STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County
George C. James., Circuit Court Judge

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JUN 22 2015

S.C. SUPREME COURT

Mark McCoy,

Petitioner,

v..

State of South Carolina,

Respondent

APPELLATE CASE NO. 2014-001253

Pro-Se Appellant Brief Pursuant
To Johnson for Writ of Certiorari

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JURISDICTION TO ENTERTAIN THIS JOHNSON PETITION.

In Johnson v. State, 294 S.C. 310, 364 S.E.2d 201(1988), this Court held it will abide by the procedures outlined in Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), prior to approving counsel's motion to withdraw, even on appeals from post conviction applications. See Edmond v. State, 341 S.C. 340, 534 S.E.2d 682 (2000).

According to Knight v. State, 325 S.E.2d 535, under Article V, §5 of South Carolina Constitution, the Supreme Court has appellate jurisdiction in law cases "to correct" errors of law under such regulations as the General Assemble may prescribe. In passing the Uniform Post Conviction Act, S.C. Code Ann. §17-27-10 through 120 (1976), the General Assembly has prescribed a regulation for the correction of errors of law in post conviction cases.

This scope of review in post conviction cases is limited to "whether there is any evidence to support the lower court's finding of facts". See Daniel v. State, 317 S. Ct. 746 (1984); and Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984)

By abiding by the standard outlined in Anders, Petitioner/Appellant here is cloaked with the responsibility "to point out those issues in the record he believes have merit, or should have been raised by appellate counsel instead of filing a Johnson Petition".

SUMMARY OF THE ISSUES TO BE POINTED OUT.

This case began and ended in textbook fashion with a prosecutor that engaged the "win at all cost" attitude. And was willing to go to any extent to obtain a conviction, while depriving the Petitioner here of any opportunity to receive a fair trial. Clear evidence of prosecutorial misconduct, evidence tampering, false testimony, as well as ineffective assistance of counsel, in exposing these events. Is but the tip of the iceburg.

Once such obvious errors occur, the representative of justice join forces in a attempt to conceal, omit, and restrict the Petitioner from bringing "the truth" to the attention of the Court, by any means necessary. Rules are invoked to prohibit evidence that otherwise, "should be admitted", in order that the Petitioner honor his obligation of "proving the allegations" raised in a post conviction matter. For which is "statutorily mandated". As the United States Supreme Court noted in Holmes v. State, 547 U.S. 319, 324 (2006)(defendant's shall have a meaningful opportunity to present a complete defense) These rights are not abridged by virtue of the venue the defendant arrives at. Based on the rooted guarantee of fair play.

Because there is so many errors within this case, Petitioner will attempt to brief them as concise as possible, while allowing this Honorable Supreme Court to render a judgment consistent with controlling authority as determined by this Court.

ISSUES TO BE REVIEWED.

1. Whether a Johnson Petition should have been filed in this case, as opposed to a merits brief?

2. Whether the lower court erred by denying PCR relief, where the Applicant proved "a Brady Violation" did occur relating to the withheld prior statements of Kimberly Delay?

3. Whether the lower court erred by denying PCR relief in regards to the withheld "Statements" of Lattimore Holmes, the State's alleged only eye-witness to the crime?

4. Whether the lower court erred by denying PCR relief, based on ineffective assistance of counsel, prior to and during trial?

5. Whether the trial court erred in failing to instruct the jury on a lessor included offense on manslaughter, where Lattimore Holmes statement described "a fight" prior to the shooting?

6. Whether the lower court erred in finding Solicitor Fant, did not commit prosecutorial misconduct by eliciting false and misleading testimony, which went uncorrected, to the jurors?

STATEMENT OF FACTS

On September 11, 2008, the Sumter County Grand Jury indicted Petitioner for murder and Possession of a Weapon during a violent crime. Petitioner's case proceeded to a jury trial on September 22, 2008, before the Honorable Howard P. King and a jury. Petitioner was represented by I.S. Leevy Johnson, and Catherine Fant, represented the State.

After a four-day trial, the jury found Petitioner guilty of both charges. The court sentenced Petitioner to consecutive sentences of life imprisonment for the murder and five years imprisonment for the possession of the weapon during a violent crime. Petitioner appealed his conviction and sentences.

On direct appeal, a brief was filed by Joseph L. Savitz, III, pursuant to the procedures outlines in Anders v. Californaia, 386 U.S. 738 (1967). Petitioner's conviction and sentence were affirmed and counsel was relieved pursuant to Anders.

On June 5, 2012, Petitioner filed a PCR application where he raised the following issues which will be addressed in this Petition, the majority premised on Petitioner's Sixth Amendment right to the "effective assistance of counsel", at trial as well as on appeal.

a. That counsel failed to continue the objection to the State's false evidence;

b. That counsel failed to move for a lessor included offense to murder;

c. That counsel failed to object to improper comments by the court during instructions;

d. Prosecutorial misconduct, i.e. soliciting false and misleading testimony;

e. Brady violation, multiple ways;

f. Material evidence being withheld by prosecution;

g. No probable cause to arrest petitioner;

h. Solicitor and Special Agent conspiring to withhold evidence being "crutial prosecution witness statements;

i. Solicitor authored materially false and material statements to jury relating to "promises made" in exchange for trial testimony;

j. Court's erroneous instruction (and counsel failing to object) to erroneous reasonable doubt instructions deemed "structural error".

1. WHETHER A JOHNSON PETITION SHOULD HAVE BEEN FILED IN THIS CASE, AS OPPOSED TO A MERITS BRIEF?

Petitioner contends and argues that more than anything, a Johnson's brief was entered improperly in this case. In otherwords, in a Post-Conviction relief action, the Applicant bears the burden of proving the allegations within the application. See Rule 71.1 (e), SCRCP, and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). But like here in the instant case at bar, "how can Petitioner prevail in honoring this obligation, when the court makes rules restricting the Applicant, during the post-conviction hearing, from presenting "a complete defense". See Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727 (2006).

The point the Holmes Court made in rendering the decision above is not to be overlooked here, in which the Petitioner needs strict interpretation and compliance, is that; "by evaluating the strengh

of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt. See Crane v. Kentucky, 476 U.S. at 690 (quoting trombetta, 467 U.S. at 485) That such proceeding deprives a defendant of his "right to have a meaningful opportunity to present a complete defense".

In Johnson v. State, 364 S.E.2d 201 (1988), the Supreme Court approved the withdrawal of counsel in meritless post-conviction appeals, provided the procedures in Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). In Edmonds v. State, 534 S.E.2d 682 (2000), the Supreme Court reversed the PCR court's denial of the post-conviction finding; "it was improper for the State to refer to or comment on a defendant's exercise of a constitutional right". Thus, the Court ordered both the appellate attorney and the State to fully brief the issues.

Under Anders, the United States Supreme Court concluded that; beginning with Griffin v. Illinois, 351 U.S. 12 (1956), and Douglas v. California, 372 U.S. 353 (1963), they've held consistently those procedures "where the rich man, who appeals as of right enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself".

Petitioner here during the post-conviction hearing, withstanding the court's rulings, plainly and consistently honored his burden of proving constitutional errors, as will be outlined here.

Even in light of being restricted "during the hearing" from present-specific evidence into the record, so that the Applicant could comply with Rule 71.1 and Butler, supra, the burden of proof remained honored and it was the court's ruling, denying the PCR that is unreasonable.

2. (a). The Brady Issues.

Refuting appellate counsel's claim that the appeal from PCR lacks merit. Petitioner logically turn this Court's focus to the evidence introduced within the PCR hearing. In doing so, the State first "concedes" a Brady violation occurred.

In otherwords, the State does not oppose that (1) there existed favorable evidence to the accused; (2) which was in possession of the prosecution; (3) such was suppressed by the State; (4) and it was material to the accused guilt or innocence or was impeaching. See Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555 (1995).

The naked "proof" concerned the 'after trial evidence', introduced during the PCR hearing. Which clearly exposed Solicitor Fant's scheme to intentionally or inadvertenly suppress "the prior statements of Ms. Kimberly Delay", taken by police officer Eugene Williams, on January 22, 2008.

Second, Ms. Delay appeared at the PCR hearing to "corroborate the January 22, 2008 statement given to police", confirming the fact "she did not know anything about the murder", and "but for the State 'threatening her', two detectives and Solicitor Fant, she would not have said what "they wanted her to say". (Tr.tr. p. 547 lines 1-9)

The direct question was posited to Ms. Delay at (Tr.tr. p. 545 lines 11-12) "Is what you said in that trial correct correct"? "NO SIR". Delay answered; And where Delay was not charged by the State with perjury during the PCR testimony. Such must be taken as "the truth of the matter".

Turning to controlling authority; the U.S. Supreme Court in Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963) determined a prosecutor may not refuse a request by the defendant for evidence that is "exculpatory (tends to prove the defendant is not guilty) and material to either guilt or punishment". The mandatory relief even if done by mistake, gives the defendant the right to a new trial. See Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1550 (1995).

Brady applies to evidence that supports the defendant's claim of innocence, but "also to evidence 'that weakens' the porsecution's case". Kyles, supra, Id. In fact, Ms. Delay's prior written statement did not have to be exculaptory (as the state suggested) because rather, "it was impeachment evidence". See United States v. Bagley, 473 U.S. 667, 105 S. Ct. 3375 (1985), where this Court explained "it makes absolutely no difference" (exculpatory of impeachment evidence) for constitutional purposes.

Thus, the lower court erred in denying the PCR application by failing to accord exactly why evidence that weakens the State's case cannot be withheld by the state. That being "the priciples of due process and the right to a fair trial". And being afforded the opportunity to present 'a complete defense'. See Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727 (2006).

(b). <u>Brady Violation in regards to Lattimore Holmes.</u>

Normally, a criminal case doesn't survive a single Brady violation without the accused "being entitled to a new trial". Here however, the Brady violations are "cumulative" for which McCoy must argue that the cumulative error rule should apply in this case.

Being the only alleged "eye-witness" to the murder, Lattimore Holmes is introduced and prompted as the state's "star witness". The pre-trial investigative report shows; (1) that a Sumter Detective traveled to Jessup FCI to interview Lattimore Holmes; (2) the interview resulted in Lattimore informing Sumter Detectives, Special Agent Brown, and Eugene Williams that; (3) McCoy and Dukes were planning on "beating up" the decedent. This was Holmes foresite in the report taken by Detectives.

In addition; (4) Holmes withheld statements also "reported a fight" occurring prior to the shooting. Thus, eliminating any premeditation for murder. But such statements were not disclosed to the defense prior to trial.

More importantly however, is (5) not only were the above statements withheld. The state (i.e. Solicitor Fant) put Holmes on the witness stand and "elicited false and misleading testimony" in front of the jury, which was material, and contradicted what the previous investigation by Special Agent Brown and Eugene Williams had previously recorded.

In the trial testimony, between pages 209 and 211, Holmes testified that "he saw petitioner put on the mask, walk through a back yark, walked up to the victim and shot him". Yet the statement to police reads as follows:

1. ATF SA Richard Brown and DEA TFO Phil Ardis spoke with a confidential source of information (SOURCE) concerning a murder committed by Mark McCoy during 2004. The SOURCE observed McCoy commit the murder. The SOURCE believes no one is aware that the SOURCE observed the murder. This is the first time the SOURCE has spoken with an investigator about the murder.

2. On June 8, 2004, the SOURCE observed the murder of Donald Tyrone Pettis. According to the SOURCE, PETTIS was breaking into stores in the Sumter area. One of the Stores broken into belonged to Ivan Sanders. Mark McCoy and Sanders figured out who had broken into Sanders Store. McCoy and Dukes were planning on beating up Pettis for breaking into the stores.

3. McCoy and Robin Dukes aka Robbie Dukes were able to locate Pettis walking in the vicinity of Edwards Street. The SOURCE was able to observe the murder from a position in a nearby backyard. The SOURCE described McCoy as wearing camouflage and a black ski mask. The SOURCE RECOGNIZED McCoy and observed McCoy pull a black ski mask down, over his (McCoy's) face, prior to the assault. McCoy began assaulting Pettis and Pettis got in a hit on McCoy. The SOURCE observed McCoy pull out a silver in color revolver and shoot Pettis in the back. The SOURCE estimates that Pettis was only a couple of feet away from McCoy when the fatal shot was fired. McCoy only fired one round and Pettis dropped to the ground; Pettis did not get back up.

[Statement taken 1/28/2008]

Moreover, had McCoy premeditated to kill Holmes, what purpose would a mask serve, coupled with "why only a single shot was fired"? Moreover however, is how the above statement came about at

trial. Even where this "exculpatory evidence had been requested by the defense", such was made privy until "Lattimore Holmes himself admitted there was a statement". To which Solicitor Fant immediately "objected", stating on record; "there is no statement". See Tr. tr. p. 234 lines 1-7. Such objection, and accompanying statement in front of jurors amounts unquestionably "to prosecutorial misconduct". Not only did Fant elicit false statements from Holmes; she actually made false accusations herself.

In the subsequent PCR hearing. Trial counsel Johnson, in a attempt to salvage Fant's reputation in this case suggested that Holmes prior statement "may have been turned over to him". Let's review such assertions under a logical defense.

Had Lattimore Holmes prior statement to police been disclosed to the defense prior to trial. It would do one of two very important things. "It would either be used to impeach Holmes during the trial", in regards to what he knew the Petitioner would do to the decedent; (i.e. **'beat him up for breaking in stores'**); or. "it would be used to make certain the court charged a lessor included offense of manslaughter, based on Holmes statement "there was a altracation prior to the shooting".

However, counsel never moved to have the jury instructed to a lessor included offense, "based on the prior statement" of Holmes. When the record and evidence, "if it was disclosed", as counsel seems to suggest during PCR. Would have bound the court to charge the jury on manslaughter, and Petitioner would not have been sentenced to life imprisonment.

According to controlling authority governing requested charge to the petit jury. In this case the court refused to give the manslauhgter based on "there was no evidence existing to support such a lessor included offense". In Tisdale v. State, 662 S.E. 2d 410 (S.C. 2009), the Court found counsel ineffective for failing to request charges on "involuntary manslaughter and accident". Because defendant's testimony supported an involuntary manslaughter charge.

In the instant case at bar, "it was the State's star witness" prior police statement which irrefutably supports the lessor included offense of manslaughter. When the statement clearly conveys "Petitioner was not looking to kill the decedent, but instead, beat him up for breaking into stores". Coupled with; "the fight where the decedent was seen striking the gunman prior to a shot being fired". Such evidence amounts to a "heat of passion" instead of a premeditated murder, for which constitutes voluntary manslaughter.

And if counsel "was in possession of the above prior statement", such failure to use it as an instrument to demonstrate the defendant is entitled to a lessor included offense. Clearly amounts to ineffective assistance of counsel, and the prejudice is demonstrated where the Petitioner received "a life sentence", as a result of counsel's deficient performance.

For these reasons, Petitioner's appellate counsel should have filed a merits brief rather than a Jonhson pettition to fully address this claim. In fact, had counsel preserved this issue for appeal, appellate courts must consider the evidence in light most

favorable to the defendant. See State v. Cole, 388 S.C. 97, 101 S.E.2d 511 (2000). If there is any evidence in the record from which it could be reasonably inferred that the defendant acted in self-defense, the defendant is entitled to instructions on that defense and the [circuit court's] refusal to do so is reversible error. State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000).

(3). WHETHER THE LOWER COURT ERRED BY DENYING PCR RELIEF BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL, PRIOR TO AND DURING TRIAL?

Petitioner brings to the attention of this court that the PCR court erred in denying relief based on counsel's ineffective assistance, in violation of the Sixth and Fourteenth Amendments.

In support of this ground for relief, specifically at Tr. tr. p. 527 (of appellate record), Mr. Brooks (PCR counsel) asked Mr. I.S. Johnson; "about Lattimore Holmes statement in regards to a fight between the perpetrator and victim". That occurred prior to the shooting. Attempting "to establish the Brady violation. In relevant part Mr. I.S. Johnson responded; "Tr. tr. p. 527 lines 20-23 But I cannot tell you right now, Mr. Brooks, If I had this information, I would have gone with murder and voluntary manslaughter".

However, on cross-exam by AG Gourley on Tr. tr. p. 531, when asked was he (I.S. Johnson) aware of Lattimore Holmes statement, I.S. Johnson answered "Yes". Yet, still failed to move for involuntary manslaughter (lines 2-5 p. 531). Amounting to ineffective

assistance of counsel. Under Strickland v. Washington, 466 U.S. at 690;,(the court must "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance")).

4). Within this issue is a vivid catch-22 circumstance. In exposing such, the PCR court was legally bound to find (1) that I.S. Johnson (trial counsel) had not received "material prior statements or information in the prosection's possession, belonging to Kimberly Delaw and Lattimore Holmes", which according to Kyles 514 U.S. at 436, such amounts to a "collective violation" of failure to disclose, or (2) trial counsel had both statements or information in his possession and failed to employ them for impeachment purposes.

Either way a court considers the above issue arguably entitles the Petitioner to a new trial under controlling authority. See Giglio v. United States, 405 U.S. at 150-151. "Finding that the government's case 'depended almost entirely' on the witness's testimony, the Court reversed the conviction because 'evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it"'. See also Monroe v. Angelone, 323 F.3d 286, 317 (4th Cir. 2003)(undisclosed government information regarding murder vehicle could have been used to impeach other prosecution witnesses); also see Douglas v. Workman, 560 F.3d 1156, 1174-75 (10th Cir. 2009)(undisclosed deal between prosecutor and key witness could have enabled defense to sucessfully impeach witness).

Thus, the failure to disclosed is controlled by decisions ren-

dered by the United States Supreme Court, since at least Brady v. Maryland, and before, and remains binding precedence in the courts of South Carolina. Such is a central concern to ensure a defendant receives a fair trial as outlined by the United States Constitution. For without these protections within a trial, the defendant is en titled "to a new trial".

(5). WHETHER THE TRIAL COURT ERRED IN FAILING TO INSTRUCT THE JURY ON A LESSOR INCLUDED OFFENSE BEING MANSLAUGHTER, WHERE LATTIMORE HOLMES'S STATEMENT DESCRIBED "A FIGHT" PRIOR TO THE SHOOTING, COUPLED WITH THE INSIGHT THAT PETITIONER'S INTENT WAS ONLY TO "BEAT THE VICTIM UP".

In order to prevail on this issue, Petitioner brings to the attention of this Court, relevant portions of the PCR transcript, in conjunction with the ruling in this case. At PCR ruling on June 4, 2014, page 13 of 17, beginning at line 13 through line 17, the lower court made the following conclusions.

> "However, the Court finds that it is clear from the hearing transcript and PCR hearing testimony of both Counsel and Assistant Solicitor Fant, that the trial judge, Judge King, review- in camera the Assistant Solicitor's entire file prior to trial. This review was pursuant to Counsel's June 3, 2008 motion for in camera inspection. Judge King concluded that the State met its discovery obligations. In addition, it is clear from the transcript that counsel was able to effectively cross Delay without the statement".

When reviewing the "claims" in this case. It becomes obvious that not only is the above conclusion unreasonable. It's dead wrong. In explaining; the PCR judge relies on Judge King's conclusion at trial in regards to "material not yet disclosed", where the evi-

dence by testimony of trial counsel, I.S. Johnson proves as much during the PCR hearing while being cross-examined by Mr. Brooks. Trial counsel is recorded stating; "But I can't tell you right now, Mr Brooks, if I had this information, I would have gone with murder and voluntary manslaughter". Id Tr. tr. pa 537 (appx.)

Thus, the PCR court's finding is bellied by the record and testimony by I.S. Johnson, "if it is credible like the court suggest", proves the material information was not disclosed. Or, if it was, "the court was obligated to charge the jury voluntary manslaughter premised on the fight before the shooting, coupled with Holmes's insight that Petitioner was planning to 'only beat the victim up'". See Tisdale v. State, 662 S.E.2d 410 (S.C. 2008)

In Tisdale, Counsel found ineffective for failing to request charges on involuntary manslaughter and accident. Counsel's conduct was deficient because the defendant's testimony supported an involuntary manslaughter charge by providing evidence of a struggle over a weapon and supported an accident charge because of an accidental discharge of a gun with the defendant lawfully armed in self-defense. In short, "where there is evidence existing whichh supports a lessor offense, the court is bound to charge such".

Thus, "if the PCR court found that all evidence had been disclosed", then it equally means "the trial court failed to charge the lessor included voluntary manslaughter", rendering Petitioner being entitled to at minimum, a new trial and/or sentence.

If the court had found "the evidence was not disclosed", based on the testimony of I.S. Johnson. Petitioner is entitled to a new trial under Brady.

(6) WHETHER THE LOWER COURT ERRED BY FAILING TO FIND THAT ASSISTANT SOLICITOR FANT INDEED HAD COMMITTED PROSECUTORIAL MISCONDUCT, BY ELICITING FALSE AND MISLEADING TESTIMONY, WHICH WENT UNCORRECTED, IN FRONT OF THE JURY?

Here, Petitioner establishes support for this ground based on the concealed **"Promises made"** by the Assistant Solicitor, Ms. Catherine Fant, coupled with the testimony during the PCR hearing by Kimberly Delay, the two detectives from Sumter County, along with Ms. Fant, threatened her into changing her testimony days before trial. On both accounts, Ms. Kimberly Delay and Mr. Lattimore Holmes **"state authored promises were concealed from jurors".**

In Giglio v. United States, 405 U.S. 150 (1972), the Court held; "A prosecutor's deliberate 'deception' of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice". In South Carolina, see Washington v. State, 478 S.E.2d 833 (S.C. 1996).

In Washington, the Court here declared that; "a solicitor has a duty to correct false information". However, after reviewing the trial record, comparative with the prior statements (as well as Kimberly Delay's testimony during the PCR hearing), both state witnesses "lied under oath while being directed by none other than Solicitor Catherine Fant.

Solicitor Catherine Fant, on both accounts, falsely elicited information which mislead jurors and the court in regards to promises made. For which were only discovered "post-trial". And nothing could be more clearer than standing authority on this ground making this impermissible and a violation of the accused rights under the United States Constitution. See Giglio v. United States, 405 U.S. 150 (1972); and State v. Washington, 478 S.E.2d 833 (S.C. 1996); and Brady, supra.

Below, the Appellant here encloses "documentary exhibits", for which irrefutably exposes what the prosecution sought to conceal in order to produce unjust results. And based on this concealment, the appellant was prejudiced in his attempt to submit the same duriog the PCR hearing. For these reasons, this writ of certiorari should be granted.

"Enclosed Exhibits Not Previously Entered on Record"

1). The Brady Motion, signed by defense counsel, I.S. Leevy Johnson.

2). Another Brady Motion for "Disclosure of Evidence", from the defense.

3). Witness Kimberly Delay's initial statement to police, uncovered "post-trial", taken Jan. 22, 2008.

4). The letter from Assistant Federal Defender, Catherine M. Leek, confirming "the promise made" by Assistant A.G. Catherine Fant, that consequently confirms "perjury", by Fant, of the conceal-agreement in exchange for Delay's testimony.

5). Lattimore Holmes's initial statement to detectives, dated Jan. 25, 2008, "confirming to his knowledge", McCoy was seeking the victim out to "beat him up". Of which, "was concealed from the defense". And eliminated any chance of being charged "voluntary manslaughter rather than murder".

6). Lattimore Holmes trial testimony that (a) he was not promised anything in exchange for testimony; (b) the ommission of the fight during the encounter between the victim and the accused, and (c) the extraordinary relief of "time served", Holmes recieved as a result of his "false testimony".

7). Trial transcript pages 229-234, of Lattimore Holmes testimnoy, contrary to the statements previously made. Coupled with Solicitor Fant's "objection" (Tr.tr. p. 234, lines 1-7), falsely asserting "there is no statement", where at that point, counsel for the defense could not have had it in their possession".

The above are the exhibits which will be forwarded that should be considered prior to making a ruling in this case. Thus, Appellant argues for relief also under the "cumulative error rule", for which expresses concern for those cases where a single error standing alone doesn't justify granting a new trial. However, multiple errors, if gone uncorrected will substantially prejudice the defendant from any opportunity to have received a fair trial. See Green v. State, 569 S.E.2d 318 (S.C. 2002); and State v. Johnson, 512 S.E.2d 795 (S.C. 1999), and Bolte v. State, 2014-UP-266 (S.C. 2014_).

For these reasons, the Appellant respectfully moves this Honorable Supreme Court, for this State to grant certiorari, rejecting the Johnson petition, and remanding this case in accordance with the reversible issued contained herein. And for any other reason this Court deems just and proper.

Respectfully Submitted,

/s/____________________________

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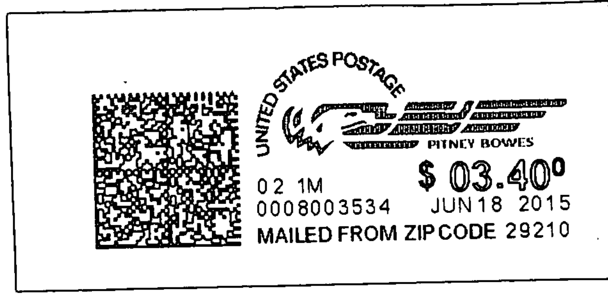

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