

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO GREENVILLE COUNTY
Robin B. Stillwell, Circuit Court Judge

CASE NO. 2014-001951

Samuel Lamont Whitner,.....Appellant,

v.

The State of South Carolina,.....Respondent.

REQUESTED ATTACHMENT TO BE SUPPLEMENTED
TO THE RECORD ON APPEAL

The below listed documents are the requested material to be supplemented to the Record concerning the above cited action.

- (1) Exhibit W is a January 10, 2014 correspondence addressed to Robert M. Arial Jr. Esq. Forwarded per the Petitioner.
- (2) Exhibit T is a February 19, 2014 correspondence from the Petitioner's initial court appointed P.C.R. counsel.
- (3) Exhibit X: The Petitioner's February 17, 2014 pro se, 26 page Supplement of Issues.

Samuel Lamont Whitner

Samuel L. Whitner
B.R.C.I. Wat. 143
4460 Broad River Rd.
Columbia, S.C. 29210

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 15 DAY OF July 2015.

Susan H. Dye
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: My Commission Expires
March 5, 2018

(Exhibit.W)

R. Mills Ariail Jr.
11 north Irvine street
Suite No: 11
greenville, S. Carolina. 29601

10, January. 2014

Re: Samuel L. Whitner Vs. State of South Carolina,
Case No: 2013-CP-23-00765/ Request For Counsel To Supplement
Issues.

Dear Mr. Ariail Jr.,

I, Samuel L. Whitner, plaintiff/Petitioner in the above cited matter am hereby respectfully requesting that as my Legal Counsel to said matter, that you supplement the four (4) additional issues (See Attachments), that are within the attachment to this letter and so titled as Case No: 2013-CP-23-00765.

Supplement of the issues to the above cited Civil Post Conviction Relief Action, (Exhibit 'X'), to the Original Post Conviction Relief Application which was filed on 8, February. 2013 in the Court of Common Pleas is vital to issues past and present raised.

Moreso, the four (4) additional issues being raised and the supporting facts are setforth within the enclosed attachment which is entitled 'SUPPLEMENT OF ISSUES (Exhibit 'X')' which is requested to be submitted and supplemented by you.

Furthermore, I am informing you (My legal counsel), that I am hereby forwarding a 'True Copy' of this letter of instruction to the Office of Clerk of Courts for the Greenville County Courts attn: Paul B. Wickensimer, and thereby respectfully requesting from said clerk a clock stamped varification of correspondence with enclosed attachments to provide assurances to the Court of Common Pleas that I have so informed you as my legal counsel to 'AMEND THE ISSUES', i have presented in the enclosed attachment to this correspondence with you at your earliest most possible date to receipt of same.

I, Samuel L. Whitner, applicant in above cited instant matter was informed by the Office of Clerk of Courts (paul B. Wickensimer), of Greenville County Courts, that the proper procedure for supplementing the four (4) additional issues to be

(Exh.W)

~~Amended in the Original Post Conviction Relief Application can~~
ONLY be submitted through (you) my legal counsel of record
(see:Exhibit 'T'), that the matters contained within said
attachment (Exhibit 'X') may be properly set forth before the
Courts and that I may meet the Burden To Prove the Allegations
that are set forth within the Post Conviction relief Application.
See: MATTHEWS Vs. STATE, 565 S.E. 2d 766.

Respectfully,

cc. File

Clerk/Greenville County

s/ Samuel L. Whitner

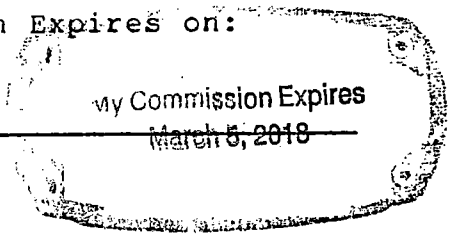
Samuel L. Whitner

Sworn and Subscribed before me
a Notary of the Public for the
State of South Carolina on this
10th day of January. 2014.

My commission Expires on:

s/ Susan H. Frye

Notary Sign/Seal



(Exhibit.w)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE,)	
)	
SAMUEL LAMONT WHITNER,	)	CASE NO: 2013-CP-23-00765
Applicant,)	
)	
Vs.	)	<u>PROOF OF SERVICE</u>
)	
THE STATE OF SOUTH CAROLINA,)	
Respondant.)	
)	

I, Samuel L. Whitner, the above cited applicant do hereby CERTIFY that I personally have forwarded to R. Mills Ariail, Jr., (Court Appointed Counsel) a correspondence entitled " Re: Samuel L. Whitner Vs. State of South Carolina, Case No: 2013-CP-23-00765/ Request For Counsel To Supplement Issues", with attachments (Exhibit's 'X' and 'T') enclosed on this 10th day of January. 2014, by depositing same into the United States Mail addressed as follows:

R. Mills Ariail Jr. Esq.
 11 North Irvine Street
 Suite No: 11
 Greenville, S. Carolina. 29601

and that below listed parties have been copied the same addressed as follows:

- | | |
|--------------------------------|------------------------------|
| 1) Paul B. Wickensimer, Clerk. | 2) Karen C. Ratigan, Esq. |
| Office Of Clerk of Courts | Office of Attorney General |
| Greenville County, S.C. | of State of South Carolina |
| Greenville County Courthouse | Rembert C. Dennis Building |
| 305 East North Street | P.O. Box 11549 |
| Greenville, S. Carolina 29601 | Columbia, S. Carolina. 29211 |

SO SUBMITTED,

Sworn and Subscribed before
 me this 10th day of January. 2014
 My Commission Expires: ..

S/ Samuel L. Whitner
 Samuel L. Whitner
 S/ Susan H. Drye
 Notary Sign/Seal

My Commission Expires

 2014

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

(Exhibit T)

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

February 19, 2014

Samuel L. Whitner #00263066
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

RE: Samuel L. Whitner vs. State of South Carolina
Case Number: 2013-DR-23-00765

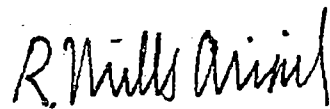
Dear Mr. Whitner:

Enclosed please find a copy of the filed copy of your Supplement of Issues for your Post Conviction Relief matter. If you have any questions, please do not hesitate to write my office.

Thank you for your consideration of this letter.

With kind regards,

LAW OFFICE OF R. MILLS ARIAIL, JR.



R. Mills Ariail, Jr.

RMA/dl

12 of 21

(Exhibit X)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
SAMUEL LAMONT WHITNER,	)	CASE NO.: <u>2013-CP-23-00765</u>
Applicant,	)	'SUPPLEMENT OF ISSUES TO THE
Vs.	)	ABOVE CITED CIVIL POST
	)	CONVICTION RELIEF '
STATE OF SOUTH CAROLINA,)	
Respondant.)	
)	

CIVIL POST
 ADM. DIV.
 FEB 17 PM 11:33
 2013

The applicant was Indicted for a single count of Criminal Sexual Conduct First (1st) Degree under Case No.: 09-GS-23-1072 and applicant was originally called to trial on said offense on 11, March, 2009, before the Honorable; C. Victor Pyle, Jr. and was represented by Christopher D. Scalzo, Esq. of the Public Defenders Office. Christy Kednocker Sustakovitch represented the State of South carolina as Solicitor.

'PROCEDURAL HISTORY'

Within the original initiating proceedings before the Honorable; C. Victor Pyle, Jr., held on 11, March. 2009 the Solicitor (Sustakovitch), attempted to offer into evidence a 'Surreptitious' recording of an 5, August. 2007 telephone conversation between the applicant (Whitner) and his daughter, see: Exhibit 'A', Transcript pages 17-23. The states 'Motion to Admit' the recording was subsequently 'Denied' by the Honorable; C. Victor Pyle, Jr., see: Exhibit 'A', Tr. Pg. 23.

The state then moved for a 'interlocutory Appeal' of the Trial Courts Denial of [its] 'Motion to Admi[t] the 5, August. 2007 intercepted telephone conversation, see: Exhibit 'A', tr. Pg. 26. Upon the jury not being Sworn in.... when the state moved for this appeal *1), and the trial was disallowed to continue.

*1)-It was held within 'State Vs. Thomas, 269 S.E. 2d 768 neither party addressed the threshold issue of 'appealability' of the Order. However, also determined by

However, upon the Solicitors Appealing before the South Carolina State Court of Appeals, the Solicitor representing the State **'fabricated'** a chonology that in which the State was appealing the Honorable; C. Victor Pyle's Order granting a ' Motion to Suppress '... prior to.... the fact that a ' Motion to Suppress '... not. been raised or ruled upon, see: Exhibit 'G', Exhibit 'A', Pgs. 17-23.

In the Trial Transcripts of said proceedings before the Honorable; C. Victor Pyle, Jr., it provides that a ruling on the evidence within this trial proceedings derived from only one (1) [Motion] which was raised by the State concerning the ' taped ' [conversation] which brought about [its] suppression by the 'Order of Denial ' rendered by the Honorable; C. Victor Pyle, Jr., see: Exhibit 'A', Pgs. 17-23.

A ' Motion to Suppress ' was **'fabricated'** upon the Solicitor filing an appeal, see: Exhibit 'G', and this therefore set forth a finding that the solicitors conduct moves ' **Beyond Prosecutorial Misconduct** '. The Solicitor did implement a ' **Perjured Testimony** ' and ' **Illegally Gained** ' jurisdiction within the south Carolina Court of Appeals.

The Solicitor, ' **Illegally Suppressed** ' a chonology regarding a initially raised ' Motion ' to admit the conversation, see: Exhibit 'A' . Pgs. 17-23 and ' **Intentionally Failed** ' to disclose this chonology before the South Carolina Court of Appeals and surrogated a ' **fabricated** ' chonology of a ' Motion ' to suppress, ' **fabricating** ' its existence before said court, see: Exhibit 'G'.

*1-Continued)

the Thomas Court; when a case is called for trial and a jury selected, but, Not Sworn; upon evidence being suppressed. The Solicitor Does Not Enjoy the Privilege to elect Not To Proceed with the case Pending Appeal of an issue to the Supreme Court, because the Order-AS IT STANDS- is interlocutory, thus Not Subject to an Immediate Appeal.

ISSUES RAISED IN THE ORIGINAL P. C. R.
CASE NO.: 2013-CP-23-00765 APPLICATION

The applicant had submitted his Post Conviction Relief application before the Court of Common Pleas on 8, february. 2013, in which the following issues where thereby raised:

- 1) Ineffective Assistance of trial Counsel; Trial counsel acted jointly and in concert with the state and illegally gained jurisdiction of the South Carolina Court of Appeals / Sixth (6th) Amendment Violation;
- 2) Appellate Counsel failed to challenge this jurisdictional defect. Ineffective Assistance of Appellate Counsel.

The applicant has hereby respectfully requested that his post Conviction Relief Counsel amend as follows these issues into the **original** Post Conviction Relief Application on his behalf pursuant to **S.C.R.C.P. 71.1(d)** and hereby has advised counsel to raise verbatim the herein listed issues to applicants original P.C.R. application pursuant to **S.C.R.C.P. 71.1(e)**.

REQUESTED AMENDMENTS FOR ISSUES TO ORIGINAL
P. C. R. CASE NO.: 2013-CP-23-00765 APPLICATION

A) Trial counsel was ineffective in not contemporaneously objecting to testimonies offered per Greenville County Detective; Bobby Bradford within the Jackson Vs. Deno Hearing before the Honorable; C. Victor Pyle, Jr., when the detective disclosed the contents of the surreptitious taped conversation between the applicant and his daughter. Trial counsel failed to 'preserve' the record on appeal that the State as well as Law Enforcement had violated the 'Wire-Tap Statute', **S.C. Code Ann §§ 17-30-20, S.C. Constitution Article 1 § 10.**

B) Trial counsel had rendered Ineffective Assistance of Counsel in not objecting contemporaneously-in which to apprise the trial

court of the fact that applicant HAD NOT OFFERED any voluntary confession to the alleged crime charged. Trial counsel also failed to preserve the record on appeal, that the State was in violation of S.C. Constitution Article 1 § 12, Article 1 § 3. trial counsel further failed to 'Protect' the applicants Civil Rights in accordance to the United States Constitutional Amendments fifth (5th), sixth (6th) and fourteenth (14th), thus to prevent Compulsory Self Incrimination.

C) trial counsel was ineffective in not objecting when the State stopped the trial and moved for an interlocutory appeal prior to the jury being sworn in, which would have preserved for the record on appeal that the State 'LACKED' appealability, thus, the (State), DID NOT meet the requirements of S.C. Code Ann § 14-3-330/ 28 U.S.C.A. § 1292(b). See: INTERLOCUTORY APPEALS ACT.

D) Trial counsel rendered Ineffective Assistance as Counsel upon NOT MOVING for a 'MISTRIAL' based upon the Solicitors 'Misconduct' in the 'Pre-Trial Proceedings that constituted 'Egregious Misconduct', when the Solicitor 'Intentionally Violated' S.C. Code Ann § 17-30-10, pursuant to S.C. Code Ann § 17-30-20 as well as the 5th and 6th Amendments to the U.S. Constitution. Also, failing to preserve for the record on appeal the 'Prosecutorial Misconduct' could be considered and seen as 'Intentional' for the purpose of 'GOADING'. See: Oregon Vs. Kennedy, 456 U.S. 667, 676 (1982).

ISSUE (A)

Trial counsel was ineffective in not contemporaneously objecting to testimonies offered per Greenville County Detective ; Bobby Bradford within the Jackson Vs. Deno Hearing before the Honorable; C. Victor Pyle, Jr., when the detective disclosed the contents of the surreptitious taped conversation between the applicant and his daughter. Trial counsel failed to 'preserve' the record on appeal that the State as well as Law Enforcement had violated the 'Wire-Tap Statute', S.C. Code Ann §§ 17-30-20, S.C. Constitution Article 1 § 10.

STATEMENT OF THE FACTS

- 1) Greenville County Detective; Bobby Bradford, testified within the Jackson Vs. Deno Hearing in which the Honorable; C. Victor Pyle, Jr., presided. Detective Bradford so testified in the trial as to the fact that he questioned the applicant (Whitner), concerning the contents of a surreptitious recorded conversation between the applicant and his daughter, see: Exhibit 'A', Tr. Pgs. 12-14, Exhibit 'A', Pg. 18.
- 2) Upon redirect examination by Solicitor Sustakovitch within the Jackson Vs. Deno Hearing, the Solicitor inquired of Detective Bobby Bradford concerning Law Enforcements seizure of the surreptitious recorded conversation tape between the applicant and his daughter, see: Exhibit 'A', Tr. Pg. 12-13.
- 3) Upon Detective Bobby Bradford's inquiry regarding the contents of the surreptitious taped conversation between the applicant and his daughter, the applicant adamantly denied any and all such allegations of sexual conduct between applicant and his daughter, see: Exhibit 'A', Tr. Pg. 15.

DISCUSSION

When the applicant was first called to trial for this offense on 11, March, 2009 before the Honorable; C. Victor Pyle, Jr., on said count under case no.: 09-GS-23-1072, the trial record will reflect that the ruling of the court concerning the suppression of the surreptitious taped conversation between the applicant and

his daughter, that which the recording was made by the 'childs' mothers husband...at the direction of the childs mother, see: Exhibit 'B'. Tr. Pg. 17, Ln. 1 thru Pg. 18, Ln. 20.

Neither party to the conversation gave prior consent to the interception and this was done without prior consent or knowledge of either the applicant or his daughter, see: Exhibit 'A', tr. pgs. 18-23 and tr. pgs. 27-30.

Again...the Order of Suppression of the surreptitious tape conversation; that which was rendered by Order of the Honorable; C. Victor Pyle, Jr., within the 11, March. 2009 trial proceedings had derived from only one motion; That was moved before the trial court, which was indeed raised by the State and brought about the Honorable Judge Pyle's Order of Suppression, which resulted in the trial court denial of the states attempt to admit into trial the illegally surreptitious taped conversation between the applicant and his daughter as evidence, see: Exhibit 'A', tr. pgs 17-23, which in general 'violated' statutory law concerning 'wire-taps' statutes, the solicitor intentionally obscured this violation when she fabricated a 'Motion to Suppress' upon the state filing its 'Notice of Appeal' before the Court of Appeals, see: Exhibit 'G'. When the solicitor for the State initially commenced to attempt admission of the surreptitious tape recorded conversation between the applicant and his daughter. The Honorable; C. Victor Pyle, Jr., did for one inquire directl[y] of the state what 'Principle of Law' would support the admission of these taped conversation?, see: Exhibit 'A', tr. pg. 18. *2

As stated within the trial transcripts before the Honorable C. Victor Pyle, Jr., see: Exhibit 'A', tr. pgs. 17-19. The colloquy concerning the States 'Motion to Admit' the illegally taped conversation.

Mr. Scalzo: 'Thank you, your honor. Judge one of the things that

*2) The trial hearing transcripts of the proceedings before the Honorable: C. Victor Pyle, Jr., held on 11, March. 2009 contained only page numbers, not the line to cite, See: Exhibit 'A'.

was referred to in this hearing * was an audio cassette. What it is a ' telephone ' conversation that takes place between the defendant and his daughter, who is the victim in this case. the phone conversation was recorded by....I believe the ' step-Father ', he takes a mini-cassette recorder and held it to the end of another phone-line while the conversation is going on and records that telephone conversation. I believe the state intends to introduce that conversation. see: exhibit 'A', tr. Pgs. 17-19
The Court: Do you solicitor?

Ms. Sustakovitch: yes, the state does.

The Court: What is the basis introducing that?

Ms. Sustakovitch: The statement is a 31-minute conversation between the defendant and the child, and it is extremely probative on the issue of guilt. Essentially, it can be construed as a confession by the defendant to his daughter.

The Court: What right does that person have to unknowingly record the conversation?

Ms. Sustakovitch: Your honor, I have several cases that supports this. Basically, the doctrine is a doctrine that courts across the country, either Federal and/or State Courts have been following.

The Court: Do you have the South Carolina Federal cases?

Ms. Sustakovitch: We do not! South Carolina and Federal Law. See: Exhibit 'A', Tr. Pgs. 17-19.

An objection contemporaneously was mandatory at that point within this trial proceeding for several reasons:

1) The record before the Honorable; C. Victor Pyle, Jr., does provide evidence that , the state indeed attempted admission of an illegal surreptitious tape recorded conversation between the applicant and his daughter within this trial proceedings before the Honorable; C. Victor Pyle, Jr., see: Exhibit 'A', Tr. Pg. 18.

2) trial attorney ' Scalzo's ' failure to preserve the record on appeal of this error, prevented a remedy which to prevent the court from becoming a partner to illegal conduct. See: Gelbard Vs. Cal, 1972 92 S. Ct. 2357.

The need for applicant's attorney's objection by contemporaneous means would have provided before the Court

of Appeals, that the Court of Appeals remedial norms were needed to immune the applicant as well as the tribunal from irreparable harm due to the violations of the Constitution in regards to State and Federal Law concerning the unauthorized use of and seizure of ' wire-tap'.

**VIOLATION OF STATUTORY LAW REGARDING WIRETAP STATUTE
PURSUANT TO S.C. CODE ANN § 17-30-20
THRU INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL**

An objection was mandatory in order to preserve also for the record on appeal as well as to apprise the trial court that the detective: Bobby Bradford; was not authorized to seize the nonconsensual, unknowingly tape recorded conversation between the applicant and his daughter, due to the fact that the detective was not in compliance with S.C. Code Ann § 17-30-70(A)(3)(2)/:17-30-75(A)(B)(C), the detective did not meet the requirements of these statutes that would enable Law Enforcement as well as the State to legally seize these surreptitious recorded conversations between the applicant and his daughter, as well as disclosing the contents thereof.

Furthermore, an objection contemporaneously to when the detective disclosed the content upon his offering testimonies within the Jackson Vs. Deno Hearing before the Honorable; C. Victor Pyle, Jr....would have preserved the record on appeal that the mandate of requirement had not been met pursuant to S.C. Code Ann § 17-30-80.

* Trial counsel was ineffective upon failing to apprise the court to the fact that the surreptitious taped conversation between the applicant and his daughter, violates Article 1 § 10, U.S.C.A., Amendment 4, because the Mother DID NOT apprise the applicant that the conversation with his daughter was going to be recorded by the childs 'Step-Father', See: Exhibit 'B', Pg. 18, Ln. 7-17 Also: Grigg-Ryan Vs. Smith Ca. 1 (M.E.) 1990, 904 F. 2d 112 and Thompson Vs. DuLanny 970 F. 2d 744.

the detective as well as the State did not produce at the trial proceeding before the Honorable; C. Victor Pyle, Jr., in Case No.: 2009-GS-23-1072, a [Application for Interception Order]. Moreover, because of this absence of an contemporaneous objection at that point within the **Jackson Vs. Deno Hearing** did so make imperceptible of the record that a subject matter involving public rights was present before the Honorable; C. Victor Pyle, Jr., in such form that which rendered the trial court capability to act upon the subject matter in which resulted in the trial court to lawfully suppress the surreptitious tape conversation between the applicant and his daughter as is provided in S.C. Code Ann § 17-30-105, §17-30-65(A), and 17-30-20.

ISSUE (B)

trial counsel had rendered Ineffective Assistance of Counsel in not objecting contemporaneously in which to apprise the trial court of the fact that applicant HAD NOT OFFERED any ' voluntary confession ' to the alleged crime charged. Trial counsel also failed to reserve the record on appeal, that the State was in violation of **S.C. Constitutional Article 1 : 12, and Article 1 § 3.** trial counsel further failed to ' protect ' the applicants Civil Rights in accordance to the United States Constitutional Amendments Fifth (5th), sixth (6th) and fourteenth (14th), thus to prevent Compulsory Self Incrimination.

STATEMENT OF THE FACTS

Upon the trial counsels failure to contemporaneously object when the State had attempted admissibility of the illegally surreptitious taped conversation between the applicant and his daughter, when the State argued before the trial court, The Federal exception of vicarious consent as basis for the surreptitious taped conversation between applicant and his daughter to be admitted in trial, See: Exhibit 'A', pages 17-26. trial counsels failure to object resulted to negate the record on appeal of a mandatory challenge to the relevancy regarding the contents of the surreptitiously taped conversation between applicant and his daughter, which does so indeed involve compelled testimonial communications, See: **Fisher Vs. U.S., 391, 409 (1976).** trial counsel failed to provide before the Honorable C. Victor Pyle, Jr., the fact that a confession DOES NOT

~~substantively lie within the surreptitiously taped conversation~~
between the applicant and his daughter.

A contemporaneous objection was very well necessary for one to apprise the Honorable C. Victor Pyle, Jr., of the above alleged Constitutional Violations of the applicants Civil Rights and to provide for the record on appeal the required implement which to allow equitable considerations of the trial judge.

STATEMENTS CONCERNING TESTIMONIES WITHIN THE TRIAL RECORDS

BEFORE THE HONORABLE: C. VICTORY PYLE, JR.,

Regarding a non-confession to the crime charged.

1) within the trial record before the Honorable: C. Victor Pyle, Jr., in the Jackson Vs. Deno Hearing, Detective Bobby Bradford testified therein that upon his interview with the applicant, that he (dect, Bradford), had inquired about statements..(i.e. the contents, thus, the oral interception), which Detective Bradfords inquiry was with regards to what the applicant meant concerning a statement that was made by the applicant within the surreptitiously recorded conversation between the applicant and his daughter. See: Exhibit 'A', Pages 11-15;

2) That upon the applicant giving his explanation regarding Detective Bobby Bradfords inquiry concerning the meaning of the applicants statement, that which, was made within the surreptitiously taped conversation between the applicant and his daughter. The applicant **DeniedALL Allegations** that he had committed any sexual acts, See: Exhibit 'A', Pages 14-15;

3) However, upon the Solicitors attempts for admission of the surreptitiously taped conversation between the applicant and his daughter, the Honorable: C. Victor Pyle, Jr., inquired of the State of what basis that will support the admission of the surreptitious taped conversation between the applicant and his daughter?, See: Exhibit 'A', pages 17-26 ;

4) the Solicitor for the State implied upon reply to the Honorable: C. Victor Pyle, Jr.s, inquiry, that the contents of the surreptitiously taped conversation between the applicant and his daughter can be construed as a confession!, See: Exhibit 'A', Page 18.

~~STATEMENTS CONCERNING TESTIMONIES MADE BY THE APPLICANTS DAUGHTER'S~~
~~MOTHER AND CHILDS MOTHERS HUSBAND; WITHIN THE WIRETAP ACT~~
~~SUPPRESSION HEARING HELD BEFORE THE SOUTH CAROLINA COURT OF~~
~~APPEALS ON 22, JULY. 2009., WHICH CORROBORATES THAT A CONFESSION~~
~~HAD NOT BEEN MADE BY THE APPLICANT WITHIN THE TAPE.~~

1) Upon 'Direct examination' by the Solicitor before the appeals court, the applicants daughter's mother (Mrs. Grady), had testified that the applicant had indeed denied all these allegations of Sexual Abuse in which the applicants daughters mother had stated three (3) times that the applicant did so deny the allegations within Direct Examination by the Solicitor before the court of appeals, See: Exhibit 'B', page 14, lines 14-25, and page 17, lines 1-12;

2) Moresoever, upon Cross Examination by trial counsel before the court of appeals, the applicants daughters mother (Mrs. Grady), testified to the fact that the applicant was 'UNAWARE' of any allegations of Sexual Abuse, that the applicant had allegedly committed upon his daughter when the applicant had called to speak with his daughter, See: Exhibit 'B', page 21, lines 11-16;

3) The applicants daughters mother (Mrs. Grady), testified to the general fact that the phone call which took place within a length of time of which the applicants daughters mother agreed was approximately 31 minutes in length, and were surreptitiously recorded by applicants daughters step-father (Mr. Grady), without the knowledge or consent of the applicant or applicants daughter on the 5th, day of August. 2007., the daughters mother (Mrs. Grady), so testified under sworn oath on the 22nd day of July. 2009, before the South Carolina Court of Appeals, stating: that the applicant had indeed DENIED the allegations that he (applicant) had committed Sexual Abuse upon his daughter, See: Exhibit 'B', Page 24, line 2 thru page 25, line 1-25

4) Generally, the applicants daughters 'step-Father', (Mr. Grady), testimony before the South Carolina Court of Appeals on 22, July. 2007, concludes that it is 'unrefutable' that the applicant had not confessed to committing any Sexual Abuse upon his (applicants) daughter, See: Exhibit 'B', page 36, lines 15-22.

DISCUSSIONS

Trial counsel had rendered ineffective assistance upon failing to object contemporaneously which to preserve on appeal that when the solicitor had insinuated that the contents within the surreptitious taped conversation between the applicant and his daughter can be construed as a confession *, See: Exhibit 'A', page 18. An objection was required to apprise the Honorable: C. Victor Pyle, Jr., that the applicants Right pursuant to **U.S.C.A. Amendment 5**, and **S.C. Constitution Article 1 § 12** is violated upon the solicitors disclosing contents of the surreptitious taped conversation between the applicant and his daughter, See: Exhibit 'A', pages 17-30. Prior to the unrefutable fact that the applicants daughters mother and 'step-father' both had testified before the South Carolina Court of Appeals of these facts...that when the 'step-father' had surreptitiously taped the conversation between the applicant and his daughter, never once did the applicant 'confess' to the alleged crime charged within the taped conversation*, See: Exhibit 'B', page 14, lines 21-25, page 17, lines 1-12, page 22, lines 1-10, page 25, lines 1-22, page 29, lines 12-29 and page 36, lines 15-25.

*1- It was held by the South Carolina Supreme Court by Order Affirming the applicants conviction OP No.: 27142. The S.C. Supreme Court stated within its Order that, "[D]uring the thirty-one minute conversation, applicant admitted the Sexual Abuse and stated that the incident was a mistake he deeply regretted." The S.C. Supreme Court ruled that the mother 'had' consented to the step-fathers recording of a telephone conversation between the 'victim' and the appellant, [without the 'victims knowledge], or consent;

*2- The south Carolina State Supreme Court also stated within its Order that "the applicant had forced his daughter to perform 'Sexual Acts' upon the applicant. However, NO such testimony was given to claim that the applicant ever forced this act upon his daughter, See: Exhibit 'J';

*3- The mother DID NOT vicariously consent upon NOT apprising the applicant that his conversation with his daughter was going to be recorded by the 'step-father', See: exhibit 'C', Pages. 15-16, 46-48. also Griggs-Ryan Vs. Smith, 904 F. 2d 112 (1st Cir. 1990), also: Exhibit 'A' page 18, Exhibit 'B', page 18, lines 7-17, thus violating the South Carolina Wire-Tap Statute upon surreptitiously taping the conversation between the applicant and his daughter.

moresoever, the applicant DID NOT GIVE A 'VOLUNTARY CONFESSION' to the crime charged and an objection would have served the purpose to corroborate; that a CONFESSION NOR AN APOLOGY for the ALLEGED SEXUAL ABUSE had ever been uttered BY the applicant; a contemporaneous objection also would have provided an accomadation to the matter in the sound discretion of the trial judge, See: McCabe Vs. Sloan, 184 S.C. 158, 191 S.E. 905, 909 (1937); Johnston Vs. Balk-McKnight Co. of Newberry, 188 S.C. 149, 198 S.E. 395, 399 (1938).

Trial counsel failed to bring to the trial courts attention upon not properly objecting contemporaneous, and to preserve for the record on appeal that the State COULD NOT provide before the trial court on the 11th day of March. 2009., any security of the admission of a statement by the applicant. See: State Vs. Middleton, 288 S.C. 21, 25, 339 S.E. 2d 692, 694 (1986); Citing; State Vs. Whitner, 380 S.C. 513, 670 S.E. 2d 655 (S.C. App. 2008).

Mainly, an objection would have provided before the Hon: C. Victor Pyle, Jr., that application of equal measures of insurance were needed to protect the applicants Civil Rights pursuant to U.S.C.A. 5th and 14th Amendments, S.C. Constitution Article 1 § 12; 1 § 3 , to prevent 'Compulsory Self-Incrimination', See: Michigan Vs. Tucker, 417 U.S. 433, 444. Moresoever, it is held within Ex-Parte Cobb (D.C.S.C. 1979), 448 F. Supp. 8861 that issues concerning the 'voluntariness' of a confession must be adequately given to the jury as an issue. it was held in Chavez Vs. Martin, 538 U.S. 760, 770 (2003) that the use of 'involuntary' statements at the defendants trial is barred per U.S.C.A. Amendment 5, See: SELF_INCRIMINATION CLAUSE...

ISSUE 'C'

Trial counsel was ineffective in not objecting when the State stopped the trial and moved for an interlocutory appeal prior to the jury being sworn in, which would have preserved for the record on appeal that the State 'LACKED' appealability, thus, the (State) DID NOT meet the requirement of S.C. Code Ann § 14-3-330/ 28 U.S.C.A. § 1292(b), see: INTERLOCUTORY APPEALS ACT.

STATEMENT OF THE FACTS

The trial records for the 11th day of March, 2009, proceedings before the Hon: C. Victor Pyle, Jr., (Exhibit 'A'), provides that when His Honor (Pyle) rendered a Order Denying the States Motion To Admit the surreptitious taped conversation between the applicant and his daughter (Exhibit 'A', Pg. 23). The trial court had inquired of the Solicitor, " if there was anything the State would like to add before the jury is brought in", (Exhibit 'A', pg. 24). The Solicitor, then inquired " if the applicants daughter could testify to the contents of the surreptitious taped conversation concerning [apologies] (Exhibit 'A', pg. 25).

The Honorable: C. Victor Pyle, Jr., granted that the applicants "daughter could testify to anything" (Exhibit 'A', pg. 25), wherefore, the same privilege was granted to the stepfather. (Exhibit 'A', pg. 28).

Trial records before the Honorable C. Victor Pyle, Jr., provides that the jury HAD NOT been sworn in when the Solicitor moved for an Interlocutory Appeal, (Exhibit 'A', pg. 28), and wherefore, the proceeding concluded.

Trial transcripts of the proceedings before the Honorable: C. Victor Pyle, Jr., establishes that the Solicitor submitted the surreptitious taped conversation between the applicant and his daughter as evidence for appeal purposes, (Exhibit 'A', Pg. 28).

DISCUSSION

Trial counsel had rendered Ineffective Assistance of Trial Counsel upon failing to object contemporaneously when the State moved for Interlocutory Appeal prior to the jury having been sworn in (Exhibit 'A', Pg. 26). trial counsel had failed to preserve the record for appeal as well as apprise trial court that States appeal 'was as it stood' is Interlocutory. See: **Di Bella Vs. United States** 82 S. Ct. 654 (1962). A contemporaneous objection needed to be made to substantiate the record on appeal that the States Interlocutory Appeal WAS NOT permitted pursuant to S.C. Code Ann § 14-3-330 and therefore, NOT subject to an Intermediate Appeal. See: **State Vs. Thomas**, 269 2d 768.

A contemporaneous objection would have provided for the record on appeal, and would have further enabled the courts to be in alliance with the U.S. Supreme Courts Ruling as held in **Easley Vs. Cromartie**, 121 S. Ct. 1452 (2001). trial counsel failed to preserve for the record on appeal, that, the Order Denying the States Motion To Admit the illegal surreptitious taped conversation between the applicant and his daughter, (Exhibit 'A', Pgs. 17-23), which said Order handed down by His Honor (Pyles), WAS NOT a mistake. See: **Anderson Vs. Bessener City**, 470 U.S. 564, 573, 105 S. Ct. 1504, 84 LEd 2d (1985), which His Honors (Pyles), Order Denying the States Motion To Admit did so cure any deficiencies involving contolling law. See: **Griegg Vs. Ford Motor Co.**, 19 F. Supp. 2d 531 (D.S.C. 1998). There was not any 'impairment' upon the States ability to prosecute this case. See: Exhibit 'A', pgs. 13-32...., **State Vs. McKnight**, 353 S.C. 238, 577 S.E. 2d 456 (2003); **State Vs. Holiday**, 255 S.C. 142, 177 S.E. 2d, 541 (1970); 28 U.S.C.A. § 1292(b) and; S.C. Code Ann § 14-3-330.

An objection was required to apprise the trial court as well as to preserve for the record on appeal the statutory mandate pursuant to S.C. Code Ann § 17-30-105 was violated upon the States attempt to admit the surreptitious taped conversation between the applicant and his daughter (Exhibit 'A', Pgs. 17-26), as well as submitting of the 'transcript' of said surreptitious taped conversation into evidence for appeal purposes. See Exhibit 'A', pg. 28.*

* Trial records before the Honorable John C. Few held November 2nd thru 4th 2009, the State had played the audio tape of the illegally surreptitious conversation between the applicant and his daughter before the jury without obtaining an Application of Authority pursuant to S.C. Code Ann § 17-30-80 and 17-30-105. The State 'violated' the S.C. Wire-tap Statute S.C. Code Ann § 17-30-20. See: trial Transcript record before the Hon: john C. Few, held 2-4, November. 2009; case no.: 09-GS-23-1072, Exhibit T, Pg. 306, Ln.4 thru pg. 308, ln.

1-16

ISSUE 'D'

trial counsel rendered Ineffective Assistance as Counsel upon NOT MOVING for a 'MISTRIAL' based upon the Solicitors Misconduct in the Pre-Trial Proceedings that constituted 'Egregious Misconduct' when the Solicitor 'Intentionally Violated' S.C. Code Ann § 17-30-10, pursuant to S.C. Code Ann § 17-30-20, as well as the 5th and 6th Amendments to the U.S. Constitution. Also, failing to preserve for the record on appeal the 'Prosecutorial Misconduct', could be considered and seen as 'Intentional' for the purpose of 'GOADING'. See: Oregon Vs. Kennedy, 456 U.S. 667, 676 (1982).

STATEMENT OF THE FACTS

The trial records before the His Honor (Pyle), shall reflect and provide, that upon the trial courts inquiring of the State, the 'Basis' for admission of the surreptitious taped conversation between the applicant and his daughter (STCBAD), see: Exhibit 'A', Pg.19. The State then provided before the trial court a 'lengthy argument' involving 'Federal Consent Exemptions of Vicarious Consent' as the States 'Basis' for His Honor (Pyle) to 'Grant' the States 'Motion To Admit' the illegal surreptitious taped conversation as evidence into the trial See: Exhibit 'A', pgs. 17-22.

**VIOLATION OF STATUTORY LAW REGARDING
S.C. WIRE-TAP STATUTE PURSUANT TO:
S.C. CODE ANN § 17-30-105, BY
INEFFECTIVE ASSISTANCE OF COUNSEL**

DISCUSSION

Upon the Solicitors attempting to admit the illegal interception See: Exhibit 'A', pgs. 17-23, when the State had arguably relied on 'Federal Consent Exception of Vicarious Consent', See: Exhibit 'A', pgs. 17-22.

An objection was mandatorially required in order to preserve the record on appeal and to apprise the trial court that a genuine violation of controlling law at that point was before His Honor (Pyle), See: Exhibit 'A', pgs. 17-22. The law holds, that a Honorable Court is to immune from such inaguration into partnership with illegal conduct. See: Gelbard Vs. Cal., 1972, 92 S. Ct. 2357 and S.C. Code Ann § 17-30-20.

Moresoever, trial counsels failure to provide this 'vital preservation' for the record on appeal by means of a contemporaneous objection, DID so 'undermine' the 'proper' functioning of the adversarial process, that the trial cannot be relied on as having produced a 'Just result', See: Strickland Vs. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler Vs. State, 286 S.C. 441, 442, 334 S.E. 2d 813, 814 (1985).

The trial records before His Honor (Pyle), establishes that 'when' the State had offered a 'Transcript' of what the interception entails, See: Exhibit 'A', pg.19, prior to trial courts inquiry as to the 'Basis' that would support the States 'Motion To Admit' the surreptitious taped conversation, See again: Exhibit 'A', Pg. 19.

The Solicitor WAS NOT in compliance with S.C. Code Ann § 17-30-105_____ the Solicitor DID NOT furnish to the court the accompanying application under which the interception had been 'AUTHORIZED'. A application HAD NOT BEEN approved by any judge of competent jurisdiction. _____ [S.C. Code Ann § 17-30-105 that which therein read, [A]s required by Federal Law, the contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom must not be recieved in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less then ten days before the hearing or proceeding and not less than thirty days prior to trial, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approve[d]/.

S.C. Code Ann § 17-30-15(8), substantiates that 'Subject Matter' was legally confered to the Circuit Judge Pyle, to deny the States 'Motion To Admit', because the wire-tap was illegal, See: Exhibit 'A', pgs. 17-23.

Furthermore, the applicant emphasize the notion in regards to the trial counsels 'obligation' for a contemporaneous objection of the error which would have apprised the trial court, as well as preserved on the record for appeal the totality of the circumstances deriving therefrom the trial proceeding before His Honor (Pyle), However, S.C. Code Ann § 17-30-105_____ DID so confer 'Subject Matter Jurisdiction' to the trial court to render an Order of Denial of the States 'Motion To Admit', to prevent a

'Violation of Controlling Law' in regards to the Rights of the parties, See: Exhibit, 'A', pgs. 17-22. Trial counsel was ineffective by NOT protecting the applicants Civil Rights with regards to the U.S. Constitution. trial counsel was ineffective in NOT apprising trial court or preserving for the record on appeal that the applicants daughters mother DID NOT apprise applicant that his private conversation with his child was being recorded by the applicants daughters 'Step-Father'.

Trial counsel further failed to establish at trial that Law Enforcement DID NOT obtain an Application for Interception Order pursuant to S.C. Code Ann § 17-30-80, which WOULD HAVE apprised the trial court that disclosure of the contents at trial and or before the jury was a grave error of law, See: Exhibit, 'T', pg. 306, ln. 4 thru pg. 308, ln. 16. pursuant to S.C. Code Ann § 17-30-75 (E); S.C. Constitutional Article 1 § 3; 1 § 10; [U.S.C.A. Amendment 4; 6; 14.

However, these facts contained within the records before His Honor (Pyle), establishes that a 'Mistrial' WAS warranted for several reasons.....;

- 1) The Solicitor demonstrated acts that 'Violate' controlling law;
- 2) Such 'Prosecutorial Misconduct' will substantively invalidate a jury trial;
- 3) Such invalidation of a jury trial by such means as 'Prosecutorial Misconduct' could be seen to spawn from 'GOADING';
- 4) that trial counsel was ineffective for failing to 'Move' for a 'Mistrial' at the trial proceedings before His Honor (Pyle). Therefore, this provides commulative errors and raises the fact that any subsequent jury is barred by 'Double jeopardy'.

ISSUES RAISED IN THE ORIGINAL P.C.R.

CASE NO.:2013-CP-23-00765 APPLICATION

Ineffective Assistance of Trial Counsel; Trial Counsel acted jointly and in concert with the state and illegally gained jurisdiction of the South Carolina Court of Appeals / 6th Amendment violation

~~Trial counsel had rendered ineffective assistance when the trial attorney acted in concert with the Solicitor and falsified the pretrial records before the Court of Appeals, See: Exhibit 'D'. Thereby, obscured the true chronology of the pretrial proceedings before His Honor (Pyle), on 11, March. 2009, See: Exhibit 'A'.~~

As stated in the commencement of the Initial Brief of Appellant, Pg. 8, Statement of the case, See: Exhibit 'C' (Pg.8).

[A]pplicant presented a pretrial Motion To Suppress a tape recorded telephone conversation between himself and his daughter.

This statement which was implimented per Appellate Counsel (Robert M. Dudek) and Public Defender (Christopher D. Scalzo), within the Initial Brief of the Appellant is contrary to the authentic transcript of record of the proceedings before His Honor (Pyle), on 11, March. 2009. A Motion TO Suppress is not shown to be raised within the transcript of record of the pretrial hearing before His Honor (Pyle), See: Exhibit 'A' and Exhibit 2.1.

The State DID NOT OBJECT if the Motion To Suppress had actually been brought to the Courts attention to preserve for the record on appeal that His Honor (Pyle), was without jurisdiction to rule on this Motion under the Wiretap Statute, See: Exhibit 'A', Pgs. 17-30.

The State MOVED TO ADMIT the evidence, See: Exhibit 'A', Pgs. 17-22,. The defense attorney (Scalzo), challenged the States attempt of admission of the evidence by means of rebuttal of the evidence, See: Exhibit 'A', Pgs. 22/23. the States Motion was therein denied, See: Exhibit 'A', Pg.23. Prior to the States non-compliance with S.C. Code Ann § 17-30-105.

A hearing in Limine IS NOT final, thus, the opposing party MUST object to the introduction of the evidence at trial in order to preserve the objection for appellate review, See: State Vs. Humphries, 551 S.E. 2d 286.

Merely raising an argument in Limine DOES NOT preserve the issue for review, See: State Vs. Stokes, 528 S.E. 2d 430.

State Vs. Schumpert , 425 S.E. 2d 859., the Schumpert court concisely summarized the proper procedure in preserving an issue

for the record on appeal. This court established the essential element in preserving an issue for the record on appeal in specifically ruling that a ruling in *Limine* IS NOT a final ruling on the admissibility of evidence unless an objection is made at the time the evidence is offered. It was held in *Schumpert*, that the issue WAS NOT preserved for review prior to the counsels failure to object to the testimony. In the applicants trial before His honor (Pyle), the State DID NOT object to:

1) that a Motion To Suppress was raised by the Defense Counsel within the proceedings before His Honor (Pyle), on 11, March. 2009; See: Exhibit 'A'.

2) that this Motion To Suppress is based on a Violation of the South Carolina Wiretap Statute, See: Exhibit 'A', Pgs. 17-30.

the pretrial transcript of record before His Honor (Pyle), for 11, March. 2009., reveals that Mr. Scalzo HAD NOT raised a Motion To Suppress, See: Exhibit 'A', Pgs. 17-26., in this hearing. In *U.S. Vs. Long*, the court specifically summarized that a Motion To Suppress evidence MUST BE raised PRIOR TO trial and also makes it clear that objections to evidence on the ground that it was illegally obtained MUST BE raised prior to trial. Upon trial counsels concurring with the State before the Court of Appeals, See: Exhibit 'D', that a "Motion To Suppress" was raised in the trial proceedings before His Honor (Pyle), when NO such Motion was ever raised and NO such "Suppression Hearing" was ever held on the 11th of March. 2009, See: Exhibit 'A'., which provides that trial counsel 'Scalzo' was ineffective by agreeing with this fabrication of the facts initiated by the State upon the States appeal, See: Exhibit 'G'. Trial counsel error was sufficiently egregious and prejudicial, See: *Murray Vs. Carrier*, 477 U.S. 478, 496 (1986).

As stated earlier, the State MOVED to admit the evidence into trial in which the State based its merits for admissibility on implimenting the Wiretap statute as legal bases for admissibility of the oral interception under the vicarious consent doctrine and attempted to apply the South Carolina Wiretap Statute (S.C. Code Ann § 17-30-30), to the Federal consent exception within the pretrial hearing held before His Honor (Pyle), on 11, March. 2009, See: Exhibit 'A', Pgs. 17-22.

The pretrial transcript of record clearly reveals that upon the States attempt to admit the oral interception, See: Exhibit 'A', Pgs. 18-22. And the prosecutor evoked while offering the Wiretap Statute § 17-30-30, as consent exception to the court. again, emphasis is ADDED to express the obligation [Requirement], for an objection by which eliminates ANY means of possible constitutional, Deprivation from 'Intentional' or 'Unitentional' misconception of the matter in the record on appeal. Defense attorney (Scalzo), merely argued against the States attempt at admissibility of the intercepted oral communication prior to the fact of defense attorney (Scalzo), not raising a "Motion To Suppress" within this pretrial hearing. This obligation is required to bring the alleged error to the trial courts attention by making a proper objection or filing a Motion. See: U.S. Vs. Hicks, 978 F. 2d 722; State Vs. McWee, 472 S.E. 2d 235. The McWee court specifically ruled that the "issue was not preserved for review prior to the applicants failure to cite any Constitutional Basis for his request". The McWee court specifically declared that; " Issues not raised to and ruled by trial court are not preserved for appeal". In essence, the defense attorney or the Solicitor did not bring to the courts attention that; A "Motion To Suppress" was being raised, See: Exhibit 'A', pgs. 17-22. A "Suppression Hearing", had never commenced before His Honor (Pyle), on 11, March. 2009, ((Face of transcript, Exhibit 'A')). This proceeding could not be referred to as a "Suppression Hearing" sufficiently, the specifics of the precise nature of the alleged error in submitting evidence was not brought to focus to be understood by the trial judge, See: State Vs. Prioleau, 548 S.E. 2d 213.

If the alleged "Motion To Suppress" was raised within the proceedings before His Honor (Pyle), and this Motion is alleged to be based on a violation of the "South Carolina Wiretap Statute", the State DID NOT object to these specific grounds, therefore, NOT preserving the precise nature of the violation of the South Carolina Wiretap Statute, which would have preserved for review that the Court of Appeals has exclusive jurisdiction to entertain this Motion. therefore, failure to object to specific grounds bars an argument, See: State Vs. Tucker, 462 S.E. 2d 263.

Furthermore, the State sought to introduce the evidence, implying that the Wiretap Statute was legal basis for admission, See: Exhibit 'A', pgs. 18-22. The intercepted oral communications were then suppressed, See: Exhibit 'A', pg. 23.

However, trial counsel had rendered ineffective assistance upon falsely asserting that he DID so raise a Motion To Suppress and by means of pretence had argued before the court within memorandum of [his] alleged merit for raising such a Motion within the Pretrial Hearing before His Honor (Pyle), See: Exhibit 'D'. Trial counsel rendered ineffective assistance when the Solicitor made defamatory statement that the applicant had [allegedly] disclosed to a department of Social Services (DSS) worker that [H]is father had allegedly sexually assaulted him prior to the fact. The applicant contends that he has never made such allegation or statements to anyone, See: Exhibit 'D' 1. trial counsel was ineffective for allowing slanderous statements against the applicant and his family by the Solicitor without an objection being made.

Trial counsel (Scalzo), was well aware of the chronology within the trial proceedings before His Honor (Pyle), See: Exhibit 'A', beings as he was the counsel appointed by the courts to represent the applicant at trial which therefore, substantiates according to the record that the counsel was aware that the State did not preserve for review that the alleged Motion To Suppress is based on a violation of the S.C. Wiretap Statute. The effect of the States failure to object to this issue, hence, that the Court of Appeals erred by entertaining a Motion To Suppress prior to said Motion NOT being properly preserved for review within the trial proceedings before His Honor (Pyle), on 11, March. 2009. trial counsel rendered ineffective assistance upon NOT apprising the Court of Appeals that a Motion To Suppress WAS NOT the vector which had brought about the Order Of Denial, See: Exhibit 2.1, by which this Order Of Denial spawned from the State actually MOVING before His Honor (Pyle), to admit the illegal surreptitious taped conversation between the applicant and his daughter, See: Exhibit 'A', pgs. 17-22. Trial counsel intentionally failed to disclose this chronology regarding said Motion by the State to admit the taped conversation, See: Exhibit 'A', pgs. 17-22, to the S.C. Court of appeals.

ISSUE RAISED ON THE ORIGINAL P.C.R.

CASE NO.: 2013-CP-23-00765 APPLICATION

Appellate counsel failed to challenge this Jurisdictional Defect. Ineffective Assistance of appellate counsel.

STATEMENT OF THE FACTS

Upon the Solicitors appealing before the S.C. Court of Appeals, See: Exhibit 'G', the Solicitor representing the State had fabricated a chronology in which the State was appealing His Honors (Pyle) 'ORDER GRANTING' a "Motion To Suppress" prior to the fact and failing to disclose that a "Motion To Suppress" had never been raised, much less ruled upon, See: Exhibit 'G' and Exhibit 'A', pgs. 17-23. The State provided before the Court of Appeals within it [M]otion To Vacate Order and Allow Motion to be Served and Filed Pursuant to Section § 17-30-110[A], See: Exhibit 1.1. a false declaration by the Solicitor [State] alleging that the trial attorney had raised a "Motion To Suppress" within the trial proceedings held before His Honor (Pyle); See: Exhibit 1.1. Moreover, appellate counsel representing applicant in the Court of Appeals concurred with this fabrication (by the State), which accommodated the States purpose to defraud the Court of Appeals to illegally access its jurisdiction.

However, upon appellate counsels concurring with the State to this fabrication asserted by the State that a "Motion To Suppress" had been raised within the trial court before His Honor (Pyle), Case No.: 09-GS-23-1072, it clearly establishes that appellate counsel willfully and knowingly neglected his lawful obligation and sworn duty in accordance and in compliance with U.S.C.A. 6th Amendment , which was to raise this serious violation regarding the States breaking Statutory Law within trial proceedings, See: Exhibit 'A', pgs. 17-26; also S.C. Code Ann § 17-30-65 (A). As so documented within the return: '[Return to the Motion To Vacate Order And Allow Motion To Be Served And Filed Pursuant To Section § 17-30-110, See: Exhibit 1. That was submitted by the Appellate counsel

[U]pon information in belief, the Attorney General made its Motion To Vacate the trial judges ruling that the tape recording was not admissible without the benefit of having the "Suppression Hearing" transcript. The Suppression Hearing was held 11, March. 2009. a careful review of that transcript."

Appellate counsel was ineffective by being in violation of the law pursuant to S.C. Code Ann § 44-63-161 (2), which is:

[A]ny person to willfully make a false statement in a certificate record, or report required to be filed by law or in an application for an amendment to it or in an application for a certified copy of a vital record, or to willfully supply false information intending that the information be used in the preparation of any report or amendmen[t].

DISCUSSION

Appellate counsel failed to provide the S.C. Court of Appeals with facts regarding Solicitors 'Misconduct' upon Solicitors breaking Statutory Law concerning 'Disclosure' of the illegally taped conversation within trial proceedings before His Honor (Pyle), See: Exhibit 'A', pgs. 17-30, as well as failing to disclose to the S.C. Court of Appeals and Supreme Court that the Solicitor 'Knew or should have known' that the information was the product of an illegal Wiretap, and the Solicitor had prior knowledge of all facts surrounding illegal interception, See: **Thompson Vs. Dulaney, 1993 F. Supp. 1535, 139 A.L.R. Fed. 765.**

Appellate counsel was ineffective as this error was sufficiently egregious and prejudicial. Upon appellate counsels failure to provide the Supreme Court with facts regarding that the applicant HAD NOT CONFESSED to this alleged crime accused, and applicant WAS NOT informed by his daughters mother that [H]is private conversation with his child was going to be recorded by childs 'Step-Father'.

Appellate counsel further failed to provide Appellate Court and or to adequately provide before the S.C. Supreme Court that applicants Rights had been violated by the State of South Carolina, because the State chose to disclose the contents of the illegal surreptitious taped conversation, that had been intercepted without the prior knowledge and or consent of the applicant and or by authority of law, therefore, the State had violated the Wiretap Statute and Article § 1-3 and §1-10 along with the 4th and 14th Amendments to the Constitution of the United States. Appellate counsel was furthermore ineffective upon NOT apprising both the S.C. Court of Appeals and the Supreme Court, that the State known violation consistent of the fact that

it was NOT AUTHORIZED to disclose contents of surreptitious taped conversation between the applicant and his daughter, See: S.C. Code Ann § 17-30-80, plus fact that Law Enforcement had no authority by which to seize or disclose, the contents pursuant to S. C. Code Ann § 17-30-75(E).

Appellate counsel was further ineffective by not challenging the Court of Appeal's jurisdiction to entertain the States Interlocutory Appeal pursuant to S.C. Code Ann § 17-30-110(A) prior to the fact that the state COULD NOT and DID NOT provide the required accompanying application under which said interception could have been or was authorized and or approved pursuant to S.C. Code Ann § 17-30-105.

Appellate counsel rendered ineffective assistance upon NOT apprising the Court of Appeals and Supreme Court that the State had disclosed the contents of tape at trial proceedings before the Honorable Judges Pyle and Few pursuant to S.C. Code Ann § 17-30-105 upon the States attempt at admission of surreptitious tape, See: Exhibit 'A', Pgs. 17-30.

Appellate counsel was ineffective upon failing to protect the Integrity of the Court, See: Exhibit 'A', pgs 17-23, and Hawkins Vs. Bruno Yacht Sales Inc. 353 S.C. 31, 42, 577 S.E. 2d 102. (208 (2003); also, Quinn Vs. Sharon Corp. 343 S.C. 411, 540 S.E. 2d 474 (Ct. App. 2000), being as the State violated the Wiretap Statute upon disclosing the contents within both proceedings, First before the Honorable Pyle in Case No.: 09-GS-23-1072, on Date on 11, March. 2009, and before the Honorable Few, on 2nd thru 4th of November. 2009.

Appellate counsel is ineffective for NOT challenging Jurisdiction Defect pursuant to S.C. Code Ann § 17-30-65; 17-30-105 and 17-30-110.

Appellate counsel rendered ineffective assistance by NOT providing to the Court of Appeals and the Supreme Court the states violation of the Wiretap Statute establishes that an appeal remedy is NOT available to the State pursuant to S.C. Code Ann § 14-3-330, therefore the States 'Interlocutory Appeal' becomes 'interlocutory' itself.

Wherefore the applicant does hereby advise and instruct Post Conviction Relief Counsel pursuant to Rule 71.1(d) to amend above issues.

Submitted this 10th day of January, 2014 does the undersigned applicant,

Samuel Lamont Whitner
Samuel Lamont Whitner #263066

SWORN AND AFFIRMED before me as a **LAWFUL** document this 10th day of January, 2014 as a Notary of the Public for the State of South Carolina (), and now **IS** a lawful request. Copies have been provided to the below listed as required by law.

CERTIFICATE OF SERVICE

1) Paul B. Wickensimer

Clerk of Courts/Greenville County. S.C. (2 R. MILLS Aerial Jr Esq.
Greenville County Judicial Center 11 North Irvine Street
305 East North Street Suite 11 Greenville S.C.
Greenville, S.C. 29601 29601

Samuel Lamont Whitner
Samuel Lamont Whitner #263066
B.R.C.E MLT 1043
4460 Broad River Road
Columbia S.C. 29210

s/ Susan H. Drye
Notary/Signature/Seal

My Commission Expires
March 5 2018

My commission expires:

(3) Karen C Ratigan Esq
office of Attorney General
of the State of South Carolina
Rembert C. Dennis Building
P.O. Box 11549

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CASE NO.: 2013-CP-23-00765
)	
SAMUEL LAMONT WHITNER	)	" ATTACHMENTS IN SUPPORT OF THE "
Applicant,	)	AMENDMENT OF ISSUES TO THE ABOVE
	)	CITED CIVIL POST CONVICTION
Vs.	)	RELIEF.
STATE OF SOUTH CAROLINA)	
Respondant.)	
)	

I, Samuel Lamont Whitner, applicant to above cited matter do hereby move to certify that the below listed document(s) are attachments which support the Amendment of Issues to the above cited Post Conviction Relief Action:

EXHIBITS

Exh. A): Trial Transcript of Record for Trial held before the Hon: C. Victor Pyle, Jr., as Case No.: 2009-GS-23-10072, on 11, March. 2009;

Exh. B): Designated portion(s) of the Suppression Hearing held before the Court of appeals on 22, July. 2009;

Exh. C): Designated portion(s) of the Initial Brief of Appellant;

Exh. D): Designated portion(s) of the Trial Counsels Memorandum before the Court of Appeals;

Exh. D-1): Designated portion(s) of the States Memorandum before the Court of Appeals;

Exh. G): The States Notice Of Appeal, dated 19, March. 2009;

Exh. T): Designated portion(s) of Trial Transcript for Trial held before the Hon: John C. Few on 2nd thru 4th of November. 2009., as Case No.: 09-GS-23-1072;

Exh. 1): Return to the Motion To Vacate Order and Allow Motion To be Served and Filed pursuant to S.C. Code Ann Section § 17-30-110;

Exh. 1-1): Motion To Vacate Order and Allow Motion To Be Served and Filed pursuant to S.C. Code Ann Section § 17-30-110;

Exh. 2-1): Correspondence To and From Court Reporter: **Caroline Hiskell.**

SO SWORN AND AFFIRMED BY:

S/ Samuel Lamont Whitner
Samuel Lamont Whitner
Affiant

So sworn and affirmed as the true facts before me a Notary of the Public for the State of South Carolina on this 10th day of January, 2014, did the above signed affiant.

My Commission Expires
March 5, 2018
My Commission Expires:

S/ Susan H. Dye
Notary Signature/Seal