EXHIBIT

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| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | IN THE COURT OF COMMON PLEAS<br>FOR THE 13TH JUDICIAL CIRCUIT<br>FOR THE COUNTY OF GREENVILLE |
|---|---|
| DARNELL E. HUDSON #227328,<br>APPLICANT, | C/A NO: 2013-CP-23-00993 |
| V. | |
| STATE OF SOUTH CAROLINA<br>RESPONDENT, | APPLICANT'S RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL WITH ATTACHED AFFIDAVIT AND EXHIBITS TO SUPPORT APPLICANT'S RESPONSE.................. |

1). APPLICANT HEREBY MOVES UPON THIS COURT BY RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL IN HUDSON V. STATE C/A NO: 2013-CP-23-00993.

2). APPLICANT WAS GRANTED TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THE CONDITIONAL ORDER OF DISMISSAL TO SHOW WHY THE ORDER OF DISMISSAL SHOULD NOT BECOME FINAL IN ITS ENTIRETY. THE CONDITIONAL ORDER OF DISMISSAL WAS ORDER BY THE HON. D. GARRISON HILL, CHIEF ADMINISTRATIVE JUDGE ON THE DATE OF AUGUST 8, 2013.

3). THE CONDITIONAL ORDER OF DISMISSAL WAS FILED UPON THE CLERK OF COURT ON THE DATE OF AUGUST 21, 2013.

4). ON THE DATE OF AUGUST 26, 2013 APPLICANT RECIEVED THE CONDITIONAL ORDER OF DISMISSAL FROM THE LIEBER CORR. INST. LEGAL MAIL SYSTEM WHERE APPLICANT IS CONFINED.

5). APPLICANT IS CONFINED IN THE SOUTH CAROLINA DEPT OF CORR. PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR GREENVILLE COUNTY PURSUANT TO INDICTMENT NO: 1995-GS-23-6102 FOR ONE COUNT OF ARMED ROBBERY AND INDICTMENT NO: 1995-GS-23-6103 FOR ONE COUNT OF ASSAULT AND BATTERY WITH THE INTENT TO KILL WHICH APPLICANT WAIVED PRESENTMENT OF INDICTMENT TO THE GREENVILLE COUNTY GRAND JURY AND ENTER A PLEA OF GUILT ON THE DATE OF OCTOBER 26, 1995 TO ARMED ROBBERY AND ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE AND WAS SENTENCED BY THE HON. MARC WESTBROOK UNDER A YOUTH OFFENDER ACT TO CONCURRENT TERMS NOT TO EXCEED SIX (6) YEARS FOR THE ARMED ROBBERY AND NOT TO EXCEED SIX (6) YEARS SUSPENDED TO FIVE (5) YEARS PROBATION FOR THE ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE.

6). APPLICANT WAS REPRESENTED BY MR. HAL W. ROACH Esq. FROM THE GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE.

7). APPLICANT DID NOT FILE NO APPEAL

8). APPLICANT FILED UPON THIS COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN APPLICATION FOR POST-CONVICTION RELIEF ON THE DATE OF FEBRUARY 19, 2013 PURSUANT TO S.C. R. CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED ON NEWLY-AFTER DISCOVERED EVIDENCE ALLEGING THAT PURSUANT TO S.C. CODE ANN § 17-27-20 (A)(1)(4) HE IS ENTITLED TO A NEW TRIAL DUE TO THE DISCOVERY OF THE VICTIM HASHAWSAN K. BROWN SUFFERING FROM BRAIN DAMAGE DEFECTS WHICH WAS CAUSED BY A SELF AFFLICTED GUN SHOT WOUND TO THE VICTIM HEAD IN A ATTEMPT TO COMMIT SUICIDE ON THE DATE OF NOVEMBER 27, 1993 WHICH THE PROSECUTION KNEW OF THE INCIDENT OF THE VICTIM SHOOTING HIMSELF IN HIS HEAD AND FAILED TO DISCLOSE THAT INFORMATION TO APPLICANT'S DEFENSE IN IT'S S.C. R. CRIM. P. RULE 5 BRADY DISCLOSURE. SEE: EXHIBIT (A)

9). ISSUES ALLEGED IN APPLICANT P.C.R. APPLICATION IS 1). THE PROSECUTION COMMITTED A S.C.R. CRIM. P. RULE 5 BRADY VIOLATION WHEN THE PROSECUTION FAILED TO DISCLOSE EXCULPATORY EVIDENCE IN ITS RULE 5 BRADY DISCLOSURE.

which 2). RENDER APPLICANT'S GUILTY PLEA INVOLUNTARY. VIOLATION OF THE DUE PROCESS CLAUSE OF THE 5TH AND 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AMENDMENTS.

## STATEMENT OF FACTS

ON THE SAID DATE OF MARCH 13, 1995 A ALLEGED VICTIM HASHAWSAN K. BROWN REPORTED TO THE GREENVILLE CITY POLICE DEPT [OFC. JT BURGESS] THAT HE WAS ROBED AT GUN POINT AND ASSAULTED BY GETING HIT IN HIS HEAD WITH A GUN BY TWO UNKNOWN BLACK INDIVIDUALS THAT HE ALLEGED ARMED ROBED HIM AND ASSAULTED HIM. THE VICTIM GAVE A SWORN STATEMENT TO THE GREENVILLE CITY POLICE DEPT AND IDENTIFIED APPLICANT OUT OF A PHOTO-LINE UP AS ONE OF THE ARMED ROBBERS AND THE ONE WHO ASSAULTED HIM. [THE VICTIM NEVER KNOWN OF APPLICANT PRIOR TO HIS STATEMENT AND IDENTIFICATION OF APPLICANT]. OFC. JT BURGESS WAS THE OFC. INVOLVED IN THE INVESTIGATION OF THE CASE. ON OR ABOUT MARCH 14TH – 15TH OF 1995 THE GREENVILLE CITY POLICE DEPT OBTAINED A SEARCH WARRANT FOR APT- 40-E WOODLAND HOMES which BELONGED TO APPLICANT'S CHILD'S MOTHER IN GREENVILLE COUNTY AND ON THAT NIGHT BY EXCUTING THE SEARCH WARRANT THE GREENVILLE CITY POLICE DEPT APPREHENDED APPLICANT AND ARRESTED AND CHARGED APPLICANT WITH 1). COUNT OF ARMED ROBBERY AND 1).

COUNT OF ASSAULT AND BATTERY WITH AN INTENT TO KILL. UPON THE SEARCH OF THE APT. THE GREENVILLE CITY POLICE DEPT FOUNDED NO EVIDENCE TO LINK APPLICANT AS THE ALLEGED ARMED ROBBER AND ASSAULTER. APPLICANT WAS APPOINTED COUNSEL, MR. HAL W. ROACH ESQ. BY THE GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE ON THE DATE OF OCTOBER 16, 1995 TO REPRESENT APPLICANT ON ALL CHARGES. SHORTLY AFTER ATTORNEY HAL ROACH WAS APPOINTED TO REPRESENT APPLICANT HE CAME TO THE GREENVILLE COUNTY DETENTION CENTER TO CONSULT WITH APPLICANT. APPLICANT WAS TOLD BY ATTORNEY HAL ROACH THAT IF HE WAS TO GO TO TRIAL ON THE CHARGES [IF] FOUNDED GUILTY APPLICANT COULD BE SENTENCED TO [30] YEARS ON THE ARMED ROBBERY CHARGE AND SENTENCED TO [25] YEARS ON THE ASSAULT AND BATTERY, WITH AN INTENT TO KILL CHARGE. APPLICANT TOLD ATTORNEY HAL ROACH SEVERAL TIMES THAT HE WAS INNOCENCE OF THE CHARGES. ATTORNEY HAL ROACH TOLD APPLICANT THAT THE VICTIM HAD WROTE A STATEMENT AND PICKED APPLICANT OUT OF A PHOTO-LINE UP AND THAT EVIDENCE ALONE COULD CONVICT HIM BY A JURY. ATTORNEY HAL ROACH TOLD APPLICANT THAT BEING THAT APPLICANT WAS 17 YEARS OLD AT THE TIME OF THE INCIDENT HE COULD GET APPLICANT A YOA SENTENCE AND PROBATION FOR THE CHARGES IF HE WAS TO PLEAD GUILTY SO HE COULD GET BACK TO HIS NEW BORN CHILD AND FAMILY SOONER. APPLICANT THOUGHT ABOUT THE [30] YEAR SENTENCE

PLUS THE [25] YEAR SENTENCE AND SPENDING ALL THAT TIME IN PRISON AND THAT THE STATEMENT AND THE PHOTO-LINE UP FROM THE VICTIM COULD HAVE HIM FOUNDED GUILTY BY A JURY IF HE WENT TO TRIAL FOR SOME THING HE DIDNT DO, SO APPLICANT TOLD ATTORNEY HAL ROACH THAT HE WOULD PLEA GUILTY TO THE YOA 1-6 AND PROBATION. ABOUT [10] DAYS AFTER ATTORNEY HAL ROACH WAS APPOINTED TO REPRESENT APPLICANT ON ALL CHARGES HE TOOK APPLICANT IN FRONT OF JUDGE MARC WESTBROOK AT A GUILTY PLEA HEARING. AT THE PLEA HEARING JUDGE WESTBROOK QUESTIONED APPLICANT ON THE RECORD HOW DO YOU PLEA AND APPLICANT STATED TO THE JUDGE, YOUR HONOR I DID NOT COMMIT THE CHARGES AGAINST ME. THE JUDGE THEN TOLD APPLICANT THAT IF YOU WAS TO GO TO TRIAL FOR THESE CHARGES HE COULD BE SENTENCED TO [30] YEARS FOR THE ARMED ROBBERY CHARGE AND [25] YEARS FOR THE ASSAULT AND BATTERY WITH AN INTENT TO KILL [IF] FOUNDED GUILTY BY A JURY. SO APPLICANT TOLD THE JUDGE THAT HE WOULD PLEA JUST TO GET IT OVER WITH SO HE COULD GET BACK TO HIS CHILD AND LOVE ONES SOONER, SO ON THE DATE OF OCTOBER 26, 1995 JUDGE WESTBROOK ACCEPTED APPLICANT'S PLEA AND SENTENCED APPLICANT TO A Y.O.A. 1-6 SENTENCE AND 5 YEARS PROBATION FOR ALL CHARGES. AT [NO] TIME PRIOR TO THE GUILTY PLEA HEARING OR THROUGHOUT THE GUILTY PLEA HEARING THE PROSECUTION DISCLOSE

TO THE DEFENSE THAT THE VICTIM HAD SHOT HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT INCIDENT AND THAT THEY BELIEVED THE VICTIM SUFFERED FROM BRAIN DAMAGE DEFECTS. THE PROSECUTION KNEW OF THE INCIDENT WITH THE VICTIM SHOOTING HIMSELF IN HIS HEAD DUE TO THE VICTIM TELLING THE POLICE THAT HE SHOT HIMSELF IN HIS HEAD AND THAT HE NEED MEDICAL HELP BECAUSE HE WAS STRUCK IN HIS HEAD WITH THE BUTT OF A HAND GUN. WHICH LEAD TO THE VICTIM BEING TRANSPORTED TO THE EMERGECY ROOM. AFTER HE TOLD THE POLICE ABOUT THE INCIDENT ON NOVEMBER 27, 1993.

ON THE DATE OF JANUARY 23, 2013 APPLICANT DISCOVERED THIS EVIDENCE ABOUT THE VICTIM SHOOTING HIMSELF IN HIS HEAD PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT AND THAT THE VICTIM SUFFERED FROM BRAIN DAMAGE DEFECTS THAT AFFECTED HIS MEMORY. APPLICANT DISCOVERED THIS INFORMATION BY TALKING TO THE VICTIM CLOSE FRIEND JERMAN BARTON WHICH IS FROM GREENVILLE SOUTH CAROLINA.

ON FEBRUARY 19, 2013 APPLICANT FILED UPON THIS COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN APPLICATION FOR P.C.R. ALLEGING THAT HE DISCOVERED NEWLY-AFTER DISCOVERED EVIDENCE THAT 1). THE VICTIM SHOT HIMSELF

IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT THAT ALLEGINLY TOOK PLACE ON MARCH 13, 1995 AND 2). THE PROSECUTION COMMITTED A BRADY VIOLATION BY FAILING TO DISCLOSE FAVORABLE EVIDENCE [EXCULPATORY EVIDENCE]. TO THE DEFENCE. SEE: EXHIBIT (A)

UPON FURTHER INVESTIGATION INTO THIS MATTER PRESENTED, APPLICANT REQUESTED FOR HIS GRANDMOTHER MS. MARGARET D. FAIRFAX TO HELP ASSIST APPLICANT IN LOCATING THE VICTIM HASHAWSAN K. BROWN AND QUESTION HIM ABOUT THE INCIDENT OF HIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE AND DO HE RECALL THE INCIDENT WHEN HE ALLEGELY GOT ARMED ROBED AND ASSAULTED ON MARCH 13, 1995 BY APPLICANT DUE TO APPLICANTS POVERTY TO AFFORD AN PRIVATE INVESTIGATOR OR LEGAL COUNSEL IN THIS MATTER.

ON THE DATE OF APRIL 29TH, 2013 MS. MARGARET D. FAIRFAX LOCATED THE VICTIM HASHAWSAN K. BROWN AT THE LOCATION OF 1 PRANCER AVE. IN GREENVILLE SOUTH CAROLINA AND QUESTIONED THE VICTIM CONCERNING HIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH THE VICTIM DID STATE TO HER THAT HE DID SHOOT HIMSELF IN HIS HEAD. THE VICTIM HAD AGREED TO TURN OVER HIS MEDICAL RECORDS TO HER. SEE EXHIBIT (B)

ON THE DATE OF JUNE 1, 2013 MS. MARGARET D. FAIRFAX WITH APPLICANTS MOTHER MS. CRYSTAL M. SILVER LOCATED HASHAWSAN K. BROWN AND WITNESS MS. MARGARET D. FAIRFAX QUESTIONED HIM IN FRONT OF APPLICANT'S MOTHER MS. CRYSTAL M. SILVER CONCERNING THE INCIDENT WITH HIM ALLEGINGLY BEING ARMED ROBED AND ASSAULTED BY APPLICANT ON MARCH 13TH 1995 AND ALSO ABOUT THE INCIDENT OF HIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH HASHAWSAN K. BROWN STATE THAT HE DID SHOT HIMSELF IN HIS HEAD AND THAT HE DON'T RECALL BEING ARMED ROBED AND ASSAULTED ON MARCH 13, 1995. HE FURTHER STATED THAT HE DIDNT KNOW OF APPLICANT AND DON'T RECALL PICKING APPLICANT OUT OF A PHOTO LINE UP OR WRITING A STATEMENT AGAINST APPLICANT. SEE EXHIBIT (C) AND (D)

ON THE DATE OF JUNE 1, 2013 THE VICTIM HASHAWSAN K. BROWN HAD SUBMITTED A SWORN AFFIDAVIT STATING THAT, I HASHAWSAN K. BROWN IS WRITING THIS SWORN AFFIDAVIT TO THE BEST OF MY ABILITY, TO WHOM THIS MAY CONCERN THAT ON NOVEMBER 27TH 1993 I SHOT MYSELF IN THE HEAD, DUE TO THAT FACT I SUFFERED A TRAUMATIC BRAIN INJURY. AND SUPPOSEDLY IDENTIFIED DARNELL HUDSON WHOM I HAVE NEVER SEEN OR KNOWN. STILL TO THIS DAY MY BRAIN INJURY AFFECTS MY EVERY DAY LIFE. I HAVE SHORT AND LONG

TERM. MEMORY PROBLEMS. I AM AND WILL BE UNDER DOCTOR'S CARE FOR THE REMAINDER OF MY LIFE. III HASHAWSAN K. BROWN DECLARE UNDER PERJURY AND PENALTY THE FACTS STATED ABOVE ARE TRUE AND CORRECT. SEE: EXHIBIT (E)

ON THE DATE OF JULY 10, 2013 THE VICTIM TURNED OVER ALL THE MEDICAL RECORDS HE HAD AT THAT TIME TO MRS. MARGARET D. FAIRFAX SEE EXHIBIT (F) (G)

ON THE DATE OF JULY 15, 2013 APPLICANT RECIEVED THE AFFIDAVITS OF MRS. MARGARET D. FAIRFAX, MRS. CRYSTAL M. SILVER AND HASHAWSAN K. BROWN WITH THE MEDICAL RECORDS OF THE VICTIM. SEE EXHIBIT'S (B) (C) (D) (E) (F) (G)

ON THE DATE OF AUGUST 26, 2013 APPLICANT WAS SERVED THE CONDITION ORDER OF DISMISSAL AND WAS GRANTED TWENTY (20) DAYS TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL SEE: EXHIBIT (I)

APPLICANT'S RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL NOW FOLLOWS:

I.

RESPONSE TO THE RESPONDENT'S FIRST CAUSE OF DEFENSE FOR SUMMARY JUDGMENT DUE TO STATUTE OF LIMITATION.

THE RESPONDENT REQUEST UPON THIS COURT TO SUMMARY DISMISS APPLICANT'S POST-CONVICTION RELIEF APPLICATION BECAUSE APPLICANT HAS ALLEGINGLY FAILED TO COMPLY WITH

THE FILING PROCEDURES ACT. S.C. CODE. ANN. § 17-27-10, ET SEQ. (2003), SPECIFICALLY 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 DECISION UPON AN APPEAL WHICH IS LATER. THUS, THE SOUTH CAROLINA SUPREME COURT HAS HELD THAT THE STATUTE OF LIMITATION SHALL APPLY TO ALL APPLICATIONS FILED AFTER JULY 1, 1996 SEE PELOQUIN V. STATE 321 S.C. 468, 469 SE 2d 606 (1996)

THE RESPONDENT ALLEGES THAT APPLICANT WAS CONVICTED OF THE OFFENSES HE CHALLENGES IN THIS APPLICATION ON OCTOBER 26, 1995 WHICH IS SEVERAL YEARS AFTER THE STATUTORY FILINGS PERIOD HAD EXPIRED.

THE RESPONDENT SEEK SUMMARY JUDGMENT PURSUANT TO MCDONNELL V. CONSOLIDATED SCH DIST OF AIKEN, 315 S.C. 487, 445 SE 2d 638 (1994) ALLEGINS THAT A MOTION FOR SUMMARY JUDGMENT MAY PROPERLY BE USED TO RAISE THE DEFENSE OF STATUTE OF LIMITATION, IN ADDITION; THE RESPONDENT ALLEGES THAT PURSUANT TO S.C. CODE. ANN § 17-27-70 (C) (2003) AUTHORIZES THE COURT TO GRANT A MOTION BY EITHER PARTY FOR SUMMARY DISPOSITION OF [AN] APPLICATION WHEN IT APPEARS FROM THE PLEADINGS, THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND THAT THE MOVING PARTY IS

ENTITIED TO JUDGMENT AS A MATTER OF LAW.

WHEN A MOVING PARTY PROPERLY SUPPORTS ITS MOTION SHOWING THAT IT IS ENTITIED TO JUDGMENT AS A MATTER OF LAW, THE PARTY OPPOSING THE MOTION MUST PRESENT "AFFIRMATIVE EVIDENCE" TO ESTABLISH A GENUINE DISPUTE OF MATERIAL FACT WHICH IS NECESSARY TO DEFEAT A SUMMARY JUDGMENT MOTION. PYE V. ESTATE OF FOX, 633 SE 2d 505. THUS, IN DETERMINING WHETHER TO GRANT SUMMARY JUDGMENT A COURT MUST REVIEW ALL EVIDENCE AND ALL REASONABLE INFERENCES THEREFROM IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY BYRD V. CITY OF HARTSVILLE, 365 S.C. 650, 620 S.E.2d 76. IN P.C.R. ACTIONS. P.C.R. ACTIONS IS GOVERNED BY USUAL RULES OF CIVIL PROCEDURES. S.C. CODE ANN 17-27-80, THUS WHEN CONSIDERING THE RESPONDENTS MOTION FOR SUMMARY DISMISSAL OF AN APPLICATION FOR POST CONVICTION RELIEF, A COURT MUST VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO APPLICANT. WILSON V. STATE 348 S.C. 215, 559 SE 2d 581.

IN APPLICANT'S RESPONSE TO THE RESPONDENTS SUMMARY JUDGMENT MOTION, APPLICANT HEREBY SHOW THIS COURT THAT A TRIABLE ISSUE OF MATERIAL FACT EXIST AND THE APPLICANT'S DISPUTE AGAINST THE RESPONDENTS MOTION FOR SUMMARY DISMISSAL OF APPLICANTS P.C.R. APPLICATION DUE TO STATUTE OF LIMITATION SHOULD BE DENIED DUE TO S.C. CODE ANN §17-27-45 (C) WHICH READS AS FOLLOWS:

DISCOVERY RULE, 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 TILLEY V. STATE, 511 S.E. 2d. 689

IN REVIEWING THE EVIDENCE IN LIGHT MOST FAVORABLE TO APPLICANT, APPLICANT SHOWS THIS COURT THAT APPLICANT HAD DISCOVERED ON THE DATE OF JANUARY 23, 2013 EXCULPATORY EVIDENCE THAT THE VICTIM HASHAWSAN K. BROWN HAD SHOT HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE TO THE VICTIMS BRAIN. SEE EXHIBIT (F) (G)

BY GAINING KNOWLEDGE OF THE VICTIM SUFFERING FROM BRAIN DAMAGE DEFECTS APPLICANT CLAIM OF NEWLY AFTER DISCOVERED EVIDENCE FELL IN THE ACTUAL DISCOVERY RULE OF 17-27-45 (C). PRIOR TO THE INFORMATION PROVIDED BY JERMAN BARTON WHICH IS A FRIEND OF THE VICTIM. APPLICANT LACKED KNOWLEDGE OF THE INCIDENT ON NOVEMBER 27, 1993 WHICH THE VICTIM HAD SHOT HIMSELF IN HIS TEMPLE IN A ATTEMPT TO COMMIT SUICIDE. SEE EXHIBIT (F)

IT WAS NO WAY POSSIBLE APPLICANT COULD OF FILED A P.C.R. APPLICATION WITHIN THE (1) YEAR OF THE STATUTORY FILING PERIOD PURSUANT TO S.C. CODE ANN § 17-27-45 (A) ON THE ISSUE PRESENTED WHEN APPLICANT LACK KNOWLEDGE OF THE VICTIM'S SUICIDE ATTEMPT, THUS THE EXCULPATORY EVIDENCE WHICH WAS NEWLY DISCOVERED WAS IMPOSSIBLE TO DISCOVERED

WITHIN THE (1) YEAR FILING PERIOD PURSUANT TO S.C. CODE ANN § 17-27-45 (A) WITHOUT NO LEADS TO THE EXISTENCE OF THE ACTUAL FACT THAT THE VICTIM HAD SHOT HIMSELF IN HIS HEAD IN AN SUICIDE ATTEMPT WHICH CAUSED BRAIN DAMAGE TO THE VICTIM.

APPLICANT HAD FILED THIS P.C.R. APPLICATION WITHIN THE (1) YEAR STATUTORY FILING PERIOD PURSUANT TO S.C. CODE ANN. 17-27-45 (C) SO PURSUANT TO THE DISCOVERY RULE APPLICANT'S P.C.R. APPLICATION IS TIMELY FILED. IN THE INTEREST OF FAIRNESS APPLICANT SHOULD BE APPOINTED COUNSEL TO APPLICANT PURSUANT TO GRAY V. STATE, 347 S.C. 627, 557 SE 2d 662. DUE TO THE ISSUE PRESENTED APPLICANT REQUEST UPON THIS COURT TO CONTINUE THIS MATTER IN HUDSON V. STATE C/A NO: 2013-CP-23-00993.

II.

APPLICANT'S RESPONSE TO THE RESPONDENT'S SECOND CAUSE OF DEFENSE TO APPLICANT'S NEWLY AFTER DISCOVERED EVIDENCE CLAIM

IN RESPONSE TO THE RESPONDENT'S ALLEGATIONS THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT EXIST TO APPLICANT'S NEWLY-AFTER DISCOVERED EVIDENCE CLAIM, APPLICANT HEREBY SHOW THIS COURT THAT A DISPUTE EXIST BETWEEN APPLICANT AND THE RESPONDENT, THE RESPONDENT ALLEGES THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT EXIST TO APPLICANT'S NEWLY-AFTER DISCOVERY CLAIM, THAT APPLICANT'S CLAIM IS WITHOUT MERIT, THAT APPLICANT HAS FAILED TO ARTICULATE THE EXACT NATURE OF THE NEW EVIDENCE. THE RESPONDENT

ALSO ALLEGES THAT APPLICANT HAS NOT SHOWN THAT THE ALLEGED EVIDANCE MEETS ANY REQUIREMENTS FOR AFTER DISCOVERED EVIDENCE, MOST IMPORTANLY, THE RESPONDENT ALLEGED THAT THE NEWLY EVIDENCE OFFERED BY APPLICANT IS NOT MATERIAL TO THE ISSUE OF GUILT OR INNOCENCE, AND PROBABLY WOULD NOT CHANGE THE RESULT IF A NEW TRIAL WAS HAD. IN THE RESPONDENTS RETURN AND MOTION TO DISMISS THE RESPONDENT REQUESTED UPON THIS COURT TO DISMISS APPLICANT'S P.C.R. APPLICATION IN ITS ENTIRELY.

APPLICANT ALLEGES THAT HE DO HAVE A GENUINE ISSUE OF MATERIAL FACT WHICH HE IS ENTITLED TO AN EVIDENTIARY HEARING ON THE MERIT OF THIS NEWLY-AFTER DISCOVERED EVIDENCE CLAIM. WHICH APPLICANT PRESENT TO THIS COURT THAT 1). THE ALLEGED VICTIM HASHAWSAN K. BROWN HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE ON THE DATE OF NOVEMBER 27, 1993 SEE EXHIBIT (F). 2). THAT THE VICTIM HASHAWSAN K. BROWN HAD SUFFERED FROM BRAIN DAMAGE WHICH CAUSED A DEFECT TO THE VICTIM MEMORY, HIGHER LEVEL COGNITIVE SKILLS, REASONING, ATTENTION, CONCENTRATION, JUDGMENT, PROCESSING SPEED, COPING SKILLS, WRITTEN EXPRESSION AND VISUAL ACUITY. ALL DEFECTS WAS CAUSED BY THE VICTIM HASHAWSAN K. BROWN SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE ON NOVEMBER 27, 1993 (3). THAT 14 MONTHS AFTER THE SUICIDE ATTEMPT BY THE VICTIM HE REPORTED TO THE GREENVILLE CITY POLICE DEPT ON THE DATE OF MARCH 13, 1995 THAT HE WAS ARMED ROBBED AND ASSAULTED BY TWO UNKNOWN BLACK INDIVIUALS (4). THAT SHORTLY AFTER HE REPORTED TO THE POLICE THAT HE

WAS ROBBED AND ASSAULTED BY 2 UNKNOWN BLACK INDIVIVALS HE [THE VICTIM] PICKED APPLICANT OUT OF A PHOTO LINE UP AND WROTE A SWORN STATEMENT AGAINST APPLICANT WHICH LEAD TO THE ARREST AND CONVICTION OF APPLICANT. DUE TO THE UNUSUAL CIRCUMSTANCE APPLICANT IS ALLEGING IN HIS P.C.R. APPLICATION THE THE PROSECUTION VIOLATED S.C.R. CRIM. P. RULE 5 BRADY DISCLOSURE WHICH RENDER APPLICANT'S GUILTY PLEA INVOLUNTARY IS APPARENT ON THE FACE OF THE APPLICATION THAT AN EVIDENTIARY HEARING IS REQUIRED, TO DEVELOPE FACTS TO SUPPORT APPLICANT'S ENTITLEMENT TO RELIEF STATE V. PROCTOR 358 S.C. 424, 595 SE 2d 480 WHICH HELD: WHERE A DEFENDANT MAKES A THRESHOLD SHOWING THAT THE UNDISCLOSED EVIDENCE HE SOUGHT CONTAINED EXCULPATORY MATERIAL OR IMPEACHMENT EVIDENCE AND, THUS, SHOWS THAT THE EVIDENCE IS MATERIAL WITHIN MEANING OF BRADY AND RULES OF CRIM. PROCEDURE; THE TRIAL JUDGE SHOULD CONDUCT A HEARING, THUS, IN APPLICANT P.C.R. APPLICATION ALLEGES THAT 1). THE EVIDENCE THAT THE PROSECUTION WITHHELD WAS FAVORABLE TO APPLICANT. 2). IT WAS IN THE POSSESSION OF OR KNOWN OR SHOULD OF BEEN KNOWN TO THE PROSECUTION, (3). IT WAS SUPPRESSED BY THE PROSECUTION AND (4). IT WAS MATERIAL UNDER EXCULPATORY EVIDENCE U.S. V. BAGLEY, 473 U.S. 667, STATE V. VON DOHLEN, 360 S.C. 598.

APPLICANT MAKES A PRIMA FACIE SHOWING UPON THIS COURT THAT 1). THE EVIDENCE THE PROSECUTION WITHHELD WAS FAVORABLE TO APPLICANT BECAUSE THE EVIDENCE OF THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A

ATTEMPT TO COMMIT SUICIDE AND SUFFERING FROM BRAIN DAMAGE WHICH AFFECTED THE VICTIM MEMORY, HIGHER LEVEL COGNITIVE SKILLS, REASONING, ATTENTION, CONCENTRATION, JUDGMENT, PROBLEM SOLVING, PROCESSING SPEED, COPING SKILLS, WRITTEN EXPRESSION, AND VISUAL ACUITY SUBJECTED THE VICTIM TO BE INCOMPETENT TO STAND TRIAL TO TESTIFY AGAINST APPLICANT, FURTHERMORE, THIS EVIDENCE COULD OF SHIELD A DIFFERENT LIGHT, MOST FAVORABLE TO APPLICANT BECAUSE DUE TO THE VICTIM'S DEFECTS ITS A REASONABLE PROBABILITY APPLICANT IS TRUELY INNOCENCE AND THE VICTIM PICKED THE WRONG INDIVIDUAL OUT OF THE PHOTO LINE UP. <u>NEIL V. BIGGER</u> 409 U.S. 188, <u>STOVALL V. DENNO</u> 388 U.S. 293, THIS EVIDENCE SHOULD OF BEEN DISCLOSED BECAUSE APPLICANT HAD THE U.S. CONST. RIGHT UNDER THE 6TH AMEND. TO CONFRONT THIS VICTIM IN A COMPETENCY HEARING TO CHALLENGE THE VICTIM'S COMPETENCY TO STAND TRIAL <u>STATE V. NEEDS</u> (S.C. 1998) 508 SE 2d 857 <u>JOHNSON V. CATOE</u> (S.C. 2001) 548 SE 2d 587. THUS, IT WAS THE COURT DETERMINATION TO QUALIFY OR DISQUALIFY THE VICTIM FROM TESTIFING AGAINST APPLICANT.

2). <u>THIS EVIDENCE WAS IN THE POSSESSION OF THE PROSECUTION</u> BECAUSE THE VICTIM WAS TRANSPORTED TO THE HOSPITAL TO BE SEEN BY A DOCTOR BECAUSE OF HIM BEING STRUCK IN HIS HEAD WITH A GUN BY ONE OF THE ALLEGED ARMED ROBBERS, THUS, THE PROSECUTION WAS REQUIRED TO KNOW OF ITS WITNESS INJURY TO HIS HEAD THAT WAS CAUSED BY ONE OF THE ARMED ROBBERS STRIKING THE VICTIM. THE

STRIKING OF THE VICTIM COULD OF CAUSED GREAT DAMAGE TO THE VICTIM BRAIN SO PURSUANT TO Kyle v. Whitley, 514 U.S. 433, 115 S.CT. 1565 IF THE PROSECUTION DIDNT KNOW THEY SHOULD HAVE KNEW ABOUT THE VICTIM'S BRAIN DEFECTS. WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE. THE VICTIM WAS THE ESSENCE TO THE STATE CASE AND THE ONLY ONE COULD TESTIFY TO WHAT HAPPENED ON MARCH 13TH 1995.

3). THE EVIDENCE WAS SUPRESSED WHEN THE PROSECUTION WITHHELD THE EXCULPATORY EVIDENCE FROM THE DEFENSE THAT THE VICTIM SHOT HIMSELF IN HIS HEAD, FURTHERMORE, IT WAS THE PROSECUTION DUTY TO DISCLOSE THAT INFORMATION TO APPLICANT'S ATTORNEY EVEN WHEN NOT REQUESTED WHEN SUCH EVIDENCE HAVE A REASONABLE PROBABILITY TO UNDERMINE CONFINDENCE IN THE STATE CASE. U.S. v. Agues, 96 S.CT. 2392

4). THIS EVIDENCE WAS MATERIAL UNDER THE EXCULPATORY EVIDENCE RULE BECAUSE IT HAD A REASONABLE PROBABILITY TO UNDERMINE CONFINDENCE IN THE STATE CASE Kyle v. Whitley 514 U.S. 433, 115 S.CT. 1565. Bagley supra.

PURSUANT TO Gibson v. State, 514 SE 2d 320 A BRADY VIOLATION CAN RENDER ONE'S GUILTY PLEA INVOLUNTARY BECAUSE WHEN A DEFENDANT LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTION POSSESSION, THE WAIVER OF CONSTITUTIONAL RIGHTS CANNOT BE DEEM KNOWINGLY AND VOLUNTARY. THE GOVERNMENT

OBLIGATION TO MAKE SUCH DISCLOSURE OF BRADY MATERIAL IS RETINENT NOT ONLY TO AN ACCUSED'S PREPARATION FOR TRIAL BUT ALSO TO HIS DETERMINATION OF WHETHER OR NOT TO PLEA GUILTY. A DEFENDANT IS ENTITLED TO MAKE THAT DECISION WITH FULL AWARENESS OF FAVORABLE MATERIAL EVIDENCE KNOWN TO THE PROSECUTION U.S. V. AVELLINO 136 F 3d. 249 AS IN THE CONTEXT OF A TRIAL, A MATERIALITY REQUIREMENT EXIST, A BRADY VIOLATION IS MATERIAL WHEN THERE IS A REASONABLE PROBABILITY THAT, BUT FOR THE PROSECUTION VIOLATION ITS A REASONABLE PROBABILITY A DEFENDANT WOULDNT PLEAD GUILTY BUT INSISTED TO STAND TRIAL. GIBSON SUPRA.

HAD APPLICANT WOULD OF KNOWN OF THIS EXCULPATORY EVIDENCE. OF THE VICTIM SUFFERING FROM BRAIN DAMAGE DEFECTS WHICH EFFECTED THE VICTIM MEMORY. APPLICANT WOULD OF NEVER PLEAD GUILTY BUT WOULD OF INSISTED TO CHALLENGE THE VICTIM COMPETENCY TO-STAND TRIAL.

III.

PURSUANT TO THE BRADY CLAIM AND THE INVOLUNTARY GUILTY PLEA CLAIM THE RESPONDENT FAILED TO PLEA ANY AFFIRMATIVE DEFENSE PURSUANT TO S.C.R. CIV. P. RULE 12 (B) (6) TO APPLICANT'S ISSUES OF 1). THE PROSECUTION VIOLATED S.C.R. CRIM. P. RULE 5 DISCLOSURE BY FAILING TO DISCLOSE EXCULPATORY EVIDENCE TO APPLICANTS DEFENSE WHICH 2). RENDER APPLICANT'S GUILTY PLEA INVOLUNTARY. APPLICANT RAISED THESE CLAIMS IN HIS P.C.R. APPLICATION AND MOTION FOR NEW TRIAL. SEE EXHIBIT (A) BY THE RESPONDENT FAILURE TO PLEA AN AFFIRMATIVE DEFENSE TO THOSE ISSUES IN ITS RETURN, MOTION TO DISMISS, OR

CONDITION ORDER OF DISMISSAL THE RESPONDENT HAS NOW WAIVED THE RIGHT TO ASSERT ANY DEFENSE TO THE BRADY VIOLATION ISSUE AND THE INVOLUNTARY GUILTY PLEA ISSUE. PURSUANT TO S.C.R. CIV. P. RULE 12 (H) (1) AND (2). DEARYBURY V. STATE 367 S.C. 34, 625 SE 2d 212. WHITEHEAD V. STATE 325 S.C. 215, 594 SE 2d 200. THEREFORE, APPLICANT REQUEST UPON THIS COURT TO CONTINUE THIS MATTER IN HUDSON V. STATE C/A NO: 2013-CP-23-00993 AND GRANT AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL.

IIII.

IN THE RESPONDENT'S RETURN AND MOTION TO DISMISS, THE RESPONDENT ALLEGES THAT APPLICANT FAILED TO ARTICULATE THE NATURE OF THE NEWLY AFTER DISCOVERED EVIDENCE IS FABRICATED, THE RESPONDENT USE THE STANDARD OUTLINED IN SPANN TO SEEK SUMMARY DISMISSAL TO APPLICANTS P.C.R. APPLICATION BY ALLEGING THAT APPLICANT CANT MEET THE REQUIREMENTS SET FORTH IN STATE V. SPANN 334 S.C. 618, 513 SE 2d. 98 (1999). IN SPANN, A NEW TRIAL MOTION BASED UPON AFTER-DISCOVERED EVIDENCE SHOULD BE GRANTED WHEN THE EVIDENCE IS (1). SUCH THAT IT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WERE GRANTED, (2). HAS BEEN DISCOVERED SINCE THE TRIAL, (3). COULD NOT IN THE EXERCISE OF DUE DILIGENCE HAVE BEEN DISCOVERED PRIOR TO TRIAL, (4). IS MATERIAL, AND (5). IS NOT MERELY CUMULATIVE OR IMPEACHING.

APPLICANT HEREBY MAKES A PRIMA FACIE SHOWING TO THIS COURT THAT (1). THE NEWLY-AFTER DISCOVERED EVIDENCE

THAT HE DISCOVERED IS SUCH THAT IT WOUID PROBABLY CHANGE THE RESUIT IF A NEW TRIAI WAS GRANTED.

APPLICANT AILEGES THAT IF A NEW TRIAI WAS GRANTED HE FACES ACQUITTAI ON THE CHARGES FOR ARMED ROBBERY AND ASSAUIT AND BATTERY WITH INTENT TO KIII DUE TO THE VICTIM BEING INCOMPETENT TO STAND TRIAI AND TESTIFY AGAINST APPLICANT. THE VICTIM HAD SUFFERED FROM BRAIN DAMAGE WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSEIF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE ON NOVEMBER 27, 1993 SEE: EXHIBIT (E) (F) (G) THE VICTIM WAS THE ESSENCE OF THE STATE CASE. HE WAS ESSENTIAI TO ITS INVESTIGATION AND INDEED MADE THE CASE AGAINST APPLICANT. THUS, WITHOUT THE VICTIM TESTIFING AGAINST APPLICANT THERE IS NO OTHER EVIDENCE TO LINK APPLICANT TO THE CRIME THE EVIDENCE THAT APPLICANT DISCOVERED IS EXCUIPATORY WHICH IT COUID SHIEID A DIFFRENT RESUIT IN THIS CONVICTION BECAUSE WITHOUT NO IDENTIFICATION EVIDENCE, NO TESTIMONIAI EVIDENCE, FROM THE VICTIM AND NO STATEMENT FROM THE VICTIM APPLICANT CHARGES WOUID BE DISMISSED.

(2). EVIDENCE BEEN DISCOVERED SINCE TRIAI

ON THE DATE OF OCTOBER 26, 1995 APPLICANT PLEAD GUIITY TO THE CHARGES OF ARMED ROBBERY AND ASSAUIT AND BATTERY WITH AN HIGH AGGRAVATED NATURE. ON THE DATE OF JANUARY 23, 2013 APPLICANT DISCOVERED THIS NEWLY AFTER DISCOVERED EVIDENCE WHICH WAS SINCE THE 1995 PLEA HEARING.

(3). THE EVIDENCE APPLICANT DISCOVERED COULD NOT IN THE EXERCISE OF DUE DILIGENCE COULD OF BEEN DISCOVERED PRIOR TO TRIAL.

APPLICANT AND APPLICANT 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. FURTHERMORE, APPLICANT NOR APPLICANT'S DEFENSE ATTORNEY NEVER KNEW OF THE VICTIM PERSONALLY AND WITHOUT NO LEADS FROM THE INCIDENT THAT TOOK PLACE ON NOVEMBER 27, 2013 OR THE VICTIM BRIAN DAMAGE DEFECTS IT WAS IMPOSSIBLE FOR APPLICANT DEFENSE ATTORNEY TO HAVE ANY KNOWLEDGE OF THE VICTIM'S MEDICAL RECORDS OR TO EVEN ATTAIN THE VICTIMS MEDICAL RECORDS BECAUSE THE VICTIM MEDICAL RECORDS ARE NOT AVAILABLE OR ATTAINABLE FROM PUBLIC RECORDS, THUS, S.C. CODE ANN. 44-115-20 PROHIBITS THE DISCLOSURE OF CONFINDENTIAL MEDICAL RECORDS THUS, THEM MEDICAL RECORDS COULD OF ONLY BEEN PROVIDED TO APPLICANT'S DEFENSE BY THE ALLEGED VICTIM HIMSELF.

4). THE EVIDENCE APPLICANT DISCOVERED IS MATERIAL

THE EVIDENCE OF THE VICTIM SHOOTING HIMSELF IN HIS HEAD AND SUFFERING FROM BRAIN DAMAGE DEFECTS IS EXCULPATORY EVIDENCE, THIS EVIDENCE CAN PRODUCE A REASONABLE PROBABILITY TO CHANGE A DIFFRENT VERDICT OR OUTCOME IN THE CASE.

- Because The victim Could of picked The wrong individual out of The photo Line up and wrote The statement on The wrong person which is Applicant. Applicant stated That He was innoncent of The Crime against The victim and only plead guilty to The charges Because He was afraided of geting founded guilty and sentenced to 30 years For The armed Robbery and 25 years For The Assault and Battery with The Intent to Kill Charges.

(5). <u>The evidence applicant Discovered is not impeaching or merely cumulative.</u>

The evidence Applicant present to This Court The victim is incompetent to stand Trial is exculpatory evidence to show This Court And testify against Applicant.

Pursuant to <u>State v. Harris</u>, 706 SE 2d 529 The Credibility of newly - after Discovered evidence is for The Trial Court to determine. Thus, under <u>McCoy v. State</u> 737 SE 2d. 625, and <u>Sharpe v. State</u> 305 SE. 2d, 247 Applicant is entitled to an evidentiary Hearing for The Court to determine The merit of the issues presented and to test The victim's competency to testify at a new Trial. <u>State v. Needs</u>, 508 SE 2d 857. <u>Johnson v</u>

Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org

EXHIBIT
A

2013 FEB 19 P 2: 13

FEBRUARY 19TH 2013

DARNELL E HUDSON 227328
LIEBER CORRECTIONAL INSTITUTION
P O BOX 205
RIDGEVILLE sc 29472

DARNELL HUDSON

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION RELIEF APPLICATION. YOUR CIVIL CASE NUMBER IS 2013CP2300993.

A COPY OF YOUR PCR HAS BEEN FORWARDED TO THE ATTORNEY GENERAL'S OFFICE.

ONCE IT IS DETERMINED THAT A HEARING SHALL BE SCHEDULED, THE PROCESS FOR ATTORNEY ASSIGNMENT WILL BEGIN. THIS MAY TAKE SEVERAL MONTHS.

WE ONLY FILE THE PCR APPLICATIONS. WE DO NOT SET COURT DATES NOR ARE WE ABLE TO ANSWER QUESTIONS CONCERNING YOUR CASE.

THANK YOU
CLERK OF COURT'S OFFICE

FORM 5

| STATE OF SOUTH CAROLINA | ) | |
|---|---|---|
| County of GREENVILLE | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| DARNELLE. HUDSON, 227328 | ) | |
| Full name and prison number (if any) of Applicant | ) | 2013-CP-23- 00993 |
| | ) | |
| v. | ) | |
| | ) | APPLICATION FOR |
| | ) | |
| State of South Carolina | ) | POST-CONVICTION RELIEF |
| | ) | |
| | ) | |
| | ) | |

## INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORR INST, P.O. BOX 205 RIDGEVILLE S.C. 29472

2. Name and location of Court which imposed sentence GREENVILLE COUNTY COURT OF GENERAL SESSION

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 95-GS-23-6102, ARMED ROBBERY

(b) 95-GS-23-6103, ABHAN

(c) ________

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 10-26-1995, SENTENCE TO Y.O.A. 1-6 YRS.-AR

(b) 5 YRS PROBATION-ABHAN

(c) ________

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty ________

(c) after a plea of nolo contendere ________

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. ________

ii. ________

iii. ________

(b) the result in each such Court to which you appealed:

i. ________

ii. ________

iii. ________

(c) the date of each such result:

i. ________

ii. ________

iii. ________

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. ________

ii. ________

iii. ________

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) APPLICANT LACKED GROUNDS FOR APPEAL

(b) ______

(c) ______

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) NEWLY-AFTER-DISCOVERY EVID, PROSECUTION

(b) FAILED TO DISCLOSE FAVORABLE EVID, INVOLUNTARY

(c) GUILTY PLEA; SEE ATTACHMENTS TO SUPPORT CLAIMS.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) CLARK V. STATE 434 SE 2d 266

(b) GIBSON V. STATE 514 SE 2d 320

(c) SANCHEZ V. U.S. 50 F. 3D. 1448

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. ______

ii. ______

iii. ______

iv. ______

(b) the name and location of the Court in which each was filed:

i. ______

ii. ______

iii. ______

iv. ______

(c) the disposition thereof:

i. ______

ii. ______

iii. ______

iv. ______

(d) the date of each such disposition:

i. ______

ii. ______

iii. ______

iv. ______

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. ______

ii. ______

iii. ______

iv. ______

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. ______

ii. ______

iii. ______

(b) the proceedings in which each ground was raised:

i. ______

ii. ______

iii. ______

16. If any ground set forth in (10) has not previously been presented to any Court. State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) APPLICANT BY PRO-SE DUE DILLIGENCE JUST

(b) DISCOVERED THE NEWLY-AFTER-DISCOVERED

(c) EVID. SEE ATTACHMENT TO SUPPORT CLAIM

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? ________

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. MR. HAl W. ROACH 23 mills AVE
GREENVillE S.C. 29603

ii. ________

iii. ________

(b) the proceedings at which each such attorney represented you:

i. AT PlEA AND SENTENCING

ii. ________

iii. ________

19. State clearly the relief you seek in filing this application:

TO REVERSE CONVICTION AND SENTENCING AND GRANT APPLICANT A NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )
) VERIFICATION
County of GREENVILLE )

I, DARNELL E. HUDSON #227328, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Darnell Hudson

SWORN to and subscribed before me this 7th day of February, 2013.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

# APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, DARNELL E. HUDSON #227328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Darnell Hudson

*Applicant*

SWORN or affirmed to and subscribed before me this 7th day of February, 2013.

Sylvia Jones

*Notary Public*

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA 2013 FEB 19 IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE FILED-CLERK GREENVILLE FOR THE 13TH JURDICIAL CIRCUIT
COURT FOR GREENVILLE COUNTY.

DARNELL E. HUDSON #227328
APPLICANT,

CASE 2013-CP-23- 00993

VS.

ATTACHMENT TO P.C.R. APPLICATION

NOTICE OF A HEARING FOR
MOTION FOR NEW TRIAL PURSUANT
TO S.C.R.CRIM.P. RULE 29 (b) WITH
ATTACHED AFFIDAVIT AND
INCORPORATED MEMORANDUM
OF LAW TO SUPPORT CLAIM.

STATE OF SOUTH CAROLINA
RESPONDENT.

1). I APPLICANT DARNELL E. HUDSON #227328, HEREBY MOVES UPON THIS COURT BY P.C.R. APPLICATION AND ATTACHED MOTION PURSUANT TO S.C.R.CRIM.P. RULE 29 (b) INCORPORATED BY MEMORANDUM OF LAW TO SUPPORT CLAIM WITH ATTACHED AFFIDAVIT BY APPLICANT TO SHOW THIS COURT A PRIMA FACIE SHOWING THAT A NEW TRIAL IS WARRANTED DUE TO NEWLY AFTER DISCOVERED EVIDENCE THAT 1). THE PROSECUTION COMMITTED A BRADY V. MARYLAND 373 U.S. 83 RULE (5) DISCLOSURE VIOLATION WHICH 2). RENDER APPLICANT'S 1995 GUILTY PLEA INVALID, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST. AMENDS.

2). THIS COURT OF GREENVILLE COUNTY, COURT OF COMMON PLEAS

3). HAVE JURISDICTION TO HEAR APPLICANT'S P.C.R. APPLICATION AND MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER-DISCOVERED EVIDENCE PURSUANT TO S.C. CODE ANN 17-27-20 (A) (4) GIBSON V. STATE 514 SE.2d 320; THIS GIVES THIS COURT CIRCUIT JURISDICTION THE POWER TO EVALUATE THIS HEREBY P.C.R. APPLICATION/ MOTION FOR NEW TRIAL DUE TO THIS COURT OF GREENVILLE COUNTY GENERAL SESSIONS HAVING JURISDICTION OVER THE CONVICTION IMPOSED UPON APPLICANT, S.C. CODE ANN 17-27-40.

4). PURSUANT TO S.C. CODE ANN 17-27-45 (B) APPLICANT HEREBY FILES THIS P.C.R. APPLICATION/ MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER-DISCOVERED EVIDENCE WITHIN THE (1) YEAR FILING PERIOD OF THIS NEWLY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED.

5). APPLICANT AND APPLICANT'S ATTORNEY WAS EXCUSABLY IGNORANT TO THE EXISTANCE OF THIS DISCOVERED EVIDENCE DUE TO THE PROSECUTION FAILING TO DISCLOSE FAVORABLE EVIDENCE TO THE DEFENSE, STATE V. PROCTOR 559 SE 2d 318; THEREFORE APPLICANT COULD NOT PURSUE P.C.R. PURSUANT TO S.C. CODE ANN 17-27-45(A) PELOGUIN V. STATE 469 SE. 2d 606.

6). APPLICANT ATTACHES PERSONAL AFFIDAVIT TO SUPPORT CLAIM PRESENTED IN MOTION FOR NEW TRIAL PURSUANT

TO S.C.R.CRIMP. RULE 29(B) TO SUPPORT P.C.R. APPLICATION AND MOTION FOR NEW TRIAL.

7). APPLICANT WITHIN THIS VERIFIED P.C.R. APPLICATION/ MOTION FOR NEW TRIAL PURSUANT TO S.C.R.CRIMP. RULE 29(B) STATES THE FACTS KNOWN TO HIM AND THE SAID ALLEGATIONS RAISED ARE TRUE AND MUST BE CONSIDERED TRUE BY THIS COURT: LEAMON V. STATE 611 SE 2d 494 (2005) AND BY THE PREPONDERANCE OF THE NEWLY AFTER-DISCOVERED EVIDENCE APPLICANT WILL SHOW THIS COURT THAT THE PROSECUTION VIOLATED APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST. AMENDS BY SUPPRESSING FAVORABLE EVIDENCE TO THE DEFENSE, BRADY, SUPRA AT PAGE 88, AND THAT IF A NEW TRIAL WAS GRANTED BY THIS COURT IT WILL CHANGE THE RESULT IN THE CONVICTION IMPOSED, GIBSON V. STATE 334 S.C. 515. STATE V. TROTER 322 S.C. 537.

8). APPLICANT BY THIS HEREBY MOTION FOR NEW TRIAL PURSUANT TO S.C.R.CRIMP. RULE 29(B) REQUEST A EVIDENTIARY HEARING ON THE RECORD TO HEAR TESTIMONY OF THE PARTIES TO DEVELOP ANY FURTHER FACTS KNOWN TO SUBSTANTIATE CLAIM FOR RELIEF. APPLICANT ALLEDGES A EVIDENTIARY HEARING IS THE APPROPRIATE VENUE BY THIS COURT TO VEIW THOSE FACTS PRESENTED BY APPLICANT IN HIS P.C.R. APPLICATION/ MOTION FOR NEW

TRIAL. STATE v. PROCTOR 559 SE 2d 318;

9). APPLICANT WAS SENTENCE IN THIS COURT OF GREENVILLE COUNTY GENERAL SESSION IN THE YEAR OF OCTOBER 26, 1995 TO A Y.O.A. 1-6 YEAR SENTENCE FOR (1) COUNT OF ARMED ROBBERY AND (5) YEARS PROBATION FOR (1) COUNT OF ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE BY CIRCUIT COURT JUDGE M. WESTBROOK AFTER A PLEA OF GUILTY.

10). APPLICANT WAS REPRESENTED BY ATTORNEY HAL W. ROACH BY THE PUBLIC DEFENDER'S OFFICE FOR GREENVILLE COUNTY.

11). MR. BOB ARIAIL WAS THE PROSECUTOR FOR THE GREENVILLE COUNTY SOLICITOR'S OFFICE IN THE YEAR OF 1995.

12). ISSUE PRESENTED

1). NEWLY AFTER-DISCOVERED EVIDENCE THAT THE PROSECUTION COMMITTED A BRADY v. MARYLAND 373 U.S. 83, RULE (5) DISCLOSURE VIOLATION RENDERING

2). APPLICANT'S GUILTY PLEA INVOLUTARY, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH.

AMENDMENT OF THE U.S. CONST. AMENDS. GUSTINE V. STATE 325 S.C. 123; Hill V. LOCKHART 474 U.S. 52; AND SANCHEZ -V. U.S. 50 F. 3RD 1448.

# THE PROCEDURAL HISTORY

## AND STATEMENT OF FACTS

13). ON THE SAID DATE OF MARCH 13, 1995 A AllEDGE VICTIM HASHAWSAN K. BROWN REPORTED TO THE GREENVIllE CITY POLICE DEPT "OFC. JT BURGESS" THAT HE WAS ROBED AT GUN POINT AND ASSAUlTED BY GETING HIT IN HIS HEAD WITH A GUN BY TWO UNKNOWN BACK INDIVIDUAlS. HE "THE VICTIM" GAVE THE GREENVIllE CITY POLICE DEPT A DESCRIPTION OF THE TWO INDIVIDUAlS THAT HE AllEDGED ARMED ROBED 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 APPlICANT DARNEll E. HUDSON AS ONE OF THE ARMED ROBBERS AND THE ONE WHO ASSAUlTED HIM. THE VICTIM NEVER KNOWN OF APPlICANT PRIOR TO HIS STATEMENT AND IDENTIFIC-ATION OF APPlICANT. OFC. 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 which BElONGED TO APPlICANT'S ChilD MOTHER IN GREENVillE COUNTY AND ON THAT Night By EXCUTING THE SEARCH WARRANT THE GREENVillE City Police DEPT APPREHENDED APPlICANT AND ARRESTED AND ChARGED Him WITH (1) COUNTY OF ARMED ROBBERY 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 APPlICANT AS THE AllEDGE ARMED ROBBER AND ASSAUlTER. APPlICANT WAS APPOINTED COUNSEl, MR. HAl W. ROACH FROM THE GREENVillE County Public DEFENDERS OFFICE ON THE DATE OF OCTOBER 16, 1995 TO REPRESENT APPlICANT ON All ChARGES, SHORTlY AFTER ATTORNEY HAl ROACH WAS appointED TO RERPESENT APPlICANT HE CAME TO THE DETENTION CENTER TO CONSUlT WITH APPlICANT. APPlICANT WAS TOlD By ATTORNEY HAl ROACH THAT IF HE WAS TO GO TO TRIAl ON THE ChARGES (IF) FOUNDED GUIlTY HE COUlD BE SENTENCE TO (30) YEARS ON THE ARMED ROBBERY ChARGE AND SENTENCE TO (25) YEARS ON THE ASSAUlT AND BATTERY WITH A INTENT TO Kill. APPlICANT TOlD ATTORNEY HAl ROACH SEVERAl TIMES THAT HE WAS INNOCENCE OF THE ChARGES. ATTORNEY HAl ROACH TOlD APPlICANT THAT THE VICTIM HAD WROTE A STATEMENT AND PICKED APPlICANT OUT OF A Photo-line up AND THAT EVIDENCE AlONE COUlD CONVICT Him By A JURY. ATTORNEY HAl ROACH TOlD APPlICANT THAT BEING THAT APPlICANT WAS

17 YEARS OlD AT THE TIME OF THE INCIDENT HE COUlD GET APPlICANT A Y.O.A. 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.
APPlICANT THOUGHT 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 THE PHOTO LINE-UP COUlD HAVE HIM FOUNDED GUIlTY BY A JURY IF HE WENT TO TRIAl SO APPlICANT TOlD ATTORNEY HAl ROACH THAT HE WOUlD PlEA GUIlTY FOR THE Y.O.A. 1-6 AND PROBATION. ABOUT (10) DAYS AFTER ATTORNEY HAl ROACH WAS APPOINTED TO REPRESENT APPlICANT OF All THE CHARGES HE TOOK APPlICANT IN FRONT OF JUDGE M. WESTBROOK AT A GUIlTY PlEA HEARING. AT THE PlEA HEARING JUDGE WESTBROOK QUESTION APPlICANT ON THE RECORD HOW DO YOU PlEA AND APPlICANT STATED TO THE JUDGE, YOUR HONOR I DID NOT COMMIT THE CHARGES AGAINST ME. THE JUDGE THEN TOlD APPlICANT THAT IF YOU WAS TO GO TO TRIAl FOR THESE CHARGES HE COUlD SENTENCE APPlICANT TO (30) YEARS FOR THE ARMED ROBBERY AND (25) YEARS FOR THE ASSAUlT AND BATTERY WITH THE INTENT TO KIll. SO THE APPlICANT TOlD THE JUDGE THAT HE WOUlD PlEA JUST TO GET IT OVER WITH SO HE COUlD GET BACK TO HIS CHIlD AND LOVES ONES SOON SO ON THE DATE OF OCTOBER 26, 1995 JUDGE WESTBROOK ACCEPTED APPlICANT'S PlEA AND HAD APPlICANT SIGN THE WAIVER AND SENTENCE SHEET AFTER

HE SENTENCED APPlicANT TO A Y.O.A.(1-6) YEAR SENTENCE FOR THE ARMED ROBBERY ChARGE AND (5) YEARS PROBATION FOR ASSAUIT AND BATTERY WITH A High AggRAVATED NATURE. AT <u>NO</u> TIME PRIOR TO THE GUIITY PIEA HEARING DID THE PROSECUTION (PROSECUTOR BOB ARIAIL OR OFC. JT BURgess) DiscIOSE TO THE DEFENSE IN THE RUIE(S) BRADY MOTION THAT THE VICTIM HAS A MENTAI DISABIIITY AND THAT THE VICTIM HAD SUFFERED FROM BRAIN DAMAGE AFFECTS THAT AFFECTS HIS MEMORY WhICH WAS CAUSED By THE VICTIM ShOOTING HIMSEIF IN THE HEAD IN A ATTEMP TO COMMIT SUICIDE INWhICH THEY "THE PROSECUTION" KNEW OF DUE TO THEIR INVESTIGATION OF THE INCIDENT AND THE VICTIM'S BACK GROUND HISTORY. ON THE DATE OF 1-23-2013 APPIICANT DISCOVERED THIS EVIDENCE ABOUT THE VICTIM ShOOTING HIMSEIF IN HIS HEAD PRIOR TO THE AIIEDGE ARMED ROBBERY AND ASSAUIT AND THAT THE VICTIM SUFFERED FROM A BRAIN DAMAGE AFFECT THAT AFFECTED HIS MEMORY AND THAT THE VICTIM HAS A MENTAI DISABIIITY. APPIICANT DISCOVERED THIS INFORMATION BY TAIKING TO THE VICTIM CIOSE FRIEND JERMAN BARTON WhICH IS FROM GREENVIIIE S.C., APPIICANT NEVER SEEN THE VICTIM NOR KNEW ANYTHING ABOUT THIS AIIEDGE VICTIM PRIOR TO THIS NEWIY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED. THIS APPIICATION/MOTION FOIIOWS.

THE P.C.R. APPIICATION ATTACHMENT TO SUPPORT MOTION

14). APPLICANT NOW MOVES UPON THIS COURT BY P.C.R. APPLICATION AND MOTION AND STATE EACH AND EVERY ALLEGATION SET FORTH IN THE ATTACHMENT OF THIS MOTION IS INCORPORATE HEREIN AND MADE APART OF THE RECORD TO SUPPORT CLAIMS PRESENTED IN THE P.C.R. APPLICATION AND MOTION FOR NEW TRIAL. APPLICANT HEREBY SHOW THIS COURT A PRIMA FACIE SHOWING THAT A NEW TRIAL IS WARRANTED DUE TO NEWLY AFTER-DISCOVERED EVIDENCE BY DEMONSTRATING THE PROSECUTION COMMITTED A RULE(S) BRADY VIOLATION RENDERING APPLICANT'S GUILTY PLEA INVALID, VIOLATING APPLICANTS DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST AMENDS.

# ISSUE 1

## BRADY VIOLATION

EVIDENCE WAS FAVORABLE TO THE ACCUSED.

15). APPLICANT ALLEDGES THAT 1). THE MENTAL HEALTH RECORDS OF THE ALLEDGE VICTIM (which would of REVEALED) THE VICTIM SUFFERING FROM A MENTAL DISABILITY WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD OF DESCRIBED THE VICTIMS PARTICULAR ILLNESS AND DISABILITY AND WOULD OF PROVEN THE VICTIM TRAIN OF THOUGHTS ARE ILLRATIONAL AND SUBJECTED TO INCOMPETENT,

THE MENTAl HEAlTH RECORDS INCLUDES ANY AND All (REPORTS, EXAMINATIONS AND TEST) DESCRIBING THE IllNESS AND DISABIlITY OF THE AllEDGE VICTIM PURSUANT TO RULE (5)(A)(1)(D) OF S.C.R.CRIM.P. 2). THE HOSPITAl MEDICAl RECORDS OF THE VICTIM (which WOUlD OF REVEAlED) THE TYPE OF DAMAGE CAUSED BY THE BUllET TO THE PARTICULAR PART OF THE VICTIM BRAIN WAS RElEVANT AND MATERIAl TO APPlICANT'S DEFENSE BECAUSE IT WOUlD OF PROVEN THE VICTIM SUFFERED FROM A GUN SHOT WOUND TO HIS HEAD which AFFECTED THE VICTIM MEMORY which IS SUBJECTED TO INCOMPETENT. THE HOSPITAl RECORDS INCLUDES ANY AND All (REPORTS, EXAMINATIONS AND TEST) DESCRIBING THE DAMAGE OF THE VICTIM BRAIN AND DISABIlITY AFFECTS, PURSUANT TO RULE (5)(A)(1)(D) OF S.C.R.CRIM.P. AND 3). THE POlICE INVESTIGATION RECORDS (which WOUlD OF REVEAlED) THE DATE, TIME, AND DESCRIPTION OF GUN USED BY THE VICTIM INWhich THE VICTIM SHOT HIS SElF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE, PRIOR TO THE AllEDGE INCIDENT Which THE VICTIM AllEDGES APPlICANT ARMED ROB HIM AND ASSAUlTED HIM WAS RElEVANT AND MATERIAl TO APPlICANT'S DEFENSE BECAUSE IT WOUlD OF PROVEN THE VICTIM'S CHARACTER AND REPRETATION TO ACT IllRATIONAl AND SUICIDAl

AND THAT THE VICTIM DID CAUSE INJURY TO HIMSELF WAS EVIDENCE SUBJECTED TO INCOMPETENT. APPLICANT ALLEDGES THAT THE (3) FACTOR'S OF EVIDENCE COULD OF BEEN FAVORABLE TO THE DEFENSE FOR REASON

1). CHALLENGING THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST APPLICANT.

16). IF THE VICTIM'S MENTAL DISABILITY AND BRAIN DAMAGE AFFECTS WAS CHALLENGED BY THE DEFENSE IN A COMPETENCY HEARING (which IS QUESTIONABLE) IT WAS THE DUTY OF THAT TRIAL COURT TO EVALUATE THE ALLEDGE VICTIM'S CONDUCT, PRESENT ABILITY TO THINK AND ACT RATIONAL WITH A LEVEL OF UNDERSTANDING TO FACTUAL QUESTIONING ABOUT TRUTH which QUESTION'S WOULD OF BEEN IMPOSED BY THE DEFENSE, PROSECUTION OR COURT, AND ALSO TO DETERMINE THE VICTIM'S MENTAL ABILITY TO AFFER HIS TESTIMONIAL EVIDENCE SURROUNDING THE CIRCUMSTANCE OF THE ALLEDGED INCIDENT BY HIS VERSION OF EVENTS CONCERNING THE ARMED ROBBERY AND ASSAULT which THE VICTIM ALLEDGINGLY ACCUSED APPLICANT OF COMMITTING THESE OFFENSE AGAINST HIM. IN PENNSYLVANIA V. GOLDBLUM 498 P.A. 455, 447 A. 2d. 234, THAT COURT HELD. IN ORDER TO BE COMPETENT TO TESTIFY, A WITNESS MUST HAVE

THE ABILITY TO 1). PERCEIVE THE EVENT WITH A SUBSTANTIAL DEGREE OF ACCURACY 2). REMEMBER IT, 3). COMMUNICATE ABOUT IT INTELLIGENTLY AND 4). BE MINDFUL OF THE DUTY TO TELL THE TRUTH UNDER OATH. SO HAD THE DEFENSE WOULD OF CHALLENGED THE VICTIM'S COMPETENCY TO STAND TRIAL IT WAS THE DUTY OF THE TRIAL COURT TO DETERMINE WAS THE VICTIM COMPETENT TO STAND TRIAL, STATE V. CAMELE, 293 S.C. 302; 360 SE 2d. 307 (1987) STATE V. PITTS 256 S.C. 420; 183 SE 2d. 738 (1971) IN RE ROBERT M; 294 S.C. 69, 362 SE 2d 639 (1987) THUS IF THAT COURT WOULD OF FOUNDED THE VICTIM INCAPABLE OF UNDERSTANDING THE DUTY OF A WITNESS TO TELL THE TRUTH OR TO ACT RATIONAL UNDER OATH, THE TRIAL COURT WOULD OF HAD TO DISQUALIFIED THE VICTIM PURSUANT TO S.C.R. EVID. RULE 601(B) DISQUALIFICATION OF A WITNESS; STATE V. GREEN 267 S.C. 599, THE VICTIM'S TESTIMONY IDENTIFYING APPLICANT AS THE ALLEDGE ARMED ROBBER AND ASSAULTER WAS THE ESSENCE OF THE STATES CASE, HE WAS ESSENTIAL TO IT'S INVESTIGATION AND INDEED MADE THE CASE AGAINST APPLICANT. SO IF HELD INCOMPETENT BY THE COURT APPLICANT FACED ACQUITTAL OF THE ALLEDGE CHARGES, THAT MENTAL HEALTH RECORD WAS FAVORABLE BECAUSE IT WAS MATERIAL EVIDENCE THAT IF WAS DISCLOSED TO THE DEFENSE "CASE", "BY THE PROSECUTION" IT WAS A

REASONABIE PROBABILITY THE MENTAI HEAITH RECORDS COUID OF UNDERMINED THE OUTCOME IN TRIAI, KYLES V. WHITIEY 514 U.S. 419, STATE V. CAIN 377 SE 2d 556, WHICH STATE, A REASONABIE PROBABIIITY IS A PROBABIIITY TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE PROCEEDING. APPIICANT AISO AIIEDGES THAT 2). DUE TO THE VICTIM'S BRAIN DAMAGE AFFECTS THAT AFFECTED HIS MEMORY WOUID OF AISO BEEN ONE OF THE QUESTION THE TRIAI COURT WOUID OF HAD TO DETERMINE IN THE COMPETENCY HEARING, IN SHERIEY V. SEABOID 929 F 2d 272, THAT COURT HEID THE WITNESS IDENTIFICATION UNRELIABIE BECAUSE VICTIM SUFFERED FROM MEMORY LOSS, THE HOSPITAI RECORDS WAS AISO FAVORABIE TO THE DEFENSE BECAUSE IT WAS MATERIAI EVIDENCE THAT IF WAS DISCIOSED TO THE DEFENSE, "BY THE PROSECUTION" IT WOUID OF UNDERMINED CONFIDENCE IN THE OUTCOME OF THE PROCEEDING. NEIL V. BIGGER 409 U.S. 188, STOVAII V. DENNO 388 U.S. 293. UNRELIABIE IDENTIFICATION SUPPRESSED BY THE COURT. ONCE AGAIN IT WAS THE DETERMINATION OF THE COURT TO AIIOW THE WITNESS TO TESTIFY UNDER S.C.R. EVID. RUIE 601(A) STATE V. SMITH 199 S.C. 279. APPIICANT AISO AIIEDGES THAT 3). THE POIICE INVESTIGATION REPORTS OF THE AIIEDGE VICTIM ATTEMP TO COMMIT SUICIDE WAS AISO FAVORABIE BECAUSE IT WAS MATERIAI EVIDENCE THAT IF WAS

DISCLOSED TO THE DEFENSE" BY THE PROSECUTION"
IT HAD A REASONABLE PROBABILITY TO UNDERMINE
CONFIDENCE IN THAT PROCEEDING BECAUSE IT WAS
EVIDENCE TO SUPPORT THE DEFENCE AT THE COMPETENCY
HEARING TO SHOW THE VICTIM ILLRATIONAL TRIAN OF
THOUGHTS TO STAND TRIAL AGAINST APPLICANT. APPLICANT
ALLEDGES THAT IF THE COURT WOULD OF FOUNDED THE VICTIM
COMPETENT TO STAND TRIAL THE (3) FACTOR'S OF EVIDENCE
WAS STILL FAVORABLE TO THE DEFENSE DUE TO IMPEACHMEN
PURPOSES PURSUANT TO S.C.R. EVID. RULE 405 (B) THUS
PURSUANT TO THE 6TH AMENDMENT OF THE U.S. CONST AMENDS
THE APPLICANT HAD THE RIGHT TO CONFRONTATION AND
CROSS EXAMINATION, POINTER V. TEXAS 380 U.S. 400;
AND BY THE PRESECUTION FAILING TO DISCLOSE THAT
FAVORABLE EVIDENCE WHICH WAS 1). THE MENTAL HEALTH
RECORDS, 2). THE HOSPITAL RECORDS, AND 3). THE POLICE
INVESTIGATION REPORTS OF THE ALLEDGE VICTIM SHOOTING HIMSELF
IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE PREJUDICED
APPLICANT DUE TO 1). THE PROSECUTION DENYING APPLICANT
TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL TO CHALLENGE
THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST
APPLICANT, 2). THE PROSECUTION DENIED APPLICANT TO
CHARACTER EVIDENCE THAT FALLS UNDER S.C.R. EVIDENCE
PURSUANT TO RULE 405 (B) INWHICH THE VICTIM ATTEMP
TO COMMIT SUICIDE WAS SUBJECTED TO IMPEACHMENT TO SHOW
HIS CHARACTER AND REPRETATION WAS NOT STABLE OR

COMPETENT; 3). THE PROSECUTION DENIED APPLICANT THE RIGHT TO CONFRONTATION UNDER THE U.S. CONST, 6TH AMENDS, "BY FAILING TO DISCLOSE" FAVORABLE EVIDENCE, DAVIS V. ALASKA 415 U.S. 308; 4). THE PROSECUTION DENIED APPLICANT TO FAVORABLE EVIDENCE WHICH COULD OF BEEN USED IN CHALLENGING THE VICTIM'S IDENTIFICATION OF APPLICANT, NEIL V. BIGGER 409 U.S. 188, STOVALL V. DENNO 388 U.S. 293, AND SHERLEY V. SEABOLD 929 F 2d 272. 5) THE PROSECUTION DENIED APPLICANT TO THE RIGHT TO A FAIR TRIAL BY FAILING TO DISCLOSE FAVORABLE EVIDENCE, VIOLATION OF THE 14TH AMENDMENT UNDER THE U.S. CONST AMENDS. BRADY V. MARYLAND 373 U.S. 83, GIBSON V. STATE 334 S.C. 515; STATE V. PROCTOR 559 SE 2d 318; APPLICANT ALLEDGES THAT HAD THE FAVORABLE EVIDENCE BEEN DISCLOSED TO THE DEFENSE ITS A REASONABLE PROBABILITY THE OUTCOME IN THE PROCEEDING WOULD OF BEEN DIFFRENT, DAVIS V. ALASKA 415 U.S. 308, KYLES V. WHITLEY 514 U.S. 419. APPLICANT ALLEDGES THAT HAD THE EVIDENCE WOULD OF BEEN DISCLOSED TO THE DEFENSE HE WOULD OF NEVER PLEAD GUILTY TO THE CHARGES AND WOULD OF INSISTED TO STAND TRIAL, GIBSON V. STATE 334 S.C. 515; HILL V. LOCKHART 474 U.S. 52;

2). *THE EVIDENCE WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION.*

17). APPLICANT ALLEDGES THAT THE PROSECUTION HAD THIS FAVORABLE EVIDENCE OF THE VICTIM SHOOTING HIS SELF IN HIS HEAD IN A ATTEMP TO COMMIT SUCIDE DUE TO THE POLICE REPORTS AND THIER INVESTIGATION OF THAT INCIDENT THAT TOOK PLACE AND BY THEIR EXERCISE OF DUE DILIGENCE IN THIS INVESTIGATION INWHICH THE VICTIM ALLEDGINGLY CLAIM HE WAS ARMED ROBBED AND ASSAULTED OPENED THE DOOR TO THE VICTIM'S BACK GROUND HISTORY AND DUE TO THAT EVIDENCE OF THE VICTIM'S BACK GROUND HISTORY THE INVESTIGATOR (JT BURGESS) KNEW OF THE SHOOTING INCIDENT AND SHOULD OF TURNED THAT INFORMATION OVER TO THE PROSECUTOR SO THE PROSECUTOR COULD OF DID HIS INVESTIGATION BY THE EXERCISE OF DUE DILIGENCE TO PREPARE FOR DISCLOSURE PURSUANT TO S.C.R. EVID. RULE (5). THE PROSECUTOR, WHO WAS ASSIGNED TO THE CASE WAS RESPONSIBLE TO MAKE DISCLOSURE OF THAT SUCH EVIDENCE WHEN ITS A REASONABLE PROBABILITY THAT EVIDENCE DISCOVERED BY THE PROSECCUTION "INVESTIGATION PARTY" IS SUBJECTED TO UNDERMINE CONFIDENCE IN THE OUTCOME OF TRIAL, MOREOVER, THAT RESPONSIBILITY REMAINS REGARDLESS OF ANY FAILURE BY THE POLICE TO BRING FAVORABLE EVIDENCE TO THE PROSECUTOR'S ATTENTION BECAUSE IT IS THE PROSECUTOR'S DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHER'S WHILE ACTING ON THE GOVERNMENT'S BEHALF INCLUDING THE POLICE. IN UNITED STATES V. AGURS 427 U.S. 97 THAT COURT

HEID THAT THE PROSECUTOR HAS A OBIigATION TO DiscIose FAVORABIE EVIDENCE TO THE DEFENSE EVEN IF NOT REQUESTED BY THE DEFENSE WHERE THERE IS EVIDENCE SUBJECTED TO A REASONABIE PROBABIIITY THAT SUCH EVIDENCE WOUID PRODUCE A DIFFRENT RESUIT IN THE OUTCOME OF A PROCEEDING, SO THE PROSECUTION HAD THAT EVIDENCE IN THEIR POSSESSION, GIBSON V. STATE 334 S.C. 515, STATE V. VON DOHIEN 322 S.C. 240, THE POIICE INVESTIGATION REPORTS OF THE AIIEDGE VICTIM SHOOTING HIS SEIF IN THE HEAD IN THE A ATTEMP TO COMMIT SUICIDE, THE MENTAI HEAITH RECORDS AND AISO THE HOSPITAI RECORDS WHICH DESCRIBED IN EVIDENCE FAVORABIE TO THE APPIICANT SHOUID OF BEEN DISCIOSED TO THE DEFENSE. BRADY. SUPRA. THE PROSECUTOR AND THE OFC. JT BURGESS WAS PRESENT AT APPIICANT'S GUIITY PIEA HEARING SO THEY SHOUID OF DISCIOSED THAT EVIDENCE TO THE DEFENSE THEN AND THERE PRIOR TO APPIICANT PIEAING GUIITY TO CHARGES.

3). THE EVIDENCE WAS SUPPRESSED BY THE PROSECUTION

18). APPIICANT AIIEDGE THAT THE PROSECUTION SUPPRESSED THE FAVORABIE EVIDENCE WHEN IT FAIIED TO DISCIOSE THE EVIDENCE TO THE DEFENSE IN THE BRADY RUIE (5) DISCIOSURE. THE PROSECUTION HAD THIS FAVORABIE EVIDENCE IN IT'S POSSESSION AND WITHHEID IT AND BY DOING SO THE FAILURE TO DISCIOSE PREJUDICED

APPLICANT BECAUSE THE PROSECUTION WITHHELD EVIDENCE THAT IF DISCLOSED TO THE DEFENSE IT HAD A REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE IN THE PROCEEDING. KYLES V. WHITLEY 514 U.S. 433 STATE V. VONDOHLEN 322 S.C. 240 IT WAS THE PROSECUTOR'S DUTY TO DISCLOSE PURSUANT TO S.C. RULES OF PRO. CONDUCT, RULE (3.4) FAIRNESS TO OPPOSING PARTY AND COUNSEL (A) A LAWYER SHALL NOT, "INPART"; CONCEAL A DOCUMENT OR OTHER MATERIAL HAVING POTENTIAL EVIDENCE VALUE, AND (D) IN PRETRIAL PROCEDURES, "INPART" FAIL TO MAKE A REASONABLE DILIGENT EFFORT TO COMPLY WITH A LEGALLY PROPER DISCOVERY REQUEST BY OPPOSING PARTY. THUS THE PROSECUTOR VIOLATED S.C.R. PRO. CONDUCT RULE (3.4.) BY FAILING TO DISCLOSE 1). THE MENTAL HEALTH RECORDS REVEALING TO THE DEFENSE THE VICTIM SUFFERED FROM A MENTAL DISABILITY, 2). THE HOSPITAL RECORDS REVEALING THE VICTIM SUFFERED FROM A GUN SHOT WOUND TO HIS BRAIN THAT AFFECTED THE VICTIM'S MEMORY AND 3). THE POLICE INVESTIGATION REPORTS CONCERNING THE INCIDENT WITH THE VICTIM SHOOTING HIM SELF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE. THAT EVIDENCE WAS INDEED MATERIAL TO THE DEFENSE AND DUE TO RULE (5) OF S.C.R. EVID. APPLICANT WAS ENTITLE TO IT. GIBSON V. STATE 334 S.C. 515, U.S. V. BAGLEY 473 U.S. 667 EVEN IF NOT REQUESTED BY THE DEFENSE, AGURS, 427 U.S. 97, WHEN A PROSECUTOR KNOW OF FAVORABLE EVIDENCE

WHICH CAN CHANGE THE OUTCOME OF THE PROCEEDING ITS HIS DUTY TO DISCLOSE AND THAT EVIDENCE THE PROSECUTOR SUPPRESSED DID HAVE A REASONABLE PROBABILITY TO UNDEMINE CONFIDENCE IN THAT PROCEEDING BECAUSE 1). THE EVIDENCE WAS MATERIAL TO APPLICANT'S GUILT, AND OR COULD OF BEEN USED IN IMPEACHMENT OR EXCULPATORY CIRCUMSTANCE. " SEE EVIDENCE WAS FAVORABLE TO THE DEFENSE",

4). THE EVIDENCE WAS MATERIAL TO APPLICANT'S GUILT AND IT APPLIED UNDER IMPEACHMENT EVIDENCE

19). APPLICANT ALLEDGE THAT THE ESSENCE OF THE STATE CASE WAS THE VICTIM CLAIMING HE WAS ARMED ROBBED AND ASSAULTED BY APPLICANT, AND BY THE VICTIM WRITING A STATEMENT AND PICKING APPLICANT OUT OF A PHOTO LINE-UP, THAT EVIDENCE WAS POINTED TO APPLICANT'S GUILT, APPLICANT ALLEDGE THAT THE FAVORABLE EVIDENCE SUPPRESSED BY THE PROSECUTION COULD OF BEEN USEFUL TO THE DEFENSE TO CHALLENGE THE VICTIM VERSION OF EVENTS AND COMPETENCE TO STAND TRIAL AGAINST APPLICANT. APPLICANT ALSO ALLEDGES THAT THE EVIDENCE SUPPRESSED BY THE PROSECUTION COULD OF BEEN USEFUL IN IMPEACHMENT PURPOSES UNDER S.C.R. EVID. RULE 405 (8) " SEE FAVORABLE EVIDENCE TO THE DEFENSE", THUS, THE VICTIM'S VERSION OF EVENTS IS QUESTIONABLE DUE TO HIS MENTAL DISABILITY (WHICH WAS NOT DISCLOSED) AND HIS BRAIN DAMAGE

AFFECTS THAT AFFECTED HIS MEMORY DUE TO THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE (WHICH ALSO WAS NOT DISCLOSED). TO THE DEFENSE. GIBSON V. STATE 334 S.C. 515,

INVOLUNTARY GUILTY PLEA.

20). APPLICANT ATTACK HIS 1995 GUILTY PLEA AS INVOLUNTARY AND NOT KNOWINGLY AND INTELLIGENTLY ENTER DUE TO THE PROSECUTION FAILING TO DISCLOSE THE FAVORABLE EVIDENCE TO THE DEFENCE. GIBSON V. STATE 334 S.C. 515, SANCHEZ V. U.S. 50 F. 3D. 1448 AND GUSTINE V. STATE 325 S.C. 123; WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY BUT MUST ALSO BE KNOWING AND INTELLIGENT ACTS DONE WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES. IN SANCHEZ WHEN A DEFENDANT LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTIONS POSSESSION THE WAIVER OF CONSTITUTIONAL RIGHTS CAN NOT BE DEEM KNOWINGLY AND VOLUNTARY. WHITE V. U.S. 858 F 2d. 416; MILLER V. ANGLIKER 848 F 2d. 1312; APPLICANT ALLEDGE THAT HAD THE PROSECUTION WOULD OF DISCLOSED THE FAVORABLE EVIDENCE TO THE DEFENSE OF THE VICTIM'S MENTAL DISABILITY AND SHOOTING HIMSELF IN HIS HEAD AND SUFFERING FROM A BRAIN DAMAGE AFFECTS THAT AFFECTED THE VICTIM'S MEMORY APPLICANT WOULD NOT HAD PLEAD GUILTY TO THE CHARGES BUT INSISTED TO STAND TRIAL. HILL V. LOCKHART 474 U.S 52.

APPlICANT AllEDGES THAT THE EVIDENCE SUPPRESSED By THE PROSECUTION HAD A REASONABIE PROBABIlITY TO UNDERMINE CONFIDENCE IN THE STATES CASE AND By THE PROSECUTION FAILING TO DISCLOSE, THE EVIDENCE TO THE DEFENSE, APPLICANT WAS PREJUDICED, VIOLATING APPlICANT'S 14TH AMENDMENT OF THE U.S. CONST AMENDS.

## THE RELIEF REQUESTED

21). APPlICANT ASK THIS COURT TO GRANT APPlICANT 1). A EVIDENTIARY HEARING TO HERE FURTHER TESTMONY AND EVIDENCE CONCERNING THE AllIGATION RAISED AND 2). GRANT APPlICANT A NEW TRIAl IN THIS MOTION.

Darrell Hudson
SIGNATURE OF APPlICANT

SWORN TO AND SUBSCRIBED BEFORE ME THIS 7th DAY OF February 2013

Sylvia Jones
NOTARY

EXP: 1/24/2018

2013 FEB 19 PM 4:40
FILED-CLERK OF ...
GREENVILLE ...

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS FOR THE 13TH CIR.

DARNELL E. HUDSON #227328

v.

STATE OF SOUTH CAROLINA

ATTACHED TO MOTION...

SWORN AFFIDAVIT OF APPLICANT PURSUANT TO S.C.R.CRIM P. RULE 29(B) MOTION FOR NEW TRIAL

2013-CP-23- 00993

THE SWORN AFFIDAVIT OF DARNELL E. HUDSON

I AFFIANT, DARNELL E. HUDSON 227328, DECLARES UNDER PENALTY OF PERJURY THAT ON THIS SAID DATE OF 1-23-2013 THE FORGOING STATMENT ALLEDGED WITHIN THIS AFFIDAVIT IS TRUE AND CORRECT.

THAT ON THE DATE OF 1-23-2013 I AFFIANT DISCOVERED NEWLY AFTER-DISCOVERED EVIDENCE THAT THE PROSECUTION OF GREENVILLE COUNTY IN THE YEAR OF 1995 WITHHELD FAVORABLE EVIDENCE FROM AFFIANT DEFENSE BY FAILING TO DISCLOSE SUCH EVIDENCE UNDER RULE(5) OF S.C.R. EVID. UNDER (A)(1)(C) AND (D). THE VICTIM'S MENTAL HEALTH RECORDS, REVEALING THE VICTIM SUFFERING FROM A MENTAL DISABILITY, 2) THE HOSPITAL RECORDS REVEALING THE VICTIM SUFFERING FROM MEMORY LOSS THAT WAS CAUSED BY THE VICTIM SHOOTING HIS SELF IN HIS HEAD AND 3), THE POLICE INVESTIGATION RECORDS CONCERNING THE VICTIM ATTEMPT TO COMMIT

SUICIDE. THE PROSECUTION WAS IN POSSESSION OF THE INVESTIGATION REPORTS OF THE INCIDENT INVOLVING THE VICTIM SHOOTING HIM SEIF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE, AND BY THEIR INVESTIGATION OF THE VICTIM BACK GROUND HISTORY KNEW OF THAT FAVORABIE EVIDENCE AND FAILED TO DISCLOSED THAT EVIDENCE TO THE DEFENSE. AFFIANT AIIEDGES THAT THE VICTIM WROTE A STATEMENT AND PICKED HIM OUT OF A PHOTO LINE-UP INWHICH THE VICTIM AIIEDGINGIY CIAIM THAT AFFIANT ARMED ROBBED HIM AND ASSAUITED HIM ON MARCH 13, 1995. ON THE DATE OF OCTOBER 26, 1995 AFFIANT PIEAD GUIIT TO CHARGE'S AND WAS SENTENCE TO A YOA (1-6) YR. SENTENCE AND (5) YR. PROBATION. AT <u>NO</u> TIME DID ATTORNEY HAI ROACH KNEW OF THE VICTIM SHOOTING HIS SEIF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE PRIOR TO THE GUIIT PIEA HEARING AND BY THE PROSECUTION FAILING TO DISCLOSE THAT EVIDENCE TO ATTORNEY HAI ROACH, ATTORNEY HAI ROACH WAS EXCUSABIY IGNORENT TO THE EXISTENCE OF SUCH EVIDENCE AND COUID NOT BY DUE DILIGENCE COUID HAVE DISCOVERED THAT EVIDENCE. AFFIANT AIIEDGES THAT HE NEVER KNEW OF THE VICTIM IN NO WAY AND COUID NOT HAVE DISCOVER THE THAT FAVORABIE EVIDENCE IN NO WAY WHAT SO EVER DUE TO THE LACK OF KNOWIEDGE OF THE VICTIM. ON THE DATE OF 1-23-2013 WHILE TAIKING TO ANOTHER PRISONER FROM GREENVIIIE COUNTY S.C. JERMAN BARTON HE DISCOVERED THOSE FACTS ABOUT THE VICTIM SHOOTING HIS SEIF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE AND THAT THE VICTIM SUFFERED FROM A MENTAI DISABILITY AND BRAIN DAMAGE AFFECTS THAT AFFECTED HIS MEMORY.

AFFIANT DECIARES UNDER PENAITY OF PREJURY THAT THE FACTS IS TRUE AND CORRECT.

Darrell Hudson

SIGNATURE

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 14th DAY
OF February 2013

Sylvia Jones
NOTARY

EXP: 1/24/2018

EXHIBIT
B

Sworn affidavit of Margaret Fairfax.

I Margaret Fairfax declare under penalty of perjury that on the said day of April 29th 20013 the forgoing statement alleged within the affidavit is true and correct.

On the said day April 29th 2013 I Margaret Fairfax located Hashawsan K. Brown at location of 1 Trancer Avenue in Greenville S.C. I questioned him concerning the mental health records and concerning the alleged incident that occurred concerning him allegedly shooting himself in the head. He confirmed the incident saying he agreed to it. He is willing and knowingly voluntarily has agreed to turn over his mental health records and hospital records. He has also submitted an affidavit to this effect. He is not of any kin blood or relative and has not been promised anything for his affidavit or his records. I Margaret Fairfax declare under penalty or perjury the facts are correct.

Signature Margaret D. Fairfax

Witness [signature]

Caty S. Campbell

Notary Signature

My Commission Expires May 22, 2016

Exp. Date

EXHIBIT

C

June 1st 2013

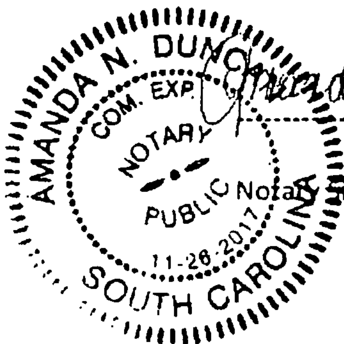
I Margaret Dora Fairfax declare under the penalty of perjury that the statement that I am writing is true and correct. That on the day of June 1st 2013 I did contact Hashawsan K. Brown at the said address One Prancer which he is a resident of Greenville County in the state of South Carolina 29605, concerning an alleged accident of him identifying my grandson Darnell Hudson in which an armed robbery took place on March 13th 1995. In which Hashawsan K. Brown stated he did not recall the incident that took place and that he never has known of my grandson Darnell Hudson. He stated that he supposedly identified Darnell Hudson. I Margaret Dora Fairfax declare under penalty of perjury that these facts are true and correct.

Margaret D. Fairfax — 6/15/13

Signature — Date

[signature] — 06/15/13

Witness — Date




Amanda N. Duncan — 06/15/13

Notary Signature — Date

EXHIBIT

D

June 1st 2013

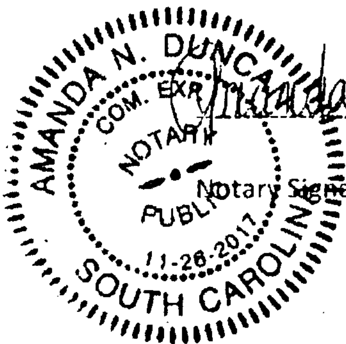
I Crystal M. Silver declare under penalty of perjury that the forgoing statement is true and correct. That on the date of June 1st 2013 that I helped my mother Margaret Fairfax locate Hashawsan K. Brown at the address of One Prancer located in Greenville County in South Carolina. I witnessed the questioning of my mother Margaret Fairfax to Hashawsan K. Brown concerning the allegations that he supposedly identifying my son Darnell Hudson in an alleged armed robbery that took place on March 13th 1995. In which he Hashawsan K. Brown saying he was not and didn't recall the incident of being robbed by my son. And also I witnessed him state that he did shoot himself in the head in the attempt to commit suicide. The forgoing statement is true and correct. I Crystal M. Silver declare under the penalty of perjury this statement is true.

Crystal M. Silver　　　　6/15/13

Signature　　　　Date

06/15/13

Witness　　　　Date




Amanda N. Duncan　　　　06/15/13

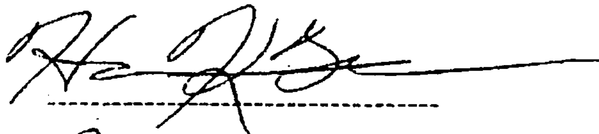
Notary Signature　　　　Date

EXHIBIT

E

June 1st 2013

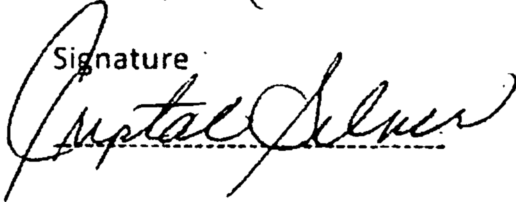
I Hashawsan K. Brown is writing this sworn affidavit to the best of my ability. To whom this may concern November 27th 1993 I shot myself in the head, due to that fact I suffered a traumatic brain injury. And supposedly identified Darnell Hudson whom I have never seen or known. Still to this day my brain injury affects my everyday life. I have short 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.



7-10-13

Signature

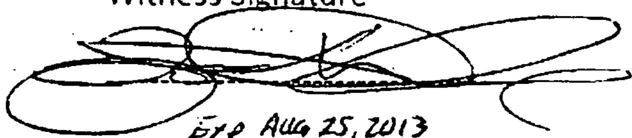
Date



7/10/13

Witness Signature

Date



Exp Aug 25, 2013

7-10-13

Notary Signature

Date

EXHIBIT

F

9(10)8

**GREENVILLE HOSPITAL SYSTEM**
GREENVILLE, S. C. 29605

1-7

NAME: BROWN, HASHAWSAN

ROOM NO. 7A

1/31/94 4152

Mr. Brown was admitted to Traumatic Brain Injury Unit at Roger Peace on 12/22/93 for a final discharge diagnosis of rehabilitation for a traumatic brain injury secondary to a gunshot wound.

Secondary diagnosis responsible in part for the patient's stay include a right subdural hematoma, gunshot wound to the temporal lobes, depression, right hemiparesis, status post gastrointestinal bleed, status post right craniotomy, seizure prophylaxis.

HISTORY OF PRESENT ILLNESS: This is a 19 year old black male with no significant past medical history, who was admitted to the Greenville Memorial Hospital by the ER on 11/28/93 after he suffered a self-inflict gunshot wound to the right temple following an apparent argument with his girlfriend. The patient was brought to the ER for the small caliber bullet wound and where no exit wound was found. CAT scan revealed an evolving hematoma with a right hypodense subdural hematoma in the right frontal lobe. The patient was admitted and managed initially on the neurosurgery service by Dr. Ottis M. Ballenger. When the patient did not appear to be making sufficient recovery, he was taken to the OR by Dr. Ballenger on 12/14/93 and underwent a right frontotemporal craniotomy with evacuation of a chronic subdural hematoma and debridement of frontal gunshot wound to the brain.

Postoperatively the patient became more alert and was evaluated by the psychiatric service. Seen by Dr. Galvarino who felt the patient was not currently psychotic or suicidal and he was subsequently transferred to Roger Peace on 12/22/93 to begin therapy on the Traumatic Brain Injury Unit.

At the time of the patient's admission to Roger Peace, he had the following labs. His white count was 6.[illegible]. His hgb. was 10.[illegible], hct. 31.4, platelet count 415. The patient is being maintained on Dilantin, subtherapeutic range. His potassium was 4.0, sodium 144, chloride 106, CO2 32, glucose 108, BUN 7, and creatinine 0.6. Albumin was 2.7, total protein was 5.6. The patient's urinalysis was unremarkable.

HOSPITAL COURSE: The patient was admitted to the Traumatic Brain Injury Unit at Roger Peace and begun on daily physical, occupational, recreational therapies as well as daily physiatric nursing and medical care, psychological services, case management, and speech therapies. On the service the patient did very well. He was converted from Dilantin to Tegretol and maintained Tegretol in the the normal range. He was stopped from his Carafate and had no episodes of upset stomach or GI disturbances. The patient physically improved rather quickly on the service and did fairly well.

The patient was seen by Dr. Galvarino on the psychiatry service while at Roger Peace and was felt to no longer be suicidal. At the time of discharge he was 100% continent of bladder and bowel. He was ambulating

2/6/94

TYPE OF REPORT: Discharge

SIGNED: Dennis Hollins, M.D./par

EXHIBIT

G

**TEAM TREATMENT PLAN SUMMARY**
**PEACE REHABILITATION CENTER**

**NAME:** Hashawsan Brown
**SSN:** 247-25-8080

## INTRODUCTION

Hashawsan is referred for evaluation and treatment of impairments resulting from a traumatic brain injury secondary to a gunshot wound on 11/27/93. Assessments in OT, ST and Psychology have been completed and goals specific for each therapy are included in each individual evaluation. This interdisciplinary treatment plan is a collaborative effort of the treating therapists and case manager.

## STRENGTHS/ASSETS

The strengths and assets upon which Hashawsan's rehabilitation plan can be founded include:

- Independence with basic self care
- Communication skills
- Reading comprehension
- Cooperative

## DEFICITS INCLUDE

The deficits which need to be addressed include:

- Awareness of deficits
- Higher level cognitive skills (reasoning, attention, concentration, judgement, memory, problem solving)
- Processing speed
- Self confidence / frustration tolerance/ coping skills
- Written expression
- Visual acuity

## RESULTING FUNCTIONAL LIMITATIONS

The above deficits have limited Hashawsan's functional life in the following areas:

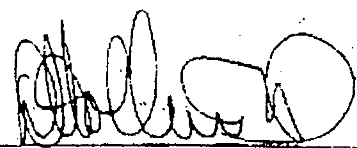
- Academic re-entry
- Driving
- Independence with advance ADL's (money management, home maintenance, cooking)
- Work re-entry
- Coping skills
- Leisure

## PATIENT/FAMILY EXPECTED OUTCOME

greater than 150 feet with supervision. His mat bed and mat mobility was independent. Occupational Therapy found him to be oriented to person, place, and circumstance, but inconsistent with time. He still requires standby assistance when shower secondary to balance. His spatial orientation problems were noted with self-care, advanced ADL's, and ambulation. In Recreational Therapy the patient was found to be alert for an entire treatment session daily. He reported some sleep problem later in the week due to being preoccupied with visions of the suicide attempt and at times needed prompting and cues to use as a memory log. In Speech, the patient continues no deficits in deductive reasoning and memory, and continuing with any moderately complex or difficult task. However, he showed progress and recall of recent information. The patient had improved in delayed recall to the location of 5 items on the moderately impaired to the average range. He continued to have significant deficits in recall for names, recall for sentences and visual auditory learning. In psychology the patient was followed by psychology service and denied any suicidal ideation. His mood was bright, although his affect remains puerile. He reported that he was thinking about his suicide attempt more frequently and was currently feeling confident about his discharge plan.

The patient went home on a pass and this went well. Referral was made to the outpatient programmatic Traumatic Brain Injury Services at Cross Creek and at the time of the patient's discharge, he was sent home on the following medications: Tegretol 200 mg. p.o. t.i.d., Trazodone 150 mg. p.o. q.h.s.

He has a follow-up appointment to see Dr. Galvarino, of the psychiatry service 2 to 3 weeks after discharge. He has a follow-up appointment to see me 4 weeks after discharge and to see Dr. Ottis Ballenger in 3 weeks after discharge.



2/6/94

TYPE OF REPORT: Discharge

SIGNED: Dennis Hollins, M.D./par



CC: Mario Galvarino, M.D.; O. M. Ballenger, M.D.

## GOALS AND PLAN

The following team goals have been developed to address the problem areas. The therapists responsible for working on each goal are in parentheses after each goal:

1. To increase cognitive skills necessary for independence with advanced ADL's and work re-entry (ST and Psy).

2. To increase written expression necessary for vocational and academic pursuits (ST).

3. To evaluate potential for work re-entry, driving, and academic re-entry by utilizing neuropsychological testing (Neuropsy).

4. To increase awareness of objective strengths and weaknesses with patient reporting accurate appraisal of skills level (ST and Psy).

5. To maximize utilization of memory management system through internal/external strategies for functional information to independent level (ST and Psy).

6. To facilitate the patient's and the family's adjustment and understanding of head injury (Psy, ST and Case Mgmt).

## EXIT/DISCHARGE PLAN

A firm exit/discharge plan cannot be determined at this time. Based on Hashawsan's performance on the neuropsychological evaluation and response to treatment additional goals and therapies may be added.

## SUMMARY

The OT evaluation has revealed no major impairments severe enough to justify continuing OT. The neuropsychological evaluation may uncover deficits which could best be addressed through OT; until the neuropsychological evaluation is completed, OT will be discontinued.

The prognosis for plan of care goals for each individual therapy and team goals is good. Treatment is recommended 2 times weekly for Speech Therapy and 1 time weekly for Psychology.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

DARNELL E. HUDSON #227328
APPLICANT,

C/A NO: 2013-CP-23-00993

v.

PROOF OF SERVICE

STATE OF SOUTH CAROLINA
RESPONDENT.

I DARNELL E. HUDSON (APPLICANT) CERTIFY THAT I HAVE ON THIS DAY SERVED APPLICANTS RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISS UPON THE PARTIES LISTED BELOW BY PLACE THIS RESPONSE IN THE LIEBER CORR. INST MAIL BOX ON THIS DATE OF SEPT 12, 2013.

THE FOLLOWING PARTIES HAVE BEEN SERVED AT THE BELOW ADDRESSES

1). MR. PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH ST.
GREENVILLE, S.C. 29601

2). MRS. KAREN C. RATIGAN
ATT. GEN. OFF.
P.O. BOX 11549
COLUMBIA S.C. 29211

s/. DARNELL HUDSON #227328