

SOUTH CAROLINA COURT  
OF APPEALS

APPEAL case NO:  
2014-002138

STATE OF SOUTH CAROLINA  
VS.  
TYRONE LORENZA ROBINSON

**EMERGENCY**

PRO SE BRIEF  
SUPPLEMENTED TO MY  
ORIGINAL PROSE BRIEF  
FOR EMERGENCY RELIEF  
TO BE RELEASED IMMEDIATELY  
FROM CURRENTLY BEING HELD  
UNLAWFULLY, UNCONSTITUTIONALLY  
AND ILLEGALLY DETAINED, RESTRAINED  
DEPRIVED OUT OF MY FREEDOM AND LIBERTY  
AND FALSELY IMPRISONED

ISSUE ARGUED  
ON DIRECT APPEAL  
FOR THIS APPEALS  
COURT TO DECIDE ON

PRO SE SUPPLEMENTAL BRIEF FOR  
EMERGENCY RELIEF TO BE RELEASED IMMEDIATELY  
FROM CURRENTLY BEING HELD UNLAWFULLY,  
UNCONSTITUTIONALLY AND ILLEGALLY DETAINED,  
RESTRAINED, DEPRIVED OUT OF MY FREEDOM  
AND LIBERTY AND FALSELY IMPRISONED IN VIOLATION  
OF MY 5TH AND 14TH AMENDMENT RIGHTS OF  
THE CONSTITUTION OF THE UNITED STATES OF  
AMERICA.

I TYRONE LORENZA ROBINSON DEMAND THAT  
THIS SOUTH CAROLINA CLERK OF COURT JENNY  
ABBOTT KITCHINGS SEND MY ATTORNEY  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

A COPY OF THIS PROSE SUPPLEMENTAL  
BRIEF AND A COPY OF MY ORIGINAL PROSE  
BRIEF TO ARGUE FOR ME ON THIS  
DIRECT APPEAL

# ISSUE APPEALED

I TYRONE LORENZA ROBINSON WAS UNLAWFULLY, UNCONSTITUTIONALLY, AND ILLEGALLY CONVICTED AND IS CURRENTLY BEING HELD UNLAWFULLY, UNCONSTITUTIONALLY, AND ILLEGALLY RESTRAINED, DETAINED, DEPRIVED OUT OF MY FREEDOM AND LIBERTY WITHOUT DUE PROCESS OF LAW. ON A UNINDICTED THEORY, CRIME AND CHARGE IN VIOLATION OF MY 5TH AMENDMENT RIGHT TO THE GRAND JURY CLAUSE WHICH STATES "QUOTE" NO PERSON SHALL BE HELD TO ANSWER FOR A INFAMOUS CRIME UNLESS UPON PRESENTMENT OF INDICTMENT AND

IN VIOLATION OF MY 5TH AMENDMENT RIGHT TO DUE PROCESS WHICH STATES "QUOTE" NO PERSON SHALL BE DEPRIVED OUT OF LIBERTY WITHOUT DUE PROCESS OF LAW

AND IN VIOLATION OF MY 14TH AMENDMENT RIGHT TO DUE PROCESS. ON THE UNINDICTED THEORY AND CRIME OF COMMON LAW MURDER BY THE UNINDICTED THEORY OF THE DOCTRINE OF TRANSFERRED INTENT, THAT THE GRAND JURY DID NOT INDICT ME ON AND THE GRAND JURY DID NOT ISSUE A INDICTMENT CHARGING I TYRONE LORENZA ROBINSON WITH AND THERE IS NOT ANY GRAND JURY ISSUED INDICTMENT CHARGING ME WITH CONSTITUTING FATAL ERROR REQUIRING THE SOUTH CAROLINA APPEALS COURT TO VACATE MY PRISON SENTENCE AND CONVICTION I RECEIVED IMMEDIATELY. AND RELEASE ME FROM FALSE IMPRISONMENT IMMEDIATELY.

# ARGUMENT

# TYRONE LORENZA ROBINSON, ARONSCOTT YOUNG SENIOR, and ARONSCOTT YOUNG JUNIOR were all charged and indicted with the theory and crime of felony murder by the felony murder rule theory only. The state of South Carolina clearly explained that # TYRONE LORENZA ROBINSON was charged and being tried on, the particular theory and crime of felony murder by the felony murder rule theory only. That's charged and alleged inside of the written write up of indictment # 2012-65-07-1935. My attorney Arie David Bax also informed me that # was being tried on the particular theory and crime of felony murder by the felony murder rule only at trial.

TRIAL in my case started on September 15th 2014 and lasted until September 19th 2014. On September 15th 2014 jury selection in my case started. While screening the jurors from the jury pool in my case. One of the female jurors from out of the jury pool stood up and told Judge Cooper in open court. That she had, had a discussion with the state of South Carolina solicitor Mc. Duffriestone a few months ago about TYRONE LORENZA ROBINSON case, and while doing so. She asked solicitor Mc. Duffriestone how was he going to get a conviction against TYRONE LORENZA ROBINSON. The female juror from the jury pool said that the state of South Carolina solicitor ~~ESSAC~~ Mc. Duffriestone told her that he was going to convict TYRONE LORENZA ROBINSON on the theory of the doctrine of transferred intent. Now keep in mind

The state of South Carolina solicitor ~~ESSAC~~ Mc. Duffriestone, solicitor Shawn Thornton, trial Judge Cooper and attorney Arie David Bax. Had all informed TYRONE LORENZA ROBINSON that he was being tried before the jury on the particular theory of the felony murder rule theory only which is a totally different theory and crime and elements to prove from the elements crime and theory required to prove to convict a person on the theory of the doctrine of transferred intent. which

IS A UNINDICTED THEORY THAT THE GRAND JURY  
 DID NOT INDICT TYRONE LORENZA ROBINSON ON.  
 THEREFORE WITHOUT REALIZING IT THIS WOMEN  
 TERROR FROM THE JURY POOL, WAS REVEALING TO THE  
 COURT AND THE PEOPLE OF SOUTH CAROLINA AND THE  
 SURROUNDING AREAS. THE STATE OF SOUTH CAROLINA  
 SOLICITOR ISSAC MC. DUFFIE STONE, SHAWN THORTON  
 AND JUDGE COOPER SECRET PLANS TO CONSPIRE TOGETHER  
 IN A FIXED TRIAL TO UNLAWFULLY, UNCONSTITUTION-  
 ALLY AND ILLEGALLY FALSELY IMPRISON TYRONE  
 LORENZA ROBINSON ON THE UNINDICTED THEORY  
 AND CRIME OF COMMON LAW MURDER BY THE  
 UNINDICTED THEORY OF THE DOCTRINE OF TRANSF-  
 ERRED INTENT, THAT THE GRAND JURY DID NOT  
 INDICT TYRONE LORENZA ROBINSON ON, AND THE  
 GRAND JURY DID NOT ISSUE A INDICTMENT CHARGING  
 TYRONE LORENZA ROBINSON WITH, AND THAT IS NOT  
 CHARGED OR ALLEGED INSIDE OF THE WRITTEN  
 WRITE UP OF INDICTMENT # 2012-GS-07-1935.  
 AFTER THE JURY WAS PICKED INSIDE OF THIS CASE ON  
 SEPTEMBER 15TH 2014. JUDGE COOPER HELD A PRE  
 TRIAL HEARING, INSIDE PRETRIAL HEARING  
 ATTORNEY ARIE DAVID BAX MOTIONED TO DISMISS  
 THE INDICTMENT # 2012-GS-07-1935 FOR INSUFF-  
 -ICIENCY OF INDICTMENT, BECAUSE THE ONGOING  
 GUN BATTLE AN INHERENTLY DANGEROUS FELONY  
 ALLEGED INSIDE OF THE WRITTEN WRITE UP  
 OF INDICTMENT # 2012-GS-07-1935. IS NOT CLASS-  
 -IFIED AS A FELONY UNDER SOUTH CAROLINA CODE  
 OF LAWS. ALSO BECAUSE THE STATE OF SOUTH CAROLINA  
 CHARGED AARON SCOTT YOUNG SENIOR AND AARON SCOTT  
 YOUNG JUNIOR, WITH THE ONGOING DANGEROUS FELONY  
 OF CONSPIRACY TO MURDER TYRONE ROBINSON WITH  
 A DEADLY WEAPON AT THE IMMEDIATE TIME AND SAME  
 LOCATION KHALIL SINGLETON WAS SHOT AND KILLED AT.  
 AS THE ONGOING DANGEROUS FELONY THAT CAUSED  
 KHALIL SINGLETON TO BE SHOT AND KILLED AND KHALIL  
 SINGLETON DID DIE AS A PROXIMATE RESULT THERE OF  
 AND KHALIL SINGLETON DEATH IS A PROBABLE OR  
 NATURAL CONSEQUENCE OF, PURSUANT TO THE FELONY  
 MURDER RULE THEORY THAT TYRONE ROBINSON WAS  
 ARRESTED ON AND INDICTED ON. AS THE VICTIM  
 WHO AARON SCOTT YOUNG SENIOR AND AARON SCOTT  
 YOUNG JUNIOR WERE COMMITTING THE ONGOING  
 FELONY OF CONSPIRACY TO MURDER TYRONE ROBINSON  
 WITH A DEADLY WEAPON AGAINST. THAT IS  
 THE ONGOING DANGEROUS FELONY THE STATE OF SOUTH  
 CAROLINA INDICTED AS THE ONGOING DANGEROUS

FELONY KHALIL SINGLETON DEATH IS A PROBABLE OR NATURAL CONSEQUENCE OF PURSUANT TO THE FELONY MURDER RULE THEORY. AS A MATTER OF LAW TYRONE LORENZA ROBINSON CANNOT BE CHARGED OR TRIED ON THE PARTICULAR THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY THAT TYRONE LORENZA ROBINSON, WAS ARRESTED ON AND INDICTED ON ON INDICTMENT # 2012-65-07-1935. IN RETURN THE STATE OF SOUTH CAROLINA ARGUED THAT THEY SHOULD STILL BE ABLE TO TRY TYRONE LORENZA ROBINSON ON THE FELONY MURDER RULE THAT TYRONE LORENZA ROBINSON WAS INDICTED ON ON INDICTMENT # 2012-65-07-1935. AS A RESULT THE TRIAL JUDGE DECIDED AND STATED ON COURT RECORD THAT TYRONE ROBINSON WOULD BE TRIED ON THE FELONY MURDER RULE THEORY ON INDICTMENT # 2012-65-07-1935.

## CRIME OF PERJURY

16-9-10(A)(2)

THE WRITTEN DESCRIPTION OF THE OFFENSE OF FELONY MURDER BY THE FELONY MURDER RULE THEORY THAT TYRONE ROBINSON WAS CHARGED INDICTED AND SUPPOSEDLY HAD BEEN TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT # 2012-65-07-1935 STATES "QUOTE" THAT IN BEAUFORT COUNTY ON ABOUT SEPTEMBER 1, 2012 WHILE ENGAGED IN AN ONGOING GUN BATTLE AN INHERENTLY DANGEROUS FELONY, TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT "CAUSE" THE VICTIM KHALIL SINGLETON TO BE SHOT AND KILLED IN THE AREA OF MARSHLAND DRIVE AND ALLEN ROAD, HILTON HEAD ISLAND, S.C. AND THAT KHALIL SINGLETON DID DIE IN BEAUFORT COUNTY AS A PROXIMATE RESULT THERE OF ON SEPTEMBER 1ST, 2012 IN VIOLATION OF SECTION 16-3-10 OF THE SOUTH CAROLINA CODE OF LAW (1976, AS AMENDED.

AT THE BEGINNING OF TRIAL THE TRIAL JUDGE COOPER GOT A COPY OF INDICTMENT # 2012-65-07-1935 AND PERTENDED TO READ A COPY OF THE DESCRIPTION OF THE OFFENSE CHARGED

IN INDICTMENT # 2012-GS-07-1935 TO THE JURY, WHILE DOING SO THE TRIAL JUDGE LIED, TRICKED, DECEIVED AND MISLEAD AND DEFRAUD-ED THE JURY INTO BELIEVING THAT THE WRITTEN WRITE UP OF THE DESCRIPTION OF THE OFFENSE CHARGED IN INDICTMENT # 2012-GS-07-1935, STATED CHARGED AND ALLEGED A UNINDICTED THEORY CRIME ACT AND FELONY THAT THE GRAND JURY DID NOT INDICT TYRONE ROBINSON ON, THE GRAND JURY DID NOT ISSUE AN INDICTMENT AGAINST TYRONE ROBINSON FOR THAT IS NOT ALLEGED OR CHARGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-1935. BY THE TRIAL JUDGE COOPER LIEING AND STATEING TO THE JURY THAT THE DESCRIPTION OF THE CHARGE ALLEGED AND CHARGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-1935 STATES "QUOTE" THAT TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT SHOOT THE VICTIM KHALIL SINGLETON.

WHILE READING THIS UNINDICTED UNTRUE LIE TO THE JURY AT THE BEGINNING OF TRIAL, THE TRIAL JUDGE COMMITTED CRIME OF PERJURY 16-9-10-(A)(2) AND LIED, TRICKED AND DECEIVED THE JURY INTO THINKING, THAT THE WRITTEN WRITE UP OF THE DESCRIPTION OF THE OFFENSE CHARGED AND ALLEGED, INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-1935, STATES "QUOTE" TYRONE ROBINSON DID WILLFULLY, UNLAWFULLY AND WITH MALICE AFORETHOUGHT SHOOT THE VICTIM KHALIL SINGLETON.

HOWEVER A CERTIFIED COPY OF INDICTMENT # 2012-GS-07-1935 THAT I HAVE SUBMITTED ATTACHED TO THIS COMPLAINT AS EVIDENCE SHOW AND PROVES THAT THE ACTUAL WRITTEN WRITE UP OF THE DESCRIPTION OF THE CHARGE AND OFFENSE CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-1935 ACTUALLY STATES "QUOTE" THAT IN BEAUFORT COUNTY ON ABOUT SEPTEMBER 1, 2012 WHILE ENGAGED IN AN ONGOING GUN BATTLE AN INHERENTLY DANGEROUS FELONY, TYRONE ROBINSON DID

7.  
WILLFULLY, UNLAWFULLY AND WITH MALICE  
OF FORETHOUGHT CAUSE THE VICTIM  
KHALIL SINGLETON TO BE SHOT AND KILLED

by trial judge cooper lying to the jury by  
tricking, deceiving, misleading and defrauding  
the jury into thinking. That indictment #  
2012-GS-07-1935 he was reading to the  
jury states "quote" TYRONE ROBINSON  
WILLFULLY, UNLAWFULLY AND WITH MALICE  
OF FORETHOUGHT SHOT THE VICTIM KHALIL  
SINGLETON

The trial judge cooper lied to the jury  
and tricked and deceived the jury into  
thinking. That TYRONE ROBINSON WAS  
charged, indicted and being tried before  
the jury on a UNINDICTED charge that the  
grand jury did not indict TYRONE ROBINSON  
ON and the grand jury did not issue a indict-  
ment charging TYRONE ROBINSON WITH  
that is not charged or alleged inside of  
the written write up of indictment #2012-  
GS-07-1935. That TYRONE LORENZA ROBINSON  
was UNLAWFULLY and UNCONSTITUTIONALLY and  
ILLEGALLY tried and convicted on at trial,  
WITHOUT an indictment issued by the  
GRAND JURY charging him with shooting  
KHALIL SINGLETON. IN VIOLATION OF

TYRONE LORENZA ROBINSON 5th Amendment  
right to the GRAND JURY clause which  
states "quote" no person shall be held to  
answer for a capital, or otherwise  
INFAMOUS crime, unless on a presentment  
OR indictment

ALSO IN VIOLATION OF TYRONE ROBINSON  
5th Amendment right to due process which  
states "quote" no person shall be depr-  
ived out of LIBERTY WITHOUT DUE  
PROCESS OR LAW.

There is absolutely no indictments  
from the GRAND JURY that charge  
state and allege. That is TYRONE LORENZA

ROBINSON WILLFULLY, UNLAWFULLY, acting WITH MALICE AND AFORETHOUGHT did shoot and Kill the victim KHALIL SINGLETON.

However IN VIOLATION OF my 5th and 14th Amendment Rights, ATTORNEY ARIE DAVID BAX participated in a fixed TRIAL and allowed JUDGE COOPER, SOLICITOR HESTAC MC. DUFFIE STONE, SOLICITOR SHAWN THORTON and the state of south carolina. to UNLAWFULLY, UNCONSTITUTIONALLY and illegally get me convicted and currently be falsely imprisoned. ON THIS FALSE CHARGE THAT THE MAGISTRATE JUDGE NEVER ISSUED AN ARREST WARRANT FOR MY ARREST FOR, AND THE GRAND JURY did not indict me on, and GRAND JURY did not issue an indictment against me for and that is not charged or alleged inside of the written write up of indictment # 2012-GJ-07-1935.  
CASE LAW MERITS

SUPREME COURT OF SOUTH CAROLINA CASE LAW OF LUCAS BAILEY VS. STATE OF SOUTH CAROLINA

OPINION NO: 26975 "QUOTING"

ON APPEAL CASTILLO RAISED SEVERAL ISSUES, INCLUDING AN ARGUMENT THAT THE TRIAL JUDGE EGREGIOUSLY ERRED BY ADDING THROUGH A LESSER - INCLUDED CHARGE, A THEORY OF PROSECUTION ("SHAKING") THAT WAS NOT SUPPORTED BY THE INDICTMENT. Id at 254. THE TEXAS COURT OF APPEALS AGREED WITH CASTILLO ARGUMENT, FINDING THE TRIAL COURT ERRED IN "ENLARGING"

THE INDICTMENT BY ADDING "SHAKING" AS AN ADDITIONAL MANNER AND MEANS OF COMMITTING THE CHARGED OFFENSE. Id at 260. IN SO RULING, THE COURT RECOGNIZED THAT A DEFENDANT MAY ONLY BE TRIED AND CONVICTED OF THE CRIMES ALLEGED IN THE INDICTMENT AND THE STATE IS BOUND BY THE THEORY ALLEGED IN THE INDICTMENT.

WE AGREE WITH THE REASONING IN

castillo and apply its analysis to the facts of the instant case, we conclude that the trial judge's instructions improperly "enlarged" the indictment by instructing the jury that it could convict Bailey of a crime not alleged in the indictment. "Further quoting" the judge's supplemental instructions, which were confusing and contradictory, resulted in the erroneous directive that the jury could find Bailey guilty of homicide by child abuse if it found a act of "abuse or neglect." Such an instruction was indirect contravention of the specific act alleged in the indictment and, thus, constituted a material variance or a constructive amendment to the indictment.

FELONY MURDER RULE THEORY ELEMENTS, THE STATE OF SOUTH CAROLINA HAS BURDEN OF PROOF TO PROVE BEYOND A REASONABLE DOUBT, IN ORDER TO CONVICT TYRONE ROBINSON FOR THE DEATH OF KHALIL SINGLETON

Because TYRONE ROBINSON was arrested and indicted and supposedly had been tried before the jury on felony murder by the felony murder rule theory only. The trial judge was supposed to charge the jury on the elements. The state of south carolina

It is required to prove to the felony murder rule theory only. That is explained inside of the case of Gore vs. Leeke 1995 E. 2d 755 which states "Quote" now ladies and gentlemen of the jury, if several persons agree or conspire to commit a felony such as grand larceny or robbery or burglary each of those persons are criminally responsible for the acts of his associates or confederates which are done in furtherance or in prosecution of the common purpose for which they combined. The common purpose, ladies and gentleman, may have not included or may not have been involved in the killing and the murder of anyone but if in the execution of this common purpose a homicide is committed by one of the confederates or one of the associates and you, the jury determine from the proof beyond a reasonable doubt that the homicide was a probable or natural consequence of the acts which were done in pursuance of this common design then, ladies and gentleman, all who are present, either actually or constructively, and participating in the unlawful, common design are as guilty as the slayer himself.

UNINDICTED THEORY OF THE DOCTRINE OF TRANSFERRED INTENT THAT TYRONE ROBINSON WAS UNCONSTITUTIONALLY CONVICTED ON. REQUIRES THE

JURY TO DETERMINE A PERSON  
 STATE OF MIND IN ORDER TO  
 CONVICT THEM ON WHICH IS A  
 DIFFERANT THEORY TO CONVICT  
 A PERSON FOR MURDER ON

REMEMBER THAT WOMAN JUROR FROM  
 THE JURY POOL DURING JURY SELECTION.  
 WHO STOOD UP IN COURT AND TOLD JUDGE  
 COOPER THAT A FEW MONTHS  
 EARLIER, SHE TALKED TO SOLICITOR  
 MC. DUFFIE STONE AND SOLICITOR ISSAC  
 MC. DUFFIE STONE TOLD HER THAT HE WAS  
 GOING TO CONVICT TYRONE LORENZA  
 ROBINSON ON THE THEORY OF THE DOCT-  
 RINE OF TRANSFERRED INTENT?  
 WELL THE THEORY OF THE DOCTRINE  
 OF TRANSFERRED INTENT IS A TOTALLY  
 DIFFERANT THEORY AND CRIME FROM  
 THE THEORY OF THE FELONY MURDER  
 RULE IS'NT IT? PROOF THAT THE STATE  
 OF SOUTH CAROLINA, SOLICITOR ISSAC MC.  
 DUFFIE STONE, SOLICITOR SHAWN THORNTON,  
 JUDGE COOPER, SGT LAUREL ALBERTIN AND  
 BEAUFORT COUNTY SHERIFF DEPARTMENT.  
 ALL PLANNED TO UNLAWFULLY, UNCONSTIT-  
 UTIONALLY, AND ILLEGALLY, FALSELY IMPRI-  
 SON ME ON THE UNINDICTED THEORY  
 AND CRIME OF COMMON LAW MURDER  
 BY THE UNINDICTED THEORY OF THE DOCT-  
 RINE OF TRANSFERRED INTENT. MANY

MONTHS BEFORE MY TRIAL TOOK PLACE  
 CONSTITUTING A RIXED TRIAL. EVEN  
 THOW I TYRONE LORENZA ROBINSON WAS  
 ARRESTED, AND INDICTED AND SUPPOSED TO  
 BE TRIED ON THE PARTICULAR THEORY AND

CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY ONLY THAT JUDGE COOPER DECIDED AND DETERMINED AT PRE TRIAL HEARING THAT TYRONE LORENZO ROBINSON WOULD BE TRIED ON BY THE FELONY MURDER RULE THEORY ONLY.

AFTER THE STATE OF SOUTH CAROLINA AND THE DEFENSE RESTED THEIR CASE, TRIAL JUDGE COOPER UNCONSTITUTIONALLY CHARGED AND INSTRUCTED THE JURY TO DECIDE ON THE UNINDICTED THEORY AND CRIME OF COMMON LAW MURDER BY THE UNINDICTED THEORY OF THE DOCTRINE OF TRANSFERRED INTENT. THAT INVO-

-LVES THE DETERMINATION OF THE STATE OF MIND TO CONVICT A PERSON ON AND IS NOT A LESSER INCLUDED OFFENSE TO FELONY MURDER BY THE FELONY MURDER RULE. THE UNINDICTED THEORY AND CRIME OF THE DOCTRINE OF TRANSFERRED INTENT REQUIRES TOTALLY DIFFERANT ELEMENTS TO PROVE AND REQUIRES TOTALLY DIFFERANT AGGRAVATING CIRCUMSTANCES TO PROVE. THAT THE GRAND JURY DID NOT INDICT TYRONE ROBINSON ON THAT THE GRAND JURY DID NOT ISSUE A INDICTMENT AGAINST TYRONE ROBINSON FOR THAT INVOLVES THE UNINDICTED THEORY AND ELEMENT OF TRANSFERRED INTENT. THAT IS ABSOLUTELY NOT A ELEMENT TO THE ELEMENTS REQUIRED TO PROVE THE FELONY MURDER RULE THEORY. THE UNINDICTED THEORY OF THE DOCTRINE OF TRANSFERRED INTENT, IS A TOTALLY DIFFERANT UNINDICTED THEORY TO PROVE, TOTALLY DIFFERANT FROM THE ELEMENTS REQUIRED TO PROVE THE FELONY MURDER RULE THEORY. THAT TYRONE ROBINSON WAS ARRESTED ON, INDICTED ON AND TRIED

ON before the JURY at TRIAL ON IND-  
-ictment # 2012-GS-07-1935 FOR PROOF &  
CITE

CASE LAW MERITS

ROBERT DELA ROSA VS. JAMES A. LYNAU-  
-GH 817 F.2d 259 (5th CIR 1987) "quoting"  
The state prosecuted dela rosa for the  
MURDER OF RODRIGUEZ UNDER A THEORY  
OF TRANSFERRED INTENT AND CONCLUD-  
ed DURING ORAL ARGUMENT THAT  
THE JURY NECESSARILY BASED ITS  
VERDICT ON TRANSFERRED INTENT  
FURTHER "quoting"

THE RELEVANT INQUIRY IN BOTH CASES,  
DUE TO THE STATE USE OF TRANSFERRED  
INTENT, IS WHAT DELA ROSA'S STATE  
OF MIND WAS TOWARD LEE AT TWO  
DIFFERANT POINTS IN TIME.

There are absolutely no indictments  
from the Grand Jury that charge  
and alledge that TYRONE LORENZA  
ROBINSON did shoot and kill the victim  
KHALIL SINGLETON THIS IS absolutely a  
UNINDICTED ACT AND THEORY and  
crime alledged that the Grand Jury  
did not indict me on and the Grand  
Jury did not issue a indictment  
charging TYRONE ROBINSON WITH.

I DEMAND THIS COURT AND  
THE STATE OF SOUTH CAROLINA  
TO PRODUCE INDICTMENT charging  
UNINDICTED THEORY ACT AND CRIME  
THE JURY FOUND ME GUILTY ON

TYRONE LORENZA ROBINSON demand

THIS SOUTH CAROLINA COURT OF APPEALS  
 AND THE STATE OF SOUTH CAROLINA  
 TO PRODUCE AND SUPPLY T TYRONE  
 LORENZA ROBINSON. WITH A CERTIFIED  
 COPY OF THE GRAND JURY ISSUED  
 INDICTMENT. THAT IN ITS WRITTEN  
 WRITE UP STATES, CHARGE AND ALLEDGE  
 THAT T TYRONE LORENZA ROBINSON  
 DID SHOOT AND KILL THE VICTIM  
KHALIL SINGLETON.

BECAUSE THE GRAND JURY DID NOT  
 ISSUE A INDICTMENT CHARGEING AND  
 ALLEDGEING THAT T TYRONE LORENZA  
 ROBINSON DID SHOOT AND KILL THE  
 VICTIM KHALIL SINGLETON.

AS A MATTER OF LAW T TYRONE LORENZA  
 ROBINSON CONVICTION ON THE UNIND-  
 ICTED THEORY AND CRIME OF COMMON  
 LAW MURDER BY THE UNINDICTED  
 THEORY OF THE DOCTRINE OF TRANSF-  
 ERRED INTENT BY THE UNINDICTED  
 ALLEGATION ALLEDGEING THAT T DID  
 SHOOT AND KILL KHALIL SINGLETON.

THAT THE GRAND JURY DID NOT INDICT-  
 ME ON, THE GRAND JURY DID NOT ISSUE  
 A INDICTMENT CHARGEING ME WITH  
 AND THAT IS NOT CHARGED OR ALLED-  
 GED INSIDE OF THE WRITTEN WRITE  
 UP OF INDICTMENT # 2012-GS-07-  
 -1735. IS CURRENTLY CAUSEING T  
 TYRONE LORENZA ROBINSON TO BE HELD  
 UNCONSTITUTIONALLY, UNLAWFULLY,  
 AND ILLEGALLY RESTRAINED, DETAINED

and deprived out of my freedom and  
 liberty without due process of law. IN  
 VIOLATION OF my 5th Amendment Right  
 to the Grand Jury clause which states  
 "quote" no person shall be held to  
ANSWER FOR A CAPITAL OR OTHERWISE  
FAMOUS CRIME UNLESS BY PRESENT-  
MENT OR INDICTMENT OF GRAND  
JURY. And IN VIOLATION OF my  
 5th Amendment Right to due process  
 which states "quote" no person shall  
be DEPRIVED OUT OF LIBERTY  
WITHOUT DUE PROCESS OF LAW

and in violation of my 14th Amend-  
 -ment Right to due process.

Therefore I TYRONE LORENZA ROBINSON  
 demand that this south carolina court  
 of appeals. VACATE my conviction  
 and prison sentence I received. For  
 the UNINDICTED THEORY AND CRIME OF  
 common law murder by the UNINDICT-  
 -ED THEORY OF THE DOCTRINE OF  
 TRANSFERRED INTENT by and for the  
 UNINDICTED ALLEGATION THEORY CRIME  
 and act ALLEGING that I did shoot  
 and kill KHALIL SIMPLETON. That the  
 Grand Jury did not issue a indictm-  
 -ent charging I TYRONE LORENZA ROB-  
 -INSON with. by doing so I TYRONE LOREN-  
 -ZA ROBINSON demand that this south  
 carolina court of appeals order that  
 I TYRONE LORENZA ROBINSON be

Released immediately from currently being held unlawfully, unconstitutional, and illegally restrained, detained, deprived out of my freedom and liberty and falsely imprisoned. For violation of my 5th and 14th Amendment rights for case law merits review.

Case Law Merits

Supreme Court of South Carolina  
Case Law of.

LUCAS BATLEY vs. STATE OF SOUTH CAROLINA  
OPINION NO. 26975

"Quateim"

In South Carolina it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. A material variance between charge and proof entitles the defendant to a directed verdict. One of the two ways an indictment can be improperly modified is through a variance, where by the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment."

When the indictment facially charges a complete offense and the state presents evidence which convicts

under a different Theory than that alleged."

A conviction under latter circumstances violates principles of due process because the state has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged."

A material variance that violates a defendant's substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants a reversal on an appeal of a judgement of conviction of the offense not charge in the indictment."

### CASE LAW MERITS

State vs. McFadden, 342 539 S.E. 2d 387 see also State vs. Roof 380 S.E. 2d 828 "quoting"

defendant can not be convicted of crime for which he is not indicted.

### CASE LAW MERITS

SUPREME COURT OF THE UNITED STATES OF AMERICA CASE LAW OF STIRONE vs. U.S. PA. 1960, 80 S. CT, 270 "quoting"

The BAIN case which has never been disapproved, stands for the rule that a court can not permit a defendant to be tried on charges that are not made in the indictment.

-ment against him. further "quoting"  
 The RIGHT to have the GRAND JURY  
 make the charge on its own judge-  
 -ment is a substantial right  
 which can not be taken away  
 with or without court Amendment.  
 Here as in the BAZIN case we can  
 not know whether the grand jury  
 would have included in its  
 indictment a charge that commer-  
 -ace in steel from a non existent  
 steel mill had been interfered  
 with. yet because of the courts  
 admission of evidence and under  
 its charge this might have been  
 the basis upon which the TRIAL  
 JURY convicted petitioner. FFSO,  
 he was convicted on a charge the  
 grand jury never made against  
 him. THIS WAS FATAL ERROR  
REVERSED

NOT GUILTY  
 OF FELONY MURDER by the felony  
 murder rule as a matter of law

Because the jury unconstitutionally found  
 Tyrone Lorenza Robinson guilty on the unind-  
 -icted theory and crime of common law  
 murder by the unindicted theory of the  
 doctrine of transferred intent. That the  
 Grand jury did not indict Tyrone Rob-  
 -inson on and that's not charged or alle-  
 -ged inside of the written write up of  
 indictment # 2012-65-07-1935.

AS A MATTER OF LAW THE JURY FOUND TYRONE ROBINSON "NOT GUILTY" OF THE THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE AND FOUND TYRONE ROBINSON NOT GUILTY ON INDICTMENT # 2012-GS-07-1935.

BECAUSE AS MATTER OF LAW THE JURY FAILURE TO DECIDE ON THE THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE, AGAINST TYRONE LORENZA ROBINSON. THATS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-1935 CONSTITUTES IMPLIED "AQUITTAL" IN TYRONE LORENZA ROBIN-

SON FAVOR ON THE THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY ON THE DEATH OF KHALIL SINGLETON AND THE JURY FAILURE TO DECIDE ON THE THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE ON THE DEATH OF KHALIL SINGLETON. IS THE EQUIVALENT TO A FINDING OF "NOT GUILTY" IN TYRONE ROBINSON FAVOR ON INDICTMENT # 2012-GS-07-1935 AND THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY. THATS CHARGED AND ALLEGED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-GS-07-1935 THAT TYRONE LORENZA ROBINSON. WAS TRIED ON BEFORE THE JURY AT TRIAL. FOR PROOF REVIEW

CASE LAW MERITS

THE STATE VS. LOUIS ENGLISH FULLER 552 S.E.2d 282 CASE NO: 25334 "QUOTING"  
IF ACCESSORY AFTER THE FACT IS NOT CHARGED IN THE INDICTMENT, BUT IS INSTRUCTED TO CLARIFY MERE PRESENCE, A FINDING OF ACCESSORY AFTER THE FACT IS THE EQUIVALENT TO A FINDING OF NOT GUILTY!!

## CASE LAW MERITS

4TH CIRCUIT COURT OF APPEALS CASE  
LAW OP.

LEVINSON VS. MURDAUGH 183F.3D 300  
4TH CIR. 1999 "Quoting"

DOUBLE JEOPARDY BAR TO RETRIAL  
FOR RECKLESS HOMICIDE CHARGE,  
AFTER JURY CONVICTED DEFENDANT  
FOR FELONY DWB BECAUSE JURY SILENCE  
ON RECKLESS HOMICIDE WAS IMPLIED  
ACQUITTAL.

BECAUSE I TYRONE LORENZA ROBINSON  
AM NOT GUILTY OF THE PARTICULAR  
THEORY AND CRIME OF FELONY MURDER  
BY THE FELONY MURDER RULE THEORY.  
THAT I WAS ARRESTED ON, INDICTED ON  
AND TRIED ON BEFORE THE JURY ON INDICT-  
MENT # 2012-GJ-07-1935.

ALSO BECAUSE THE JURY AS A MATTER OF  
LAW DID NOT FIND I TYRONE LORENZA  
ROBINSON GUILTY - ON THE PARTICULAR  
THEORY AND CRIME OF FELONY MURDER BY  
THE FELONY MURDER RULE THEORY. THAT  
I TYRONE LORENZA ROBINSON WAS ARRESTED  
ON, INDICTED ON, AND TRIED ON BEFORE THE  
JURY AT TRIAL ON INDICTMENT # 2012-  
GJ-07-1935.

AS A MATTER OF LAW I TYRONE LORENZA  
ROBINSON CONVICTION - ON THE UNINDICTED  
THEORY AND CRIME OF COMMON LAW MURD-  
ER BY THE UNINDICTED THEORY OR THE  
DOCTRINE OF TRANSFERRED INTENT, THAT  
THE GRAND JURY DID NOT INDICT ME ON,  
AND THE GRAND JURY DID NOT ISSUE A  
INDICTMENT CHARGING ME WITH  
VIOLATES MY 5TH AND 14TH AMENDMENT  
RIGHT TO DUE PROCESS OF LAW AND CAUSE-  
ING I TYRONE LORENZA ROBINSON TO BE  
UNLAWFULLY, UNCONSTITUTIONALLY AND

ILLEGALLY RESTRAINED, DETAINED AND DEPRIVED OUT OF MY FREEDOM AND LIBERTY BY SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AND PERRY CORRECTIONAL FACILITY AND WARDEN CARTLEDGE

WITHOUT DUE PROCESS OF LAW IN VIOLATION OF MY 5TH AND 14TH AMENDMENT RIGHT TO DUE PROCESS OF LAW.

BECAUSE THE STATE OF SOUTH CAROLINA HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT AND FACT NECESSARY

THAT CONSTITUTE THE PARTICULAR THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE, THAT TYRONE ROBINSON WAS ARRESTED ON, INDICTED ON AND TRIED ON BEFORE THE JURY AT TRIAL ON INDICTMENT # 2012-65-07-1935,

BECAUSE AS A MATTER OF LAW THIS CONSTRUCTIVE AMENDMENT AND OR MATERIAL VARIANCE. ALSO VIOLATES TYRONE LORENZA ROBINSON 5TH AMENDMENT RIGHT

TO THE GRAND JURY CLAUSE SUBSTANTIAL RIGHT TO BE TRIED ONLY ON THE PARTICULAR THEORY AND CRIME OF FELONY MURDER BY THE FELONY MURDER RULE THEORY ONLY,

THAT IS PRESENTED INSIDE OF THE WRITTEN WRITE UP OF INDICTMENT # 2012-65-07-1935 THAT THE TRIAL JUDGE DETERMINED AT PRE TRIAL HEARING TYRONE LORENZA ROBINSON

WOULD BE TRIED ON BEFORE THE JURY AT TRIAL. THESE 5TH AND 14TH AMENDMENT VIOLATIONS CONSTITUTE FATAL ERROR

AND CURRENTLY IS CAUSING TYRONE LORENZA ROBINSON TO BE HELD UNLAWFULLY, UNCONSTITUTIONALLY, AND ILLEGALLY DETAINED,

RESTRAINED, DEPRIVED OUT OF MY FREEDOM AND LIBERTY WITHOUT DUE PROCESS OF LAW AND FALSLY IMPRISONED IN VIOLA-

TION OF MY 5TH AND 14TH AMENDMENT RIGHTS OF THE CONSTITUTION OF THE UNITED

States of America, on the unindicted theory and crime of common law murder by the unindicted theory of the doctrine of transferred intent, by the unindicted allegation that I did shoot and kill Khalil Singleton. That the Grand Jury did not indict me on and the Grand Jury did not issue a indictment charging me with pre-judging Tyrone Lorenza Robinson and violating my right to a fair trial by depriving me out of a fair trial. Therefore this court must reverse and vacate Tyrone Lorenza Robinson conviction on the unindicted theory and crime of common law murder by the unindicted theory of the doctrine of transferred intent and the unindicted allegation that I did shoot and kill Khalil Singleton, and by doing so this court of appeals must order South Carolina Department of Corrections, Perry Correctional Institution and Warden Cartledge to release Tyrone Lorenza Robinson from currently being held unlawfully, unconstitutionally, and illegally, detained, restrained, deprived out of my freedom and liberty without due process of law and falsely imprisoned in violation of my 5th and 14th Amendment right of the constitution of the United States of America.

### CASE LAW MERITS

Supreme Court of South Carolina case  
Law of.

Lucas Bailey vs. State of South Carolina

Opinion No. 26975 "Quoting"

In South Carolina 7th Rule of

UNIVERSAL OBSERVANCE IN ADMINISTERING THE CRIMINAL LAW THAT A DEFENDANT MUST BE CONVICTED, IF CONVICTED AT ALL, OF THE PARTICULAR OFFENSE CHARGED IN THE BILL OR INDICTMENT.

A MATERIAL VARIANCE BETWEEN CHARGE AND PROOF ENTITLES THE DEFENDANT TO A DIRECTED VERDICT.

ONE OF THE TWO WAYS AN INDICTMENT CAN BE IMPROPERLY MODIFIED IS THROUGH "A VARIANCE WHERE BY THE CHARGE IN TERMS OF THE INDICTMENT ARE LEFT UNALTERED, BUT THE EVIDENCE OFFERED AT TRIAL PROVES FACTS MATERIALLY DIFFERENT FROM THOSE ALLEGED IN THE INDICTMENT." WHEN THE INDICTMENT FACTUALLY CHARGES A COMPLETE OFFENSE AND THE STATE PRESENTS EVIDENCE WHICH CONVICTS UNDER A DIFFERENT THEORY THAN THAT ALLEGED. A CONVICTION

UNDER LATTER CIRCUMSTANCES VIOLATES PRINCIPLES OF DUE PROCESS

BECAUSE THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH A DEFENDANT WAS CHARGED - A MATERIAL VARIANCE THAT VIOLATES A DEFENDANT'S SUBSTANTIAL RIGHT TO BE TRIED ONLY ON CHARGES PRESENTED IN AN INDICTMENT CONSTITUTES FATAL ERROR AND WARRANTS A REVERSAL ON AN APPEAL OR A JUDGEMENT OF CONVICTION OF THE OFFENSE, NOT CHARGED IN THE INDICTMENT.)

submitted under penalty of perjury to be true exact and correct by Tyronne Lorenza Robinson

Signature: Tyronne Lorenza Robinson  
PRINT: TYRONNE LORENZA ROBINSON

Date: 6/15th/2015

**WITNESSES**

Inv. L. Albertin-BCSO

DOCKET NO. 2012GS0701935

**The State of South Carolina**

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

October Term 2012

I  
Hereby appear in my own proper person and plead guilty to the within indictment or to

**ARREST WARRANT NUMBER**

2012A0720300114

THE STATE

vs.

**ACTION OF GRAND JURY**

*True Bill*

Tyrone Robinson

Defendant

*Melinda Beers*  
Foreperson of Grand Jury  
Date:

OCT 18 2012

Indictment for

Murder / Murder

Witness:

SC Code: 16-03-0010; 16-03-0020  
CDR Code:0116

**VERDICT**

C.C.C. PLS. and G.S.

Foreperson of Petit Jury  
Date:

INDICT

24

24

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

INDICTMENT  
2012GS0701935

At a Court of General Sessions, convened on October 18, 2012, the Grand Jurors of Beaufort County present upon their oath:

**Murder / Murder**

That in Beaufort County on or about September 1, 2012, while engaged in an ongoing gun battle, an inherently dangerous felony, Tyrone Robinson did willfully, unlawfully and with malice aforethought cause the victim Khalil Singleton to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, SC, and that Khalil Singleton did die in Beaufort County as a proximate result thereof on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Gene M. Sherman*

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Lucas Bailey, Petitioner,

v.

State of South Carolina, Respondent.

**ON WRIT OF CERTIORARI**

Appeal From Aiken County  
Doyet A. Early, III, Circuit Court Judge

Opinion No. 26975  
Submitted March 16, 2011 - Filed May 9, 2011

**REVERSED AND REMANDED**

Tara Shurling, of Columbia, for Petitioner.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh,  
Assistant Deputy Attorney General Salley W.  
Elliott and Assistant Attorney General Mary  
S. Williams, of Columbia, for Respondent.

**JUSTICE BEATTY:** After his conviction for homicide by child abuse[1] was affirmed on direct appeal, Lucas Bailey filed an application for post-conviction relief (PCR). We granted a petition for a writ of certiorari to review the denial of PCR. Bailey contends the judge erred in denying PCR as trial counsel was ineffective in failing to object to supplemental jury instructions that allowed the jury to convict him for an act that was not alleged in the indictment. We reverse and remand for a new trial.

## I. Factual/Procedural Background

This case arises from the tragic death of sixteen-month-old Charles Devon Allen ("Victim"). At the time of his death, Victim lived with his mother, Amy Hughes, her boyfriend, Bailey, and Victim's two sisters, who were then five and six years old, respectively. [2]

Around 6:00 p.m. on Thursday, April 26, 2001, Bailey called 9-1-1 and reported that Victim was not breathing. When Aiken County emergency personnel arrived, they found Victim lying face down on the bed. The coroner pronounced Victim dead as his body was "cool to the touch" and *rigor mortis* had begun to set in. Based on the history presented by Bailey and Hughes, investigators initially believed that Victim might have died from an accidental overdose of cold medications. However, upon examining Victim's body, the coroner noticed three "circular marks" or "discolorations" on the child's abdomen.

The next day, Dr. Joel Sexton, a forensic pathologist, performed an autopsy. Dr. Sexton noted visible bruises on Victim's abdomen. Upon further examination, he discovered "extensive internal injuries in the abdominal region and in the head region." Injuries to the intestines and the mesentery arteries and veins indicated multiple blows had torn the areas by compression against the spine. As to Victim's head, Dr. Sexton noted that "there were numerous small round contusions . . . in the front, on the top of the head, on the right side of the head and in the back," which resulted in swelling of the brain. According to Dr. Sexton, the contusions were consistent with a fist or a knuckle-sized object hitting the head. He believed the head injuries contributed to Victim's death and were consistent with some of the symptoms exhibited by Victim prior to his death. He explained that a head injury leads to swelling of the brain, which in turn causes vomiting, lethargy, a "limp" body, and eyes that "roll back" into the head.

Ultimately, Dr. Sexton opined the abdominal injuries were the primary cause of Victim's death. He believed that at least one of the abdominal injuries had occurred hours before death. He concluded that the later abdominal injuries could have caused Victim's death within minutes due to the loss of blood. The cause of death was "listed as blood loss which we refer to as exsanguination due to laceration of these mesentery arteries and veins . . . due to blunt force injury to the abdomen due to a beating." Although Dr. Sexton could not definitively pinpoint Victim's time-of death, he opined that it occurred sometime after 2:30 p.m. on Thursday, April 26, 2001. Dr. Sexton believed Victim's injuries were inflicted by an adult as a child would not have had the "force" to cause these injuries. Finally, he did not believe the cold medications given to Victim prior to his death caused or contributed to the death.

Law enforcement interviewed Hughes and Bailey. Subsequently, an Aiken County grand jury indicted Bailey for homicide by child abuse.

At trial, Hughes testified for the State. Hughes testified that she had worked on the Monday and Tuesday preceding Victim's death. According to Hughes, Victim was cared for by Bailey on Monday and then went to daycare on Tuesday. Because Victim had a cold on Wednesday, Hughes stayed home from her job to care for him. Hughes recalled that she and Victim went to sleep in the same bed around 8:00 p.m. Around 12:00 or 12:30 a.m., Bailey took Victim into the kitchen to feed him. Hughes, who had remained in bed, heard a "loud noise" coming from the kitchen followed by Victim crying out. Although

Hughes did not get up to check on Victim, she asked Bailey what had happened, to which Bailey responded, "Nothing." When Bailey returned to bed around 12:50 a.m., he told Hughes that he had put Victim in the bed with his sisters.

Hughes stated that her oldest daughter came in the next morning and reported that Victim had thrown up. According to Hughes, Bailey got up and when he returned he told Hughes that Victim was fine and that he had cleaned him up and placed him in his crib. When Hughes checked on Victim later on Thursday morning, she observed that Victim was unusually quiet and did not stand up in his crib. After taking her daughter to school, Hughes returned and gave Victim some medicine for his cold, but Victim was unable to keep it down. Hughes stayed home from work to care for Victim and called a friend to bring additional cold medication. Hughes stated that Victim was unable to keep this medication down and that he was weak and "wasn't moving." She then took Victim into the bedroom where she laid down with him and Bailey. When Hughes's mother arrived around noon, Hughes left Victim with Bailey. While she was talking with her mother, Hughes heard a "loud sound" from her bedroom. Hughes then asked her daughter to get Victim, but her daughter reported that Bailey told her "no."

Approximately twenty or thirty minutes later, Hughes's daughter took Victim out of the bedroom and brought him to Hughes. Hughes described Victim as "droopy," unable to sit up on his own, and that his eyes rolled back into his head. Around 2:00 p.m., Hughes's friend returned with a different cold medication that Victim was able to tolerate. Hughes testified that Victim fell asleep and Bailey then put him to bed. After she laid down with Victim for approximately thirty minutes to an hour, she got up and checked that Victim was breathing normally.

Around 5:00 p.m., Hughes left the home to drive Bailey's mother to the store. When Hughes returned home around 6:00 or 6:30 p.m., she found emergency personnel at her home. At that time, she was informed that Victim was dead. Hughes ultimately claimed that Bailey had struck Victim, resulting in his death.

During his testimony, Bailey adamantly denied hitting Victim or causing his death. Although Bailey recounted essentially the same timeline as Hughes, he claimed that he and Hughes discussed taking Victim for medical treatment but decided to see if Victim felt better after taking medication on Thursday. He further testified that he checked on Victim after Hughes left on Thursday afternoon and discovered that Victim was not breathing.

In his jury charge, the judge instructed the jurors on the offense of homicide by child abuse by reading the applicable statutory language. [3]

Approximately one hour into deliberations, the jury sent a note to the judge with several questions concerning evidentiary issues. Additionally, the jury asked "the difference between the indictment and the last statement on the indictment form" [4] and "whether the neglect has to directly contribute to the death." In response to the notes, counsel believed that recharging the statute on the offense of homicide by child abuse would be appropriate.

When the jury returned to the courtroom, the foreman referenced the last sentence of the indictment and explained that the jury "wanted to get an understanding of the meaning of the indictment." After the judge read the last sentence of the indictment, the foreman

responded:

Well, the definition was the question we [were] asking for. Also, our verdict to . . . to say this person did that last statement . . . you're talking two different . . .

Before the foreman finished his statement, the judge explained the purpose of the indictment was to "state the charges with enough specificity so that the defendant knows what he has to defend against." The judge then re-read the applicable provisions of the homicide by child abuse statute and gave the jury a printed copy of the statute.

Approximately thirty minutes later, the jury sent out another note, stating:

Does the State have to prove beyond a reasonable doubt: that the defendant caused the death of the child and does the neglect or abuse have to have caused the death?

Counsel and the judge debated the meaning of the jury's question. When the jury returned to the courtroom, the judge explained that "in this case, the only allegations are that [the defendant] caused the death of the child by neglect and abuse," and that under the statute several acts qualified as "neglect and abuse," but the State was required to prove only one of them.

In response, the foreman stated:

We see . . . as a jury, total jury, we see the neglect in the parents, but we fail to see evidence that Lorenzo struck the child. There was no evidence to us that Lorenzo struck this child. There was neglect, yes, on both parties, but we fail to see that - - - and that's written in that document that we didn't see any evidence. We didn't see any evidence . . . And the definition of your homicide has a combination of both. I know [its] a part of that definition, but we fail to see any evidence that he did that.

The judge then instructed the jury to refer to the language of the homicide by child abuse statute.

Out of the presence of the jury, defense counsel indicated her concern over the "emphasis on the neglect to the possible exclusion of the rest of the statute;" however, she believed the jury understood the judge's explanation.

When the jury returned to the courtroom, the judge issued supplemental instructions that stated in part:

[I]f you are distinguishing some acts that you would call abuse and some that you would call neglect, that's up to you as long as you kind of go by the statute here. The statute doesn't really . . . It says it can be abuse or neglect, and it doesn't say which acts might be which, but it says that abuse or neglect is an act or omission which causes harm.

So if there is an act or omission which causes harm then that is abuse or neglect, by definition under this statute. Any act which causes, any act or omission, or failure to act, which causes harm to the child's health, that would be by this statute abuse or neglect,

without getting into the difference of which is which, it doesn't matter.

The judge further explained that:

So you have to find that [the defendant] either did something or failed to do something . . . that caused the death of the child. Either his doing something which is an act, or failing to do something which is an omission. And that that conduct on his part, either the act or the omission, caused the death of this child.

Moments later, a juror approached the bench and, in an off-the-record discussion, expressed her concern to the judge over the definition of the word "caused."<sup>[5]</sup> The judge then gave an instruction on proximate cause. In part, the judge stated: "You must find that the State has convinced you beyond a reasonable doubt that either an act or failure to act on the part of this defendant is a proximate cause of the death of this child."

Nine minutes later, the jury returned with a guilty verdict. The judge denied counsel's motion for a new trial and sentenced Bailey to twenty-five years' imprisonment.

Bailey appealed his conviction and sentence to the Court of Appeals, alleging the trial judge erred in declining to direct a verdict of acquittal. The court affirmed Bailey's conviction and sentence, concluding that "substantial circumstantial evidence" supported a finding that Bailey abused Victim. State v. Bailey, Op. No. 2003-UP-744 (S.C. Ct. App. filed Dec. 17, 2003).

Subsequently, Bailey filed a timely PCR application. After a hearing, the PCR judge denied Bailey's application. As to trial counsel's performance, the PCR judge found, in part, that counsel was not ineffective for failing to object to certain jury instructions. In so ruling, the PCR judge concluded that counsel's decision constituted trial strategy and that even if counsel's performance was deficient, Bailey had not proven prejudice.

## II. Discussion

### A.

Bailey contends the judge erred in denying his PCR application as his trial counsel was ineffective in failing to object to the trial judge's supplemental jury instructions. In support of this contention, Bailey claims the instructions allowed the jury to convict him for "an act alternative to the one specified with particularity in the indictment." Because "the infliction of physical injuries was the specific act alleged in the indictment," Bailey asserts the jury was limited to a determination of whether he committed this act. Based on the foreman's statement that the jury found no evidence that Bailey struck the child, Bailey claims the jury found "a material variance between the act alleged in the indictment and the State's proof." Specifically, Bailey avers the jury convicted him of an unindicted crime as the jury found evidence of neglect rather than the specifically-alleged acts of abuse. Given that the judge's erroneous instructions precipitated this result, Bailey asserts his trial counsel was ineffective in failing to object to these supplemental instructions.

### B.

\* The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

\* The United States Supreme Court has established a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Under the second prong, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Simmons v. State, 331 S.C. 333, 503 S.E.2d 164, 166 (1998).

This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them, and will reverse the decision of the PCR judge when it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007).

C.

As a threshold matter, the State claims Bailey's issue is not preserved for appellate review given it was not raised to and ruled upon by the PCR judge. We disagree.

In his PCR application, Bailey characterized the trial judge's instructions as erroneous and confusing because the jury was misled regarding the homicide by child abuse statute and the indictment. Additionally, Bailey argued that trial counsel was ineffective in failing to object to certain instructions.

During the PCR hearing, Bailey testified that his trial counsel failed to object to the improper jury instructions. In explaining this claim, Bailey referenced the trial judge's supplemental instructions and the judge's discussions with the jury regarding its questions. Trial counsel admitted that she did not object to these instructions and contended her decision constituted trial strategy. Finally, in his written order, the PCR judge addressed Bailey's allegation of "ineffective assistance of counsel for failing to object to jury charges."

Based on the foregoing, we find Bailey's argument was properly preserved for this Court's review. See State v. Moore, 357 S.C. 458, 593 S.E.2d 606 (2004) (holding an issue must be raised to and ruled upon by the trial court to be preserved for appellate review).

D.

Having found that Bailey's issue is properly before this Court, we turn to the merits.

\* "In South Carolina, [i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment." State v. Ginn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) (quoting State v. Cody, 180 S.C. 417, 423, 186 S.E. 165, 167 (1936)). "A material variance between charge and proof entitles the defendant to a directed verdict; such a

variance is not material if it is not an element of the offense." Id. (citation omitted); see 41 Am. Jur. 2d Indictments & Informations § 252 (2005) (stating that one of the two ways an indictment can be improperly modified is through "a variance, whereby the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment").

"[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged." Thomason v. State, 892 S.W.2d 8, 11 (Tex. Crim. App. 1994) (citations omitted). "A conviction under the latter circumstance violates principles of due process . . . because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged." Id. (citations omitted); see 41 Am. Jur. 2d Indictments & Informations § 256 (2005) ("A material variance that violates a defendant's substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants a reversal on an appeal of a judgment of conviction of the offense not charged in the indictment.").

In a case involving similar facts to the instant case, the Texas Court of Appeals found error in the trial judge's jury instructions that permitted the jury to convict the defendant of an act not alleged in the indictment. Castillo v. State, 7 S.W.3d 253 (Tex. Ct. App. 1999). In Castillo, the defendant was charged with the felony offense of intentionally and knowingly causing serious bodily injury to a child and convicted of the lesser-included offense of reckless injury to a child pursuant to section 22.04(a)(1) of the Texas Penal Code. Id.; Tex. Penal Code Ann. § 22.04(a)(1) (1994) ("A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes a child . . . serious bodily injury."). The one-count indictment charging Castillo with this offense provided that Castillo:

[d]id then and there intentionally and knowingly cause serious bodily injury to Triston Castillo, a child 14 years or younger by then and there striking the child with a deadly weapon, to wit: the defendant's hands or by striking the child's head against a deadly weapon, to wit: a wall or a floor.

Id. at 255. In prefacing its analysis, the Texas Court of Appeals noted that "[b]y including a more specific description, the State undertook the burden of proving the specific allegations to obtain a conviction." Id.

At trial, the child's mother testified that the morning the child was taken to the hospital, she was taking a shower when she heard the child "crying out loudly" while in Castillo's care. When she went to check on the child, she observed that he was "in a daze," "seizing," and "limp." Id. at 255. Although Castillo admitted to shaking the child because he was having difficulty breathing, he expressly denied that the child hit or struck a wall. Id. at 257.

On appeal, Castillo raised several issues, including an argument that the trial judge egregiously erred by adding, through a lesser-included offense charge, a theory of prosecution ("shaking") that was not supported by the indictment. Id. at 254. The Texas Court of Appeals agreed with Castillo's argument, finding the trial court erred in "enlarging" the indictment by adding "shaking" as an additional manner and means of committing the charged offense. Id. at 260. In so ruling, the court recognized that a defendant may only

be tried and convicted of the crimes alleged in the indictment and the State is bound by the theory alleged in the indictment. Id. at 258-59. [6]

In light of its holding, the court declined to reach Castillo's claim of ineffective assistance of counsel. The court, however, noted the claim would "loom large on the scene, given the failure to move for an instructed verdict and to object to the charge which enlarged the indictment." Id. at 262.

We agree with the reasoning in Castillo and apply its analysis to the facts of the instant case. We conclude that the trial judge's instructions improperly "enlarged" the indictment by instructing the jury that it could convict Bailey of a crime not alleged in the indictment.

Here, the indictment charging Bailey with homicide by child abuse specifically alleged that Bailey "inflicted upon [Victim] physical injuries to his abdomen resulting in exsanguination and consequently the death of the child." By its express terms, the indictment alleged that Bailey's "act" resulted in Victim's death. Significantly, it did not allege that Victim's death was the result of an "omission" on the part of Bailey.

Thus, the indictment apprised Bailey that he had to defend only against the allegation that he inflicted the physical injuries resulting in Victim's death. See Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) ("The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted."); State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("The indictment is a notice document.").

A careful review of the jury's questions and the ensuing discussion with the judge reveals that the jury focused on the terms of the indictment and recognized the alternative elements in the homicide by child abuse statute, *i.e.*, an "act" versus an "omission." The foreman of the jury then stated the jury found "no evidence" that Bailey struck the Victim. [7] Based on this statement and the reference to the last line of the indictment, it is evident the jury was inquiring as to whether a finding of "neglect" on the part of Bailey was sufficient for a conviction under the statute.

The judge's supplemental instructions, which were confusing and contradictory, resulted in the erroneous directive that the jury could find Bailey guilty of homicide by child abuse if it found an act of "abuse or neglect." Such an instruction was in direct contravention of the specific act alleged in the indictment and, thus, constituted a material variance or a "constructive amendment" to the indictment.

We find that trial counsel not only failed to object to these jury instructions, but also acquiesced in the judge's erroneous interpretation. Thus, counsel's failure to object did not constitute a valid trial strategy. Cf. Padgett v. State, 324 S.C. 22, 484 S.E.2d 101 (1997) (finding trial counsel's failure to challenge first-degree burglary indictment did not constitute valid trial strategy where counsel did not recognize the distinction between a "barn" and a "dwelling" for the purposes of first-degree burglary).

Having found that trial counsel's performance was deficient, the question becomes whether Bailey was prejudiced by counsel's errors. [8] Because the supplemental

instructions created a material variance between the State's evidence and the allegations in the indictment, we conclude that Bailey was prejudiced by trial counsel's failure to object as this deficiency undermined confidence in the outcome of his trial. Accordingly, we hold trial counsel rendered ineffective assistance. See McKnight v. State, 378 S.C. 33, 48-49, 661 S.E.2d 354, 361-62 (2008) (finding trial counsel rendered ineffective assistance when she failed to object to the supplemental jury charge on the measure of criminal intent required for a conviction under the Homicide by Child Abuse statute; reasoning that the supplemental charge: (1) did not clarify the particular mental state and served to "further confuse the jury;" (2) "attained a special significance in the minds of the jurors;" and (3) was "prejudicial in fact" as the jury returned a guilty verdict five minutes after the supplemental charge).

**III. Conclusion**

In conclusion, we find Bailey's issue was preserved for appellate review as it was raised to and ruled upon by the PCR judge. In terms of the merits, we hold trial counsel was deficient in failing to object to the supplemental jury instructions as the judge perpetuated the jury's confusion that they could convict Bailey of homicide by child abuse based on an unindicted allegation of neglect. We find that a confluence of the lone specific allegation of physical abuse in the indictment and the jury's expressed confusion about the necessity of evidence of physical abuse by Bailey with the insufficient jury instructions created a structural due process defect that deprived Bailey of a fair trial. We conclude that Bailey was prejudiced by counsel's deficient performance. Accordingly, we reverse the order of the PCR judge and remand for a new trial.

**REVERSED AND REMANDED.**

**TOAL, C.J., PLEICONES, KITTREDGE and HEARN, JJ., concur.**

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[1] S.C. Code Ann. § 16-3-85 (2003).

[2] Bailey was not the biological father of Victim or Hughes's other children; however, Hughes was pregnant with Bailey's child at the time of Victim's death.

[3] Specifically, the judge read the following provisions of section 16-3-85:

(A) A person is guilty of homicide by child abuse if the person:

(1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life;

(B) For purposes of this section, the following definitions apply:

(1) "child abuse or neglect" means an act or omission by any person which causes harm to the child's physical health or welfare;

- (2) "harm" to a child's health or welfare occurs when a person:
- (a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;
  - (b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death;  
or
  - (c) abandons the child resulting in the child's death.

S.C. Code Ann. § 16-3-85(A)(1), (B) (2003).

[4] The text of the indictment provided:

That LUCAS LORENZO BAILEY did in Aiken County on or about April 26, 2001, commit the crime of Homicide By Child Abuse in violation of South Carolina Code Ann. Section 16-3-85, in that the defendant did cause the death of Charles D. Allen, a child two (2) years of age, while committing child abuse or neglect as defined by South Carolina Code Section 20-7-490, and the death of said child occurred under circumstances manifesting an extreme indifference to human life, in that Lucas Lorenzo Bailey was responsible for the welfare of said child and the defendant did inflict physical harm to the child, to wit: **The defendant inflicted upon said child physical injuries to his abdomen resulting in exsanguination and consequently the death of the child.**

[5] We take this opportunity to caution the bench against engaging in off-the-record discussions with members of the jury. Here, the record does not reveal whether the attorneys were present during the exchange that culminated in the jury charge regarding proximate cause. Thus, we are troubled that the decision regarding the jury instruction may have been made without the judge conferring with the attorneys. Because this was not an issue raised for our consideration on appeal, we do not address any arguments challenging the procedure employed by the judge. However, we emphasize that we do not condone a judge's off-the-record discussion with a juror.

[6] Notably, the court stated in its conclusion that its decision did not prevent "the State from seeking a new indictment charging injury to a child and alleging a different manner and means of committing the offense such as 'shaking,' and trying appellant on the new indictment." *Id.* at 262.

[7] By his statement, the foreman was conveying the jury's deliberations as to whether there was "direct evidence" that Bailey struck Victim. Thus, we believe it would have been prudent and more appropriate for the trial judge to instruct the jury on "circumstantial evidence" in order to resolve the jury's confusion.

[8] We reject any contention that the Court of Appeals' opinion affirming Bailey's conviction negates a finding of prejudice as the court only considered the evidence in the context of a directed verdict motion. Although we agree there was sufficient evidence to submit the case to the jury, the issue in this case requires a consideration of the evidence after the submission of the case to the jury.

# CERTIFICATE OF SERVICE

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I TYRONE LORENZA ROBINSON CERTIFY  
THAT I SENT A COPY OF MY EMERGENCY  
PROSE BRIEF AND ORIGINAL PROSE BRIEF  
TO SOUTH CAROLINA ATTORNEY GENERAL  
WHO ARE RESPONDENTS, THROUGH USE OF  
UNITED STATES POSTAL MAIL ADDRE-  
SSED AS FOLLOWS.

ALAN WILSON  
ATTORNEY GENERAL  
REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA, 29211-1549

SIGNATURE: TYRONE LORENZA ROBINSON  
PRINT: TYRONE LORENZA ROBINSON  
DATE: 6/15th/2015

DEAR CHIEF ADMINISTRATIVE JUDGE  
FOR SOUTH CAROLINA COURT OF APPEALS.

MY NAME IS TYRONE LORENZA ROBINSON.  
I AM CURRENTLY BEING HELD UNLAWFULLY,  
UNCONSTITUTIONALLY AND ILLEGALLY  
DETAINED, RESTRAINED AND FALSLY  
IMPRISONED.

PLEASE ENSURE THAT YOUR CLERK OF  
COURT OFFICE FILE THIS PROSE BRIEF  
INSIDE MY APPEAL CASE AND ENSURE  
THAT THE JUDGES AT THIS COURT DECIDE  
ON THIS PROSE BRIEF AND ITS FIVE  
ALONG WITH MY ORIGINAL PROSE BRIEF  
AND ITS FIVES. TO ENSURE THAT THIS  
COURT PUT A STOP TO S.C. LAWS AND  
CONSTITUTION FROM BEING VIOLATED AGAINST  
ME AND TO PUT A STOP TO ME BEING HELD  
UNLAWFULLY, UNCONSTITUTIONALLY AND  
ILLEGALLY DETAINED, RESTRAINED,  
AND FALSLY IMPRISONED BY THE STATE  
OF SOUTH CAROLINA AND SOUTH CAROLINA  
DEPARTMENT OF CORRECTION.

PLEASE APPOINT ME A ATTORNEY TO  
ARGUE THESE FIVES IN MY PROSE  
BRIEF ON DIRECT APPEAL FOR ME AND  
TO ORDER MY TRIAL TRANSCRIPT SO  
THIS COURT CAN CORRECT THIS UNLA-  
-WFULLY, UNCONSTITUTIONAL AND ILLEGAL  
SITUATION I TYRONE LORENZA ROBIN-  
-SON IS CURRENTLY BE HELD FOR.

I THANK YOU IN ADVANCE  
SINCERELY SIGNATURE: TYRONE LORENZA ROBINSON  
PRINT: TYRONE LORENZA ROBINSON  
DATE: 6/15TH/2015

TYRONE LORENZA ROBINSON #235104  
Q2B - Rm 117  
PERRY CORRECTIONAL INSTITUTION  
430 OAKLAWN ROAD  
PELZER, SOUTH CAROLINA 29669

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SC Court of Appeals

DIRECTED TO: CHIEF ADMINISTRATIVE  
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THE DEPARTMENT OF CORRECTIONS HAS  
NOT INSPECTED THIS ITEM.  
THEREFORE, THE DEPARTMENT DOES NOT  
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