Reginald Nance #275742
TyRCI-UY-U7-Rm109
200 Prison Rd.
Enoree, SC 29335

Honorable Daniel Shearouse
S.C. Supreme Court Clerk
P.O. Box 11330
Columbia, SC 29211

Re: 59(e) motion

Date: November 24, 2014

Dear Mr. Shearouse,

Please find enclosed a motion to alter/amend judgment to be filed in your office. By letter and mailing, I attempted to have it filed in the Pickens County Clerk's office but he said it was to be filed in your office. see letter dated November 4, 2014. Please forward a stamped clock filed copy to me in the provided envelope for my records. Thank you in advance for your time and consideration in this matter.

Sincerely,
Reginald L. Nance

cc: Enclosures

Office of Clerk of Court

TELEPHONE (864) 898-5857
FAX (864) 898-5863
PWELBORN@CO.PICKENS.SC.US

PICKENS COUNTY
Harold P. "Pat" Welborn, Jr.
P.O. BOX 215
PICKENS, SC 29671

CIVIL RECORDS (864) 898-5862
CRIMINAL RECORDS (864) 898-5864
FAMILY COURT (864) 898-5598

November 4, 2014

Mr. Reginald Nance
200 Prison Rd
Enoree, S.C. 29335

RE: Letter/Motion Dated: 11/3/2014

Dear Mr. Nance,

I am in receipt of your letter/ motion dated: 11/3/2014

I am returning your Motion. Your attorney should be the one filing Motions. This will have to be filed with the Court of Appeals in Columbia.

Sincerely,

Harold P. Welborn, Jr.
Pickens County
Clerk of Court

Reginald Nance 275742
TyRCI-UY-47-Rm109
200 Prison Rd.
Enoree, SC 29335

Honorable Harold P. Welborn Jr.
P.O. Box 215
Pickens, SC 29671

Re: Reginald Nance v. State
2013-CP-39-0789

Date: November 3, 2014

Dear Mr. Welborn Jr.,

Enclosed is a motion to alter or amend judgment for the Order of dismissal in the above-referenced case. Please file the motion and send a copy to Judge James R. Barber III, who presided over the PCR evidentiary hearing for his consideration. Also, please forward me a stamped dated file copy in the provided envelope for my records.

Thank you in advance for your time and consideration in this matter.

I remain,
Reginald Nance
Applicant

STATE OF SOUTH CAROLINA)
County of Pickens)

IN THE COURT OF COMMON PLEAS

2013-CP-39-0789

Reginald Nance #275742
Applicant,
vs.
State of South Carolina
Respondent.

MOTION TO ALTER OR AMEND
MOTION FOR RECONSIDERATION

PLEASE BE advised that the above named Applicant in the above captioned action motions this Honorable Court to alter and/or amend its order of dismissal dated September 24, 2014 pursuant SCRCivP 59(e) to make specific findings of facts and conclusions of law regarding the herein mentioned issues that were presented by the Applicant to the PCR Court by way of initial PCR application, direct testimony at the PCR evidentiary hearing and/or post hearing brief that were before this Court.

In South Carolina, state law requires that all grounds for relief be stated in the PCR application. S.C. Code Ann § 17-27-90. If the PCR Court fails to address a claim as required by S.C. Code Ann § 17-27-80, the Applicant must make a motion to alter or amend the judgment. SCRCivP 59(e). Failure to do so will result in the application of a procedural bar to that claim by the South Carolina Supreme Court. The Applicant asserts that he is not abandoning any of his substantial issues and request a ruling

on all the herein mentioned issues.

I

ISSUES

In its order, this Honorable Court first addressed Applicant claim of ineffective assistance of counsel by trial counsel failure to object to the State's use of perjured testimony and subsequent failure to correct false evidence used by the State to deny Applicant due process and a fair trial. The PCR Court noted that trial counsel received the CAD report through discovery and was familiar with this document as well as the information it contained. That trial counsel cross-examined state witnesses about inconsistencies in their testimony and the timeline of events. The Applicant would bring it to this Court's attention that trial counsel only questioned responding officer Corey Baker about the CAD report during cross-examination as to what it was. Tr. p. 91, L1-25; Tr. p. 92, L1-4. As stated above, Applicants' claim against trial counsel was that he failed to object to the use of perjured testimony and correct the use of false evidence that was used by the State to obtain its conviction against the Applicant. The CAD report was referenced because it showed the impossibility of the evidence gathering timeline law enforcement officers were presenting before the jury. Applicant presented testimony of the exhibit and the CAD report during the evidentiary hearing regarding the collecting of his South Carolina State issued drivers license that was located inside a vehicle outside the

scene of multiple burglaries. The State would offer extensive testimony through law enforcement officers that the vehicle found at the scene was secured from the moment they responded, throughout the evidence collection period, and while it was stored at the law enforcement center, until trial. Tr. p. 80, L20 - p. 81, L12; Tr. p. 83, L19-23; Tr. p. 264, L13-20.

The State's theory was that at some point throughout the crime, either while making entry or when police officers showed up, Applicant placed his license and bank card inside Johnny Parks wallet to deflect suspicion from himself and place the blame on Parks. Tr. p. 601, L12-14, Tr. p. 764, L13-765, L19. There was no physical evidence connecting Applicant to the burglaries. Tr. p. 453, L11-454, L2. Through the testimony of deputies Baker, Berghold, K9 units Fricks and Durham and crime scene investigator Lt. Robinson, it was alleged that no one entered the vehicle at any time until K9 units arrived to scent the vehicle for tracking purposes. Once K9 units scented the vehicle driver's seat and begin tracking for possible suspects, Lt. Robinson began a inventory of the vehicle for evidence, and the first thing he do is photograph the scene. Tr. p. 218, L4-5; Tr. p. 219, L16-19; Tr. p. 221, L8-13; Tr. p. 253, L12-15; Tr. p. 252, L9-21. It was established that K9 units did not start the tracking process until after midnight, approximately ten to fifteen minutes after twelve. Tr. p. 203, L12-21; Tr. p. 204, L6-14. K9 unit officer Durham would further state that he did nothing but wait for the other K9 unit officer to arrive at the scene for tracking purposes. Tr. p. 204, L15-23.

Testimony was extensive and precise as to the activities of all law enforcement officers responding to the scene.

In it's summation, the State concluded that Applicant being a very smart individual put his ID and bank card in Parks wallet at some point during the course of the burglaries to frame Parks as the preputrator of the crimes. This effectively staging a crime scene to make it appear someone other than himself committed the crimes he was on trial for. Tr. p. 764, L13-765, L2. This was the State's theory from the onset of the trial because before Applicant ever took the stand the State was accusing him of this act before the Court. Tr. p. 601, L12-14. Yet, there is no evidence in the record to draw this inference other than the State's own suggestion arising from false evidence given by law enforcement that the State failed to correct and trial counsel failed to object to.

The CAD report showed that K9 unit officer Durham didn't just wait for the other K9 unit to arrive but had in his possession Applicant drivers license as well as Johnny Parks license. He called both license numbers into Pickens County Sheriff office dispatch at approximately 23:56:16 and 23:58:27. This is seventeen minutes prior to crime scene investigator Lt. Robinson entering the vehicle to photograph it and process it for evidence, though testimony was given that no one had entered the vehicle prior to it being photographed and it was processed and photographed as the suspects left the vehicle while fleeing the crime scene. Tr. p. 264, L13-20

Tr. p. 281, L11-15. Therefore, the bank card could not have been in the position it was photographed in because law enforcement officers had previously moved the wallet and ID's prior to it being processed, photographed and inventoried for evidence. Applicant testified that he placed his license with the title, bill of sale, and extra key inside the vehicle glove compartment. Tr. p. 613, L8-13. Johnny Parks testified that it surprised him that Applicant bank card and license was in his wallet and that he didn't place them there. Tr. p. 523, L4-11. All of this was known and in the possession of the prosecution and Applicant's trial counsel, yet neither corrected it.

A prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice. Giglio v. U.S., 92 S.Ct. 763. The state violated Applicant's due process rights when it failed to correct mis-statements made by law enforcement officers while testifying against Applicant. The prosecution offends due process when false evidence is used, whether it solicits the evidence or simply allows it to go uncorrected when it appears. Napue v. Illinois, 79 S.Ct. 1173. The failure to correct false evidence is as reprehensible as its presentation. Washington v. State, 478 S.E.2d 833. Due process is equally offended by direct statements which are untrue and the eliciting of testimony which "taken as a whole" gives the jury a "false impression." Alcorta v. Texas, 78 S. Ct. 103. Knowingly false testimony of a law enforcement officer is imputed to the prosecution.

Longworth v. Ozmint, 377 F3d 437. If police allow the state's attorney to produce evidence pointing to guilt without informing him of other evidence in their possession which contradicts this inference, state officers are practicing deception not only on the state's attorney but on the Court and the defendant. Boyd v. French, 147 F3d 319. The Constitution requires only that a defendant receives a fair trial, not a perfect one. U.S. Const. Am. VI; State v. Johnson, 512 S.E. 2d 795.

Therefore, Applicant's trial was rendered fundamentally unfair by prosecutorial misconduct that violated his due process rights and denied him a fair trial by trial counsel failure to object to the false evidence presented to the Court and jury by the prosecution.

II

In its order, the PCR Court contends that Applicant failed to meet his burden of proving trial counsel should have investigated and presented an alibi defense. Applicant asserts that his claim was that trial counsel failed to request alibi instructions to be given to the jury during the jury charge conference when evidence of alibi had been presented by both Applicant and the State. Following the state's case-in-chief, Applicant presented an alibi defense. Specifically, Applicant testified he had dinner with a female friend and spent the rest of the evening with her at a local hotel. Tr. p. 628, L17-631, L11; Tr. p. 660, L1-9; Tr. p. 684, L23-685, L3. The State introduced alibi for the Applicant through its' own

witnesses and summation. Tr. p. 395, L8-20; Tr. p. 449, L6-16; Tr. p. 760, L7-8. During the jury charge conference, trial counsel failed to request an alibi instruction. Trial counsel failure to request alibi instructions, where sole theory of defense was alibi is ineffective assistance of counsel. Riddle v. State, 418 S.E.2d 308. The absence of a charge on alibi give rise to a conclusion by the jury that it was impermissible for them to consider alibi as a defense. Id. The law stipulates that a defendant is entitled to have a judge instruct the jury on his theory of defense provided that it is supported by law and has some foundation in the evidence. Even if the alibi evidence is weak, insufficient, inconsistent, or of doubtful credibility, the instruction should be given. An alibi instruction is critical because a juror, unschooled in the law's intricacies, may interpret a failure to prove the alibi defense as a proof of the defendant's guilt. To avoid this possibility, where alibi is the defense, a suitable instruction must be given when requested.

Alibi is not an affirmative defense imposing upon the accused the burden of its proof. It does not require testimony of the accused or of witnesses produced by him. It may be established as well by the prosecution. There are instances when the issue of alibi may enter the case through prosecution witnesses. State v. Mayfield, 109 S.E.2d at 722. Evidence adduced by the prosecution, albeit to prove Applicant's motive and guilt, put before the jury a factual question of whether the Applicant

was with a female friend and away from the site of the burglaries when they occurred, thus, entitled Applicant to an alibi instruction. By offering evidence of the dinner statement in its closing, the State put the truth of the statement in issue and effectively provided the Applicant with an alibi defense. Tr. p. 760, L7-8. The State has, in effect, the burden of disproving alibi. State v. Floyd, 177 S.E.2d 375. Yet here, the State substantiated Applicant's alibi. There was no physical evidence Applicant committed the charged crimes, outside of Parks allegations. Tr. p. 453, L11-454, L2. Applicant was prejudiced because based on the evidence presented at trial, a different verdict might have been reached if the jury had been charged and aware they could consider alibi instructions requested by Applicant's trial counsel.

Applicant was further prejudiced because the Court's general charge did not cover the substance of alibi nor did they explain the elements of alibi. The Court's general charge did not inform the jury sufficiently that the State had to prove beyond a reasonable doubt that the Applicant was not at dinner with a female friend that led to them spending the rest of the evening at a local hotel. That he was actually present and participated in the burglaries, and that he was not elsewhere.

Therefore, Applicant's trial counsel failure to request an alibi instruction denied him effective assistance of counsel and a fair trial.

III

In it's order, the PCR Court asserts that Applicant failed to meet his burden of proving trial counsel did not properly handle the issue of the Laurens vehicle. Applicant contends that his issue centered on trial counsel eliciting bad acts testimony by opening the door to it during cross-examination. Trial counsel did attempt to object to further testimony being offered about the 2nd vehicle once he learned that the State was going to use it to show that the vehicle was use by the Applicant and codefendant to escape capture. Tr. p. 470, L 11 - 472, L 16. But it is widely known that you can not complain about what you open the door to. For there is not testimony or evidence of a 2nd vehicle being an intricate part of the crimes charged, not in discovery nor the States case until trial counsel elicited from Lt. Byers. Not only did it bring into question the 2nd vehicle but also another burglary which is a similar/same crime Applicant was on trial for. This Court asserts that it finds that trial counsel did not open the door to the damaging testimony though the trial record is completely silent on any mentioning of the Laurens vehicle, that is, until trial brings it to the jury's attention by way of cross-examination. Trial counsel testified he wanted to "take a shot at Byers" when he could. Had trial counsel interviewed Lt. Byers to ascertain his response he would

Lt. Byers wasn't even the investigating officer of the 2nd vehicle. Tr. p. 484, L10-25, and could not offer anything that would create uncertainty about a facet of the State's case that wasn't a part of their case until trial counsel open the door for it to be brought in by the State. Ingle v. State, 560 S.E. 2d 401.

The testimony of the 2nd vehicle further led to the State using it in closing arguments where it was asserted that Applicant solicited Tisha Brown to help him dispose of incriminating evidence, i.e., the stolen vehicle, though none of it was in evidence or the record regarding statements made by Applicant and Ms. Brown leading to the disposal of the vehicle. Tr. p. 767, L22-768, L1.

Applicant contends he received ineffective assistence of counsel and was prejudiced by the overwhelming affect of the bad acts evidence the State was able to capitalize on and use because of trial counsel error of opening the door to the elicited bad acts testimony.

IV

In it's order, the PCR court asserts that the Applicant failed to meet his burden of proving trial counsel did not convey a plea offer. With regards to plea offers, the Supreme Court has held that "as a general rule, defense counsel has a duty to communicate

formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frye, 132 S.Ct. 1399, 1408; see also Libretti v. United States, 116 S.Ct. 356. (It is the responsibility of defense counsel to inform a defendant of the advantages and disadvantages of a plea agreement...."). However, even if there is deficient conduct, Applicant must still demonstrate prejudice. In Lafler v. Cooper, 132 S.Ct. 1376, the Supreme Court set forth the relevant prejudice inquiry that a criminal defendant must meet in order to be granted relief for counsel's failure to properly convey a plea offer:

> In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the Court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the Court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Lafler, 132 S.Ct. at 1385.

Here, trial counsel testified he informed Applicant of a five-year offer in October of 2009, which Applicant declined. At that time, there was very little evidence linking Applicant to the charged crime. It wasn't until January of 2010, that a significant change occurred in the State's case against Applicant i.e., a confessional statement given by Johnny Burk implicating Applicant to the crimes. At that time, the plea offer was still available to Applicant though trial counsel did not convey this to Applicant in light of the mounting evidence against applicant. Tr. p. 546, L 13-23. And that if Applicant didn't

accept the plea he would be facing LWOP in other jurisdictions. Tr.p. 36, L2-6. In light of the severity of not accepting the State's plea offer and the significant changes in the case against Applicant, trial counsel rendered ineffective assistance by his failure to sufficiently evaluate and convey the State's plea offer to Applicant. Applicant went on to face a length trial and received a substantial sentence that was five times that of the plea offer. (27 years).

V

Failure to object to closing argument

VI

Failure to object to impermissible questioning

Applicant would direct this Court attention to the "post hearing brief" for the above-mentioned issue. All of Applicant substantial issues are addressed in the post hearing brief for the Court's consideration.

Conclusion

Based on all the forgoing, Applicant prays that this Honorable Court Alter or Amends its order of dismissed and grants Applicant any and all relief deemed applicable.

Respectfully Submitted

Reginald A. Nance

Reginald Nance #275142
Applicant