



# SCCID

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Robert M. Dudek, Chief Appellate Defender  
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RECEIVED

JAN 15 2015

S.C. Supreme Court

January 15, 2015

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: Bayan Aleksey v. State of South Carolina

Dear Mr. Shearouse:

Enclosed is a copy of the reply to brief in opposition to petition for writ of certiorari which I have filed today in the United States Supreme Court. Please contact me if you have any questions.

Sincerely,

Robert M. Dudek  
Chief Attorney

RMD/rdf

Enclosure

cc: Donald J. Zelenka, Esquire

IN THE SUPREME COURT  
OF THE UNITED STATES

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OCTOBER TERM, 2014  
14-7320

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RECEIVED

JAN 15 2015

S.C. Supreme Court

BAYAN ALEKSEY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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REPLY TO BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI

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ROBERT M. DUDEK  
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## ARGUMENT IN REPLY

3.

The State's assertion that Petitioner Aleksey only made a "belated assertion" that his confession was beaten out of him during the two hour gap on the tape is grounded in trial counsel Stone's erroneous testimony that Petitioner did not tell a television station about the beating at the first opportunity.

The State argues that the post-conviction relief court correctly found there was no evidence Petitioner had been beaten into giving a confession. Brief in Opposition at 28. The State also wrote that: "[Defense counsel] Stone stated that Aleksey did not tell WIS [Television] that he was beaten or that he was promised he would get out of jail or that a woman would be helped." Brief in Opposition at 37. Stone's testimony was directly contradicted by an article in the Orangeburg Times and Democrat that Petitioner made a part of Applicant's Exhibit 72, ((Notebook of Newspaper articles) at p. 5796) during the post-conviction relief hearing. App. 1.

In this January 6, 1998 article, written six days after the shooting, titled "Man says he didn't kill trooper," reporter Carol B. Barker wrote:

On Sunday from a pay phone inside the Orangeburg jail, Aleksey telephoned a WIS-TV reporter in Columbia to give his version of what happened the night of Dec. 31, saying that he needed help getting an attorney to represent him.

The Times and Democrat on Monday, requested an interview with Aleksey, but jail administrator, Willie Bamberg, explained that the Sunday night interview was unauthorized and no further interviews were being allowed.

At the request of The T&D, WIS-TV made the taped interview available Monday. Information for this article was taken from that interview.

Claiming Blackwell shot Lingard, Aleksey said he confessed to killing the state trooper after being beaten and threatened by police. He insisted Blackwell was driving and he was “in a deep sleep” in the passenger seat of the 1998 white Mustang GT in which they were traveling when Lingard pulled them for speeding.

App. 1.

This is also significant because Stone also testified at the post-conviction relief hearing that there was extensive media coverage in this “cop killer” case, and that the defense team gave considerable thought to moving for a change of venue. App. 3343-3357. Stone’s claim that Petitioner Aleksey did not tell WIS-TV that he had been beaten into giving a confession was not true. It is also incredible to think that Stone would not have read this article when reviewing the media coverage that would be the focus of a much discussed possible change of venue motion. Stone considered Petitioner Aleksey’s alleged failure to tell WIS-TV that the confession had been beaten out of him “the problem.” App. 3292, l. 13 – 3293, l. 15.

Counsel Stone did not challenge the statement advancing the brutality claim at either the Jackson v. Denno, 378 U.S. 368 (1964) hearing, nor to the jury.<sup>1</sup> App. 2557, l. 18 – 2558, l. 7. The solicitor admitted at the PCR hearing that Aleksey’s “confession” was the strongest piece of evidence they had. App. 3667, ll. 20-22.

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<sup>1</sup> At the post-conviction hearing Petitioner put forth his strong claim that defense counsel was ineffective for not pursuing the issue of his confession being coerced by a beating. The State’s assertion that the post-conviction court was not fully presented with the issue before this Court is not supported by the record. BIO at 29.

The State does acknowledge that co-counsel, Thomas Sims, admitted that Petitioner Aleksey had told him “at one time that SLED had beaten him. App. 2533-2560, PCR 134, 141.” Brief in Opposition at 36. However, the State quickly added that Counsel Sims maintained that “the existence of crying by Aleksey after the gap in the second statement at law enforcement center, [was] without any witness to suggest why he was crying.” App. 2559. Brief in Opposition at 36.

The mysterious two hour gap in the tape, reminiscent of Rose Mary Woods, and the uncontroverted change in Aleksey’s demeanor, provided evidentiary corroboration to Aleksey’s assertion to WIS-TV that his confession was coerced by a beating. This audio tape can be made readily available to this Court.

Aleksey repeatedly informed counsel he had been beaten, and that is why he confessed. It is inexplicable why trial counsel placed such great emphasis on his false belief that Aleksey had not told WIS-TV about the SLED beating during his interview.

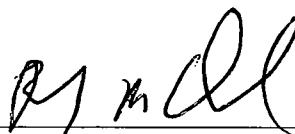
Aleksey was simply ignored by counsel who did not believe him, who was operating under a conflict of interest because he represented the Highway Patrol, and other State entities, during this Highway Patrolman victim death penalty trial. Moreover, defense counsel had a very cynical belief that the long serving trial judge would not even consider suppressing Aleksey’s confession.

Defense counsel utterly failed to attempt to present a complete defense in this case by challenging a confession that was the result of a brutal beating by law enforcement officials because they believed Aleksey had killed a fellow police officer. See, Chambers v. Mississippi, 410 U.S. 284 (1973); Holmes v. South Carolina, 547 U.S. 319 (2006).

CONCLUSION

WHEREFORE, Petitioner having responded to the Brief in Opposition, and for the reasons contained in his three-issue petition for writ certiorari, submits that this Court should grant certiorari.

Respectfully submitted,



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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

January 15, 2015

# ... says he didn't kill trooper

By CAROL B. BARKER  
T&D Staff Writer

The Philadelphia man accused of gunning down a state trooper during a traffic stop on Interstate 95 near Santee New Year's Eve is claiming it was his girlfriend who killed 1st Sgt. Frankie Lee Lingard.

Bayan R. Aleksey, 29, and Gloryvee Perez Blackwell, 25, of 3131 Knights Road, Bensalem, Pa., have been charged with the trooper's murder and are being held in the Orangeburg-Calhoun Detention Center pending bond hearings.

Deputy 1st Circuit Solicitor Jimmy Williams said the bond hearings will be held before Judge Thomas L. Hughston Jr. either Wednesday or Thursday.

Aleksey, who was initially arrested under the name of Justin Matecki of Silver Spring, Md., also used the aliases of Michael Piscani, Sal Vicoaroli, Steven Larassa and Vinny Messer.

On Sunday from a pay phone inside the Orangeburg jail, Aleksey telephoned a WIS-TV reporter in Columbia to give his version of what happened the night of Dec. 31, saying he needed help getting an attorney to represent him.

WHY?

The Times and Democrat on Monday requested an interview with Aleksey, but jail administrator Willie Bamberg explained that the Sunday night interview was unauthorized and no further interviews were being allowed.

At the request of The T&D, WIS made the taped interview available Monday. Information for this article was taken from that interview.

2 HOUR Baiting!

Claiming Blackwell shot Lingard, Aleksey said he confessed to killing the state trooper after being beaten and threatened by police. He insisted Blackwell was driving and he was "in a deep sleep" in the passenger seat of the 1998 white Mustang GT in which they were traveling when Lingard pulled them for speeding.

Aleksey said he and Blackwell and her two daughters, one 11 years old and the other 8 months old, left New Jersey on Dec. 31 to

Please see Trooper, 4A



Bayan R. Aleksey

## Troopers to review vest policy

By The Associated Press

COLUMBIA — A committee of South Carolina Highway Patrol troopers was appointed Monday to review whether bulletproof vests should be mandatory after the New Year's Eve slaying of a veteran trooper who was not wearing one.

Patrol 1st Sgt. Frankie Lingard, 39, was shot to death as he approached the driver's side of a white Mustang, he had stopped for speeding on Interstate 95.

Two Pennsylvania residents have been arrested for his killing.

The decision whether to wear body armor is left up to individual troopers but the 10-member troopers' committee, which includes those who work the highways and administrators, will consider whether that needs to be changed, said department spokeswoman Sus Sadik.

Interim Public Safety Department Director Eddie Gunn asked for their recommendation by Feb. 12.

Bayan R. Aleksey, 29, of Philadelphia and Gloryvee Perez Blackwell, 25, of Bensalem, Pa., face murder charges in Lingard's death.

Phase (1)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2014

\_\_\_\_\_  
No. 14A-278  
\_\_\_\_\_

BAYAN ALEKSEY,

Petitioner,

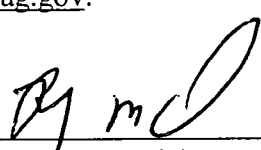
v.

STATE OF SOUTH CAROLINA,

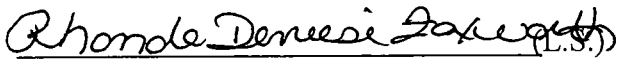
Respondent.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that copies of the reply to brief in opposition to petition for writ of certiorari has been served upon opposing counsel, Donald J. Zelenka, by mailing copies in envelopes properly addressed with postage prepaid to the Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211 on this 15th day of January, 2015. Counsel is also today, January 15, 2015 sending a copy of the reply to brief in opposition to petition for writ of certiorari to opposing counsel by electronic delivery to [dzelenka@scag.gov](mailto:dzelenka@scag.gov).

  
\_\_\_\_\_  
Robert M. Dudek  
*Counsel of Record*

SWORN TO BEFORE me this  
15<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: October 17, 2021