Explination as Pursuant to
Rule 243(c) SCACR

On November 18, 2013 the Appellant appeared before General Sessions Court Greenville County for a DNA Post-Conviction Relief Testing hearing. The Appellant filed a PCR action challenging the hearing results of his DNA Post-Conviction Testing relief hearing, whereas he was made aware of the distruction and disposal of his evidence he wished to have tested. The evidence was destroyed while and during appellate relief action was pending, as a final order and disposition had not been concluded and/or issued by the PCR Judge the Honorable John C. Few, of the Appellant's first PCR of 2005.

This action (Appeal) is being submitted as a direct result of the destruction of crucial relevant evidence prior to all relief options and actions being exhausted that were available to the Appellant. This appeal has directly resulted from the denial of the Appellant's right to due process created by this destruction of the evidence from his trial proceedings.

This willful destruction and disposal took place during the Appellant's pending/ongoing appellate process of his initial PCR filed July 2, 2004. The evidentiary hearing was convened on February 16 2005. While awaiting the final Order of Judge Few, the Appellant's evidence presented at his trial was destroyed March 30, 2005 - forty-two (42) days, six (6) weeks - after the evidentiary hearing, while the PCR appellate action was awaiting Judge Few's Order. The failure to preserve and properly maintain this evidence by the State's representatives has created a denial of access to justice for the re-testing and evaluation, to pursue his liberty interest and relief from conviction; processes made available to him by and through the Statute of Laws of South Carolina.

The failure to properly preserve and maintain this evidence by the State's representitives as required by State Statutes of law has created a situation not allowing the Appellant to further pursue the appellate relief processes available and raises the question of South Cardina law broken being properly sanctioned against those responsible, and accountability; as well as justice and fairness to be demonstrated toward the Appellant.

No one is above the law, nor should any entity be as well. Statutes of law are in place as by the State Legislature to guide the public as well as public servants, officials and offices; in and by the laws of the State of South Carolina.

The cardinal rule of statutory construction is, to ascertain and effectuate the intent of the Legislature

However the Respondent and lower Court are attempting to expound the statutory operation to include something the Legislature never intended. It would be fundamentally unfair to provide the Appellant with a remedy to correct the unjust but then use that procedure as a bar by deeming it successive. The idea of "one bite at the apple" encompasses the procedural right and concept of one full bite at the apple.

To insinuate that the Appellant would have been able to raise and present this issue of the destruction of evidence presented and admitted at trial as grounds in his initial PCR application of July 2 2004 is an abstract finding, marked by an obvious lack of reason or logic. Judge Stillwell as well as the Respondent have concluded that the Appellant "had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on February 16 2005" (Pg 2 Final Order). This is impossible as the destruction had not occured *at that time*. but took place *forty-two (42)* days *after* the evidentiary hearing on March 30 2005

In addition, the DNA Post-Conviction Testing Act was passed into law in 2008 (Act 413 of 2008) enacted into law January 1 2009, and was *not* funded for implimentation and actual use by prisoners/incarcerated individuals until *three (3)* years later in 2012, to finally allow applicants the opportunity to seek such action and relief. Therefore, how could the Appellant ever have possibly sought or attempted such relief efforts in his prior filing of 2004.

The Appellant filed his application for DNA Post Conviction testing August 2012 and hearing application was granted March 4 2013 by Judge Letitia H. Verdin. The Appellant appeared for this DNA Post-Conviction hearing November 18 2013. At this appearance the Appellant discovered and was made aware of, by and with documentation of this destruction of the physical evidence and biological material. The Appellant in turn within one (1) year of this court appearance and discovery, filed his PCR action. When the Court

convened and held proceedings, this action opened the door, initiating a seperate proceeding, which allows the Appellant to initiate a seperate action in response to the final disposition of it's convening- See S.C. Code Ann. § 17-28-110(B) "Nothing in this Article prohibits a person from filing an application for post-conviction relief Pursuant to Chapter 27 Title 17"; not as a "successive filing of issues that could have been previously raised. Such as a scenario could be considered undeniably the "invited reply doctrine" theory; is applicable in principle.

Based on the factual documented unambiguous proof given to the Respondent by copies of official documents of this illegal destruction, it is literally impossible to litigate an event or occurence: ① Prior to it's taking place and/or ② prior to having knowledge or being made aware of such occurence or situation. An application can only be successive if the issue was raised or could have been raised in a previous filing.

The S.C Code Ann. § 17-28-340(A) "Petition For Destruction of Evidence Prior To Expiration of Required Time Period mandates "The Custodian must petition the General Sessions Court ... in which the person was convicted ... for an order allowing for disposition of the physical evidence or biological material prior to the time prescribed ..." S.C Code Ann § 17-28-340(c) mandates "the Clerk shall file the Petition upon it's receipt and promptly bring to the attention of the Court and deliver a copy to the convicted or adjudicated person ..." S.C Code Ann. § 17-28-340(D) allows the convicted person 180 days to respond to the Petition. The Appellant never had this opportunity as the Statutes of Law were not adhered to by those in place and position of Custodian of evidence.

Had the Appellant been notified of the State's intent to dispose and destroy his evidence as mandated by the Statutes of Law, the position of this issue and ground being litigated prior to the Appellant's July 8 2014 PCR application could have bearing as it truely could have been presented not at his first evidentiary hearing, but certianly afterward - Again the Appellant submits it was not

Feasable for him to present this without knowledge of it's existance or having taken place.

S.C. Code Ann. §17-28-320 embraces and outlines the mandated laws of evidence preserved conditions and duration of preservation. S C Code Ann § 17-28-320(B) specifically outlines the physical evidence and biological material *must* be preserved 1) subject to a chain of Custody as required by South Carolina law, 2) with sufficient documentation; and (C) until the person is released from incarceration, dies while incarcerated or is released from incarceration or is executed for the offense It is well established that evidence presented at trial and evidence admitted as exhibits during the trial proceedings, made a matter of the trial record before the Court *must* be preserved as mentioned, as well as until the exhaustion of all possible and *existing relief efforts* have gone forth or time limitations and restraints surpassed. Clearly this was not observed nor adhered to in the Applicant's case at hand.

This destruction and disposal of the Appellant's evidence has impaired the Appellant's ability to bring forth the opportunity to convey his innocense by positive identification of all Contributors of all the DNA evidence.

This destruction of evidence during the pending appellate process can, and should be considered as an act of obstruction of justice. "Under common law obstruction of justice is an offense to do any act which prevents obstructs impedes or hinders administration of justice." See State v Lyles-Gray 492 SE2d 802 (SC App 1997), and State v Cogdell 257 SE 2d 748 (1979).

Spoilation is the destruction or material alteration of evidence ... because a party is always under a duty to preserve relevant evidence when litigation is pending ... adverse inference charge would adequately sanction the improper conduct." See Nucor Corp v Bell 2008 WL 9894350

The Appellant has made numerous request to the Clerk of Court Greenville County, the Greenville Sheriff's Office and South Carolina Department of Corrections Division of Operations seeking documentation regarding the Custodianship, maintaince and preservation of the

of the evidence, and most importantly the Chain of custody that is required to be kept. See S.C. Code Ann § 17-28-320(B)(1)(a) as stated previously. The third request to the Clerk of Court was made formally as a Freedom Of Information Act (FOIA) request undes S.C. Code Ann § 30-4-10 et seq to which they finally responded.

The most recent request to SCDC Division of Operations and the Greenville County Sheriff's Department, Property and Evidence Division. Both request were made formally as FOIA Request under SC Code Ann § 30-4-10 et seq requesting their responses within fifteen (15) days as neither party has responded as required and mandated under S.C. Code Ann § 30-4-30(c)

Rule 606(c)(1)(B) SCACR requires the Clerk of Court to maintain evidence admitted during a trial. During the Appellant's trial State's Exhibit Number 10, identified as a "Child's Sexual Assault Kit" (SSC Kit) was admitted described as to it's contents, was admitted by the Without objection by the trial judge. confirmed as accounted for by the Court's reporter/clerk when asked by the trial judge if all the Exhibits and Evidence (where as the proceedings had concluded) were accounted for and the Court reporter/clerk affirmed all exhibits and evidence was.

The Clerk of Court Greenville County, in his response to the Appellant's Freedom Of Information Act request indicates in his response." The Clerk of Court records do not include the above referenced exhibit for the above referenced cases." (This is in reference to Exhibit 10 admitted into evidence) This clearly indicates that the Clerk's Office has not conformed or complied with Rule 606(c)(1)(B) SCACR.

The Appellant has repeatedly and consistantly refuted the argument of the Respondent and Court in their Claim of this evidence destruction taking place after the PCR hearing and still refutes their assertion as determined by Judge Robin B. Stillwell's order of dismissal.

The Appellant has sought to have his conviction overturned by the available processes of DNA Post Conviction Relief Act as the application was filed seeking such. In light of these events the Appellant's seeking of relief is now subject to the obstruction of justice and resulting unfairness from such, denying him due process under USCA 14.

This issue is presented squarely to this Court as it has been to the lower Courts based on comity to allow the State to review and Consider the federal nature of the Claim.

The Appellant would seek relief based on the remaing available evidence, the Forensic Reports of test and conclusions determined by SLED and documented. This is sought under and pursuant to Rule 1004(1) SCRE.

The Appellant would also seek that the appropriate action(s) and sanction(s) be taken against those who have infringed upon the statutes of South Carolina Law in their official capacities acting under Color of State. as the law prescribes and allows.

Respectfully submitted,

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