S.E. 2d. 59 (S.C. CT. APP. 2006) FINDING DEFENDANT'S MOTION TO SET ASIDE THE CONVICTION UNTIMELY WHERE IT WAS FILED APPROX. EIGHT YEARS AFTER HE RECEIVED NOTICE OF THE EVIDENCE ON WHICH THE MOTION WAS BASED.

THE MOTION MUST BE FILED BEFORE THE TRIAL COURT WITH JURISDICTION OVER THE CONVICTION. S.C.R. CRIM.P. RULE 29 (B).

A MOTION MUST BE SUPPORTED BY AFFIDAVITS AND IF AVAILABLE OTHER RELEVANT EVIDENCE. THE MOVING PARTY MUST ALSO SUBMIT A PERSONAL AFFIDAVIT SUPPORTING THE MOTION DECLARING THAT HE DID NOT KNOW OF THE EXISTENCE OF SUCH EVIDENCE AT THE TIME OF TRIAL AND THAT HE USED DUE DILIGENCE TO DISCOVER THE

EVIDENCE, OR THAT HE COULD NOT HAVE DISCOVERED IT BY THE EXERCISE OF DUE DILIGENCE. STATE V. DEANGELIS 182 SE 2d 732 (S.C. 1971)

ONCE A MOTION UNDER THIS PROVISION SET FORTH IN S.C. R. CRIM. P. RULE 29 (B) HAS BEEN FILED, THE PETITIONER BEARS THE BURDEN OF PROOF AND MUST SATISFY EACH ELEMENT FOR THE COURT TO GRANT THE MOTION. HAYDEN V. STATE 299 S.E.2d 854 (S.C. 1983) THESE REQUIREMENTS PURSUANT TO THE PROVISION OF RULE 29 (B) IS FOUNDED IN STATE V. TAYLOR 508 SE 2d 870 (S.C. 1998) WHICH IS (1). THE EVIDENCE DISCOVERED WILL PROBABLY CHANGE THE RESULT IF A NEW TRIAL IS GRANTED; (2) THAT IT HAS BEEN DISCOVERED SINCE TRIAL; (3) THAT IT COULD NOT HAVE BEEN DISCOVERED BEFORE THE TRIAL BY THE EXERCISE OF DUE DILIGENCE; (4) THAT IT IS MATERIAL TO THE ISSUE OF GUILT OR INNOCENCE; AND (5) THAT IT IS NOT MERELY CUMULATIVE OR IMPEACHING. THUS, IF A MOTION SET FORTH A CLAIM THAT THE PROSECUTION COMMITTED A S.C.R.CRIM. P. RULE 5 BRADY DISCLOSURE VIOLATION DUE TO FAILURE TO DISCLOSE FAVORABLE EVIDENCE. A PETITIONER BEARS THE BURDEN OF PROOF AND MUST SATISFY EACH ELEMENT FOR THE COURT TO GRANT THE MOTION. Simpson v. Moore 367 S.C. 587, 627 S.E.2d 701. THESE ELEMENTS REQUIRED IS FOUND IN BRADY V. MARYLAND 373 U.S. 83 (1963) WHICH IS (1). THE EVIDENCE WAS FAVORABLE TO THE ACCUSED, (2). IT WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION (3). IT WAS SUPRESSED BY THE PROSECUTION AND (4). IT WAS MATERIAL TO GUILT OR PUNISHMENT. THIS ALSO APPLIES TO IMPEACHING EVIDENCE AS WELL AS EXCULPATORY

EVIDENCE. THUS, PURSUANT TO THE STANDERS SET FORTH ABOVE AN EVIDENTIARY HEARING IS REQUIRED TO DETERMINE THE CREDIBILITY OF THE NEWLY AFTER-DISCOVERED EVIDENCE MOTION. STATE V. HARRIS 706 S.E.2d. 526 (CT. APP. 2011) WHICH HELD THAT THE CREDIBILITY OF THE NEWLY AFTER-DISCOVERED EVIDENCE IS FOR THE TRIAL COURT TO DETERMINE. SO THEREFORE, WHEN AN APPLICANT MOVES UPON A COURT PURSUANT TO S.C.R.CRIM.P. RULE 29 (B) MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE HE IS ENTITIED TO AN EVIDENTIARY HEARING ON THE MOTION.

ARGUMENT

THE HON. GEDWARD WEIMAKER DETERMINATION WAS IMPROPER FOR FINDING THAT APPELLANT'S MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE WAS UNTIMELY FILED. HIS FINDING WAS ERROR BECAUSE PURSUANT TO S.C.R.CRIM.P. RULE 29 (B) IT PLACE NO LIMITATION ON A MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE. STATE V. SPANN 513 S.E. 2d. 98 (S.C. 1999) GRANTING MOTION FOR NEW TRIAL WHERE NEW EVIDENCE WAS DISCOVERED EIGHTEEN YEARS AFTER THE ORIGINAL TRIAL. HOWEVER, UNDER THAT PROVISION OF S.C.R.CRIM.P. RULE 29 (B) IT DO REQUIRE THAT THE MOTION BE FILED WITHIN A REASONABLE TIME AFTER THE DISCOVERY OF THE EVIDENCE. TOWN OF HILTON HEAD ISLAND V. GODWIN, 634 SE 2d 59 (S.C. CT. APP. 2006) FINDING DEFENDANT'S MOTION TO SET ASIDE THE CONVICTION UNTIMELY WHERE IT WAS FILED APPROX. EIGHT YEARS AFTER HE RECIEVED NOTICE OF THE EVIDENCE ON WHICH THE MOTION WAS BASED. PURSUANT TO S.C.R. CRIM. P. RULE 29 (B)

His motion for new trial was timely filed. He discovered on the date of January 23, 2013 evidence that Mr. Hashawsan K. Brown, the victim in an alleged armed robbery and assault incident that took place on March 13, 1995 is incompetent due to a self inflicted gun shot wound to his head in an attempt to commit suicide on the date of November 27, 1993. Mr. Brown identified appellant out of a photo line-up and wrote a statement against appellant implicating him as the one who armed robbed him and assaulted him. The victim identification and statement led to the arrest and conviction of appellant. The police had no physical evidence to link appellant to the crime that the victim had allegedly occured. The only evidence the police had was the victim's photo line up identification of appellant and his statement. which render appellant to entering a plea because of being afraid to be found guilty for something he alleged he didnt do. Appellant filed approx 27 days after the discovery of the evidence a motion for new trial based on newly after discovered evidence pursuant to S.C.R.Crim.P. Rule 29 (B) alleging 1). He discovered newly after-discovered evidence 2). The prosecution failed to disclose exculpatory evidence which violated S.C.R.Crim.P. Rule 5 Brady disclosure and 3), involuntary guilty plea. Gibson v. State (S.C. 1999) 334 S.C. 515, 514 SE 2d 320. Appellant attached to his motion for new trial pursuant to S.C.R.Crim.P. Rule 29 (B) an affidavit to support his motion. State v. Deangelis, 182 S.C. 2d. 732 (S.C. 1971). In appellant's new trial motion he alleged that he discovered newly after discovered evidence of material facts, not previously presented and heard,

THAT REQUIRES VACATION OF HIS CONVICTION IN THE INTEREST OF JUSTICE; S.C. CODE ANN § 17-27-20(A)(4). APPELLANT ALLEGED THAT THE DISCOVERY OF THE NEWLY AFTER DISCOVERED EVIDENCE REQUIRES AN EVIDENTIARY HEARING DUE TO THE DISCOVERY OF THE STATE WITNESS WHICH IS A ALLEGED VICTIM, MR. HASHAWSAN K. BROWN INCOMPETENT DUE TO AN SELF INFLICTED GUN SHOT WOUND TO HIS HEAD IN A ATTEMP TO COMMIT SUICIDE ON THE DATE OF NOVEMBER 27, 1993. JOHNSON V. CATOE 345 S.C. 389 (S.C. 2001). IN JOHNSON SUPRA THE S.C. SUPREME COURT GRANTED STAY OF EXECUTION TO CONSIDER WHETHER PETITIONER SHOULD BE GRANTED LEAVE TO MOVE FOR A NEW TRIAL BASED ON AFTER DISCOVERED EVIDENCE TO CONSIDER THE COMPETENCY AND CREDIBILITY OF CONNIE SUE HESS, A WITNESS THAT IMPLICATED JOHNSON IN A MURDER OF A STATE TROOPER IN 1985, THE HON. WILLIAM P. KEESLEY WAS FURTHER INSTRUCTED TO SET FORTH HIS RECOMMENDATIONS ON THE MOTION FOR NEW TRIAL PURSUANT TO THE STANDERS SET FORTH IN STATE V. SPANN 334 S.C. 618, 513 SE 2d 98 (1999). APPELLANT IS ENTITED TO AN EVIDENTIARY HEARING DUE TO THE CIRCUMSTANCES ALLEGED BECAUSE IF THE VICTIM'S ABILITY TO PERCEIVE THE EVENT WITHOUT A SUBSTANTIAL DEGREE OF ACCURACY, COULD NOT REMEMBER IT, OR COULD NOT COMMUNICATE ABOUT IT INTELLIGIBLY AND BE MINDFUL OF THE DUTY TO TELL THE TRUTH UNDER OATH, HE COULD NOT HAVE TESTIFIED. S.C. R. EVID. RULE 601(B) THUS, IN APPELLANT'S MOTION FOR NEW TRIAL HE ALLEGED THAT THE STATE PROSECUTION KNEW OF THE EXCULPATORY EVIDENCE OF THE VICTIM'S SUICIDE ATTEMPT WHICH WOULD OF REVEALED THE DEFICTS OF THE VICTIM WHICH IS AWARENESS DEFICTS, HIGHER LEVEL COGNITIVE SKILLS, (REASONING, ATTENTION, CONCENTRATION, JUDGEMENT, MEMORY, PROBLEM SOLVING) PROCESSING

SPEED, SELF CONFIDENCE, FRUSTRATION TOLERANCE, COPING SKILLS, WRITTEN EXPRESSION AND VISUAL ACUITY. SEE: EXHIBIT (G) THIS EXHIBIT WAS ALSO INCLUDED IN APPELLANT'S RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL WITH SEVERAL AFFIDAVITS INCLUDING ONE FROM THE VICTIM HIMSELF. STATING I HASHAWSAN K. BROWN IS WRITING THIS SWORN AFFIDAVIT TO THE BEST OF MY ABILITY. TO WHOM THIS MAY CONCERN NOVEMBER 27 TH 1993 I SHOT MYSELF IN THE HEAD, DUE TO THAT FACT I SUFFERED A TRAUMATIC BRAIN INJURY AND SUPPOSEDLY IDENTIFIED DARNELL HUDSON WHOM I NEVER SEEN OR KNOWN. STILL TO THIS DAY MY BRAIN INJURY AFFECTS MY EVERY DAY LIFE. I HAVE SHOT AND LONG TERM MEMORY PROBLEMS. I AM AND WILL BE UNDER DOCTOR'S CARE FOR THE REMAINDER OF MY LIFE. I HASHAWSAN K. BROWN DECLARE UNDER PERJURY AND PENALTY THE FACTS STATED ABOVE ARE TRUE AND CORRECT. SEE: EXHIBIT (F) APPELLANT ALLEGED THAT PURSUANT TO S.C.R. CRIM.P. RULE 5 BRADY DISCLOSURE THE PROSECUTION SHOULD OF DISCLOSED THE INFORMATION OF THE VICTIM'S SUICIDE ATTEMPT BECAUSE THAT WOULD OF LEAD TO EXCULPATORY EVIDENCE WHICH WOULD OF GIVEN HIS ATTORNEY THE OPPERTUNITY TO CHALLENGE THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST APPELLANT. HAD APPELLANT ATTORNEY WOULD OF HAD THAT OPPERTUNITY TO CHALLENGE THE VICTIMS COMPETENCY IT'S A REASONABLE PROBABILITY THE OUTCOME WOULD OF BEEN ACQUITTAL ON THE CHARGES BECAUSE 1). THE VICTIM COULD NOT TESTIFY AGAINST APPELLANT PURSUANT TO S.C.R. EVID. RULE 601(B) AND 2). HIS IDENTIFICATION AND STATEMENT AGAINST APPELLANT WOULD OF BEEN INADMISSIBLE AT TRIAL. APPELLANT ALLEGED THAT THE PROSECUTION FAILED TO DISCLOSE THE EVIDENCE OF THE 1993 SHOOTING TO HIS

ATTORNEY PRIOR TO HIM ENTERING THE GUILTY PLEA. APPELLANT ALLEGED THAT IF THE PROSECUTION DIDN'T KNOW OF THE EXCULPATORY EVIDENCE THEY SHOULD HAVE KNOWN BECAUSE ITS THEY[THE PROSECUTION] RESPONIBILITY TO INVESTIGATE THE WHOLE SURROUNDING CIRCUMSTANCES OF THE ALLEGED ALLEGATION [INCLUDING ALL OF THE WITNESSES BACK GROUND HISTORIES] KYLES V. WHITLEY 514 U.S. 419, APPELLANT ALLEGED THAT EVEN IF HIS ATTORNEY NEVER REQUESTED THIS INFORMATION PURSUANT TO S.C.R. CRIM. P. RULE 5 BRADY DISCLOSURE IT WAS STILL THE PROSECUTOR'S DUTY TO DISCLOSE ANY EXCULPATORY EVIDENCE KNOWN TO THEM. S.C.R. PRO. COND. RULE 3.8.(d) U.S. V. AGURS 96 S.CT. 2392. APPELLANT ALLEGED THAT HAD HE WOULD OF KNOWN OF THE VICTIM'S INCOMPETENCY HE WOULD OF NEVER PLED GUILTY TO THE CHARGES BUT WOULD OF STOOD TRIAL. GIBSON V. STATE 514 SE 2d 320. HILL V. LOCKHEART 474 U.S. 52. THE P.C.R. COURT HAD KNOWLEDGE OF THE EVIDENCE AND ALLEGATION PRESENTED BY APPELLANT AND ALSO HAD KNOWLEDGE THAT THE RESPONDENT NEVER PRESENTED IN THIER MOTION TO DISMISS, CONDITIONAL ORDER OF DISMISSAL OR AT THE HEARING HELD ON DECEMBER 19, 2013 ANY AFFIDAVITS OR PRODATIVE EVIDENCE TO ESTABLISH THAT APPELLANT KNEW OF THE EVIDENCE HE DISCOVERED PRIOR TO THE ONE YEAR FILING PERIOD OR WITHIN THE ONE YEAR FILING PERIOD OF S.C. CODE ANN § 17-27-45 (A) TO PROVE THAT APPELLANT COULD OF FILED THE CLAIM HE RAISE WITHIN THE STATUTORY FILING PERIOD PURSUANT TO S.C. CODE ANN § 17-27-45(A) IN ADDITION, THE RESPONDENT NEVER PRODUCED NO AFFIDAVITS OR ANY PRODATIVE EVIDENCE TO ESTABLISH THAT APPELLANT OR APPELLANT'S ATTORNEY COULD OF DISCOVERED THE EVIDENCE NOW

NEWLY DISCOVERED PRIOR TO THE 1995 GUILTY PLEA HEARING BY THE EXERCISE OF DUE DILIGENCE. SPANN SUPRA. AT THE HEARING HEID ON DECEMBER 19, 2013 THE RESPONDENT TESTIFIED THAT UNDER S.C. CODE ANN § 17-27-45(A) THAT THE (1) YEAR STATUTE OF LIMITATIONS APPLY TO THIER MOTION TO DISMISS APPELLANT'S MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE PURSUANT TO S.C. CODE ANN § 17-27-45 (A) WHICH READS AS FOLLOWS: AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DICISION UPON AN APPEAL, WHICHEVER IS LATER. THE RESPONDENT'S SOLELY CLAIM AT THE HEARING WAS PURSUANT TO S.C. CODE ANN § 17-27-45 (A). THE P.C.R. COURT DENIED APPELLANT TO AN EVIDENTIARY HEARING PURSUANT TO APPELLANT'S S.C.R. CRIM. P. RULE 29 (B) MOTION THAT WAS TIMELY FILED. THAT WAS ERROR BECAUSE 1). THE P.C.R. COURT DENIED APPELLANT TO HIS STATUTORY RIGHT PURSUANT TO S.C. CODE ANN § 17-27-80 AND S.C.R. CIV. P. 71.1 (E). THIS VIOLATION IS PREJUDICE BECAUSE IT VIOLATED APPELLANT'S DUE PROCESS AND EQUAL PROTECTION CLAUSE UNDER S.C. CONST. ART 1. SECTION 3 BY GRANTING EVIDENTIARY HEARINGS TO STATE V. SPANN 513 S.E.2d 98, (1999) JOHNSON V. CATOE 345 S.C 389 (2001) STATE V. TAYLOR 508 SE 2d 870 (1998) SIMPSON V. MOORE, 627 SE 2d 701 STATE V. PROCTOR (S.C. APP. 2001) 559 SE 2d 318; RIDDLE V. OZMINT (S.C. 2006) 631 SE 2d. 70; GIBSON V. STATE (S.C. 1999) 514 SE 2d 320; STATE V. HARRIS 706 SE 2d 526 (CT. APP. 2011) NOT TO MENTION ALL THE HEARINGS NOT MENTIONED. AND DENYING APPELLANT OF HIS RIGHT TO PROVE HIS ENTITLEMENT TO RELIEF BY THE PREPONDERANCE OF

EVIDENCE. BANNISTER V. STATE 509 SE 2d 807. THE P.C.R. COURT DENIED APPELLANT OF AN EVIDENTIARY HEARING WITHOUT NO PROBATIVE EVIDENCE TO SUBSTANUATE THE RESPONDENT'S MOTION TO DISMISS PURSUANT TO S.C. CODE ANN § 17-27-45 (A) THAT APPELLANT COULD OF RAISED HIS MOTION FOR NEW TRIAL PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) WITHIN THE ONE YEAR FILING PERIOD OF S.C. CODE ANN § 17-27-45 (A) PELOQUIN V. STATE 469 S.E. 2d. 606 (1996). WITHOUT NO AFFIDAVITS OR ANY EVIDENCE TO PROVE TO THE COURT THAT APPELLANT KNEW OF THE EVIDENCE PRIOR TO OCTOBER 26, 1995 OR WITHIN THE ONE YEAR FILING PERIOD OF S.C. CODE ANN § 17-27-45(A) THE COURT FINDINGS OF FACT AND CONCLUSION OF LAW IS ERROR BECAUSE IT HOLDS NO WEIGHT OF PROBATIVE VALUE TO HOLD ITS FINDING. IF NO PROBATIVE EVIDENCE EXIST TO SUPPORT A FINDING, THIS COURT WILL REVERSE. PIERCE V. STATE, 338 S.C. 139, 526 SE 2d 222 (2000) (CITING HOLLAND V. STATE, 322 S.C. 111, 470 S.E. 2d. 378 (1996). THUS, UNDER THE PROVISION OF S.C. CODE ANN § 17-27-45(A) IT DO NOT APPLY TO MOTIONS FOR NEW TRIAL BASED ON NEWLY AFTER - DISCOVERED EVIDENCE PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) BECASE THAT RULE DONT HAVE NO STATUTE OF LIMITATIONS, IT ONLY REQUIRE THAT ONCE THE EVIDENCE IS DISCOVERED THAT THE MOTION BE FILED WITHIN A REASONABLE TIME PERIOD. THE P.C.R. COURT ERRED BY APPLYING THE WRONG LAW TO APPELLANT'S MOTION FOR NEW TRIAL PURSUANT TO S.C.R.CRIM. P. RULE 29 (B). FINDING THAT APPELLANT MOTION WAS UNTIMELY FILED. THUS, SINCE A MOTION FOR A NEW TRIAL COULD BE HEARD UNDER THE UNIFORM P.C.R. PROCEDURE ACT, PURSUANT TO S.C. CODE ANN § 17-27-45 (C) APPELLANT MOTION FOR NEW TRIAL IS TIMELY FILED. PURSUANT TO S.C. CODE ANN § 17-27-45 (C) READS AS FOLLOWS: DISCOVERY RULE.: A APPLICATION MUST BE FILED UNDER THIS

CHAPTER WITHIN ONE YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE. PURSUANT TO THAT RULE APPELLANT MOTION FOR NEW TRIAL IS TIMELY FILED DUE TO THE FOLLOWING REASONS: 1). ON THE DATE OF JANUARY 23, 2013 APPELLANT DISCOVERED EVIDENCE THAT THE VICTIM MR. HASHAWSAN K. BROWN DID ON THE DATE OF NOVEMBER 27, 1993 SHOT HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE DEFECTS TO THE VICTIM'S BRAIN. 2). ON THE DATE OF FEBRUARY 19, 2013 WHICH WAS APPROX 27 DAYS AFTER THE EVIDENCE DISCOVERED APPELLANT FILED A MOTION FOR NEW TRIAL PURSUANT TO S.C.R. CRIM. P RULE 29(B) ALLEGING THAT HE DISCOVERED 1). NEWLY AFTER-DISCOVERED EVIDENCE, 2). BRADY VIOLATION, 3). INVOLUNTARY GUILTY PLEA. APPELLANT SUBMITTED A SWORN AFFIDAVIT TO SUPPORT HIS MOTION. 3). BY DISCOVERING EVIDENCE OF THE VICTIM'S SUICIDE ATTEMPT AND SUFFERING FROM A BRAIN DAMAGE DEFECTS APPELLANT'S CLAIM OF NEWLY AFTER DISCOVERED EVIDENCE FELL WITHIN THE ACTUAL DISCOVERY RULE PURSUANT TO S.C. CODE ANN§ 17-27-45(C) COATS v. STATE 595 SE 2d 557 IN COATS, COATS ALLEGED THAT HIS TRIAL ATTORNEY WAS INEFFECTIVE FOR IMPROPERLY ADVISING HIM THAT HE WOULD BE ELIGIBLE FOR PAROLE IF HE PLED GUILTY TO CONSPIRACY TO TRAFFICKING MARIJUANA. COATS ULTIMATELY PLED GUILTY, AND HE WAS SENTENCED TO SEVEN YEARS IMPRISONMENT. COATS DID NOT PURSUE A DIRECT APPEAL. AFTER THE 4 YEAR STATUTE OF LIMITATIONS HAD EXPIRED, COATS LEARNED HE WAS NOT ELIGIBLE FOR PAROLE. THE LOWER COURT DENIED THE DEFENDANT'S P.C.R. APPLICATION AS UNTIMELY FILED. THE SOUTH CAROLINA SUPREME COURT REVERSED, HOLDING THAT COATS CLAIM FELL WITHIN THE

"Discovery Rule". The Court observed that Coats understanding of his Parole Eligibility may have affected the validity of the underlying Plea. Because Coats filed his claim within one year after discovering his trial attorney's error, his Petition was timely and he was entitled to an evidentiary hearing to determine if his trial counsel was in fact ineffective. 4). Prior to the discovery of the newly after-discovered evidence being discovered appellant lacked knowledge of the incident on November 27, 1993 when the victim had shot himself in his head in a attempt to commit suicide. He learned of this information by talking to some one from Greenville County that knows of the victim. Thus, it was no way possible appellant could have filed for post-conviction relief within the one year statutory filing period pursuant to S.C. Code Ann § 17-27-45(A) due to the following reasons: 1). Appellant and appellant's defense attorney was excusably ignorant to the existence of the victim's brain damage defects which was caused by the victim shooting himself in his head in a attempt to commit suicide. 2). Appellant's nor appellant's attorney never known of the victim personally and without no leads about the incident that took place on November 27, 1993 it was impossible for appellant or appellant's attorney to have gained any knowledge of the victim's brain damage defects because the victim's medical records pursuant to S.C. Code Ann § 44-115-20, 44-44-80 and 44-6-180 which prohibits disclosure of confindential medical records, so the evidence appellant discovered could not reasonably have been discovered through the exercise of due diligence prior to the guilty plea hearing or within the one year statutory filing period pursuant

TO S.C. CODE ANN § 17-27-45(A). DUE TO THEM FACTS PRESENTED BY APPELLANT IN HIS RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL AND AT THE HEARING HELD ON DECEMBER 19, 2013 THE P.C.R. COURT WAS TO VEIW THOSE FACTS PRESENTED BY APPELLANT IN THE light MOST FAVORABLE TO HIM when THE RESPONDENT MOVED FOR SUMMARY DISMISSAL OF HIS MOTION FOR NEW TRIAL BASED ON NEWLY AFTER DISCOVERED EVIDENCE PURSUANT TO STATUTE OF LIMITATIONS AND SUMMARY JUDGMENT. Wilson v. STATE 559 S.E.2d 581; LEAMON v STATE 611 S.E.2d 494 AND PEIZER v. STATE 662 SE 2d 618. APPELLANT PRODUCED EVIDENCE OF PROBATIVE VALUE IN HIS RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL which WAS EXHIBITS (A) (B) (C) (D) (E) (F) (G) (H) AND TESTIFIED AT THE HEARING THAT THE P.C.R. COURT WAS TO VEIW THOSE EXHIBITS IN THE Light MOST FAVORABLE TO HIM, WHICH HE WAS ENTITLED TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL. McCoy v. STATE 401 SE 2d 363 (2013) which HELD, AN EVIDENTIARY HEARING WAS APPROPRIATE DUE TO APPELLANT RAISING AN QUESTION OF MATERIAL FACT THAT ONLY COULD BE RESOLVED BY AN HEARING WHICH IS MANDATED. APPELLANT CASE IS SOME WHAT IDENTICAL TO McCoy SUPRA. BECAUSE 1). THE RESPONDENT NEVER REFUTED ANY OF APPELLANT CLAIMS THAT HE DISCOVERED NEWLY AFTER-DISCOVERED EVIDENCE THAT THE VICTIM WAS INCOMPETENT AND PICKED THE WRONG ONE who HE SAID ARMED ROBBED HIM AND ASSAULTED HIM DUE TO HIS BRAIN DAMAGE DEFECTS AND THAT 2). THE PROSECUTION VIOLATED S.C. R. CRIM. P. RULE 5 BRADY DISCLOSURE BY FAILING TO DISCLOSE EXCULPATORY EVIDENCE THAT THE VICTIM HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE APPROX 14 MONTHS PRIOR TO HIM IDENTIFING APPELLANT AND

WRITING A STATEMENT AGAINST APPELLANT WHICH LEAD TO THE ARREST AND CONVICTION OF HIM. THE RESPONDENT'S ONLY DEFENSE AGAINST THESE ALLEGATION WAS STATUTE OF LIMITATIONS WHICH BY LAW DO NOT APPLY TO APPELLANTS MOTION FOR NEW TRIAL PURSUANT TO S.C. R. CRIM. P. RULE 29 (B) WHEN THE RESPONDENT NEVER PRODUCED NO AFFIDAVITS OR ANY PROBATIVE EVIDENCE TO PROVE THAT APPELLANT KNEW OF THE VICTIM'S SUICIDE ATTEMAT AND BRAIN DAMAGE DEFECTS PRIOR TO OCTOBER 26, 1995 OR WITHIN THE ONE YEAR FILING PERIOD PURSUANT TO S.C. CODE ANN § 17-27-45(A). BY THE P.C.R. COURT DENYING APPELLANT TO AN EVIDENTIARY HEARING THAT AMOUNTED TO AN MISCARRAGE OF JUSTICE. BUTLER V. STATE 397 S.E.2d. 87 (1990) BECAUSE APPELLANT MOTION FOR NEW TRIAL WAS TIMELY FILED PURSUANT TO S.C.R. CRIM. P. RULE 29(B) SPANN SUPRA.

WHEN THE P.C.R. COURT DECISION IS CONTROL BY ERROR OF LAW THIS COURT MUST REVERSE. PIERCE V. STATE 526 S.E.2d 222 (2000); HOLLAND V. STATE 470 SE 2d 378 (1996), STATE V. EDENS 250 S.E. 2d. 116, (S.C. 1978); STATE V. PIERCE V. STATE 207 SE 2d. 414 (S.C. 1974).

CONCLUSION

APPELLANT REQUEST UPON THIS COURT TO GRANT WRIT OF CERTIORARI AND REVERSE THIS MATTER BACK TO THE P.C.R. COURT FOR AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL.

RESPECTFULLY SUBMITTED

DARNELL E. HUDSON

IN THE SUPREME COURT OF SOUTH CAROLINA

COURT OF APPEALS

APPELLANT'S CASE NO: 2014-000407

PROOF OF SERVICE

I DARNELL E. HUDSON (APPELLANT) CERTIFY THAT ON THIS DAY OF MARCH 27, 2014 I SERVED A PETITION FOR CERTIORARI PURSUANT TO S.C. APP. CT. RULE 243(c) UPON THE SUPREME COURT OF SOUTH CAROLINA, COURT OF APPEALS, BY DEPOSITING SAID MOTION IN THE U.S. MAIL (BY AND THROUGH LIEBER CORR INST LEGAL MAIL SYSTEM). THE ABOVE IS NOW IN POSSESSION OF SAID INSTITUTION LEGAL MAIL PURSUANT TO HOUSTON V. LACK, 487 U.S. 266 (1988).

THE FOLLOWING PARTIES HAVE BEEN SERVED AT THE BELOW ADDRESS:

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