STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTORARI to HORRY County
KRISTI LEA HARRINGTON,
CIRCUIT COURT Judge

Jeffrey WAYNE RIEBE,

Petitioner,



V.

STATE OF SOUTH CAROLINA,

Respondent

Appellate case NO: 2015-000015

Pro SE Response to JOHNSON
Petition for writ of CERTIORARI

Jeff Riebe
Appellate
MCCIF2A-166
386 Redemption way
McCormick, SC 29899
New Address

ARGUEMENT

1) Trial counsel was constitutionally ineffective for failing to have quashed a defective indictment.

At the start of the JACKSON-DENNO HEARING The Trial Judge Honorable STEVEN H JOHN(court) called the case, the following took place between the Court, MS. Brana williams(Williams) Jeffrey Riebe's (Petitioner) trial Counsel and MR. George DeBusk ASSISTANT solicitor for Horry County, Counsel for State.

MR. DeBUSK: Your Honor, we want to proceed with... JACKSON-DENNO

The court: ... Why don't we call the name of the case, so we've got it on record, Please.

MR. DeBUSK: THIS is STATE V. JEFFREY RIEBE. I'm sorry, your Honor... I didn't have the indictment number handy. ...

MS Williams: I have it, It's (08-GS-26-01053) (08) sic

MR DeBusk: That is correct, Your Honnor.

The CourT: ALL Right, very good See (APP. 21, I:4-14)

ON Tuesday, MAY 24, 2011 - FRIDAY, MAY 27, 2011, and TUESDAY, MAY 31, 2011 Trial was held See (APP. 1, I) The case was called, but not the indictment number see (APP. 114, I:14-16) The Petit Jury found petition guilty, and Deputy cleck of courte PUblished the following:

Indictment number (08-GS-26-01053) (sic) State of South Carolina, County of Horry versus JEFFREY RIEBE ... MAY 31st, 2011 Signed by

foreperson, 302 Stalvey. See (App. 991, II: 7-13)

a) Convicted under one indictment, and Sentance under another indictment.

The petitioner was taken to trial under indictment (08) which the body stated ... strangulation only See (App. 1091-2, III) and petitioner published the indictment at post conviction Relief (PCR) hearing See (App 1031, III: 2-16) The petit jury found Petition guilty, and the Deputy Clerk of Court published the verdict with indictment (08) ID (emphasis added)

The Court: ... (09-GS-26-01053), State of South Carolina. County of Horry, versus JEFFREY WAYNE RIEBE ... See (App. 996, II: 13-14) The Court Reporter informed the Court there is a problem with the indictment See (App. 997, II: 4-5)

The Court did inquire about the indictment number, and the following took place;

The Court: The indictment number, Solictor is 2009-- is it (09-GS-26-01053)?

MR. DeBusk: I have 2008 Your Honnor, but--

The Court: well, I've got the True-Billed indictmen.

MR. DeBusk: I will take your word over that, your Honnor

The Court: OKAY, and it says 2009--

MR. DeBusk: It was true Billed on MARCH 26, 2009

The Court: 26, 2009
MR. DeBuski: ... So it should be 2009, Your Honner
The Court: yes, - see App. 997, II 6-17)

The court went by the action of the grand jury "Action of the grand jury" the word "true-Billed" ... after the grand jury has deliberated, it then reports it finding of "true bill" or "No bill" to Court of General Session. this report may be made on the same day as the grand jury make its finding, or it may be made at some time later time Brown v. State 449 SE2d 494, 316 SC 258 (SC 1994)

By using the action of the grand jury was in error in this situation. where the dock number and term of court on the first (1st) page was typed in Number (8) (Eight) on page two (2) the oath and grand jury convined on (8) (Eight) ... AS required by Law ... the caption of indictment should show the place and date at which the court was held... State Vs Griffin 285 SE2d 631, 277 SC 193 (1981). There is no ambiquity or uncertianty in it (Capation) it is as descriptive of the place as language can passibly make it to the nicety and exacting laid down in some of the old antiquated English reporters. it was disgrace to Law ... a sufficient degree of certainty to show the time and place is all the Law do quire, and well

laid in caption of the indictment under construction State v. Brisbane 2 Bay 451, 451 — —, 1802 WL 494 (SC const, 1802) Petitioner's certianty show place and time as required by Law by having Common date of 2008 see (Aff. 1091-2, III)

The indictment (08) did not have any omission, and the Law only permits for insertion for omission - The omission may be corrected by other parts of the indictment Id Griffin See also tate v. state 549 SE2d 601 (SC, 2001)

In State v. CReight 1 Brev 169, — — — 1802 WL 558 (S C, const, 1802) (... and even after conviction the statement in an indictment, that the presentment of the jury is "upon thier oath" is part of the caption, and if it has been omitted, may be inserted even after conviction), But the court could not amended petitioner's indictment when grand jury convined on october 30, 2008 See (Aff. 1092, III) and the indictment (08) over two (2) years later be amended See Aff, 997, 4-17) on MAY 31, 2011. A mere clerical mistake may be amend at anytime, but after term expired, the original caption cannot be amended State v. Dozier 29 Sec 211, 2 Spear 211, 1843 WL 2521 (SC A, 1843) Citing 2 Lord Raymond 968. Amending the caption on May 31, 2011 when the term of court for grand jury MARCH 26, 2009 or MAY 30, 2011 is well outside the week the term of court ended.

The term of court is one week. State v. campbell, 376 SC 21, 265 SEd 371, (SC, 2008)

It is Long standing rule of Law that a trial judge is without Jurisdiction to consider a criminal matter once the term of court during which Judgement was entered expires State v. Hinson 303 SC 92, 339 S.E. 2d 422 (1990) also State v. Best 257 SC 361, 186 SE2d 272 (1972) (Trial Judge is without Authority to pursue a case after the term of court has a-Journed) The grand jury made there finding on indictment (08) I0, and since the grand jury's Jurisdiction co-extesive with the criminal Jurisdiction of the court in which it is enpaneled and for which it making inquiry State v McClure 289 SE2d 158 (SC, 1982) the grand jury which was enpaneled in March 26, 2009 term falls well outside may 31, 2011 term when the indictment (08) was altered.

b) Different Indictments

The indictment (08) is the offense of strangling Mowery only. See (App, 1092, III) The indictment the Petitioner should of went to trial by should be Mowery ... by means of asphyxia due to manual Strangulation and blunt force trauma, Injuries to the neck, The front and back of Head, mouth and body (ribs) by Belt and fist, corner or wall, floor, hard object or something of that nature (Unknow weapon) See (App II: (564:1-2), 566:25-568:9, 564:11-16, 569:12-15, 565:9-566:3, 5696-7, 568:11-569:5, and 569:17-570:13), or to that effect.

Solicitor called DR. Proctor would do the Autopsy and Testified that Mowery died of asphyxia due

to Manual Strangulation and blunt force trauma II at(557, II:12-18) and also ... The cause of death? "This woman(mowery) died as a result of asphyxia due to manual strAngulation, and blunt force trauma" II. this Belt Like Ligature that was present at the time of Autopsy -(SEE App. 564, II:1-2) "Again to Break ribs in that matter, it would be blunt force," see(App 570, II:8-9) " The head being banged against the floor, or any blunt object... to the front of the head ... blood within the brain stem" see(App 568, II: 20-569:6) This offense presented to petit jury was different from the grand jury indicted petitioner for,

The respondent (Joshua A. Thomas) assistant attorney General asserted that the indictment (08) presented to grand jury. A presumption of regularity attaches to proceeding in the court of general session. Pringle v. State 287 SC 409, 411, 339 SE2d 127, 128 (1986) citing Britt 235 SC 395, 111, SE2d 669 (1959) State v Jones 211 SC 319, 45 SE. 2d 143 (1918) Absent evidence to contrary, the court must presume that a properly returned indictment is valid. State v. JAMES 321 SC 75, 472 SE2d 38, 40 Ct App 1996) Cciting weather v State 319 SC 59, 459 SE2d 838 (1995). State v Thompson 305 SC 496, 409 SE2d 420 (Ct App. 1991) Applicant's indictment is valid on it face because it state all the necessary elements of the crime, the date of the offense, and the name of the accused ID at 75, 472 SE2d

at 40, the indictment is stamped "True-billed" and signed by the forman 287 SC 410, 339 SE2d 129. See (App 1087, III, 10-19) The respondent asserted that the body of the indictment is without defect and PCR court agreed ID order at 1087 and petitioner agree's this is valid indictment (08) returned by the grand jury mean this indictment (09) is perfected and meet with requirement of the LAW ID Brisbran as well

The petitioner published during PCR hearing the indictment (08) See (App 1031, III: 4-16 and 1092, III) respondent asserted that it's valid on it face ID The only defect to the indictment (08) is the amendment to number (8) to make it (09) by handwritten date which goes against common date of (08) which was not omitted but change. In Griffin and Tate courts ID held the omitted section could be corrected by other part of the indictment. The petitioner's original indictment (08) has all three (3) section filled in with eight (08) which was amended, over two (2) years later in which Dozier court ID held could not be amended outside term of court of judgement in which grand jury making inquiry co-existed with court it was enpaneled McClure ID, and Tate court - indictment which state the essential elements of the crime and, is other wise free from defect in the caption will not invalidate the indictment.

State should of had Indictment (09)

The court: ALright, Do you have the book where the indictment numbers are originally Recorded? see (App 997, II 23-24)...

MR. DeBUSK: we have checked the book, we have it present in the court room today.

It is (09-GS-26-01053).

The court: ALL right so it's (09-GS-26-01053)

MR: DeBUSK: Yess your Honnor.

the court: ALL right. And that's what is Reflected on the original indictment, and sentancing sheet, see (App. 998, II: 15-21) (The court used the true-Bill) date 10

C) The court Knew number on the indictment was essential

The court: Mad clerk... you need to look at your book, you need to look at your book and make sure... well, we'll clear that up. See (App. 997, II: 19-21, 998: 5) In an action for Malicious Prosecution an averment in the declaration, of the term of which the indictment was given out to the grand jury is Material and variance from the record will be fatal, But if the averment be according to the truth, the plaintiff is not concluded by an errous statement of the term in the caption of the indictment, and sustain the averment. Vandyke V. Dare 1 bail 165, 1828 WL 783 (SC App & Eq 1828) The court should of Known with the number

and adverment (2008 to 2009 and Strangulation to Strangulation and blunt force trauma) would be fatal to the indictment. The court errored by not Looking at the indictment as a whole AS the Griffin court ID (fail to Read the indictment as a whole)

The respondent on cross of petitioner counsel asked her about the Autopsy report and in she was surprise and indictment(08) did not mention both words (Strangulation and blunt force trauma) see (App. 1064, III : 20-1065; 7 If he received any notice at all, it was from the attorney ID the court held that notice from the Attorney was inadaquate, and therefore the defendant's constitutional rights were violated Ed MAGAZINE 361 SC 610, 606 SE2d 761 (SC 2004) citing State v. Green 269 SC 657, 661 239 SE2d 485, 487 (1977). The solicitor giving petitioners Attorney the Autopsy report and not putting blunt force trauma in the indictment was inadaquate to petitioner's Constitution rights to be fully informed.

C) The Solicitor Amended the indictment at trial by presentment of evidence outside scope of indictment (08)

The Solicitor's openning arguement informed Jury that Mowery " had massive contusion on front part of her head, her forehead was all cut up, some of her teeth where knocked out" see (App 16, II: 11-16) He also said mowery was very beaten, lying on the floor in helpless position, probably too drunk to do anything about it in pain, spitting out blood with every breath see

(App.116, II 14-16) citing Petitioner's counsel Johnson Petition for writ of Certiorari (Johnson Brief) 4; 8-11

The Solicitor called DR. Proctor who testified "This woman died as result of asphyxia due to manual strangulation, and blunt force trauma" (App 57, II 17-18) This testimony was presented by Solicitor for which indictment (08) show only strangulation,

Petitioner would like to remind this court of the definition of the word "and"; 1) used to indicate connection or addition. esp. of item with in the same class or type, or to join word or phrase of the same grammatical rank or function, 2) use to join one finite verb to another so that together they are equivalent to an infinitive of purpose see Merriam-Webster's dictionery and thesaurus (Paperback) Copyright 2006 by Merriam-Webster, Inc, ISBN 978-0-87779-851-4... 20th printing 8/2013

"Appellant also asserts a fatal variance between the indictment and the proof because the State did not prove the specific mean of accomplishing the murder, the State did produce evidence tending to show that the victom could have been killed by any one of means alleged in indictment there was no material variance State v. Owens 293 SC 161, 359 SE 2d 275 (SC 1985)



MOOR

over ruled on other grounds(Gentry). unlike Owens petitioner's indictment did not have any additional cause of death, but the cause of death for mowery in this case was strangulation, and addition of blunt force trauma.

The purpose of the indictment was to state the charge with enough specifity so that the defendant knows what he has to defend against... the Jury's question and ensuing dissussion with the Judge reveals that Jury focused **** on the terms of the indictment and reconized the alternative elements in the homicide Bailey v. State 392 SC 422 709 SE2d 671 (SC, 2011) in petitioner's case no one has reconized the additional element of blunt force trauma (ephasis Added)

2) The trial counsel was constitutionally in effective for failing to object to state's closing Arguments,

FACTS

MR. DeBUSK: ... He (petitioner) killed Phyllis Mowery (Mowery). He beat her... He beat her, put cuts on her head, contusion front and back; Broken ribs... He was confronted with a choice... he grabs that belt, put it around her neck... put it around her neck, hold it tight enough to fracture the bone in her trachea... hold it long to kill Phyllis mowery see (APP 974, II: 2-975: 1)

He had to wrap that belt around her neck

He had to hold with sufficient force to break the bone in her trachea... the effort required was significant, and it had to be done well over a minute to bring about her death... all this happen after he beat her. He knocked out her teeth see (App. 972, II; 1-10)

Let's talk about that evidence, the real evidence the real evidence in this case prove Jeffrey Riebe is guilty of MURDER, Prove it beyound a reasonable doubt see (App 956, II; 7-9)... he knew she was dead, the person who tried to hide what he did and that person is Jeffrey Riebe see (App II; 17-18)

The last word's by Solicitor was... the Jeffrey Riebe who is Guilty of strangling and murdering Phyllis Mowery, Now I ASK you to go back there and do Justice for Phyllis Mowery see (App. 978, II; 2-5) (EMPHASIS ADDED)

The Solicitor's opening argument is as following mr. Debuski... Turn out unfortunatley Jeffrey Riebe did not like being fuss at... it made him angry, and one night of August 26, 2008. and the early morning hours of August 27, 2008 that anger boiled over, and when Phyllis fussed at Jeffrey Riebe Just one to many times, he started beat her... at that point Jeffrey Riebe takes a choice... the alternative was to finish what he had started and that's then

alternative he chose... He grabbed that belt, He put it around Phyllis's neck and he squeezed, so hard it crushed her trechea and he held it, so long that it killed her from asphyiation she wasn't going to be a witness against him, he made the choice, I going to get away with this, and he carried on with that choice see (App. 116, I :6-117:4) He did not tell the truth they (police) talked to him two (2) different days, and he he told two (2) different stories see App. 117, I :20-23)

a) The post Conviction Relief (PCR) Judge errored in her ruling by not considering the following.

The propriety of closing argument must be reviewed in the context of the trial judge's instruction adequately cured the improper argument and whether there is over whelming evidence of the defendant's guilt Brown v. State 383 SC 506, 516, 680 SE 2d 909, 914-15 (2009) (citing Simmons v. State 331 SC 333, 338, 503 SE 2d 164, 166 (1998) also order of Dismissal Case no. 2013-CP-26-5292 (2014) There was no curative instruction given by the trial judge in petitioner case see (App 79, II :16-99 :16)

(1) STATE CASE IS WEAK

The state's DNA expert said "a mixture of

touch DNA was found on the belt, including that of unidentified male" (App 456, I: 13-24, App 451, I: 22 - 452: 16) the DNA expert for state orginally testified that petitioner was excluded as a contributor to the DNA on the Belt (App. 452, I. 14-25) upon prompting from the Solicitor, The state's own DNA expert then said if the male DNA on the Belt were from three people instead of two, that it was "possible" that petitioner was contributor (App. 453, I: 21-24) petition's DNA expert agreed that petitioner was excluded from being a contributor on the belt (App. 865, I: 3-868: 14 He disagreed with the SLED expert that if there were more than two contributor petitioner was a "possible" match because there was not enough "quantity and quality of that DNA... to form a conclusion." (App. 868, II 15-869. II: 5) citing Johnson Brief case No 2015-000015) also State expert agreed with petitioner's expert "... in this case the male contributor was a very weak profile, so I thought it be helpful to determine comparing with Y string testing (App. 453: 17-20)... would it be fair to characterize it (DNA) as Low quality and Low quantity, Answered; Yes it is a touch sample (DNA) App 514 II: 2-23 Also confirmed Y-

-String tested by state's second DNA expert.
-State's DNA experts and petitioner's expert all testified that unidentified male DNA was present on the Belt

(2) No witness to the offense

The solicitor presented one witness who places petitioner in the area of where the offense happen, but not at time of the offense. solictor called Michell Rainey (Rainey) Mowery's nicce.

Q: (DeBusk) No on August 26, of 2008, did you see Phyllis

A: (Rainey) not on the 26th, No ... I'm not exactly sure what day ... before got murdered see (App 125, I 16-21)

Q: So the day before this happened, did you see Phyllis?

A: Yes, she was with me till about 8:05 (pm) that night see App 126, I: 2-3)

A: because she called Jeff (petitioner), and right when she called Jeff it was on my cell phone ... not Long after she called Jeff cell phone that's when she went home see (App 126, I: 8-11)

Q: did you hear the -- phyllis end of the Conversation?

A: ... she said that he was going to come over see (App. 126, I: 16-21)

A: He (petitioner) came over, I'll say

around 10(pm) something to use can opener to open a can of Spaghetti I see (App 127, I: 5-6)

Q: After that, after he came over for the can opener did you see Phyllis and Jeff again?

A: NO

Q: when was the next time you saw Jeff Riebe?

A: that -- the morning my aunt (Mowery) was found see App. 127, I: 16-21 (Coroner determined Date of death August 27, 2008) see (App 482, I: 4)

Rainey could only confirm that petitioner was in the area night before at around 10 pm at her house next time she see petitioner two days later the morning her aunt was found, she never testified that she seen Pitioner leave her aunt Appartment see App. I: _____

A: (RAiney) I heard -- there's two appartments right next to each other, If you've seen the pitures But the neighbor's kept coming in and out, in and out, and I heard arguing over there, But I wasn't SURE If It was coming from them (Mowery and petitioner), I wasn't sure if it was come from them, so I did not see no body else going to the appartment after Jeff went over there (she has no personal knowledge that petitioner is over

her Anunt's Appartment ID) see(134,I 1-135:5)(IN Rainey's statement to the police she heard arguing at 2 AM and went to bed at 2:30 AM)

3) Petition is unreliable according to Solicitor

MR DeBUSK: ... He did not tell the truth. they (police) talk to him two different days and he told two different stories see App.113, I:20-20-23) and closing he also said some thing in the first interview and then change them in the second interview see App. 960, I:15-17)

9) the solictor vouches for state evidence

MR: DeBUSK: ... Ladies and Gentlemen, I would never ask you to convict HIM (petitioner) on evidence of that NATure. that's a little speculative instead we are going to Look at the real evidence in this case, the firm evidence, the non-SPECulative evidance, and most of that Ladies and Gentleman, comes from Jeffrey Riebe himself. let talk about that evidence the real evidence. The real evidence in this case prove Jeffrey Riebe is guilty of murder, prove it beyond a reasonable doubt (App. 956 II 2-9)(emphasis ADDed)

Look at the real truth. its there right -- just to her (mowery) right that way he (petitioner) couldn't miss it. when he left out, It's a blood stain see App. (962, II (4-16)

by stateing the real evidence prove petitioner is Guilty beyound a reasonable doubt took away petitioner's constitutional right to presumption of innocent and took away constitutionally unbaised Jury by vouching for the state's evidence and useing state influance that petitioner is guilty beyond a reasonable doubt. No matter what his defense is a lie and he (solicitor) had the real evidance and truth to his guilt. when an accossed assert a constitutional right, it is imperssible for state to comment upon or argue in favor of guilt or punishment based upon his assertion of that right State v. Johnson 293 SC 321, 323, 360 SE2d 317, 319 (1987). A solicitor's closing argument must becarefully tailored so as not to appeal to the personal baised of jury State v. Copeland 321 SC 318 324, 468 SE2d 620, 624 (1996) (the state's closing argument must be confined to evidence in the record and reasonable inference that may be draw from the evidence) State v Smith 375 SC 507, 654 SE2d 523 (SC, 2007)

The solicitors argument was prejudicial in that it deprived him of the presumption of

innocence and his right to rely upon the failure of State's evidence to prove his guilt be yound a reasonable doubt State v. primus 341 SC 592, SE2d 152 (SCA, 2000) citing State v. Posey 369 SC 500, 238 SE2d 176 (SC, 1977)

The Solicitor's last words were "The Jeffrey Riebe who is guilty of strangling and Murdering Phyllis Mowery. Now I ask you to go back there and do justice for Phyllis Mowery, and find him guilty of Murder. See (App. 978, I 2-5) (Phases Added)

MR. GASSER personalize the issue to the jury by suggesting they where speaking for Ms. Joyner made their responsibility personal rather than as for jury to decide the issue from the facts and evidence, and interjected I think into the trial, and to the jury an inflammatoon, and a passion to decide this case for other reason other than the facts, and law State v. Reese 359 SC 260, 597 SE2d 169 (SCA, 2004)

5) the police had evidence of someone else

solictor calls Detective Dennis Pitsinger (Pitsinger) of north MYRTLE BEACH Police Department: A: (Petsinger) I Actually Looked at that quite extensively, and it appears to be that there was blood that let on the

floor there or dibbled on the floor... I think initially we thought it might be a shoe pattern. on closer examination, and I blew it up a number of times on my computer, it almost seemed like a hand had- had smeared through it as if that two, the drag mark and the hand smear could have been together See (App 291, I: 17-21)

The next day an in camera Hear out side the presence of Jury, Pitsinger stated "I'm not Certified footwear impression examiner ..." See (App 373, I: 17) then back in presence of jury "At the time, I believed it was some sort of footwear impression" but later you made another determination, correct? "Yes, I did" See (App. 382, I: 3-9)

Pitsinger also testified that no one else in the North MYRTLE BEACH police department was qualified and no one outside help to Identify the foot wear impression was Sought See (App 385, I: 8-386: 4)

Another Detective owen LYNAM (Lynam) of the north myrtle beach police Department who did the interagation of petitioner two days in a row on the first interagation: He state the following about the footwear

impression. Q:(Williams)..., there was a foot print at the scene, and in fact, if it wasn't this (Petitioners) foot print, it could exonerate him, right?

A:(Lyn Am) that's correct.

Q: was that the truth on your part?

A: Yeah, If we could prove that it wasn't his foot print. see (App 640, II: 1-9)

Petitioner's counsel calls footwear expert Donald Girndt (Girndt) that he believed this appeared to be bloody partial footwear impression which is not uncommon at a crime scene see (App. 826, II: 19-21) and clearly see the circular patterns here that somewhat outline of a shoe... Plain to see. see (App. 828, II 18-21) opinion was made with reasonable scientific certainty that it was not petitioners shoes see (App. 831, II: 2-16)

## & Solicitor give his personal OPINION

solicitor comments on petitioner's crime scene expert Girndt during closing argument.

MR. DeBusk ... would basically collect anything and everything that was assiated with crime or not... She (Ms Williams) talk all the things that could of have been collected, and it makes you wonder if her expert doesn't have a ware-house somewhere like the end of Indiana Jones you know, when they have that huge ware-

house, he's collected all this evidence because -- he would of pulled up the floor, In fact, I believe that the building would of have fallen down after he did the evidence, because he would of taken the entire house into evidence see App. 954, II:4-11)

I (Solicitor) don't think he was kicking her (Mowery) to make sure she was dead, because if he (Petitioner) really wanted to see was dead, because if he really wanted to see if she was okay he would of kneal down and checked to see if she was breathing this is I know your are dead, I'm just making sure (App. 962, II:4-8) ... He kick her to make sure she dead see (App 968: II:11-12)

... He kept on saying I don't rember, when really meant I don't want to tell you see (App. 960, II:14-15) ... every time he said I don't rember there was a reason, Its because he didn't want to answer the question. See App. 963, II: 18-20) ... Ladies and gentlemen I don't rember mean, I don't want to answer the question ... but most of all, he rembers that motive. See (App. 965, II: 21-23) He says he think he probably went into a rage Lady and gentlemen that mean he went in to a rage see (App. 967, II: 17-19) when he did not want to admit something, I can't remember See

(App. 968, II: 7-8) A prosecutor should refrain from stating his personal opinion during arguements and misslead the jury about the Law Boyd Vi French 147 F3d 319 (4th, 1998)

The dermination of wether an error is harmless depentants on circumstance of the particular case State v. Reeves 301 SC 191 391 SE2d 241 (1990) no definite rule of Law governs this finding Id rather, the materiality and prejicial character of error must be determined from its *** relationship to the entire case State Vi Michell 386 SC 572 336 SE2d 150 (1985) AN error is harmless where it could not reasonably have Affected the result of the trial id State Vi primus 341 SC 592, 535 SE2d 152. Although the instruction constitional correct statement of the LAW, it does not cure the judge's error or permitting the inappropriat comment by the assistant Solicitor during closing arguement, the Jury was never informed the Solicitor's Comment was improper. More over the charge on the Law does not operate on a reparative vein, so as to eliminate the error which occured during jury argument. Id the court never gave curative instruction for petitioner's Counsel object in opening argument see (App 114, I: 14 - 118: 18) and no objection was givin by petitioner's counsel during close argument see (App 958, II: 22 - 978: 10) and curative instruction. Id

## Conclusion

The solicitor violated petitioner's United States constitutional Rights and/or Federal Law, and/or Constitutional Rights and/or Law of the State of South Carolina for failing to take petitioner to trial by notice of Legal indictment.

1) by Presenting the grand jury with indictment (08), and Offense of strangulation as cause of death, then presenting a petit jury at indictment (08) (strangulation), then the court changed the indictment from one indictment to another by making it Indictment (09) - strangulation and blunt force trauma by various weapon, and unknow (Belt, floor, dresser and hard objects ectra.)

2) the indictment as it stand to day is indictment (08) because docket number goes against rest of the numbers on the term and oath the grand jury convicned on is october 30, 2008 term the indictment can not be change the term of court in october, 2008 or term of trial may 2011 are expired.

3) the petitioner was not personally notified by indictment as required because Blunt force trauma and various weapon or un know weapon was not in the indictment.

4) The state cannot produce legally true billed indictment (or) which the journal show that petitioner was to be taken to trial.

5) The accumulation of these errors or any one cause this indictment to be defective which violated the requirement of notice by indictment.

The solicitor violated petitioner united state constitutional Rights and/or Law, and/or constitutional Right and Law of the state of south carolina

1) The solicitor violated petitioner's Right to the presumption of innocents by stating three time petitioner is guilty and several time that petitioner died Kill, and strangled and what his thought where.

2) The solicitor violated the "Golden Rule" asking the jury to make it person and/or mowey call out for justice that justice would be served by finding petitioner Guilty, an other ~~factors~~ factors.

3) By stateing the state's evidence is real proof beyound a resonable doubt, and petitoner evidence was speculative and not the truth

4) state vouch that his expert's where fact and that petitioner's expert where paid well to lie.

(5) The soliciton violate petitioner right to a Fair tiral by causing in the jury to State Side or mowery side with in flaming jury passions then to look at the evidence, And See the weakness of the case present by State, And Determining the evidence to see if the evidence prove the petitioner guilty beyound a reasonable dount by the evidence Alone

for the above reasons the Petitioner ask the Court to reverse.

Jeffrey Rieber 14 Dec 15
Jeffrey Rieber

Sworn and subscribed
before me 14 Dec. 2015
on J Franklin.
My commission expire on
12-16-2019

# Affidavit of Service

I, Jeffrey Riebe, did mail copy of PRO SE Response to Johnson Petition for writ of certiorari on date sworn and subscribe to Assistant Attorney General Joshua L. Thomas, Esquire. At;

P.O. Box 11549
Columbia, SC 29211

Jeffrey Riebe 14 Dec 15
Jeffrey Riebe

Sworn and subscribed before me J C Hamilton
on 14 Dec. 2015

My commission expires on 12.16.2019

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