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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY  
HONORABLE LEE S. ALFORD, RESIDENT JUDGE

CASE No. 2014-002630

THE STATE, RESPONDENT

v

JEFFREY LYNN CHRONISTER, APPELLANT

BRIEF OF APPELLANT

JEFFREY LYNN CHRONISTER, #189827  
KIRKLAND CORR. INST., B-II, 34  
4344 BROAD RIVER ROAD  
COLUMBIA, S.C., 29210

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## STATEMENT OF ISSUES ON APPEAL

(I) FRAUD ON THE COURT COMMITTED BY DEFENSE COUNSEL'S MISREPRESENTATION, AND SOLICITOR'S PROSECUTORIAL MISCONDUCT WHICH ALSO PRODUCED THE DIRECTED VERDICT, AND ALSO OBSTRUCTED JUSTICE.

(II) THE ARREST MALICIOUSLY MADE FOR THE LACK OF PROBABLE CAUSE WHICH WAS BROUGHT FORTH BY THE FRAUD ON THE COURT.

(III) APPEARING THAT THE GRAND JURY CAME BACK WITH AN NO BILLED INDICTMENT, AND ALSO OTHER FACIAL IRREGULARITIES OF INDICTMENT RAISING DEFECT(S) IN SUBJECT MATTER JURISDICTION.

## STATEMENT OF THE CASE

APPELLANT IS PRESENTLY CONFINED AT KIRKLAND CORRECTIONAL INSTITUTION OF SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDER OF COMMITMENT FROM YORK COUNTY CLERK OF COURT. APPELLANT HAD AN TRIAL BY JURY ON SEPTEMBER 21-22 1992, AND WAS REPRESENTED BY GERALD W. SMITH, ESQUIRE, OF THE YORK COUNTY PUBLIC DEFENDERS OFFICE. THE TRIAL RESULTED IN APPELLANT BEING FOUND GUILTY AS CHARGED FOR MURDER, AND UNLAWFUL POSSESSION OF AN FIREARM DURING THE COMMISSION OF A VIOLENT CRIME (92-GS-46-1224). THE SOLICITOR WAS LARRY F. GRANT, AND THE HONORABLE DON S. RUSHING IMPOSED A LIFE SENTENCE PLUS FIVE (5) YEARS CONSECUTIVE.

APPELLANT IS AN PROSE LITIGANT, AND THIS MATTER NOW BEFORE THE COURT AROSE FROM AN MOTION FOR NEWLY DISCOVERED EVIDENCE TO THE YORK COUNTY COURT OF GENERAL SESSIONS. APPELLANT RECEIVING AN WRITTEN ORDER FROM THE HONORABLE LEE S. ALFORD, RESIDENT JUDGE OF THE SIXTEENTH JUDICIAL CIRCUIT, AND APPELLANT FILING AN TIMELY NOTICE OF INTENT TO APPEAL THE JUDGE'S DECISION. APPELLANT RECEIVING AN CONFIRMATION LETTER FROM THE HONORABLE V. CLAIRE ALLEN, DEPUTY CLERK OF THIS COURT DATED FEBRUARY 13, 2015.

(SEE COPY OF THE LETTER AT PAGE 23) THAT CONFIRMS IT IS PROPER FOR THIS APPEAL TO PROCEED, AND PLEASE SEE APPELLANT'S CERTIFICATE OF SERVICE BY MAIL AT PAGE 24 THAT SHOWS THIS INITIAL BRIEF, AND DESIGNATION OF THE MATTER HAS BEEN PROPERLY SERVED WITHIN THE (30) THIRTY DAY TIME LIMITATION OF THE DATE OF THE LETTER. (COPY OF JUDGE'S ORDER AT PAGE 24)

APPELLANT NOW RESPECTFULLY COMES BEFORE THE COURT OPPOSING THE JUDGE'S DECISION IN THE ORDER OF THE MOTION WAS UNTIMELY MADE. BECAUSE OF IT WAS SUBMITTED UNDER "RULE 29(b) SCR CRIM. P.", "PURSUANT TO RULE 60(b) SCRCP", AND THE FOLLOWING ARGUMENTS THAT WERE PRESENTED IN THE MOTION SHOWS THE FACTS AND ELEMENTS FOR CAUSE OF THIS APPEAL. ALSO THE ARGUMENTS HAVE NOT BEEN RAISED TO AN COURT ON ANY ACTION PRIOR TO THE MOTION, AND SUPPORTED IN THE MOTION BY THE TRANSCRIPT OF RECORD, EXHIBITS, AND CASE LAWS

### ARGUMENTS

(1) WAS THE DIRECTED VERDICT PRODUCED BY PROSECUTORIAL MISCONDUCT, AND MISREPRESENTATION BY DEFENSE COUNSEL?

STATEMENT: THE INITIAL DIRECT EXAMINING OF OTIS J. WHITSTINE SHOWS HE WAS WITH THE YORK COUNTY SHERIFF'S DEPARTMENT AND INVOLVED IN AN INVESTIGATION OF TRAGEDY ON THE DATE IT OCCURRED [TR. P. 133, L. 12-23]. HE WAS THE PRIMARY LAW OFFICER THROUGHOUT THE CASE. BECAUSE OF SHOWN AS THE "AFFIANT", "PROSECUTING OFFICER" OF ARREST WARRANT, AND SOLE WITNESS OF INDICTMENT FOR MURDER (SEE EXHIBITS A-B, P. 25-26) ALSO WAS THE ONLY LAW OFFICIAL WHO TESTIFIED INTERVIEWING AND OR HAVING TALKED WITH WITNESS TOMMY AUTEN ON THE MORNING OF TRAGEDY. THE SOLICITOR ADDRESSING WITNESS

AS "THE EYEWITNESS IDENTIFICATION AND LINE-UP" [TR. P. 119, L. 17-20] AND THE ARREST WARRANT STATES "PROBABLE CAUSE BASED ON WITNESS'S".

SUPPORTING FACTS: THE RECORD FAILS TO SHOW ANY INITIAL DIRECT EXAMINING OF OFFICER / DETECTIVE WHITSTINE OF HAULING INTERVIEWED OR TALKED WITH WITNESS AUTEN ON THAT MORNING [TR. P. 133, L. 12-TO-P. 137], AND ONE OF THE MAIN SUBJECTS OF THIS ISSUE THAT RAISES FRAUD UPON THE COURT BY COUNSEL'S MISREPRESENTATION IS THE FOLLOWING SECOND DAY CROSS EXAMINING OF THE DETECTIVE. BECAUSE OF THE FACTS / EVIDENCE THAT IS FURTHER PRESENTED SHOWS THE ONLY INVOLVEMENT OF THE DETECTIVE IN THE INVESTIGATION WAS PRESENTING OF AN PHOTO LINE-UP TO WITNESS AUTEN AT WITNESS'S RESIDENCE ON THAT AFTERNOON OF THE TRAGEDY. WHICH ALSO SHOWS THE JUDGE'S DECISION IN ERROR. BECAUSE OF THE AUTHORITY GRANTED IN RULE 60(b) ALLOWS AN INDEPENDENT ACTION THATS NOT SUBJECT TO THE ONE YEAR LIMITATION FOR FRAUD ON THE COURT, OR UNDER THE AUTHORITY IN RULE 60 TO HEAR AN INDEPENDENT ACTION FOR EXCEPTIONAL CIRCUMSTANCES WARRANTING EQUITABLE RELIEF. SEE MA. TV M.S.T 378 SC127, 135, 662 SE2d 413, 417 (CT. APP. 2008) (STATING RULE 60 PERMITS THESE TWO POTENTIAL INDEPENDENT ATTACKS ON JUDGMENT). OUR SUPREME COURT HAS EXPLAINED THAT WHILE IN MOST CIRCUMSTANCES THERE IS A TIME LIMITATION ON A PARTY SEEKING TO REOPEN A FINAL JUDGMENT, THERE IS NO LIMITATION WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD ON THE COURT. CHEWNING, 354 SC AT 80, 579 SE2d AT 609-10; ARATA V VILLAGE WEST OWNERS ASSN. INC. NOT REPORTED IN SE2d 2011, WL 1173500 4 (S.C. APP. 2011): EXAMINING

INITIAL CROSS-EXAMINING: (Q) "NOW WHEN YOU TALKED WITH HIM DID YOU TALK WITH HIM EARLIER IN THE MORNING THAT DAY?" (A) "I DON'T RECALL, BUT ITS POSSIBLE THAT I DID" TR. P. 137, L. 19-21]

THE SECOND DAY DIRECT EXAMINING: (Q) "AND WHERE DID YOU TALK TO HIM PLEASE?"; (A) "THE FIRST TIME I BELIEVE WAS AT DUKE POWER CATAWBA NUCLEAR STATION, AND THE SECOND TIME WAS AT HIS RESIDENCE" [TR. P. 205, L. 10-12]

SECOND DAY CROSS-EXAMINING: (Q) "DETECTIVE YOU SAY THAT YOU HAD TALKED WITH MR. AUTEN OUT AT THE CATAWBA STATION EARLY IN THE MORNING, CORRECT, SIR?"; (A) "YES, SIR, DOING INTERVIEWS"; (Q) "AND THAT THAT WOULD HAVE BEEN ABOUT 8:00 - 7:30, 8:00 O'CLOCK, CORRECT, SIR?"; (A) "I ASSUME, IT WAS EARLY IN THE MORNING." [TR. P. 207, 10-17]

THE EVIDENCE THAT REFUTE THE DETECTIVE'S FOREGOING TESTIMONY OF INTERVIEWING WITNESS, AND SUPPORTS THAT COUNSEL COMMITTED THE MISCONDUCT OF FRAUD ON THE COURT IN MISLEADING THE COURT IN THAT THE ALLEGED INTERVIEW HAD OCCURRED ARE: (1) AFTER THE DETECTIVE TESTIFIED TO BEING INVOLVED IN AN INVESTIGATION OF THE TRAGEDY HIS ANSWERS TO THE VERY NEXT FOLLOWING QUESTIONING SHOWS THAT HE MET WITH WITNESS AT WITNESS'S RESIDENCE TO PRESENT THE LINE-UP INSTEAD OF HAVING INTERVIEWED OR TALKED WITH HIM ON THAT MORNING [TR. P. 133, L. 24 - TO - P. 134]. MOST SIGNIFICANT IS WITNESS AUTEN'S TESTIMONY SUPPORTS THAT WHEN THE DETECTIVE ARRIVED AT HIS RESIDENCE AND HAVING INTRODUCE, AND ALSO IDENTIFY HIMSELF WAS THE FIRST TIME THEY HAD EVER MET. FOR HE TESTIFIED CONCERNING DETECTIVE WHITSTINE'S INTRODUCTION THAT;

"HE TOLD ME WHO HE WAS, IDENTIFIED HIMSELF" [TR. P. 201, L. 13]

(2) THE RECORD SHOWS THAT THE ONLY TIME WITNESS AUTEN MENTIONED DETECTIVE WHITSTINE'S NAME WAS DURING HIS TESTIMONY CONCERNING THE PRESENTATION OF THE LINE-UP [TR. P. 126, L. 12 - TO - P. 133, L. 10 - AND P. 208, L. 4 - TO - P. 204, L. 11] AND ALSO THERE IS NO EVIDENCE ON THE RECORD OF THE DETECTIVE INTERVIEWING AND OR HAVING TALKED WITH ANY OF THE OTHER WITNESSES OF THAT MORNING; JOEL SMITH, NO EVIDENCE OF BEING INTERVIEWED OR HAVING TALKED WITH AN OFFICER [TR. P. 87 - TO - P. 99]; DANNY WILSON, INTERVIEWED BY AN OFFICER JIM WILLIAMS, [TR. P. 112;

L. 2-6]; AND SIDNEY BALLANGER III, NO EVIDENCE OF BEING INTERVIEWED OR HAVING TALKED WITH AN LAW OFFICER ON THAT MORNING. ALSO NO NAMES OF THE AUTHORITIES THAT HE TESTIFIED GIVING PARTIAL TAG REGISTRATION TO OR WHEN THIS WAS GIVEN [TR. P. 179, L. - TO P. 189]. (3) THE ONLY COPY OF AN INCIDENT REPORT FROM THE YORK COUNTY SHERIFFS DEPARTMENT THATS BEEN ENTERED INTO APPELLANT'S TRANSCRIPT OF RECORD SHOWS THAT WITNESS AUTEN WAS THE REPORT'S "COMPLAINANT" [TR. P. 452] THOUGH DUE TO THE COPY BEING ENTERED WITHOUT SHOWING OF THE REPORTING OFFICER(S) NAME(S) (SEE EXHIBIT - C AT P. 27) APPELLANT ASKED FAMILY MEMBER TO OBTAIN COPIES OF ALL INCIDENT REPORTS AND ALSO NOTES OF THE TRAGEDY FROM THE SHERIFFS DEPARTMENT. THERE WAS NO COPIES OF NOTES PROVIDED, AND THE ONLY COPY OF AN INCIDENT REPORT GIVEN WAS OF THE SAME REPORT THAT ITS COPY WAS ENTERED INTO THE TRANSCRIPT OF RECORD (SEE EXHIBIT - D P. 28). THIS COPY NOT ONLY SUPPORTS THAT THERE IS NO PHYSICAL EVIDENCE TO SUPPORT THE DETECTIVES TESTIMONY OF HAVING INTERVIEWED WITNESS AUTEN ON THAT MORNING IT ALSO SHOWS THAT THERE IS NO LAWFUL PHYSICAL EVIDENCE THAT ANY OF THE WITNESSES HAD BEEN INTERVIEWED INCLUDING WITNESS AUTEN. BECAUSE OUTSIDE OF THE COPY SHOWING OF AN OFFICER T. B. SMITH BEING THE REPORTING OFFICER THE RECORD FAILS TO SHOW ANY EVIDENCE / TESTIMONY OF HIS BEING INVOLVED IN THE INVESTIGATION AT ANYTIME. THE ONLY TIME OFFICER SMITH'S NAME IS MENTIONED ON THE RECORD IS BEING CALLED ON THE FIRST DAY OF THE TRIAL [TR. P. 21, L. 2-3]. AND BESIDES OF OFFICER SMITH BEING ABSENCE THROUGH OUT THE TRIAL THE REPORT IS FURTHER SHOWN IN THIS APPEAL TO HAVE BEEN FABRICATED FROM OTHER OUTSIDE SOURCES, AND FALSE STATEMENTS

APPELLANT RESPECTFULLY CONTENDS GIVEN THE FOREGOING EVIDENCE THAT REFUTES AND FAILS TO SUPPORT DETECTIVE WHITSTINE'S TESTIMONY OF HAVING INTERVIEWED THE WITNESS THAT COUNSEL'S CROSS EXAMINING ALSO SHOWED MISREPRESENTATION BY IMPROPERLY USING LEADING QUESTIONS IN INDUCING FALSE TESTIMONY ABUSING RULE 611(C) S.C.R.C, AND

ALSO SHOWING MISREPRESENTATION IN VIOLATING RULE 407 SCARER RULES OF PROFESSIONAL CONDUCT, RULE 8.4 MISREPRESENTATION SUBSECTIONS (a), (b), (d), (e), AND (g).

THE FOLLOWING PRESENTMENT EXAMPLES OF OFFICER SMITH'S INCIDENT REPORT AS TO WITNESS AUTEN'S TESTIMONY, AND WITNESS'S LACK OF TESTIMONY SHOWS THAT THE REPORT WAS FALSELY WRITTEN, AND ALSO FABRICATED FROM OTHER SOURCES / WITNESSES VIOLATING S. C. CODE ANN. 16-9-10, (A), (2):

REPORT: "R/A STATED AS HE WAS EXITING THE VEHICLE HE DROVE TO WORK THAT HE HEARD APPROXIMATELY 5 RAPID GUN SHOTS"

WITNESS: "AS I PARKED MY VEHICLE I DID HEAR SOMETHING THAT WAS A LITTLE STRANGE, I HEARD WHAT I THOUGHT WAS A SMALL PACK OF FIRECRACKERS BEING DISCHARGED OVER IN THE ADMINISTRATIONS PARKING LOT"; (Q) "ALL RIGHT SIR WHERE WERE YOU WHEN YOU HEARD THAT?"; (A) "I WAS IN MY VEHICLE IN MY PICK-UP TRUCK." [TR P. 190, L. 23-TO - P. 191]

WITNESS AUTEN'S PRIOR TESTIMONY SHOWS THE NOISES THAT HE THOUGHT WAS A SMALL PACK OF FIRECRACKER WERE "AT LEAST 5", AND THEY WERE IN A "VERY RAPID SUCCESSION" [TR. P. 121, L. 8-11] THOUGH WITNESS DANNY WILSON'S TESTIMONY SHOWING HE HEARD "AT LEAST 5 SHOTS" THAT WERE IN FAIRLY RAPID SUCCESSION" [TRP. 109, L. 2-6], AND ALSO SHOWING THAT THE REPORT'S PRESENTMENT OF "N.C. PARTIAL REGISTRATION DRL" WAS GIVEN TO LAW ENFORCEMENT BY WITNESS BALLANGER [TR P. 101, L. 12-14; P. 110, L. 1-5; P. 186, L. 1-5, AND P. 188, L. 7-9] WHEREAS WITNESS AUTEN'S TESTIMONY FAILS TO SHOW HAVING GOT ANY REGISTRATION.

AS TO THE REPORT'S PRESENTMENTS OF "R/A SAW A W/M SUBJECT FITTING THE ABOVE DESCRIPTION", THE RECORD FAILS TO SHOW ANY WITNESS TESTIMONY AS TO THE PRESENTMENTS OF THE SUSPECT'S "AGE 38/42", COLOR OF HIS HAIR BEING "BROWN" NOR TO THE COLOR OF HIS EYES BEING BROWN. WHERE:

AS APPELLANT WAS 42 YEARS OLD, HAS BROWN HAIR, AND BROWN EYES. THE ONLY IDENTITY PRESENTMENT THAT WITNESS CORROBORATED BY WITNESS AUTEN IS THE SUSPECT WAS "MALE", AND THE NARRATIVE PRESENTMENT OF A "WHITE DODGE VAN" WHICH APPELLANT RESPECTFULLY CONTENTS IS INSUFFICIENT AS EVIDENCE TO OVERCOME THE MAJOR DISCREPANCIES OF REPORT, AND USE AS EVIDENCE TO SUPPORT THE INTERVIEW HAD OCCURRED. ALSO GIVEN THE FOREGOING SHOWING OF IT BEING FABRICATED FROM OTHER SOURCES.

APPELLANT RESPECTFULLY CONTENTS THAT GIVEN THE REPORT BEING THE ONLY POSSIBLE PHYSICAL EVIDENCE THAT COULD HAVE SUPPORTED WITNESS AUTEN WAS INTERVIEWED MISREPRESENTATION BY COUNSEL AND OR PROSECUTORIAL MISCONDUCT BY THE SOLICITOR WAS RAISED IN NOT ENSURING OFFICER SMITH'S PRESENCE TO PRESENT AND TESTIFY AS TO WRITING OF THE REPORT.

APPELLANT'S CONTENTION IS BASED ON THE FOLLOWING SHOWING OF COUNSEL'S CROSS EXAMINING OF WITNESS AUTEN THAT SHOWS COUNSEL AND THE SOLICITOR HAD KNOWLEDGE OF THE REPORT BEING FALSE PRIOR TO THE TRIAL, AND THIS WOULD HAVE BEEN SHOWN BY WITNESS AUTEN'S, AND ALSO THE OTHER WITNESSES TESTIMONIES THIS IS SUPPORTED BY THE RECORD FAILING TO SHOW ANY INITIAL DIRECT EXAMINING OF WITNESS AS TO HAVING TALKED WITH OR HAVING GAVE "A DESCRIPTION" TO ANY OFFICER ON THAT MORNING WHICH SHOWS THAT COUNSEL HAD KNOWLEDGE OF WITNESS HAD TALKED WITH SOLICITOR PRIOR TO THE TRIAL ALSO SUPPORTIVE IS THAT WITNESS HAD TESTIFIED UNDER PRIOR DIRECT EXAMINING THAT THE SUSPECT'S HEIGHT WAS "5'10" TO 6 FOOT", AND HIS WEIGHT WAS "PROBABLY 170, 180 POUNDS" [TR. P. 124, L. 24 - TO P. 125, L. 4], AND COUNSEL IS SHOWN ATTEMPTING TO INDUCE WITNESS INTO TESTIFYING "APPROXIMATELY

5'9", 160, 170 POUNDS". WHICH NOTED ON THE REPORT THE SUSPECT'S "HEIGHT" IS "5'9", AND "WEIGHT" IS "160" POUNDS. THUS COUNSEL ATTEMPTING TO CORROBORATE THESE PRESENTMENTS IN THE INITIAL CROSS EXAMINING AS FOLLOWS;

(Q) "DID YOU GIVE A DESCRIPTION TO ANY OFFICER AT THE SCENE?"  
(A) "YES SIR, I DID"; (Q) "AND THAT DESCRIPTION WAS APPROXIMATELY 5'9", 160, 170 POUNDS?"; (A) "YES SIR. THAT SOUNDS ABOUT RIGHT I THINK"; (Q) "AND YOU TOLD THE SOLICITOR THAT YOU TALKED WITH THE ORIGINAL--GAVE A DESCRIPTION--ORIGINALLY GIVEN AT APPROXIMATELY 8:30 OR SO IN THE MORNING. VERY EARLY IN THE MORNING RIGHT AFTER THIS HAPPENED?"  
(A) "YES, SIR." [TR P. 131, L. 20 - TO - P. 132]

APPELLANT RESPECTFULLY CONTENTS THAT THE CROSS EXAMINING FURTHER SHOWS FRAUD ON THE COURT IN COUNSEL MISLEADING THE COURT TO FALSELY ESTABLISH AN INTERVIEW HAD OCCURRED. WHICH THIS IS SUPPORTED BY HIS NOT QUESTIONING OF THE OFFICER'S NAME, WAS THERE ANY REPORT TAKEN, AND WHEN THAT HE HAD TOLD THE SOLICITOR? ALSO BY COUNSEL'S ACTIVE IMPROPERLY USE OF LEADING QUESTIONS IN COMMITTING THE MISCONDUCT;

APPELLANT RAISES MISREPRESENTATION BY COUNSEL IN NOT ENSURING OFFICER SMITH'S PRESENCE TO TESTIFY, AND OR OBJECTING TO HIS ABSENCE BECAUSE OF HIS GOING OVER AN "SUMMARY OF THE INTERVIEW" DURING INITIAL CROSS-EXAMINING OF WITNESS WILSON [TR P. 111, L. 25 - TO - P. 113]. WHEREAS THE RECORD FAILS TO SHOW ANY MENTIONING OF THE SUMMARY DURING THE PRIOR DIRECT EXAMINING OF THE WITNESS [TR P. 100, L. 16 - TO - P. 111 L. 23]. WHICH THE SUMMARY WOULD ALSO SHOW THERE'S NO LAWFUL PHYSICAL EVIDENCE OF WITNESSES BEING INTERVIEWED ON THAT MORNING. FOR WITNESS WILSON'S TESTIMONY SHOWING THAT THE OFFICER USED HIS OWN INTERPRETATION (TWICE) INSTEAD OF WHAT THE WITNESS ACTUALLY SAID, AND ALSO ERRED IN WRITING SUMMARY [TR P. 111, L. 25 - TO - P. 116]

PHOTO LINE-UP; APPELLANT RESPECTFULLY CONTENTS THAT THE FOLLOWING FACTS PERTAINING TO THE PHOTO LINE-UP SHOWS FURTHER FRAUD ON THE

COURT BY COUNSEL'S MISREPRESENTATION, AND PROSECUTORIAL MISCONDUCT BY THE SOLICITOR.

APPELLANT HAS NEVER SEEN THE ALLEGED PHOTO LINE-UP ITSELF NOR HAS OBTAINED A COPY OF IT THROUGH MOTIONS OF DISCOVERIES, AND PRIOR TO BEGINNING OF TESTIMONIES COUNSEL NOTIFIED THE COURT THAT THERE WOULD BE AN IDENTIFICATION BASED ON IT, AND MOVING TO QUASH THE LINE-UP AS HAVING "TAINTED THE IN COURT IDENTIFICATION" [TR.P. 119, L. 3-6]. AFTER WHICH WITNESS AUTEN TESTIFIED AS FOLLOWS WHICH NOT ONLY SHOWS HE WAS UNRELIABLE IN IDENTIFICATION IT ALSO SHOWS THE LINE-UP WAS THE LINCHPIN IN IDENTIFICATION:

WITNESS: "NO SIR. WHAT I'M TELLING YOU IS THE PERSON I IDENTIFIED IN THE LINE-UP WAS THE PERSON I SAW IN THE PARKING LOT." [TR.P. 130, L. 1-20]: ALSO, "IF THIS MAN IS THE MAN THAT I IDENTIFIED ON THE PHOTOGRAPH, THEN HE IS INDEED THE SAME PERSON." [TR.P. 204, L. 1-3]

AFTER WITNESS AUTEN'S INITIAL TESTIMONY CAME DETECTIVE WHITSTINE'S UNDER INITIAL DIRECT EXAMINING THAT SHOWS HE HAD THE LIST OF NAMES THAT WAS ASSOCIATED WITH THE NUMBERS BESIDE OF THE SUSPECTS PHOTOGRAPHS OF LINE-UP, AND HAD PREPARED THE LINE-UP PRIOR TO GOING TO SEE WITNESS AUTEN [TR.P. 133, L. 24-TO-P. 134, L. 4]. THEN TO THE QUESTION OF "WHO MADE THAT RECORD?" HE ANSWERED "THE LINE-UP WAS MADE BY DETECTIVE JETER IN GASTON COUNTY." [TR.P. 135, L. 14-19] THE ONLY EVIDENCE ON RECORD OF DETECTIVE JETER'S INVOLVEMENT IS HIS PREPARING OF THE SUSPECTS PHOTOGRAPHS TO MAKE THE RECORD OF THE LINE-UP. THERE IS NO TESTIMONIAL EVIDENCE BY THE DETECTIVE AS TO THE LIST OF NAMES NOR ITS PREPARATION [TR.P. 210-TO-P. 212 - ATTENTION TO - P. 211 L. 23 - TO - P. 212] THUS DETECTIVE WHITSTINE'S PREPARING OF NAMES TO THE NUMBERS BESIDE OF THE PHOTOGRAPHS WOULD HAVE RENDERED THE LINE-UP UNDULY SUGGESTIVE AND TAINTED THE DETECTIVE'S IN-COURT IDENTIFICATION WHICH IS FURTHER SHOWN. FURTHERMORE HIS TESTI-

MONY SHOWS THAT THE PRESENTATION OF THE LINE-UP WAS UNLAWFUL, AND VIOLATED APPELLANT'S CONSTITUTIONAL RIGHT. BECAUSE OF SHOWING OF PRESENTING THE LINE-UP ALONE TO WITNESS [TR P. 137, L. 4-6] AND THE RECORD FAILS TO SHOW ANY EFFORT BY THE STATE TO HAVE SECURED COUNSEL'S PRESENCE AT THE PRESENTATION. ALSO IT FAILS TO SHOW ANY EFFORT BY COUNSEL TO HAVE PROTECTED APPELLANT'S RIGHT AND APPEAR AT THE PRESENTATION OR OBJECT TO IT. UNDER USC AMEND. VI(20) "AN OUT OF COURT IDENTIFICATION OF AN ACCUSED AT A POLICE LINE-UP IS A CRITICAL STAGE AT WHICH THE ACCUSED HAS A CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL." STATE V LYONS, 251 SC 541, 104 SE 2d 445; STATE V NORTHCUTT 372 SC 202, 222, 641 SE 2d 873, 880 (2007) THE SOLICITOR'S "DUTY IS NOT TO CONVICT A DEFENDANT, BUT TO SEE JUSTICE DONE."

APPELLANT'S CASE WAS FURTHER PREJUDICED BY COUNSEL'S AND THE SOLICITOR'S MISCONDUCT. BECAUSE OF UNDER INITIAL DIRECT EXAMINING OF WITNESS AUTEN HE TESTIFIED GIVING DETECTIVE WHITSTINE "THE NUMBER THAT WAS BESIDE THE INDIVIDUAL'S PICTURE" OF LINE-UP [TR. P. 127, L. 12-15], AND GIVEN THAT THEY WERE ALONE HIS TESTIMONY WAS AS TO WHICH NUMBER HE GAVE WAS NEEDED IN ORDER TO CORROBORATE THE DETECTIVE'S TESTIMONY OF THE NUMBER. COUNSEL'S AND SOLICITOR'S MISCONDUCT WAS RAISED BY THEIR ONLY QUESTIONING THE DETECTIVE OF THE NUMBER AND NOT QUESTIONING WITNESS. WITNESS'S DIRECT EXAMINATIONS AT [TR. P. 127, L. 12-TO-P. 130, L. 10-AND-P. 203, L. 12-TO-P. 204], AND CROSS-EXAMINING CONCERNING THIS [TR P. 203, L. 12-TO-P. 204]. DIRECT EXAMINING OF THE DETECTIVE [TR. P. 136, L. 17-TO-P. 137-AND P. 207, L. 22-TO-P. 208, L. 25]

AFTER DETECTIVE WHITSTINE'S EXAMINING BY THE SOLICITOR THEN CAME THE CROSS EXAMINING AS FOLLOWS WHICH APPELLANT RESPECTFULLY CONTENTS SHOWS FURTHER FRAUD ON THE COURT BY ACTIVE MISREPRESENTATION IN COUNSEL'S ATTEMPTING TO INDUCE THE DETECTIVE INTO TESTIFYING HAVING NO KNOWLEDGE OF THE LINE-UP'S PREPARATION. AL-

SO BY NOT QUESTIONING HIM ABOUT HIS TESTIMONY OF HAVING HAD THE LIST OF THE SUSPECTS NAMES, AND HOW HE DID PREPARE THE LINE UP PRIOR TO SEEING THE WITNESS? TO SUPPORT THIS CONTENTION IS COUNSEL ACTIVELY IMPROPERLY USING LEADING QUESTIONS INSTEAD OF PROPERLY SEEKING ANSWERS / FACTS OF MATTER;

(Q) "NOW, YOU DID NOT PREPARE THE LINE-UP, IS THAT CORRECT OFFICER?"; (A) "NO, SIR"; (Q) "AND YOU DON'T KNOW WHERE THE PHOTOGRAPHS CAME FROM OR WHO OBTAINED THEM OR ANYTHING OF THAT NATURE?"; (A) "THEY CAME FROM DETECTIVE JETER WITH THE GASTON COUNTY POLICE DEPARTMENT"; (Q) "BUT THEY PUT IT TOGETHER?"; (A) "YES, SIR"; (Q) "AND THE PHOTOGRAPHS WERE IN THE FOLDER AS THEY ARE TODAY?"; (A) "YES, SIR." THE FOLDER WAS COMPLETE AS NOW" [TR. P. 138, L. 9-19]

AFTER THE INITIAL CROSS-EXAMINATION OF DETECTIVE WHITSTINE COUNSEL MOVED THE COURT TO SUPPRESS ANY IN-COURT IDENTIFICATION MADE BY WITNESS AUTEN BY STATING, IN PART, THE WITNESS WAS "SIMPLY UNSURE" [TR. P. 139, L. 20-TO-P. 140] WHICH APPELLANT RESPECTFULLY CONTENTS THAT FRAUD ON THE COURT WAS FURTHERED BY COUNSEL'S ACTIVE MISREPRESENTATION IN ALLOWING AND NOT REQUESTING ANY IN-COURT IDENTIFICATION BY DETECTIVE WHITSTINE BE ALSO SUPPRESSED. THIS CONTENTION IS SUPPORTED BY THE DETECTIVE'S TESTIMONY THAT WOULD HAVE RENDERED THE LINE-UP UNDULY SUGGESTIVE THUS TAINING THE IDENTIFICATION. ALSO COUNSEL NOT APPEARING AT THE LINE-UPS PRESENTATION, AND NOT QUESTIONING THE WITNESS AS TO WHICH NUMBER HE PICKED OUT TO CORROBORATE THE DETECTIVE'S TESTIMONY OF THE NUMBER

COUNSEL NOT REQUESTING SUPPRESSION ALLOWED THE FOLLOWING SHOWING OF THE DETECTIVE'S IDENTIFICATION THAT WAS ALSO "INADMISSIBLE" BY LAW. BECAUSE OF THE RECORD FAILING TO SHOW ANY EVIDENCE OF DETECTIVE HAVING MET OR OBSERVED APPELLANT PRIOR TO THE TRIAL IN ORDER TO HAVE MADE SUCH AN IDENTIFICATION, SEE RULE

801, 1, (C) SCRC, AND WHICH IS SUPPORTED BY THE DETECTIVE'S ANSWER TO THE RE-CROSS EXAMINING OF NOT KNOWING NO. 3. THIS ALSO SUPPORTS THAT THE IDENTIFICATION WAS BASED ON THE LINE UP / UNDULY SUGGESTIVENESS, AND THE DETECTIVE'S ANSWER TO THE FIRST QUESTION REENTERATES THAT THE DETECTIVE WAS ALONE WITH WITNESS. UNDER U.S. v WADE 87 S.C.T. 1926 (1987) "ABSENCE OF COUNSEL AT PRE TRIAL LINE-UP RENDERS COURT ROOM IDENTIFICATION INADMISSIBLE UNLESS COURT ROOM IDENTIFICATION IS BASED ON OBSERVATION OF SUSPECT OTHER THAN LINE-UP"; "RELIABILITY IS LINCHPIN IN DETERMINING ADMISSIBILITY OF IDENTIFICATION TESTIMONY" SEE STATE v ANDERSON 422 SE2d 161 (S.C. APP. 1992), USCA 5, 6, 14

THE FIRST QUESTIONING ALSO SHOWS FURTHER FRAUD ON THE COURT BY SOLICITOR'S ACTIVE PROSECUTORIAL MISCONDUCT IN HAVING KNOWLEDGE OF THE PRESENTATION WAS UNLAWFUL / UNCONSTITUTIONAL, CONTINUING QUESTIONING, AND THUS PERMITTING THE INJUSTICE OF THE IDENTIFICATION. Id. NORTH CUTT; UNDER S.C. CODE ANN. 1-7-730 AND 17-3-150, "REQUIRES THAT THE PROSECUTOR FULFILL AND SEE THAT ALL DUTIES REQUIREMENTS AND RULES OF CRIMINAL PROCEDURES RELATED TO DUE PROCESS AND THE SOUTH CAROLINA CONSTITUTION ARE ADHERED TO AND COMPLETED WITHIN THE COURT." UNDER U.S. v McDONALD 161 F3d 4 (TABLE) CA. 4 (N.C. 1998) "THE TERM 'FRAUD ON THE COURT' IS A NEBULOUS CONCEPT. A CLEAR EXAMPLE IS CORRUPTION OF JUDICIAL OFFICERS" WILKENS v SUNBEAM CORP. 466 F2d. 711, 714 (10TH CIR 1972)

APPELLANT RESPECTFULLY CONTENDS THAT THE FOREGOING MISCONDUCT BY COUNSEL AND THE SOLICITOR WAS ALSO ALLOWED FROM COUNSEL NOT RENEWING HIS REQUEST TO QUASH THE LINE-UP WHEN IT WAS ENTERED AS THE STATE'S EXHIBIT [TR. P. 135, L. 2-24] WHICH ALSO DERIVED APPELLANT CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL REVIEW OF THE MATTER. USCA CONST. AMEND 5, 6, 14

THE IDENTIFICATION AS FOLLOWS:

SOLICITOR: (Q) "WAS ANYBODY THERE BESIDES YOU AND HIM?"; (A) "NO SIR."; (Q) "AND WHO WAS THE PICTURE THAT HE PICKED OUT?"; (A) "JEFFREY LYNN CHRONISTER. NO. 3 IN THE LINE-UP."; (Q) "AND DOES MR. CHRONISTER APPEAR DIFFERENT TODAY IN COURT?"

COUNSEL: "OBJECT TO LEADING, YOUR HONOR"

SOLICITOR: "IS THERE ANY DIFFERENCE IN MR. CHRONISTER'S APPEARANCE TODAY IN COURT AS IN THE PICTURE LINE-UP?"

COUNSEL: "YOUR HONOR, THE SAME OBJECTION"

THE COURT: "NO SIR, I OVERRULE YOU GO AHEAD"

DETECTIVE: (A) "HE HAS NO BEARD AT THIS TIME" [TR. P. 206, 24-20-207]

RE-CROSS EXAMINING: (Q) "AND YOU DIDN'T KNOW NO. 3 FROM ADAMS HOUSE CAT OF YOUR OWN KNOWLEDGE. DID YOU SIR?"

(A) "NO, SIR". [TR. P. 209, L. 5-19]

THE DETECTIVE'S IDENTIFICATION CAME FORTH BEFORE THE JURY, AND AFTERWARDS CAME COUNSEL'S CROSS-EXAMINING, AS FOLLOWS, WHICH SUPPORTS APPELLANT'S CONTENTION OF FRAUD COMMITTED ON THE COURT THAT WAS RAISED IN THE INITIAL CROSS-EXAMINING OF THE DETECTIVE. BECAUSE OF AGAIN SHOWING OF COUNSEL IMPROPERLY USE OF LEADING QUESTIONS IN MISLEADING THE COURT AND TO FALSELY APPEAR THE DETECTIVE HAD NO KNOWLEDGE OR NOTHING TO DO WITH THE LINE-UP'S PREPARATION, WHICH APPELLANT RESPECTFULLY CONTENTS WOULD HAVE FALSELY IMPRESSED THE IDENTIFICATION WAS RELIABLE, AND THE DETECTIVE'S ONLY INVOLVEMENT WAS PRESENTING OF THE LINE-UP.

APPELLANT'S CONTENTIONS ARE SUPPORTED BY COUNSEL AGAIN NOT QUESTIONING ABOUT THE DETECTIVE'S IMPLICATING TESTIMONY OF HAVING HAD THE LIST OF NAMES, AND HIS PREPARING OF THE LINE-UP PRIOR TO SEEING WITNESS. ALSO NOT PROPERLY QUESTIONING OF WHO DID PREPARE THE LINE-UP, AND DID YOU HAVE A

ROLE IN IT? WHERE AND WHO DID PREPARE THE LIST OF NAMES, WHO DID PREPARE THE NAMES ASSOCIATED TO THE PHOTOGRAPHS NUMBERS? ALSO WHEREAS PREVIOUSLY SHOWN THE DETECTIVE KNEW WHO PREPARED THE RECORDS PHOTOGRAPHS, HE DID NOT QUESTION THE DETECTIVE OF THIS:

COUNSEL: "NOW I BELIEVE YOU YOURSELF DID NOT PREPARE THE LINE-UP, CORRECT, SIR?"; (A) "NO SIR"; (Q) DETECTIVE YOU DID NOT PREPARE THE PHOTO LINE-UP?"; (A) "NO SIR"; (Q) "NOR DID YOU PREPARE THE NAMES ASSOCIATED WITH THE NUMBERS DID YOU SIR?"; (A) "NO SIR"; (Q) "ALL YOU KNOW IS THAT NO. 3 WAS THE PERSON THAT WAS PICKED-OUT BY MR. AUTEW?"; (A) "ON THE SHEET IT HAS A LIST OF NAMES OF THE PEOPLE IN THE PICTURES, AND MR. CHRONISTER WAS LISTED AS NO. 3"; (Q) "BUT YOU DIDNT PREPARE THAT LIST YOU DIDNT PREPARE THE PHOTOGRAPHS?"; (A) "NO SIR." [TR. P. 209, L. 5-19]

### DIRECTED VERDICT

COUNSEL MOVED FOR A DIRECTION OF VERDICT ON THE GROUNDS OF: (1) "THE EVIDENCE VIEWED IN LIGHT MOST FAVORABLE TO THE STATE SHOWS A KILLING, BUT THE IDENTIFICATION ISSUE, IT DOES NOT SHOW THAT MY CLIENT DID THAT, BECAUSE OF THE NATURE OF THE TESTIMONY BY THE PEOPLE AS TO IDENTITY"; (2) "I WOULD ALSO SUBMIT THAT THERE HAS BEEN NO WEAPON PRODUCED, THERE HAVE BEEN NO PROJECTILES", AND (3) "THE PRIMARY FAILURE IN THE STATE'S CASE, YOUR HONOR, IS THAT THERE HAS NOT BEEN ANY EVIDENCE TO MAKE-OUT THE NECESSARY CASE FOR MALICE, EVEN THOUGH MALICE MAY BE INFERRED FROM THE USE OF A WEAPON. THERE HAS BEEN NO WEAPON CONNECTED TO MY CLIENT, AND I SIMPLY FEEL THAT BASED ON THE TESTIMONY THAT WE HAVE, THAT THE STATE HAS FAILED TO MAKE OUT A CASE FOR MURDER. THE PRIMARY FAILURE BEING THE STATE HAS FAILED TO SHOW THE REQUIRED MALICE" [TR. P. 231, L. 19-TO-232]

THE COURT: "THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS IDENTIFIED AS BEING THE PERSON AT THE SCENE. THAT HE WAS IN POSSESSION OF A WEAPON THAT GUNSHOTS WERE HEARD, AND VERY SHORTLY IN SECONDS THEREAFTER THE VICTIM'S BODY WAS FOUND, SHE WAS DEAD. OF COURSE THE STATEMENTS MADE BY THE OFFICER-- ALL OF THOSE AND THE USE OF A WEAPON, YOU DON'T HAVE TO FIND THE WEAPON IF THERE'S TESTIMONY OF USE OF A WEAPON"

"USE OF A WEAPON IS SUFFICIENT FOR INFERENCE OF MALICE TO SUPPORT A CONVICTION FOR MURDER. MALICE AFORETHOUGHT."

"FOR THOSE REASONS THE MOTION FOR DIRECTED VERDICT AT THIS STAGE IS DENIED" [TR P. 231, L. 16-TO-P. 232]

COUNSEL SUBSEQUENTLY RENEWED THE MOTION ON THE SAME GROUNDS, AND WAS DENIED BY THE JUDGE ON THE SAME REASONS

[TR P. 240, L. 8-11]

APPELLANT RESPECTFULLY CONTENDS HE WAS ENTITLED TO THE DIRECTED VERDICT BECAUSE OF THE FOLLOWING FACTS OF THE MATTER SHOWS IT WAS PRODUCED BY THE FRAUDULENT IDENTIFICATION TESTIMONY OF DETECTIVE/OFFICER WHITSTINE. UNDER RULE 19(a) SCR CRIM. P., "THE COURT SHALL DIRECT A VERDICT IN THE DEFENDANT'S FAVOR ON ANY OFFENSE CHARGED IN THE INDICTMENT AFTER THE EVIDENCE ON EITHER SIDE IS CLOSED, IF THERE IS A FAILURE OF COMPETENT EVIDENCE TENDING TO PROVE THE CHARGE IN THE INDICTMENT." UNDER U.S. v McDONALD, 161 F3d 4 (TABLE) CA. 4 (N.C. 1998) "A DECISION PRODUCED BY FRAUD ON THE COURT IS NOT IN ESSENCE A DECISION AT ALL AND NEVER BECOMES FINAL" SEE 11 WRIGHT AND MILLER, FEDERAL PRACTICE AND PROCEDURE, "2870 AT 409 (1995), QUOTING KENNER v COMMISSIONER OF INTERNAL REVENUE, 387 F2d 689, 691 (7TH CIR. 1968)

FACTS; (1) AS TO THE INCLUSION OF THE TESTIMONY BY THE PEOPLE, AND <sup>AND</sup> IDENTITY, AND THE JUDGE'S STATEMENT OF "THE TESTIMONY IN THE CASE IS THAT THE DEFENDANT WAS IDENTIFIED AS BEING THE PERSON AT

THE SCENE". AS PREVIOUSLY SHOWN ON PAGE 9 OF THIS APPEAL WITNESS AUTEN MADE NO POSITIVE IN COURT IDENTIFICATION OF APPELLANT BEING THE PERSON THAT HE IDENTIFIED "ON THE PHOTOGRAPH" OR "IN THE PARKING LOT," AND THE RECORD FAILS TO SHOW THE OTHER WITNESSES OF THAT MORNING MAKING AN POSITIVE IDENTIFICATION AS THE JUDGE STATED: JOEL SMITH [TR. P. 99, L. 10-12] DANNY WILSON TR. P. 105, L. 29-TO-P. 106], AND SIDNEY BALLANGER [TR. P. 187, L. 10-17] WHICH LEAVES THE FRAUDULENT IDENTIFICATION BY DETECTIVE/OFFICER WHITSTINE, AND SUPPORTIVE OF JUDGE'S USE OF THIS TESTIMONY IS HIS STATEMENT "OF COURSE, THE STATEMENT MADE BY THE OFFICER--" WHICH WAS USED IN CONTEXTS OF THE TRAGEDY OCCURRENCE ON THAT MORNING.

(2) SHOWING OF COMMISSION OF FRAUD ON THE COURT WAS HAD IS THAT OF THE JUDGE'S USE OF THE DETECTIVE'S/OFFICER'S IDENTIFICATION WHICH WENT AGAINST COUNSEL'S INCLUSION OF THE TESTIMONY BY THE PEOPLE AS TO IDENTITY, AND COUNSEL NOT OBJECTING ALSO SUPPORTS ACTIVE MISREPRESENTATION, WHICH DEPRIVED APPELLANT OF CONSTITUTIONAL DUE PROCESS TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL REVIEW ON THE MATTER USCA, 6. 14

ARGUMENT II: WAS APPELLANT'S ARREST MADE WITHOUT PROBABLE CAUSE VIOLATING THE CONSTITUTION OF THIS STATE, AND THE 4TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION?

SUPPORTING FACTS: APPELLANT RESPECTFULLY CONTENDS THAT THE FOREGOING FACTS OF ARGUMENT I SHOWS THAT THE ARREST WAS MALICIOUSLY MADE FOR THE LACK OF PROBABLE CAUSE. BECAUSE OF THE FACTS SHOW THE FAILURE OF ANY WITNESS TESTIMONY OR ANY LAWFUL PHYSICAL EVIDENCE THAT WOULD HAVE SUPPORTED DETECTIVE WHITSTINE HAD IN FACT INTERVIEWED WITNESS AUTEN, OR INVOLVED IN THE INTERVIEWING OF ANY WITNESS THAT MORNING WHICH WOULD

SHOW THAT THE DETECTIVE LACKED ANY SUFFICIENT KNOWLEDGE OF FACTS AND ALSO CIRCUMSTANCES OF THE TRAGEDY'S OCCURRENCE TO HAVE WARRANTED PROBABLE CAUSE IN OBTAINING OF THE ARREST WARRANT. SEE S.C. CONST. 1976 SUPP. VOL. 21, USC CONST. AMEND IV, NOTE (10), STATE V DUNBAR (S.C. APP. 2003), 354 S.C. 479, 581 SE2d 840, 356 S.C. 138, 587 SE2d 691, 361 SC 240, 603 SE2d 615, ARREST 63.4(2) UNDER U.S. v GRAY 137 F.3d 756 (4TH CIR 1998), "TO COMPLY WITH THE FOURTH AND FOURTEENTH AMENDMENT AN ARREST MUST BE PREDICATED ON PROBABLE CAUSE" SEE PAPCHUON V CITY OF JACKSONVILLE 405 U.S. 156, 92 S. CT. 156, 31 LE2d 110.

GIVEN THAT DETECTIVE WHITSTINE'S OBTAINING OF THE WARRANT WAS UNLAWFULLY MADE FOR THE LACK OF PROBABLE CAUSE THE ARREST WAS THEREFORE MALICIOUSLY MADE BY AN SERGEANT MIMS (JOHNNIE). BECAUSE OF HIS TESTIMONY SHOWING TAKING APPELLANT INTO CUSTODY NOT FAR FROM APPELLANT'S HOME IN NORTH CAROLINA AFTER HE FIRST OBSERVED APPELLANT IN HIS VEHICLE" AT 8:01 A.M." ON THAT SAME MORNING OF THE TRAGEDY [TRP. 213, L. 5. AND P. 215, L. 17-18] ID. DUNBAR; ID. GRAY

APPELLANT RESPECTFULLY CONTENDS THAT THIS ISSUE IS PROPER FOR THE COURT'S CONSIDERATION. BECAUSE OF THE LACK OF PROBABLE CAUSE SHOWS THAT THE ARREST WARRANT WAS INVALID, AND RAISES ISSUE OF DEFECT IN JURISDICTION OF THE STATE'S GENERAL POWER TO EXERCISE AUTHORITY OVER APPELLANT TO HAVE BEEN ARRESTED, AND THE ISSUE OF A DEFECT IN SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANYTIME INCLUDING WHEN RAISED FOR THE FIRST TIME ON APPEAL TO THIS COURT" SEE STATE V SCOTT, UNPUBLISHED OP. NO. 2003-UP-037 (S.C. APP. 2003); BROWN V STATE 343 SC 342, 346, 540 SE2d 846, 848-49 (2001)

ARGUMENT III: WAS THE CIRCUIT COURT PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION TO HAVE OBTAINED CONVICTION AND SENTENCE SUPPORTING FACTS: APPELLANT RESPECTFULLY CONTENDS THAT IT

APPEARS THE GRAND JURY CAME BACK WITH AN NO BILLED INDICTMENT, AND THAT THE COURT LACKED SUBJECT MATTER JURISDICTION TO HAVE ACTED IN ACCORDANCE TO THE LAW OVER THE CASE. FOR THE REASON OF THE INDICTMENT FOR MURDER (EXHIBIT-B, P. 26) FAILS TO SHOW ANY INDICATION OF IT BEING STAMPED "TRUE-BILLED" AND AS UNDER Id. SCOTT, "A REVIEW OF THE 1998 INDICTMENTS REVEALS NO INDICATION THAT EITHER OF THEM WAS STAMPED "TRUE BILLED." NOR THAT A WAIVER OF PRESENTMENT WAS EXECUTED BY SCOTT." ALSO "BECAUSE OF ITS FUNDAMENTAL NATURE, THE DEFECT IN SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANYTIME INCLUDING WHEN RAISED FOR THE FIRST TIME ON APPEAL TO THIS COURT" Id. BROWN. "A COURT WITHOUT SUBJECT MATTER JURISDICTION MAY NOT PROPERLY ACT, AND ANY ACTION TAKEN BY THAT COURT IS VOID, AND WITHOUT LEGAL EFFECT," BROWN, 343 SC AT 346, 540 SE2d AT 849; STATE V FUNDERBURK 259 SC 256, 261, 191 SE2d 520, 522 (1992); STATE V EVANS 307 SC 477, 415 SE2d 816 (1992) HOLDS, "A VALID INDICTMENT, OR A VALID WAIVER OF PRESENTMENT IS PREREQUISITE FOR CIRCUIT COURT'S SUBJECT MATTER JURISDICTION." ALSO SUBJECT MATTER JURISDICTION IS THE POWER TO HEAR AND DETERMINE CASES OF GENERAL CLASS TO WHICH THE PROCEEDINGS QUESTION BELONGS. BELLS V MONANTO CORPORATION 577 SE2d 325 (SC 2003), AND INASMUCH THE COURT'S POWER TO HEAR AND DETERMINE CASES SUBJECT MATTER JURISDICTION DOES NOT ONLY COVER AND OR INVOLVE WHETHER OR NOT THE MATTER RESOLVES IN A PROPER COURT OF JURISDICTION TO HEAR AND DETERMINE IT, BUT ALSO INVOLVES AN ISSUE THAT MAY AFFECT THE POWER AND OR ABILITY TO ACT IN ACCORDANCE TO LAW. THIS ISSUE CAN BE RAISED AT ANYTIME, CANNOT BE WAIVED BY MOVANT, AND THE COURT SHALL NOT FAIL TO TAKE NOTICE" Id BROWN; STATE V BROWN, 320 SC AT 368, 465 SE2d 359, CITING STATE V MUNN, 357 SE2d 461 (SC 1987)

IN APPELLANT'S CASE THAT'S BEFORE THE COURT A PLEA OF NOT GUILTY

TO MURDER WAS ENTERED AT THE TRIAL [TR. P. 256, L. 12-14], AND THE INDICTMENT FOR MURDER IS THE SUBJECT OF THIS ISSUE. FOR APPELLANT WAS NOT FORMALLY INDICTED UNDER S.C. CODE ANN. (16-23-490) (1976 AND SUPP. 1997) FOR COUNT TWO OF THE INDICTMENT'S FIREARMS CHARGE WHICH IS SUPPORTED BY THE INDICTMENT FOR MURDER BEING THE ONLY INDICTMENT INTRODUCED IN COURT BY THE SOLICITOR [TR. P. 99, L. 25-TO-P. 81, L. 18] TILLY v STATE, 511 SE2d 689 AT 691 (S.C. 1999) "S.C. CODE ANN. 16-23-490 (1976 AND SUPP. 1997) PROVIDES FOR A MANDATORY FIVE-YEAR SENTENCE FOR A PERSON CONVICTED UNDER THIS SECTION" ALSO A COPY OF THE INDICTMENT FOR MURDER IS THE ONLY COPY OF AN INDICTMENT THATS BEEN ENTERED INTO APPELLANT'S TRANSCRIPT OF RECORD, AND THE RECORD FAILS TO SHOW ANY WAIVER(S) BY APPELLANT OF ANY STATUTORY OR CONSTITUTIONAL RIGHTS PATTERSON v U.S. 50 S. CT. 253 (1930); STATE v PATTERSON 278 S.C. 319, 295 SE2d 264 (1982)

THE ISSUE PRESENTED IS THAT OF THE COURT OF GENERAL SESSIONS FAILED TO COMPLY WITH STATUTORY LAW JURISDICTIONAL IN NATURE OF TRUE BILLED INDICTMENTS, S.C. CODE ANN. 17-19-10; AND NOT A CHALLENGE TO THE COURT'S GENERAL GRANT OF AUTHORITY TO HEAR AND DETERMINE CASES. THAT AUTHORITY IS RIGHTFULLY GRANTED BY OUR CONSTITUTION, STATE v GENTRY 363 SC 93, 601 SE2d 464 (2005), AND WILL NOT BE AN ISSUE HERE.

THE COURT REMANDED SCOTT'S CASE FOR AN EVIDENTIARY HEARING TO THE CIRCUIT COURT PURSUANT TO GRIM, 341 SC 63, 533 SE2d 330 (2000) IN ORDER TO DETERMINE WHETHER THE ABSENCE OF THE WORDS TRUE BILLED FROM THE FACE OF THE INDICTMENT WAS A MERE SCRIVERERS ERROR, AND ON THE REMAND IF THE STATE COULD NOT PROVE THE CIRCUIT COURT WAS PROPERLY VESTED WITH SUBJECT MATTER JURISDICTION IT WAS ORDERED TO VACATE SCOTT'S CONVICTION.

UNDER Id. GRIM, 533 SE2d 329, "RELYING ON PRINGLE, 339 SE2d 127, 287 SC 409, THE COURT OF APPEALS HAS HELD THAT AN INDICTMENT PROPER EVEN THOUGH IT WAS NOT STAMPED TRUE BILL WHERE THERE IS EVIDENCE IN FORM OF SWORN TESTIMONY FROM THE GRAND JURY'S DOCKET COORDINATOR, A COURT REPORTER, AND A LEGAL SECRETARY THAT THE INDICTMENT WAS IN FACT TRUE BILLED." IN APPELLANT'S CASE BEFORE THE COURT THE TRANSCRIPT OF RECORD FAILS TO SHOW ANY SUCH TESTIMONIES, AND UNDER STATE V MUNN SURRA, "SUBJECT TO CERTAIN MINOR EXCEPTIONS NOT PRESENT THE TRIAL COURT LACKS SUBJECT MATTER JURISDICTION TO CONVICT DEFENDANT FOR AN OFFENSE WHERE THERE IS NO TRUE BILLED INDICTMENT AGAINST DEFENDANT." ALSO SEE CARTER V STATE 329 SC 355, 495 SE2d 273; STATE V BEACHUM 288 SC 335, 342 SE2d 598 (1986); UNDER WEST'S SOUTH CAROLINA (DIGEST) SECOND EDITION "INDICTMENT AND INFORMATION SECTION III, AN TRUE BILL IS OF THE FORMAL REQUISITES FOR AN INDICTMENT.

APPELLANT RESPECTFULLY CONTENDS CUMULATIVE TO THIS ISSUE, AND THE INDICTMENT BEING INVALID IS THE INDICTMENT FAILS TO SHOW TO HAVE BEEN WRITTEN AND PUBLISHED BY THE CLERK. UNDER ANDERSON V ST. 527 SE2d 398, 338 SC 629 "A FACIAL IRREGULARITY DOES NOT RENDER AN INDICTMENT INVALID WHERE INDICTMENT IS IN WRITING AND PUBLISHED BY THE CLERK." WHICH ALSO APPLIES TO THE INDICTMENT'S SHOWING OF THE GRAND JURY'S FOREMAN IMPROPERLY SIGNING OF "T BILL" BECAUSE OF ITS FAILURE TO COMPLY WITH THE LEGAL FORMALITY PROCEDURES OF INDICTMENTS Id. WEST'S DIGEST; Id. PRINGLE, HOLDS; "WHILE IT IS PREFERABLE FOR GRAND JURY FOREMAN TO SIGN TRUE BILL, FOREMAN'S SIGNATURE IS NOT ESSENTIAL TO VALIDITY OF INDICTMENT WHERE INDICTMENT IS WRITTEN AND PUBLISHED BY CLERK."

APPELLANT RESPECTFULLY CONTENDS THAT STATUTORY AND CONSTITUTIONAL VIOLATIONS OF DUE PROCESS OF LAW WAS COMMITTED BY PROSECUTORIAL MISCONDUCT BY THE SOLICITOR AND OR MISREPRESENTATION BY

COUNSEL BECAUSE GIVEN THE SERIOUSNESS OF THE CHARGES, AND THE INDICTMENT RAISING FUNDAMENTAL DEFECTS IN SUBJECT MATTER JURISDICTION OF THE CIRCUIT COURT TO ACT WITH LEGAL EFFECT. Id. SCOTT; Id. BROWN THE MISCONDUCT WAS RAISED BY THE SOLICITOR IN NOT INVESTIGATING THE INDICTMENT PRIOR TO BEGINNING OF THE TRIAL. Id. NORTHCUTT; Id. 17-3-150 AND 1-7-730. THUS PERMITTING THE CONVICTION WHERE THE COURT LACKED JURISDICTION, AND DEPRIVING APPELLANT OF DUE PROCESS OF LAW TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL REVIEW OF THE MATTER USCA CONST. AMEND. 6, 14. UNDER Id. BEACHUM 342 SE2d 577, AFTER THE JURY WAS SWORN IN AND TESTIMONY FROM SEVERAL WITNESSES WAS TAKEN THE SOLICITOR NOTICED THAT THE INDICTMENT WAS NEITHER SIGNED BY THE GRAND JURY FOREMAN NOR HAD BEEN STAMPED "TRUE BILLED", AND EVENTHOUGH WITH CONSENT OF THE DEFENSE COUNSEL TO TEMPORARILY SUSPEND THE TRIAL WHILE INDICTMENT WAS SUBMITTED TO GRAND JURY, TRUE BILLED, AND PUBLISHED BY THE CLERK THIS DID NOT FIX THE DEFECT OF SUBJECT MATTER JURISDICTION.

APPELLANT HAD NO KNOWLEDGE OF THE FORMAL REQUISITES FOR AN INDICTMENT BECAUSE OF HAVING NO PRIOR CRIMINAL RECORD, AND COUNSEL HAD THE ENTRUSTED RESPONSIBILITY TO HAVE INVESTIGATED THE INDICTMENT UNDER RULE 407 SCACR. HIS NOT DOING INVESTIGATION WHICH PERMITTED THE TRIAL TO GO FORWARD AND THE CONVICTION HAD WHERE THE COURT LACKED JURISDICTION VIOLATED THE RULE(S) CODE OF PROFESSIONAL CONDUCT. ALSO USCA CONST AMEND. 6, 14.

ON THE OTHER HAND ACCORDING TO THE AMERICAN JOURNAL 2d SECTION 299 "INDICTMENT AND INFORMATION," ALTHOUGH MOVANT DID NOT OBJECT TO BEING TRUE BILLED THE NO BILL RENDERED THE INDICTMENT WHOLLY INVALID. AN NO BILL INDICTMENT IS OF SUCH FUNDAMENTAL CHARACTER AS TO MAKE AN INDICTMENT WHOLLY INVALID, AND SUBJECT TO WAIVER BY MOVANT."

CONCLUSION

FOR ALL THE FOREGOING REASONS, APPELLANT NOW REQUEST THAT THE CONVICTIONS, AND SENTENCE BE VACATED OR GRANT SUCH EVIDENTIARY HEARING AS THE COURT DEEMS NECESSARY TO RESOLVE THIS MATTER WITH APPOINTMENT OF AN ATTORNEY IN THE FIELD OF CRIMINAL APPEALS FOR APPELLANT'S REPRESENTATION.

RESPECTFULLY SUBMITTED:

Jeffrey Lynn Chronister  
JEFFREY LYNN CHRONISTER

THIS 4TH DAY OF MARCH, 2015



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
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February 13, 2015

Jeffrey L. Chronister, 189827  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia SC 29210

Re: The State v. Jeffrey Lynn Chronister  
Appellate Case No. 2014-002630

Dear Mr. Chronister:

The Court is in receipt Judge Alford's letter dated November 21, 2014. The Court is construing it as the order on appeal. Therefore, the appeal is to proceed. The appellant's initial brief and designation of matter are due to be served and filed no later than thirty (30) days from the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Alan McCrory Wilson, Esquire



92-1224

State of South Carolina  
The Circuit Court of the Sixteenth Judicial Circuit

Lee S. Alford  
Judge

Moss Justice Center  
1675-1J York Highway  
York, SC 29745-7434  
Phone: (803) 628-3048  
Fax: (803) 628-3139  
lalfordj@sccourts.org

November 21, 2014

Jeff Chronister, #189827  
Kirkland C.I., B-II, 34  
4344 Broad River Road  
Columbia, S. C. 29210

Dear Mr. Chronister:

This will acknowledge receipt of your motion and correspondence. This Court cannot grant relief on a motion unless timely made. You would need to file a Post-Conviction Relief Action in order for the Court to consider your motion.

With kind regards, I am

Yours Very Truly,

*Lee S. Alford /s/*

Lee S. Alford  
Resident Judge  
of the Sixteenth Judicial Circuit

LSA:rgb

FILED-RECEIVED  
2014 NOV 21 PM 2:57  
DAVID HAMILTON  
C.C.P. & S.S.  
YORK COUNTY, SC

ARREST WARRANT

D- 228986

STATE OF SOUTH CAROLINA

County/  Municipality of York

THE STATE

against

442

Lynn Jeffery Chronister

Address: 211 Ellington Rd.  
Belmont N.C.

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: M Race: W Height: 5'8" Weight: 170

DL State: \_\_\_\_\_ DL #: \_\_\_\_\_

DOB: 8/28/49 Agency ORI #: 0460000

Prosecuting Agency: YCSD

Prosecuting Officer: Whistine

Offense: Murder

Offense Code: \_\_\_\_\_

Code/Ordinance Sec. 16-3-10

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of \_\_\_\_\_

The accused is to be arrested and brought before me to be dealt with according to law.

(LS.)

Signature of Judge

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to defendant Lynn Jeffery Chronister on 2-24-92

Signature of Constable/Law Enforcement Officer

16800  
CERTIFIED TRUE COPY  
MAR 22 11 51 AM '92  
YORK COUNTY

RETURN WARRANT TO

STATE OF SOUTH CAROLINA )

County/  Municipality of York )

AFFIDAVIT

S.C. Attorney General  
July 28, 1990  
SCCA 518

Personally appeared before me the affiant Otis Whistine being duly sworn deposes and says that defendant Lynn Jeffery Chronister did within this county and state on February 14th, 1992 violate the criminal laws of State of South Carolina (or ordinance of \_\_\_\_\_ County/ \_\_\_\_\_ Municipality of \_\_\_\_\_) in the following particulars:

DESCRIPTION OF OFFENSE: Murder: Section 16-3-10 116

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: Defendant did wilfully and unlawfully, and with Malice Aforethought kill Marie Gail Chronister by shooting her. This unlawful act occurred at the Catawba Nuclear Station, Concord Rd., Clove York County S.C. All against the Peace and Dignity of the State and against such Laws as made and provided. Probable cause based on witness's.

EXHIBIT A

Sworn to and subscribed before me on February 14th, 1992  
*[Signature]* (LS.)  
Signature of Issuing Judge

Signature of Affiant  
Affiant's Address Court House, South Congress St York S.C.  
Affiant's Telephone 684-8522

Otis Whistine

FILED-RECEIVED  
BOOK  
FEB 21 12 03 PM '92  
YORK COUNTY S.C.

STATE OF SOUTH CAROLINA )

County/  Municipality of York )

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on February 14th, 1992 defendant Lynn Jeffery Chronister did violate the criminal laws of the State of South Carolina (or ordinance of \_\_\_\_\_ County/ \_\_\_\_\_ Municipality of \_\_\_\_\_) as set forth below:

DESCRIPTION OF OFFENSE: Murder (Section 16-3-10)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to defendant at the time of its execution, or as soon thereafter as is practicable.

*[Signature]* (LS.)  
Judge's Address South Congress St York S.C.  
Judge's Telephone 684-8514  
Issuing Court:  Magistrate  Municipal  Circ

ORIGINAL

**BAIL set by**

Judge \_\_\_\_\_

in \_\_\_\_\_

Type and Amount: \_\_\_\_\_

Name of Surety: \_\_\_\_\_

**PRELIMINARY HEARING held by**

Judge \_\_\_\_\_

in \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

**DISPOSITION before**

Judge \_\_\_\_\_

in \_\_\_\_\_

by \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

**JURORS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**WITNESSES**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**CODEFENDANTS**

\_\_\_\_\_

491

WITNESSES

Otis Whistine YCSD

ARREST WARRANT NO. D-228986

ACTION OF GRAND JURY

Bice 4/6/92

Im Weedon  
Foreman of Grand Jury

VERDICT

Count one - Guilty Murder  
Count two - Guilty Possession  
of a Firearm when committing  
a Violent Crime

Foreman of Petit Jury

Date:

The State of South Carolina,

County of York

COURT OF GENERAL SESSIONS

April 6, TERM 1992

THE STATE

vs.

Lynn Jeffery Chronister

Indictment for

MURDER

AND

UNLAWFUL POSSESSION OF FIREARM OR  
KNIFE DURING THE COMMISSION OF A  
VIOLENT CRIME

(S. C. Code 16-3-10)  
(CDR Code 116)

EXHIBIT B

26

*[Handwritten signature]*

JUN 20 10 41 AM '01

STATE OF SOUTH CAROLINA )  
COUNTY OF York )

INDICTMENT FOR

MURDER AND  
UNLAWFUL USE OF FIREARM OR KNIFE DURING THE  
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on April 6, 1992,

the Grand Jurors of York County present upon their oath:

COUNT ONE

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 feloniously, wilfully and with malice aforethought, kill one Marie Gail Cronister by means of shooting her and that the said victim died as a proximate result thereof.

COUNT TWO

That Lynn Jeffery Chronister did in York County on or about February 14, 1992 while in possession of a firearm or while visibly displaying what appeared to be a firearm, committed the crime contained in Count One of this Indictment.

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

  
\_\_\_\_\_  
SOLICITOR

AGENCY I. D.  
SC0460000

YORK COUNTY SHERIFF'S DEPARTMENT  
INCIDENT REPORT

CASE NUMBER

9, 2 - 0, 2 - 2, 3, 1

INC.

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE
1. Homicide Offense (Murder)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	parking lot		<input checked="" type="checkbox"/> Indiv. <input type="checkbox"/> Busin. <input type="checkbox"/> Finan. <input type="checkbox"/> Govt. <input type="checkbox"/> Relig. <input type="checkbox"/> Soc. <input type="checkbox"/> Other <input type="checkbox"/> Unkn. <input type="checkbox"/> Public
2.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			
3.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) **Administration Building Catawba Nuclear Stat. York, SC** ZIP CODE **29745** WEAPON TYPE **firearm**

INCIDENT DATE **2-14-92** 24 HR CLOCK **06:57** TO DATE **2-14-92** 24 HR CLOCK **06:58** DISPATCH DATE/TIME **07:02** TIME ARRIVED **09:07** DEPART TIME **LWC**

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) **Auten, Thomas F.** RELATIONSHIP TO SUBJECT **unknown** RESIDENT **J S @ U** RACE **W M** SEX **M** AGE **60** ETH. **N** DAYTIME PHONE **324-3128** EVENING P. **327-23**

ADDRESS **2882 Billy Wilson Rd.** CITY **Rock Hill** STATE **SC** ZIP CODE **29730** LOCATION **RHL**

VICTIM'S NAME (LAST, FIRST, MIDDLE) **Chronister, Gail Marie** RELATIONSHIP TO SUBJECT **wife** RESIDENT **J S @ U** RACE **W F** SEX **F** AGE **34** ETH. **N** DAYTIME PHONE **unknown** EVENING P. **unknown**

HEIGHT **510** WEIGHT **145** HAIR **Brn** EYES **Brn** FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS **1414 Copeland Park** CITY **Mt. Holly** STATE **NC** ZIP CODE **28120** LOCATION

VISIBLE INJURY (MCT 1)  YES  NO  EXPLAIN - **gun shots to head + body** COMPLAINT OF ANY NON-VISIBLE INJURIES  YES

VICTIM (NO. 1) USING ALCOHOL  YES  NO  UNK  DRUGS  YES  NO  UNK  TYPE

TWO-MAN VEH  ONE-MAN VEH  DETECTIVE/SPLASMT  OTHER  ALONE  ASSISTED  \*J - This Jurisdiction S - State O - Out of State U - Unknown

SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR
<input checked="" type="checkbox"/>	<b>unknown</b>	<b>W M</b>	<b>M</b>	<b>38</b>	<b>N</b>	<b>unknown</b>	<b>509</b>	<b>160</b>	<b>Brn</b>
<input type="checkbox"/>	<b>beard</b>								
<input type="checkbox"/>	<b>unknown</b>	<b>unknown</b>	<b>unk</b>	<b>unknown</b>	<b>unk</b>	<b>unknown</b>			

**NAIATIVE**

RIP stated as he was exiting the vehicle he drove to work that he heard approximately 5 rapid gun shots. RIP saw a w/m subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van NC partial registration DRH and left the scene. Victim sustained gunshot wound and was pronounced dead at the scene.

**EXHIBIT-C**

PROPERTY EST.	TYPE (GROUP)	TOTAL VALUE
<input type="checkbox"/>	STOLEN	
<input type="checkbox"/>	DAMAGED	
<input type="checkbox"/>	BURNED	
<input type="checkbox"/>	RECOVERED	
<input type="checkbox"/>	SEIZED	

SUBJECT IDENTIFIED  YES  NO  SUBJECT LOCATED  YES  NO  ACTIVE  ADM CLOSED  UNFOUNDED

REASON FOR EXCEPTIONAL CLEARANCE 1  OFFENDER DEAD 2  NO PROSECUTIVE MERIT 3  EXTRADITION DENIED 4  VICTIM DENIES COOPERATION 5  JUVENILE - NO CUSTODY 6  CIVIL MATTER

REPORTING OFFICER(S) \_\_\_\_\_ DATE \_\_\_\_\_ UNIT NUMBER \_\_\_\_\_ APPROVING OFFICER \_\_\_\_\_ DATE \_\_\_\_\_

1. Jerry J. Nissen -

451-A

10212 Harbor Dr., Charlotte, NC 28212

1. Mrs. Lucille Mernard

(3) Mr. Elger Mernard

(work) \*704-866-2913#(direct)  
704-866-2000

(work) 704-822-2170

Business office

shop

EVENT	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. Homicide Offense (Murder)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	parking lot		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
	2.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)	ZIP CODE	WEAPON TYPE
Administration Building Catawba Nuclear Stat. York, SC	29745	firearm
INCIDENT DATE 24 HR. CLOCK TO DATE 24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	LOCATION NO.
2-14-92 06:57	2-14-92 06:58 07:02 09:07	LWD
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT RACE SEX AGE ETH. DAYTIME PHONE EVENING PHONE
Auten, Thomas F.	unknown	J S O U W M 32 N 324-3128 327-2331
ADDRESS	CITY	STATE ZIP CODE LOCATION NO.
2882 Billy Wilson Rd.	Rock Hill	SC 29730 RHW

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT RACE SEX AGE ETH. DAYTIME PHONE EVENING PHONE			
Chronister, Gail Marie	wife	J S O U W F 34 N unknown unknown			
HEIGHT WEIGHT HAIR EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC				
510 145 Brn Brn					
ADDRESS	CITY	STATE ZIP CODE LOCATION NO.			
1414 Copeland Park	Mt. Holly	NC 28120			
VISIBLE INJURY (VICT. 1) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN -	COMPLAINT OF ANY NON-VISIBLE INJURIES: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
gun shots to head + body					
VICTIM (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE:					

TWO-MAN VEH. <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> DETECTIVE/SPLASMT. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>	*J - This Jurisdiction. S - State. O - Out of State. U - Unknown				
<input checked="" type="checkbox"/> SUSPECT	NAME, (LAST, FIRST, MIDDLE)	RACE SEX AGE ETH. DATE OF BIRTH HEIGHT WEIGHT HAIR EYES			
<input type="checkbox"/> RUNAWAY	unknown	W M 42 N unknown 509 160 Brn Brn			
<input type="checkbox"/> WANTED	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
<input type="checkbox"/> WARRANT	beard				
<input type="checkbox"/> ARREST	ADDRESS	CITY STATE ZIP CODE LOCATION NO.			
<input type="checkbox"/> JAIL	unknown	unk unknown			
<input type="checkbox"/> SUMMONS	SUBJECT (NO. 1) USING: ALCOHOL: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK <input type="checkbox"/> ARRESTED NEAR OFFENSE SCENE: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> DATE/TIME OF OFFENSE	DATE/TIME OF ARREST			
	DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK <input type="checkbox"/> TYPE:	TOTAL # ARRESTED			

RIP stated as he was exiting the vehicle he drove to work that he heard approximately 5 rapid gun shots. RIP saw a w/m subject fitting the above description carrying a rifle walking away from the scene. Subject entered a white Dodge van NC. partial registration DRL and left the scene. Victim sustained gunshot wounds and was pronounced dead at the scene.

# EXHIBIT-D

TYPE (GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	

SUBJECT IDENTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	SUBJECT LOCATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> EX-CLEAR UNDER 18
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTIVE MERIT. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DENIES COOPERATION. 5. <input type="checkbox"/> JUVENILE—NO CUSTODY. 6. <input type="checkbox"/> CIVIL MATTER.		<input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR 18 AND OVER
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER
Smith, T. B.	2-14-92	955	
FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO		OFFICER	

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, JEFFREY LYNN CHRONISTER, I/M #189827, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jeffrey Lynn Chronister  
Applicant

SWORN or affirmed to and subscribed before me this  
4<sup>th</sup> day of March, 2015.

Albert W. Carter  
Notary Public

My Commission Expires: Sept 11, 2021

