STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI TO BAMBERG COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

JAMES GUNNELLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-001890

PETITION FOR WRIT OF CERTIORARI

JAMES GUNNELLS
PRO SE PETITIONER

JAMES GUNNELLS
430 OAKLAWN Rd.
PELZER, S.C. 29669

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ISSUES PRESENTED

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STATEMENT

IN MARCH 2004, A BAMBERG COUNTY GRAND JURY INDICTED PETITIONER FOR CRIMINAL CONSPIRACY, (3) COUNTS OF KIDNAPPING, GRAND LARCENY, (2) COUNTS OF GRAND LARCENY OF A MOTOR VEHICLE, ARMED ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL, FIRST DEGREE BURGLARY, AND POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME.

ON OCTOBER 12-15, 2004, PETITIONER WAS TRIED BEFORE THE HONORABLE J.C. NICHOLSON AND A JURY. BARBARA MORGAN AND GRANT GIBBONS REPRESENTED THE STATE. CHRISTOPHER WILSON AND STEVE CHANDLER REPRESENTED PETITIONER. THE JURY ACQUITTED PETITIONER OF THE LARCENY CHARGES, ASSAULT AND BATTERY WITH INTENT TO KILL, AND ONE KIDNAPPING CHARGE. THE JURY CONVICTED PETITIONER OF CRIMINAL CONSPIRACY, ARMED ROBBERY, (2) COUNTS OF KIDNAPPING, FIRST DEGREE BURGLARY, AND POSSESSION OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME. JUDGE NICHOLSON SENTENCED PETITIONER TO LIFE IMPRISONMENT FOR FIRST DEGREE BURGLARY AND CONCURRENT TERMS OF THIRTY YEARS IMPRISONMENT FOR BOTH KIDNAPPINGS, AND FIVE YEARS IMPRISONMENT FOR BOTH CRIMINAL CONSPIRACY AND POSSESSION OF A FIREARM. JUDGE NICHOLSON SENTENCED PETITIONER TO A CONSECUTIVE TERM OF THIRTY YEARS IMPRISONMENT FOR ARMED ROBBERY. PETITIONER WAS REPRESENTED ON APPEAL BY LANELLE C. DURANT. ON JANUARY 14, 2009, THE COURT OF APPEALS AFFIRMED PETITIONERS CONVICTION. (STATE V. GUNNELLS, 2009-UP-035 (CT. APP. JAN. 14, 2009). MS. DURANT FILED A PETITION FOR CERTIORARI WITH THE SUPREME COURT WHICH WAS DENIED ON OCTOBER 7, 2009.

ON APRIL 5, 2010, PETITIONER FILED A P.C.R. APPLICATION. ON JANUARY 27, 2012 A HEARING WAS HELD BEFORE THE HONORABLE EDGAR W. DICKSON. TRICIA BLANCHETTE REPRESENTED PETITIONER. MARY S. WILLIAMS REPRESENTED THE STATE. AARON WALSH REPRESENTED A WITNESS, TIVO LEE. ON JANUARY 13, 2012 PETITIONER FILED AN AMENDMENT TO HIS P.C.R. APPLICATION. ON MARCH 8, 2012, PETITIONER FILED A MEMORANDUM OF LAW. ON AUGUST 13, 2013, JUDGE DICKSON DENIED PETITIONERS APPLICATION. THIS PETITION FOLLOWS.

ARGUMENT

1. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN VIOLATION OF PETITIONERS SIXTH AMENDMENT RIGHT TO COUNSEL BECAUSE HE FAILED TO PREPARE AND INVESTIGATE PRIOR TO TRIAL?

PETITIONER DID NOT RECIEVE ADEQUATE COUNSEL AT TRIAL AND THROUGH THE LACK OF PREPARATION WAS PREJUDICED. TRIAL COUNSEL NEVER ARTICULATED A VALID TRIAL STRATEGY AT ANY TIME AND THIS CLEARLY SHOWS HE WAS JUST GOING ON A CATCH ALL TYPE OF ATTITUDE. HE CLEARLY STATES HE HAD NO VIABLE DEFENSE AVAILABLE AT TRIAL, SO IN TURN THAT ALSO SHOWS HE HAD NO STRATEGY FORMULATED. SEE DAVIS V. STATE, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997), THIS CASE SHOWS THAT WHEN TRIAL COUNSEL SAID HE WAS UNPREPARED FOR TRIAL THE P.C.R. JUDGE COULD RULE THAT COUNSEL WAS DEFICIENT.) TRIAL COUNSEL NEVER INTERVIEWED ANY OF THE VICTIMS OR CO-DEFENDANTS IN THIS CASE, OR THE PETITIONERS GIRLFRIEND OR AUNT, ALL OF WHOM GAVE STATEMENTS AND WHERE INVOLVED. HE ALSO NEVER INVESTIGATED ANY OF THE INFORMATION THE PETITIONER PROVIDED WHICH ALSO SHOWS UNPROFESSIONAL CONDUCT. THE INFORMATION THAT PETITIONER PROVIDED COULD'VE CHANGED THE WHOLE SCENARIO AT TRIAL IF COUNSEL WOULD HAVE PURSUED THE DEFENSE OF RECIEVING STOLEN PROPERTY AFTER HE WAS TOLD ITEMS RECOVERED WERE PURCHASED. THERE WAS NEVER ANY PHYSICAL TYPE EVIDENCE LINKING PETITIONER TO THE CRIME AND FOR COUNSEL NOT TO DO ANY INVESTIGATION FALLS BELOW THE STANDARD OF A REASONABLY COMPETENT ATTORNEY PRACTICING UNDER PREVAILING PROFESSIONAL NORMS. SEE BRYANT V. SCOTT, 28 F.3d 1411, WHERE IT STATES AN ATTORNEY MUST ENGAGE IN A REASONABLE AMOUNT OF PRETRIAL INVESTIGATION AND "AT A MINIMUM.... INTERVIEW POTENTIAL WITNESSES AND.... MAKE AN INDEPENDANT INVESTIGATION OF THE FACTS AND CIRCUMSTANCES IN THE CASE.") ADDITIONALLY, PETITIONER IS SERVING A SENTENCE OF LIFE PLUS 30 YEARS FOR HIS SUPPOSED PARTICIPATION IN THE ROBBERY, AND GIVEN THE SERIOUSNESS OF THE CRIME COUNSEL SHOULD HAVE PURSUED ANY POSSIBLE LINE OF INVESTIGATION. TRIAL COUNSEL NEVER INTERVIEWED EITHER CO-DEFENDANT, VICTIMS, GIRLFRIEND, OR AUNT. HE SAYS HE DISCUSS-

ED THE CASE WITH ME AND WENT OVER THE DISCOVERIES AND INDICTMENTS AND THAT WAS THE EXTENT OF IT ALL. CONSEQUENTLY, INFORMATION RELEVANT TO PETITIONERS DEFENSE MIGHT HAVE BEEN OBTAINED THROUGH BETTER PRETRIAL INVESTIGATION OF THE EYEWITNESSES/VICTIMS, AND A REASONABLE LAWYER WOULD HAVE MADE SOME EFFORT TO INVESTIGATE ANY POSSIBLE TESTIMONY. SEE KEMP V. LEGGETT, 635 F.2d 453, 454 (5TH CIR 1981). IF TRIAL COUNSEL WOULD HAVE QUESTIONED, INTERVIEWED PRIOR TO TRIAL PROPERLY, HE COULD'VE HAD SOME TYPE OF DEFENSE PREPARED FOR PETITIONER INSTEAD OF NOTHING BUT OFF THE CLIFF ANSWERS WHICH ONLY HINDERED MY DEFENSE, IN TURN PREJUDICING PETITIONER AND VIOLATING HIS 6TH AMENDMENT RIGHT TO COUNSEL. PROPER INVESTIGATION WOULD'VE SHOWN THAT AT THE TIME OF THE CRIME VICTIMS CLEARLY STATED TWO BLACK MALES, THEN IN APPROXIMATELY 2½ MONTHS AFTER MY ARREST THE VICTIMS INCLUDE A WHITE MALE IN THEIR SECOND STATEMENTS TO POLICE AFTER THEY (VICTIMS) ADMIT THAT POLICE TOLD THEM THAT PETITIONER WAS INVOLVED. THIS WAS VERY PREJUDICIAL TO PETITIONER AND TRIAL COUNSEL SHOULD'VE ARTICULATED A ARGUMENT BEING AS THOUGH HE HAD KNOWLEDGE OF THIS INFORMATION PRIOR TO TRIAL. HE COULD'VE ALSO UTILIZED CO-DEFENDANT WHO ALSO GAVE INFORMATION THAT WOULD'VE BEEN BENEFICIAL TO PETITIONER AT THE TIME OF TRIAL. TRIAL COUNSEL ALSO SHOULD'VE INVESTIGATED THE JEWELRY IN THIS CASE. THE POLICE (DARNELL) SAID UPON PETITIONERS ARREST HE IDENTIFIED THE JEWELRY. HOW IS THIS POSSIBLE? THERE WAS NEVER ANY PROOF OFFERED BY THE VICTIMS AT ALL THAT THIS WAS IN FACT THEIR PROPERTY. IT WAS ALSO RELEASED TO THE VICTIMS PRIOR TO TRIAL WHICH SHOULD'VE BEEN ADDRESSED AS A CHAIN OF CUSTODY VIOLATION BEING AS THOUGH IT WAS EVIDENCE IN A CRIME. PETITIONER IN TURN ARGUED THAT THE JEWELRY WAS IN FACT HIS OWN AND DID PROVIDE RECIEPTS

TO SLED TO NO AVAIL. THIS WAS HIGHLY PREJUDICIAL TO PETITIONER BECAUSE THE JURY WAS ALLOWED TO SEE PICTURES OF JEWELRY ON PETITIONER AND HEAR ARGUMENT AND TESTIMONY THAT IT IN FACT BELONGED TO VICTIMS WHEN THERE WAS ABSOLUTELY NO PROOF. THIS SHOULD'VE BEEN AN ARGUMENT TRIAL COUNSEL PURSUED BUT DIDN'T. IT SHOULD'VE BEEN ADDRESSED SPECIFICALLY BECAUSE IT MADE UP THE ELEMENTS FOR THE ARMED ROBBERY INDICTMENT TO BE VALID. WITHOUT THE JEWELRY SUPPOSEDLY TAKEN FROM A VICTIM THE ONE INDICTMENT FOR ARMED ROBBERY WOULD'VE BEEN INSUFFICIENT BEING AS THOUGH ALL THE OTHER ELEMENTS WERE INCLUDED IN THE LARCENY INDICTMENT WHICH WAS "NOL PROS", AFTER THE ELEMENTS WERE ADDED TO THE ARMED ROBBERY INDICTMENT. THIS ALSO SHOULD'VE BEEN A ISSUE THAT COUNSEL ARGUED BECAUSE IT CHANGED AND ENHANCED THE CHARGE WITHOUT PROPER AUTHORITY. A INDICTMENT CAN NOT BE ENHANCED TO A GREATER OFFENSE WITHOUT THE AUTHORITY OF A GRAND JURY AND IN THIS CASE THE JUDGE AMENDED THE INDICTMENT TO THE GREATER OFFENSE INSTEAD OF THE LESSER WHICH IS REQUIRED BY LAW AND SHOULD'VE BEEN ADDRESSED AS SUCH BY COUNSEL. THIS SHOWS COUNSELS LACK OF PREPARATION AND SHOWS SEVERAL ALTERNATIVE CHOICES HE COULD'VE USED IN PETITIONERS DEFENSE, AND ALL COULD'VE POSSIBLY AFFECTED THE OUTCOME OF TRIAL.

2. <u>WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN VIOLATION OF PETITIONERS SIXTH AMENDMENT RIGHT TO COUNSEL BECAUSE HE FAILED TO INVESTIGATE OR UTILIZE CO-DEFENDANT TIVO LEE AS A WITNESS?</u>

PETITIONER WAS GREATLY PREJUDICED BY COUNSELS FAILURE TO UTILIZE OR INVESTIGATE CO-DEFENDANTS ABILITY TO SERVE AS A WITNESS. THIS IS A VERY OBVIOUS LACK OF PREPARATION ON BEHALF OF TRIAL COUNSEL.

THIS CO-DEFENDANT HAS STATED SINCE HIS ARREST THAT HE NEVER COMMITTED ANY CRIME WITH PETITIONER AND ADMITTED THAT HE ALONG WITH OTHERS DID COMMIT THE CRIMES IN QUESTION. NOT ONLY DOES HE ADMIT TO THE CRIME, THERE IS SUFFICIENT EVIDENCE TO CONVICT HIM BEING AS THOUGH THERE WERE PHYSICAL FINGERPRINTS LEFT AT THE SCENE THAT MATCHED HIS. THIS AVENUE OF DEFENSE SHOULD'VE BEEN USED BY COUNSEL TO NO END. THE STATE ALSO USED IN IT'S ORDER OF DISMISSAL FALSIFYING TACTICS TO DAMAGE HIS CREDIBILITY BY SAYING HE ONLY SAID WHAT HE SAID BECAUSE HE HAD NOTHING TO LOSE AND NO PENDING CHARGES. THEY FAIL TO SAY THAT THE JUDGE PERSONALLY QUESTIONED HIM AND WHEN HE WAS ASKED IF HE COULD BE RECHARGED WOULD HE CHANGE HIS TESTIMONY, HE CLEARLY SAID "NO." SEE PAULING V. STATE, 331 S.C. 606, 503 S.E.2d 468, WHERE THE SUPREME COURTS HAVE HELD THAT COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL A DEFENSE WITNESS. THE SUPREME COURT CONCLUDED COUNSEL'S FAILURE TO CALL A DEFENSE WITNESS WAS DEFICIENT AND THE PETITIONER WAS PREJUDICED BY THIS DEFICIENCY. SEE ALSO HENDERSON V. SARGENT, 926 F.2d 706, 711 (8TH CIR. 1991) (STATING THAT COUNSEL HAS A DUTY TO INVESTIGATE ALL WITNESSES WHO ALLEDGEDLY POSSESS KNOWLEDGE CONCERNING THE DEFENDANTS GUILT OR INNOCENCE.) (QUOTING LAWRENCE V. ARMONTROUT, 900 F.2d 127, 130 (8TH CIR 1990), "COUNSEL HAS A DUTY TO MAKE REASONABLE INVESTIGATIONS OR TO MAKE A REASONABLE DECISION THAT MAKES PARTICULAR INVESTIGATIONS UNNECESSARY." STRICKLAND, 466 U.S. AT 691. ONE COMPONENT OF THAT DUTY IS TO INVESTIGATE ALIBI WITNESSES IDENTIFIED BY A DEFENDANT, AND THE FAILURE TO MAKE SOME EFFORT TO CONTACT THEM TO ASCERTAIN WHETHER THEIR TESTIMONY WOULD AID THE DEFENSE IS UNREASONABLE. GROOMS V. SOLEM, 923 F.2d 88, 90 (8TH CIR. 1991). THIS SHOWS IT WAS COUNSELS OBLIGATION TO CHECK ON

EVERY POSSIBLE AVENUE OF DEFENSE BEFORE PROCEEDING TO TRIAL. THE RIGHT TO PRESENT THE TESTIMONY OF WITNESSES, IS IN PLAIN TERMS THE RIGHT TO PRESENT A DEFENSE, THE RIGHT TO PRESENT THE DEFENDANTS VERSION OF THE FACTS AS WELL AS THE PROSECUTIONS TO THE JURY SO IT MAY DECIDE WHERE THE TRUTH LIES. SEE WASHINGTON V. TEXAS, 388 U.S. 14, 19, 87 S.CT. 1920, 18 L.Ed.2d 1019 (1967). ACCORDINGLY, A DEFENDANT HAS A FUNDAMENTAL CONSTITUTIONAL RIGHT TO OFFER RELEVANT WITNESS TESTIMONY. WASHINGTON, 388 U.S. AT 23, 87 S.CT. 1920, THIS SHOWS THAT ALL ISSUES CONSIDERED RELEVANT SHOULD BE PRESENTED TO A JURY WHEN IT CONCERNS A WITNESS AT TRIAL. SECONDLY AND MOST IMPORTANTLY IT IS A CONSTITUTIONAL RIGHT AFFORDED TO THOSE WHO CHOOSE TO UTILIZE THEIR RIGHT TO TRIAL. PETITIONER WAS DENIED THE RIGHT TO PRESENT ANY WITNESSES AT TRIAL DUE TO COUNSELS FAILURE TO RESEARCH POSSIBLE OPTIONS FROM SAID CO-DEFENDANT. THE SAME TESTIMONY THAT WAS GIVEN AND HEARD AT THE P.C.R HEARING COULD'VE BEEN HEARD BY THE JURY AT TRIAL AND IT COULD'VE HAD A GREAT WEIGHT TO THE JURY. THEREFORE COUNSELS NEGLECT HAD A VERY PREJUDICIAL AFFECT WHICH COULD'VE ALTERED THE OUTCOME OF TRIAL.

3. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN VIOLATION OF PETITIONERS SIXTH AMENDMENT RIGHT TO COUNSEL BECAUSE HE FAILED TO DISCUSS THE INDICTMENTS AND THE DEFECTS WITH PETITIONER PRIOR TO TRIAL?

PETITIONER WAS PREJUDICED BY COUNSELS FAILURE TO DISCUSS THE INDICTMENTS PRIOR TO TRIAL, WHERE IF DONE PROPERLY COUNSEL COULD HAVE PRESENTED A VALID ARGUMENT WHEN THE STATE MOVED TO AMEND THE ARMED ROBBERY INDICTMENT. PETITIONER NEVER HAD ANY ACCESS TO THE SAID INDICTMENTS AND COUNSEL HAD A OBLIGATION TO ADVISE PETITIONER OF ANY DISCREPANCIES THAT

COULD'VE BEEN RAISED AT TRIAL. TRIAL COUNSEL ALSO SAID HE DISCUSSED ALL THE INDICTMENTS AND KNEW ABOUT ALL OF THEM MONTHS BEFORE TRIAL, BUT AT TRIAL HE ARGUES HE KNEW NOTHING ABOUT ANY AMENDMENTS. SEE (APP. 152 10-11) ALSO AT TRIAL THE SOLICITOR MS. MORGAN SAYS SHE NOTIFIED HIM PREVIOUSLY BUT DIDN'T THINK SHE HAD TO UNLESS IT CHANGED THE PENALTIES, WHICH IT CLEARLY DID. MS. MORGAN NEVER SUPPLIED COUNSEL WITH ANY OF THE INDICTMENTS AND THEY WEREN'T INCLUDED IN THE RULE 5 MATERIAL. SHE ALSO CLEARLY STATES THAT AT THE TIME OF TRIAL SHE STILL POSSESSED THE ORIGINAL INDICTMENTS SO THEY COULDN'T HAVE BEEN PROPERLY HANDLED AND FILED. SEE (APP. 153. 14-17.) THIS SHOWS PETITIONER NOR COUNSEL COULD'VE POSSIBLY PREPARED AN ARGUMENT THAT WOULD'VE BEEN SUFFICIENT TO DISPUTE THE STATES AT THE TIME AND THIS PREJUDICED THE PETITIONER BY ENHANCING THE SENTENCE DUE TO THE AMENDMENT OF THE INDICTMENT.

4. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO SUPPRESS A PAWN RECIEPT WHEN IT WAS PREJUDICIAL TO PETITIONERS ARGUMENT AND COULD'VE BEEN CONTRADICTED IF IT WAS INVESTIGATED?

PETITIONER WAS PREJUDICED BY COUNSELS FAILURE TO PROVIDE A VALID ARGUMENT TO SUPPRESS A PAWN RECIEPT ALLEDGEDLY TAKEN AT THE TIME OF ARREST. THE STATE ALLEDGES THAT THE RECIEPT WAS VOLUNTARILY TURNED OVER TO LAW ENFORCEMENT, BUT PETITIONER CLAIMED THIS WAS NOT THE CASE. COUNSEL STATED HE RECIEVED NOTES FROM PETITIONER VERIFYING THIS, BUT HE NEVER MADE AN ARGUMENT CONCERNING THE INFORMATION HE WAS GIVEN. IF TRIAL COUNSEL WOULD HAVE INVESTIGATED HE WOULD'VE FOUND OUT THAT THE RECIEPT IN

QUESTION COULDN'T HAVE CAME FROM THE PETITIONER BECAUSE IT CONTAINED NONE OF HIS CORRECT INFORMATION. AT THE TIME OF PETITIONERS ARREST HE WAS VERY THOROUGHLY SEARCHED AND PLACED IN RESTRAINTS (BLACKBOX & SHACKLES), HE WAS THEN TRANSPORTED TO THE SHERIFFS DEPARTMENT WERE HE WAS SUBSEQUENTLY QUESTIONED. AT THIS TIME THEY SAY PETITIONER DID HAND OVER THE PAWN RECIEPT WHICH IS PHYSICALLY IMPOSSIBLE DUE TO THE TYPE OF RESTRAINTS PETITIONER WAS IN. ALSO NONE OF THE INFORMATION CONTAINED IN THE RECIEPT MATCHED THAT OF THE PETITIONER AND THAT CLEARLY SHOULD'VE BEEN AN ISSUE COUNSEL DID ARGUE AT TRIAL AND NOT DOING SO PREJUDICED PETITIONER. IT IS A KNOWN FACT THAT IN ORDER TO PAWN PROPERTY YOU HAVE TO PRESENT SOME TYPE OF IDENTIFICATION FOR VERIFICATION PURPOSES. AT THE TIME OF THIS INCIDENT PETITIONER POSSESSED A VALID SOUTH CAROLINA DRIVERS LISCENCE AND WOULD'VE HAD TO PRESENT IT IN ORDER TO PAWN PROPERTY, ALSO A PHOTOCOPY WOULD'VE BEEN ON FILE, BUT IN THIS CASE THE INFORMATION CONTAINED ON THE RECIEPT BELONGED TO SOME ONE ELSE WHICH MAKES ITS CREDIBILITY SUSPECT AND QUESTIONABLE TO SAY THE LEAST. COUNSEL KNOWING THIS INFORMATION AND NOT ARGUING IT PREJUDICED PETITIONER BECAUSE ANY TYPE OF PRESENTATION TO THE JURY WOULD'VE BEEN HELPFULL TO THE DEFENSE AND COULD'VE CHANGED THE OUTCOME OF THE JURYS DECISION CONCERNING THIS MATTER.

5. <u>WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY RAISE PRE-TRIAL MOTIONS ON IDENTIFICATION, SEIZED EVIDENCE, AND A SUPPOSED STATEMENT MADE BY PETITIONER TO HIS AUNT DEBRA MYERS?</u>

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY PRESENT

A VALID ARGUEMENT TO SUPPRESS THE IN-COURT IDENTIFICATION OF PETITIONER. COUNSEL MOVED TO SUPPRESS BUT HIS ARGUMENT WAS INSUFFICIENT AS THOUGH IT WASN'T THOROUGHLY RESEARCHED. AT NO TIME WAS PETITIONER EVER IDENTIFIED BY ANY OF THE VICTIMS UNTIL AFTER PETITIONERS ARREST THEN MONTHS LATER AFTER ALL ADMITTED TO BEING TOLD BY LAW ENFORCEMENT. THIS WAS VERY SUGGESTIVE BEHAVIOR AND SHOULDVE BEEN SUPPRESSED SIMPLY BECAUSE IT WAS A COERCED IDENTIFICATION. WITHOUT LAW ENFORCEMENT TAINTING THE PROCESS THE IDENTIFICATION WOULDVE NEVER BEEN MADE AND THE JURY WOULDVE NEVER SEEN THE INCRIMINATING IN-COURT IDENTIFICATION WHICH WAS VERY PREJUDICIAL TO THE DEFENSE. LAW ENFORCEMENT ALSO SAYS THEY TOOK SEVERAL PHOTOGRAPHS AT THE TIME OF ARREST OF PETITIONERS HANDS CONTAINING ALL JEWELRY, AND NECK AREA FOR THE NECKLACE. AT TRIAL ONLY THE PHOTO OF PETITIONERS HANDS WAS PUBLISHED TO THE JURY, BUT COMMON SENSE WOULD QUESTION THE IDENTITY KNOWING THERE WAS SEVERAL MORE PHOTOS AVAILABLE AT THE TIME. ALSO KNOWING LAW ENFORCEMENT WAS TAKING AND SHOWING THE VICTIMS SOME CLOTHING AND OTHER MATERIAL, WHOSE TO SAY THEY DIDN'T SHOW THEM THE PHOTOGRAPHS OF PETITIONERS FACE CONTAINING THE NECKLACE WHICH WOULD IN TURN GIVE THEM AN OUT OF COURT TAINTED IDENTIFICATION? THE RIGHTS TO DUE PROCESS INCLUDE THE RIGHT NOT TO BE THE OBJECT OF SUGGESTIVE POLICE IDENTIFICATION PROCEDURES THAT CREATE "A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION." THIS IS CLEARLY OBVIOUS IN THIS CASE AND SHOULDVE BEEN ARGUED AS SUCH. THERE ARE ALSO SEVERAL CASES TO

SUPPORT THIS CLAIM THAT COUNSEL COULD'VE USED TO ARGUE THE POINT. SEE RAHEEM V. KELLEY, 257 F.3d 122 (2nd CIR. 2001). IN THIS CASE IT WAS NOT HARMLESS ERROR WHEN THE COURTS ADMITTED AN IMPERMISSABLY SUGGESTIVE IDENTIFICATION BECAUSE THE STATE PRESENTED NO OTHER EVIDENCE OF IDENTIFICATION AT TRIAL. PETITIONER WAS ALSO NEVER IDENTIFIED IN THIS CASE. A DEFENDANTS PROTECTION AGAINST SUGGESTIVE IDENTIFICATION PROCEDURES ENCOMPASSES NOT ONLY THE RIGHT TO AVOID METHODS THAT SUGGEST THE INITIAL IDENTIFICATION, BUT AS WELL THE RIGHT TO AVOID HAVING SUGGESTIVE METHODS TRANSFORM A SELECTION THAT WAS ONLY TENTATIVE INTO ONE THAT IS POSITIVELY CERTAIN. SEE U.S.C.A. CONST. AMEND. 14. ALSO IN THIS SPECIFIC CASE THE SAID VICTIMS ALL ADMITTED TO BEING TERRIFIED AND IN FEAR FOR THEIR LIVES SO THEY ALL COMPLIED WITH THE ROBBERS AND DIDN'T LOOK UP DURING THE INCIDENT. SEE U.S. V. ROGERS, 126 F.3d 655, 659 (5TH CIR. 1997), WHERE IDENTIFICATION WAS SAID TO BE UNRELIABLE BECAUSE WITNESSES REACTION TO THE ROBBER WAS "STARK FEAR, FEAR FOR LIFE," THUS CASTING DOUBT ON WITNESSES ABILITY TO CONCENTRATE ON AND REMEMBER ROBBERS FACE.) COUNSEL SHOULD'VE BEEN ABLE TO ARTICULATE A VALID STRATEGY AGAINST THE IDENTIFICATION AND HAD IT SUPPRESSED AS A MATTER OF LAW. THE FOURTH CIRCUIT, WHOSE DECISIONS REGARDING FEDERAL CONSTITUTIONAL LAW ARE BINDING AND HAVE HELD A DEFENDANT BEARS THE BURDEN OF PROVING THE IDENTIFICATION PROCEDURE WAS IMPERMISSABLY SUGGESTIVE. SEE UNITED STATES V. SAUNDERS, 501 F.3d 384, 389 (4TH CIR. 2007). SEE ALSO STATE V. DUKES, 404 S.C. 553, 745 S.E.2d 137 (S.C. APP. 2013), STATE V. LIVERMAN, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). ANY COMPETANT ATTORNEY HAS THE RESOURCES TO FORMULATE A STRATEGY FOR THIS IS THEIR TRADE. IN THIS

CASE THE IDENTITY WAS CRUCIAL TO THE DEFENSE AND SHOULD'VE BEEN ARGUED TO NO END. THIS PREJUDICED THE PETITIONER AND COULD'VE CHANGED THE JURYS MIND ABOUT THE ACTUAL PERPETRATOR IF HIS IDENTIFICATION COULD'VE BEEN SUPPRESSED. IN PETITIONERS CASE IT IS CLEARLY PROVEN THE IDENTIFICATION WAS SUGGESTIVE OR AT MOST QUESTIONABLE AND SHOULD'VE BEEN SUPPRESSED BY LAW. SECONDLY, THE STATE SAYS PETITIONER FAILED TO SHOW AN ARGUMENT NOT ADVANCED BY COUNSEL IN THE SUPPRESSION OF EVIDENCE THAT WOULD HAVE ANY LIKELIHOOD OF SUCCESS AT TRIAL. THIS IS NOT TRUE. CLEARLY WITHOUT THE CIRCUMSTANTIAL AND TAINTED PROCEDURES USED IN PETITIONERS ARREST, THERE WOULD BE NO EVIDENCE OR CASE AT ALL, EXCEPT MAYBE A RECIEVING STOLEN PROPERTY CONVICTION IF THE CASE COULD BE PROVEN. FOR ALL OTHER ARGUMENT CONCERNING THIS ISSUE PETITIONER IS GOING TO DEFER TO APPELLATE COUNSEL DAVID ALEXANDERS' JOHNSON PETITION WHICH CONTAINS THIS ISSUE ON HIS BEHALF. FINALLY, THE TRIAL COURT FOUND THAT PETITIONERS SUPPOSED STATEMENT TO DEBRA MYERS HIS AUNT WAS NOT HEARSAY AND WAS ADMISSABLE. TRIAL COUNSEL DID OBJECT TO THIS ISSUE, BUT DID NOT PRESENT A VALID STRATEGY TO ATTACK THE STATES PRESENTMENT OF HER TESTIMONY. TRIAL COUNSEL'S FAILURE TO OBJECT TO SEVERAL PORTIONS OF TESTIMONY MAKES HIM FALL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS. HIS FAILURE WAS HIGHLY PREJUDICIAL AND CUMULATIVE AND AFFECTED THE OUTCOME OF PETITIONERS TRIAL SIMPLY BECAUSE OF A GUILT FACTOR. THE JURY WOULD BE MORE SUBJECTABLE TO BELIEVE A MEMBER OF ONES OWN FAMILY TESTIFYING AGAINST THEM EVEN

THOUGH THE TESTIMONY IS CONSIDERED HEARSAY AND HAS NO EVIDENCE TO SUPPORT OR BACK ITS CLAIM. HERE COUNSEL HAD SEVERAL WAYS AND OPTIONS TO UTILIZE TO SUPPRESS THIS TESTIMONY AND HE FAILED TO DO SO WHICH GREATLY PREJUDICED PETITIONER AND COULD'VE CHANGED THE OUTCOME OF TRIAL. FIRST, HE FAILED TO ADDRESS TO THE JURY THAT SHE HAD SOMETHING TO GAIN FROM HER COOPERATION WITH THE STATE. DEBRA MYERS' SON WAS ALSO SUPPOSEDLY INVOLVED IN THIS CASE, BUT WAS SOMEHOW NEVER CHARGED EVEN THOUGH HIS CONSPIRACY INITIATED THE SAID CRIME. THIS COULD'VE BEEN A DEAL OFFERED FROM THE STATE AND COULD'VE BEEN SHOWN TO THE JURY AS SUCH, BUT WITHOUT PROPER PREPERATION BASICALLY CONCEDED PETITIONERS GUILT TO THE JURY. ALSO THERE ARE NUMEROUS ARGUMENTS COUNSEL COULD'VE PRESENTED FROM LEGAL AUTHORITY THAT WOULD'VE BEEN BENEFICIAL IN TRYING TO SUPPRESS THE TESTIMONY AT TRIAL. SEE CRAWFORD V. WASHINGTON: ENCOURAGING AND ENSURING THE CONFRONTATION OF WITNESSES, 39 U. RICH. L. REV. 511, 540 (2005). WHICH STATES THAT STATEMENTS MADE TO FAMILY, FRIENDS, AND ACQUAINTANCES WITHOUT AN INTENTION FOR USE AT TRIAL HAVE CONSISTENTLY BEEN HELD NOT TO BE TESTIMONIAL, EVEN IF HIGHLY INCRIMINATING. THIS COULD HAVE BEEN A LAST RESORT ARGUMENT BECAUSE IT STATES THAT EVEN IF PETITIONER DID MAKE THE STATEMENT IT'S INADMISSABLE BECAUSE IT WAS MADE IN CONFIDENCE AND THOSE TYPES HAVE BEEN FOUND TO BE NONTESTIMONIAL. ALSO SEE VAIL V. STATE, 402 S.C. 77, 738 S.E.2d 503 (S.C. APP 2013), WHERE IT STATES COUNSEL'S FAILURE TO MAKE THOSE OBJECTIONS PREJUDICES AND AFFECTS THE OUTCOME OF TRIAL WHICH HAPPENED IN THIS CASE.

6. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO UTILIZE THE INCONSISTANT STATEMENTS MADE BY THE STATES' WITNESSES?

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO UTILIZE ALL THE INCONSISTANT STATEMENTS FROM THE STATES' WITNESSES. THE STATE SAYS COUNSEL CONDUCTED CROSS-EXAMINATION, BUT FAIL TO NOTE HE NEVER USED THEM AS EVIDENCE TO PRESENT TO THE JURY. THE JURY WAS ALLOWED TO SEE EVIDENCE AND STATEMENTS FROM THE STATE, BUT WHEN OFFERED THE CHANCE TO INTRODUCE ANY EVIDENCE, DEFENSE COUNSEL DECLINED. THIS GREATLY PREJUDICED PETITIONER BECAUSE IT WAS A KEY POINT IN THE DEFENSE TO SHOW THE JURY THE DISCREPANCIES AND HOW QUESTIONABLE THE STATEMENTS WERE OBTAINED. ALSO THE FACT THAT ALL STATEMENTS SAID (BLACK MALES) UNTIL AFTER PETITIONERS ARREST, THEN SUDDENLY MORE STATEMENTS WERE MADE TO INCLUDE A WHITE MALE. COUNSEL SHOULD'VE UTILIZED THESE TO NO END, AND HE NEVER MENTIONS (VICTIMS) SECOND STATEMENT AT TRIAL WHICH PREJUDICED PETITIONER AND DENIED HIM THE CHANCE TO ARGUE THIS ISSUE ON APPEAL BECAUSE IT WASN'T PRESERVED ON THE RECORD. THE STATE ALSO SAYS PETITIONER FAILED TO PROVE ANY PREJUDICE THAT WOULD ALTER TRIAL, BUT PETITIONER CONTENDS THAT IF COUNSEL WOULD'VE UTILIZED THIS EVIDENCE ALONG WITH THE FACT OF A (BLACK MALES) FINGERPRINTS AND HIS TESTIMONY, IT WOULD'VE DEFINATELY HAD A MAJOR IMPACT TO THE JURY AND COULD'VE CHANGED THE OUTCOME IF THERE WOULD'VE EVEN BEEN A TRIAL.

7. WHETHER TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO PROVIDE A VALID MOTION FOR RECONSIDERATION ARGUMENT IN A TIMELY MANNER?

AFTER PETITIONERS TRIAL COUNSEL FILED A RECONSIDERATION OF

SENTENCING ON BEHALF OF THE PETITIONER. THE STATE CLAIMS THERE WAS A SIGNIFICANT DELAY IN HEARING THIS MOTION BUT FAIL TO STATE WHY. THIS PREJUDICED PETITIONER BECAUSE IT HELD IN ABEYANCE THE OPPORTUNITY TO APPEAL CASE TO THE COURTS FOR YEARS WITH NO EXPLANATION. PETITIONER WROTE TRIAL COUNSEL SEVERAL TIMES CONCERNING THIS MATTER TO NO AVAIL. PETITIONER ALSO FILED A PREMATURE P.C.R. IN AN ATTEMPT TO GET SOME CLOSURE ON HIS CASE AND HIS APPEAL PROCESS STARTED. PETITIONER WANTS THE COURTS TO RECOGNIZE THE FACT THAT COUNSEL COULDN'T GET THE MOTION HEARD IN A TIMELY MANNER, BUT CONVENIANTLY CAN IMMEDIATELY GET PETITIONER IN COURT TO WITHDRAW THE MOTION. IT SHOULD BE OBVIOUS THAT THERE WAS A CONFLICT BETWEEN PETITIONER AND COUNSEL AT THIS POINT. THE STATE ARGUES THAT I FAILED TO SHOW I WOULD RECIEVE A SENTENCE REDUCTION, BUT FAIL TO RECOGNIZE THE FACT THAT AT THAT HEARING JUDGE J.C. NICHOLSON ACTUALLY SAID HE WOULD SERIOUSLY CONSIDER MY CASE. SO THE STATE CAN'T SAY THERE WAS NO PREJUDICE TO PETITIONER BECAUSE IT WAS ULTIMATELY THE JUDGES DECISION AND THEY CAN'T ARGUE ABOUT WHAT HE WOULD'VE DONE. THIS DIRECTLY REFLECTS ON COUNSEL'S WILLINGNESS TO ASSIST PETITIONER IN AID OF HIS DEFENSE AND PREJUDICES PETITIONER GREATLY BECAUSE WITH PROPER PREPARATION THERE WAS A CHANCE THE JUDGE WOULD'VE MADE A FAVORABLE RULING FOR PETITIONER.

8. WHETHER APPELLATE COUNSEL WAS INEFFECTIVE IN CHALLENGING THE IDENTIFICATION OF PETITIONER?

PETITIONER WAS PREJUDICED BY COUNSEL'S FAILURE TO SUPPRESS THE IDENTIFICATION BY VICTIM. COUNSEL DIRECTED A VALID ARGUMENT ABOUT THE SUGGESTIVE LAW ENFORCEMENT PROCEDURES BUT FAILED TO IDENTIFY TO THE COURTS THE DIFFERENCE IN THE TWO IDENTIFICATIONS.

THERE IS LAW SUPPORTING THE FACT THAT IF IT'S THE FIRST TIME AN IDENTIFICATION IS MADE, IT CAN BE MADE IN COURT IN THE PRESENCE OF THE JURY. IN THIS PARTICULAR INSTANCE, PETITIONER WAS CLEARLY PREJUDICED BECAUSE IT'S NOTED THAT NONE OF THE VICTIMS COULD IDENTIFY PETITIONER UNTIL SUGGESTIVE POLICE PROCEDURES. THIS IN FACT TAINTED THE WHOLE PROCESS WHICH SHOULD'VE SUPPRESSED THE IN COURT IDENTIFICATION WHEN VICTIMS STATED LAW ENFORCEMENT SUPPLIED PETITIONERS NAME WHEN SHOWING THEM CLOTHES PRIOR TO TRIAL. THAT WAS AN OUT OF COURT IDENTIFICATION WHICH VIOLATED PETITIONER DUE PROCESS RIGHTS. SEE STATE V. LIVERMAN, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). THIS CASE STATES THAT AN OUT OF COURT IDENTIFICATION OF THE DEFENDANT VIOLATES DUE-PROCESS AND MUST BE SUPPRESSED WHEN THE IDENTIFICATION PROCEDURE USED BY POLICE WAS IMPERMISSABLY SUGGESTIVE AND CONDUCIVE TO A SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION. THERE IS NO DOUBT PETITIONERS RIGHTS WERE VIOLATED REGARDLESS OF TRIAL OUTCOME, AND EITHER WAY SUPPRESSION SHOULD'VE BEEN GRANTED. SEE ALSO MOORE, 343 S.C. AT 288, 540 S.E.2d AT 448. WHICH STATES EYEWITNESS IDENTIFICATION WHICH IS UNRELIABLE BECAUSE OF SUGGESTIVE POLICE PROCEDURES IS CONSTITUTIONALLY INADMISSABLE AS A MATTER OF LAW. SEE ALSO SIMILAR SUPPORTING CASES, STATE V. ROACH, 364 S.C. 422, 429-30, 613 S.E.2d 791, 795 (2005), STATE V. BROWN, 356 S.C. 496, 503, 589 S.E.2d 781, 785 (2003), STATE V. MANSFIELD, 343 S.C. 66, 79, 538 S.E.2d 257, 264 (CT. APP. 2000). PETITIONER RECOGNIZES THE CASE THE STATE RELIED ON, SEE STATE V. LEWIS, 354 S.C. 222, 580 S.E.2d 149 (2004), WOULD CONTROL THE RESULTS, BUT IS IMPOSSIBLE TO BE THE CONTROLLING AUTHORITY IN THIS CASE WHEN IT'S PLAIN ERROR SHOWN. THIS SHOULD'VE BEEN ADDRESSED PROPERLY AND NOT DONE SO PREJUDICED PETITIONER AND COULD'VE ALTERED THE OUTCOME.

9. WHETHER TRIAL COUNSELS OVERALL PERFORMANCE CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL AND PREJUDICED PETITIONER FROM HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL?

PETITIONER CONTENDS THAT COUNSELS PERFORMANCE DURING THE COURSE OF TRIAL WAS DEFICIENT AND ULTIMATELY PREJUDICED HIM. THERE ARE NUMEROUS QUESTIONABLE TACTICS USED BY COUNSEL AND ALOT OF MISPLACED REPRESENTATION. COUNSEL AT NO TIME SHOWED ANY INTEREST IN DEFENDING PETITIONER AND HAD NO VALID STRATEGY THRU OUT TRIAL. COUNSEL STATES HE WANTED AND WORKED OUT A PLEA FOR PETITIONER, BUT THIS INFORMATION IS NO WHERE TO BE FOUND. AT P.C.R. TRIAL COUNSEL COULD ONLY GIVE VAGUE ANSWERS AND CONTRADICTED HIMSELF SEVERAL TIMES. THERE HAS NEVER BEEN ANY TYPE OF OPEN COMMUNICATION AND ALOT OF QUESTIONS WENT UNANSWERED AS WELL AS ALOT OF ISSUES NEVER ADDRESSED AT TRIAL THAT PETITIONER EXPRESSEDLY TOLD COUNSEL TO USE. (SEE TRIAL NOTES FROM PETITIONER). COUNSEL ALSO HAD A DUTY TO INVESTIGATE SOME TYPE OF DEFENSE. HE STATES HE DID INVESTIGATE, BUT ONLY USES SOMETHING ABOUT SHOE PRINTS WHICH WAS BASICALLY IRRELEVANT BECAUSE IT WAS INCONCLUSIVE EVIDENCE, BUT IN REALITY COULD'VE PRODUCED A WHOLE DEFENSE STRATEGY IF HE WOULD'VE INTERVIEWED THE TWO SUSPECTED CO-DEFENDANTS WHO BOTH DENIED BEING INVOLVED WITH PETITIONER. COUNSEL FAILED TO STATE THE ONLY REASON PETITIONER CHOSE TRIAL WAS BECAUSE HE SPECIFICALLY EXPRESSED HIS INNOCENCE, BUT TRIAL COUNSEL IN TRIAL CONCEEDED HIS GUILT. THIS IS INEFFECTIVE ASSISTANCE OF COUNSEL! SEE FLORIDA V. NIXON, 543 U.S. 175, 125 S.CT. 551, 160 L.Ed. 2d 565 (2004). THIS CASE STATES IT IS INEFFECTIVE ASSISTANCE OF COUNSEL FOR COUNSEL TO CONCEED GUILT WITHOUT EXPRESS CONSENT OF DEFENDANT. TRIAL COUNSEL MADE SEVERAL COMMENTS DURING TRIAL AND

CLOSING ARGUMENTS THAT COULD'VE HAD CONFUSING EFFECTS ON JURY MEMBERS AND LED THEM TO BELIEVE PETITIONER WAS GUILTY WHEN IN FACT CLAIMED INNOCENCE. HE SPECIFICALLY TOLD THE JURY TO FIND PETITIONER GUILTY OF WHAT HE DID AND NOTHING ELSE. THERE WERE SEVERAL OTHER ISSUES, BUT PETITIONER WILL RELY ON THE COURTS TO RULE UPON THEM AS THEY DEEM APPROPRIATE. THE OVERALL PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND STAYED THERE. THERE WAS NO PHYSICAL EVIDENCE PLACING PETITIONER THERE AND THE IDENTIFICATION WAS THE CORNERSTONE OF THE STATES CASE IN CHIEF. CONSEQUENTLY, INFORMATION RELEVANT TO PETITIONERS DEFENSE COULD'VE BEEN OBTAINED THROUGH BETTER PRETRIAL INVESTIGATION AND A REASONABLE LAWYER WOULD'VE MADE A EFFORT. SEE <u>BRYANT V. SCOTT, 28 F.3d 1411</u>, WHERE COUNSELS FAILURE TO INTERVIEW ROBBERY DEFENDANTS CO-DEFENDANT, WHO CONFESSED TO ROBBERY AND MAINTAINED THAT DEFENDANT WAS NOT SECOND PERPETRATOR, CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL; EVEN IF DECISION NOT TO CALL CO-DEFENDANT TO STAND AT TRIAL WAS STRATEGIC, FAILURE TO INTERVIEW CO-DEFENDANT WAS NOT REASONABLE. THIS IS IDENTICLE TO PETITIONERS ISSUE AND SHOULD'VE BEEN ADDRESSED BY COUNSEL. FOR THESE REASONS PETITIONER WAS PREJUDICED AND THEY COULD'VE CHANGED THE OUTCOME OF TRIAL.

10. <u>WHETHER P.C.R. COURT JUDGE ERRED IN NOT RULING IN PETITIONERS FAVOR FOR AFTER-DISCOVERED EVIDENCE FOR CO-DEFENDANT TIVO LEES' TESTIMONY?</u>

PETITIONER WAS GREATLY PREJUDICED BY THE P.C.R COURTS FAILURE TO ADDRESS THIS ISSUE PROPERLY. THE STATE SAYS PETITIONER WAS

AWARE OF CO-DEFENDANTS EXISTANCE, BUT FAIL TO STATE THAT THEY WERE HOUSED IN SEPERATE COUNTIES, SO HOW COULD ONE KNOW ABOUT THE OTHER? THEY ALSO SAY PETITIONERS COUNSEL WAS IN CONTACT WITH CO-DEFENDANTS COUNSEL, BUT FAIL TO PROVE THIS OTHER THAN AN INITIAL CONTACT, NOTHING ELSE. THE STATE ALSO ARGUES THAT IF THE CO-DEFENDANT WOULD'VE TAKEN BLAME FOR THE CRIME AND EXONERATED PETITIONER IT WAS INFORMATION THAT WAS AVAILABLE AT TRIAL. PETITIONER AGREES WITH THIS, BUT IT WOULD SHOW HOW HE WAS PREJUDICED BY COUNSELS DEFICIENCY. ANY REASONABLE ATTORNEY WOULD'VE INVESTIGATED THIS AVENUE OF DEFENSE. THE STATE ALSO CLAIMS A CREDIBILITY ISSUE WITH CO-DEFENDANT AND STATES THEY DO NOT FIND HIS TESTIMONY WOULD CHANGE THE RESULT IF A NEW TRIAL WAS HELD. HOW COULD CREDIBILITY BE AN ISSUE WHEN IT'S PROVEN HE WAS THERE? PETITIONER WAS PREJUDICED BY COUNSELS FAILURE TO UTILIZE THIS INFORMATION. NOT ONCE DURING TRIAL DID COUNSEL USE ANY INFORMATION CONCERNING THIS MATTER. THE CREDIBILITY SHOULD HAVE BEEN FOR THE JURY TO DETERMINE REGARDLESS. SEE MELTON V. WILLIAMS, 281 S.C. 182, 186, 314 S.E.2d 612, 614-15 (CT. APP. 1984), THE CREDIBILITY OF WITNESSES IS A QUESTION FOR THE JURY, NOT THE COURT, AND IT IS THE JURY THAT DECIDES THE WEIGHT TO BE AFFORDED THE TESTIMONY. FOR THESE REASONS THE P.C.R. COURT SHOULD HAVE GRANTED PETITIONERS MOTION, NOT DOING SO WHEN THIS INFORMATION WAS OUTCOME DERIVATIVE GREATLY PREJUDICED THE PETITIONER.

11. WHETHER P.C.R. JUDGE ERRED IN NOT RULING ON EVERY ISSUE PRESENTED?

PETITIONERS ORDER OF DISMISSAL WAS NOT A FINAL ORDER SUBJECT TO CERTIORARI REVIEW BECAUSE THE ORDER DID NOT INCLUDE SPECIFIC FINDINGS OF FACT AND CONCLUSION OF LAW RELATING TO EACH ISSUE PRESENTED. THE STATE JUST MADE VAGUE ARGUMENT WITH NO REAL SUPPORTING FACTS OF LAW. SOUTH CAROLINA CODE ANN. § 17-27-80 (2003) STATES THAT A P.C.R. COURT "SHALL MAKE SPECIFIC FINDINGS OF FACT AND STATE EXPRESSLY ITS CONCLUSION OF LAW RELATING TO EACH ISSUE PRESENTED." THIS ORDER IS THE FINAL ORDER (EMPHASIS ADDED) AN ORDER IN A P.C.R. MATTER WHICH DOES NOT INCLUDE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO EACH ISSUE PRESENTED, DOES NOT CONSTITUTE A FINAL ORDER OR JUDGEMENT UNDER THE UNIFORM POST-CONVICTION RELIEF ACT AND THEREFORE IS NOT REVIEWABLE BY WRIT OF CERTIORARI. FOR THESE REASONS CERTIORARI SHOULD BE GRANTED FOR PETITIONER

CONCLUSION

BASED ON THE FOREGOING ARGUMENTS, THE COURTS SHOULD FIND PETITIONER WAS CONSTITUTIONALLY DENIED HIS SIXTH AMENDMENT RIGHTS AND GRANT THE PETITION SEEKING A NEW TRIAL ON BEHALF OF THE PETITIONER.

RESPECTFULLY SUBMITTED,

JAMES GUNNELLS
PRO SE PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO BAMBERG COUNTY
EDGAR W. DICKSON, CIRCUIT COURT JUDGE

JAMES GUNNELLS,

PETITIONER,

V.

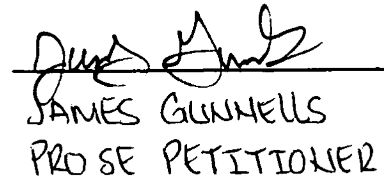
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-001890

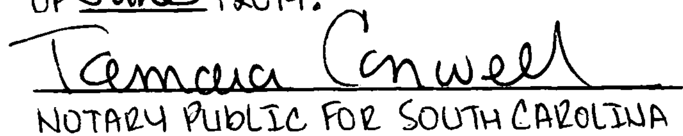
CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE COPY OF PETITIONERS PRO SE BRIEF FOR WRIT OF CERTIORARI HAS BEEN SENT TO DANIEL E. SHEAROUSE, CLERK OF COURT FOR THE SUPREME COURT OF SOUTH CAROLINA AT P.O. BOX 11330, COLUMBIA, S.C. 29211 THIS 23 DAY OF JUNE, 2014.



JAMES GUNNELLS
PRO SE PETITIONER

SWORN TO BEFORE ME THIS 23 DAY
OF June, 2014.



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S.C. SUPREME COURT

MR. SHEAROUSE,

I AM FORWARDING TO YOU (2) COPIES OF MY PRO SE BRIEF FOR WRIT OF CERTIORARI. THE ONE IS TO BE FILED WITH YOUR COURTS ON MY BEHALF, THE OTHER TO BE CLOCK STAMPED AND RETURNED TO ME FOR MY OWN RECORDS. I WOULD PREFER YOU USE THE DARKER INKED COPY FOR THE COURTS AND THE LIGHTER FOR MYSELF BEING AS THERE ARE LESS ERRORS. I THANK YOU IN ADVANCE FOR YOUR ASSISTANCE. HAVE A NICE DAY.

SINCERELY,

MR. JAMES A. GUNNELLS