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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2015-UP-501 (Ct.App. Filed October 28, 2015)

THE STATE, Respondent,

vs.

DON-SURVI CHISOLM, Petitioner.

Appellate Case No. 2016-000092

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PETITIONER'S QUESTIONS PRESENTED

1.

Did the Court of Appeals err by holding the trial court properly admitted evidence of Petitioner's alleged prior drug dealing when the evidence was not admissible to prove motive pursuant to Rule 404(b), SCRE, was not necessary to a full presentation of the case, and where its probative value was substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE?

2.

Did the Court of Appeals err by holding Petitioner's challenge to the admission of a firearm into evidence on grounds that there was an insufficient nexus to prove the weapon was involved in the murder thereby making it irrelevant and highly prejudicial was not preserved for appellate review and by failing to address the merits of the claim?

3.

Did the Court of Appeals err by holding the trial court properly denied Petitioner's motion to suppress evidence derived from a search warrant issued on September 27, 2007 for Petitioner's 2007 Dodge Durango when the search warrant was based on defective information?

4.

Did the Court of Appeals err by holding the trial court properly refused to allow Petitioner to cross-examine Detective Zensen about DNA testing performed on a seized firearm, specifically as it pertained to the decedent, since Petitioner had the right to show that the detective's answers were inconsistent in this regard and because the evidence was relevant to the thoroughness and accuracy of the investigation?

5.

Did the Court of Appeals err by holding the trial court properly allowed Petitioner to represent himself where the trial judge did not inquire about the nature of the conflicts Petitioner was having with his attorney, did not warn Petitioner that a murder conviction would constitute an aggravating circumstance for the state to seek the death penalty in his other Berkeley County murder case, and was very vague and not specific about the dangers and disadvantages of self-representation?

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1.

Whether the Court of Appeals erred in finding no abuse of discretion in admitting limited and brief evidence of prior drug sales through the testimony of Thomas Simonelli in proof of material facts directly related to the instant murder, namely possible motive, and as the context of the murder cleanup efforts immediately thereafter?

2.

Whether the Court of Appeals erred in finding Petitioner's issue challenging the admission of the gun was procedurally barred from review where Petitioner argued a different ground at trial than the ground raised on appeal?

3.

Whether the Court of Appeals erred in finding no abuse of discretion in denying Petitioner's motion to suppress based on incorrect information in the search warrant where Petitioner's only actual argument of incorrect fact in regard to the assertion of a purchase was simply an incorrect date?

4.

Whether the Court of Appeals erred in finding no abuse of discretion in disallowing cross-examination concerning testing of a gun in another matter that could not have been the murder weapon in this case given there was neither a nexus to the crime nor a proper point of impeachment to be made based on same?

5.

Whether the Court of Appeals erred by resolving the record fully and fairly supports the finding of a knowing and intelligent waiver of the right to counsel where it reflects the judge engaged in lengthy inquiry and personalized inquiry on the understanding of the dangers and disadvantages of self-representation?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted Petitioner, Don-Survi Chisolm, in January 2008 for the murder of Craig Michael Canady, Jr. (R. pp. 690). John Loy, Esq., initially represented Petitioner on the charge. On February 11, 2011, Petitioner moved to dismiss counsel and requested to represent himself. The Honorable Diane Schafer Goodstein, after inquiry on the waiver of the right to counsel, granted the request. (R. p. 33-36).

The case was originally called to trial on August 22-23, 2011, before the Honorable Edgar W. Dickson. Petitioner represented himself. Mr. Loy was standby counsel. (R.p. 86). Petitioner moved for a mistrial based on an answer received from a prosecution witness during cross-examination, which was ultimately granted. (R. p. 116, line 3 – p. 131, line 16).

Another jury trial was scheduled and held September 13-19, 2011, before Judge Goodstein. Petitioner again represented himself and Mr. Loy was, again, present as standby counsel. The jury

convicted as charged. (R. p. 686, lines 10-14). Judge Goodstein sentenced Petitioner to life imprisonment. (R. p. 689, lines 4-6). Petitioner sought direct appeal review.

On October 28, 2015, after briefing and oral argument, the South Carolina Court of Appeals issued an unpublished opinion affirming Petitioner's conviction. (App. pp. 1-3). On November 12, 2015, Petitioner filed a petition for rehearing. (App. pp. 4-26). The State made its return to the petition on November 23, 2015. (App. pp. 28-42). The Court of Appeals denied the petition by order dated December 17, 2015. (App. p. 43).

On February 8, 2016, Petitioner filed a petition for writ of certiorari seeking review from this Court. This return follows.

RESPONDENT'S STATEMENT OF FACTS

On Saturday, September 15, 2007, a hunter came across a body in a ditch along Clubhouse Road in Dorchester County. (R.p. 186, lines 11-22). Officers recovered store cards from the body that were registered to Tamekka Williams, who in turn identified the individual as her boyfriend, Craig Michael Canady, Jr. (R.p. 196, line 11- p. 197, line 18). While officers were standing outside of Ms. Williams' home, Petitioner approached and volunteered that he had seen the victim (known as "Red") and David White (known as "Scully") that prior "Tuesday or Wednesday." Petitioner also stated he had dropped-off victim at Haven Oaks (where both the victim and Petitioner lived) at approximately 4:00 am, and last saw the victim go across a ditch toward nearby Azalea Apartments. (R.p. 198, line 8 -p. 199, line 8; p. 556, line 21- p.557, line 1). Petitioner remained very interested in the ongoing investigation, offering information, observing the officers' investigation, and he approached at least one individual that the officers spoke to directly after the officers left. (R.p. 556, line 21- p. 558, line 8). Petitioner voluntarily gave another statement that he was actually with the victim late Wednesday to the early morning hours of Thursday, which was corroborated by cell

phone records. (R.p. 202, line 7-p. 203, line 24). He also admitted the victim was riding in Petitioner's front passenger seat with Scully in the back. (R. p. 204, lines 15-21).

David "Scully" White testified at trial that on September 12, 2007 (Wednesday), at approximately 5:00 in the afternoon, Petitioner picked him up in Petitioner's Dodge Durango to see the birth of Scully's fiancée's daughter's child. (R.p. 268, line 3- p. 271, line 17). Scully and Petitioner, however, ending up using powder cocaine, and, instead of going to the hospital, they "just rode around and got high." (R.p. 273, lines 10-15). About 10:00 that night, they called a girl, later met her and stayed with her until midnight. (R.p. 273, line 17- p. 274, line 17). Petitioner then took Scully to a store for a beer and cigarettes, then took Scully back to Scully's home. (R.p. 274, line 19 – p. 275, line 21). Petitioner called later, sometime after 1:00 am in the early morning hours of September 13, 2007, and asked Scully to go with him to get more cocaine. (R.p. 277, lines 2-9). When Petitioner picked-up Scully in the Durango, "Red" was in the passenger seat, and Scully got in the back. (R.p. 278, line 15 – p. 279, line 19). According to Scully, Petitioner asked "about get a lick," *i.e.* to commit an armed robbery, but Scully stated he was "not dressed for that," having left the house in slippers. (R.p. 280, lines 1-13). Petitioner began to ride around to look for someone in Azalea Park, then "pull[ed] out the gun and shot Red in the head." (R.p. 282, lines 14-15). Scully testified "there wasn't no discussion. No argument. I couldn't tell you why he even shot my man for." (R.p. 282, line 23- p. 283, line 1). Scully protested, Petitioner cursed and kept talking (though Scully could not focus on what was being said after having seen the unprovoked shooting), and victim quickly slumped over and took his last breath. (R.p. 282, line 17 – p. 283, line 20; p. 300, lines 3-5). Scully testified the gun was "a 22 long, long on the muzzle." (R.p. 283, lines 23-25). Scully testified Petitioner then placed the gun on the center console. (R.p. 284, lines 19-21). Petitioner started to dump the body nearby, but Scully advised to go further out to avoid being seen. (R.p. 286, line 17 – p. 287, line 8). They eventually "pulled to the side of the road, and throwed

Red's body in the ditch." (R.p. 287, lines 17-22). Scully testified Petitioner called his wife and "told her that he just got finished putting Red's body in the ditch." (R.p. 288, lines 18-25). Petitioner instructed Scully the "story" would be they "rode around, got high. He took me home, him and Ray left and went back towards the high school... Azalea Park, Haven Oaks area." (R.p. 289, lines 5-17). Before Petitioner took Scully home, he stopped at Bacon Bridge Road and "tossed the gun out over the bridge." (R.p. 289, lines 20-23). He also used victim's phone to call "Sike's number trying to make it seem like it was Red calling him." Scully knew Sike as the boyfriend of his girlfriend's daughter, (R. p. 268, lines 3-19), and could recognize Sike's voice as he answered and repeated hello several times, (R. p. 293, line 19-p. 294, line 5). When Scully exited the car at his house at approximately 5:00 am, he could see "a big spot of blood" on the passenger side seat of Petitioner's Durango. (R.p. 294, line 6-p. 295, line 15). The next day, in the afternoon, Petitioner talked to Scully "about he was trying to find a seat for the truck," and showed Scully "the hole he cut out the seat" where the big blood stain had been. (R.p. 296, line 3- p. 297, line 9). Scully also noticed the seat belt on that side had been cut off. (R.p. 298, lines 6-11). Petitioner instructed Scully "to be quiet, ain't nothing going to happen."(R.p. 298, lines 12-16).Scully testified he maintained his exculpatory story out of fear of Petitioner until Petitioner was arrested, then: "... when I found out they caught him, I call my attorney" to tell what really happened. (R p. 300, lines 1-2). (See also R.p. 299, lines 21-24; p. 315, lines 20-21;p. 345 line 24-p. 346, line 1). After two dive attempts, officers located a gun matching the description. (R.p. 430, line 2 – p. 431, line 4).

The State introduced records of cellphone calls placing Petitioner's phone at approximately the same places and times as described in Scully's testimony. (See R. p. 360, line 11 – p. 363, line 12). In further corroboration, the forensic pathologist opined the "gunshot wound ... entered the left side of [victim's] head" and the bullet continued back and "slightly up" to the other side. She opined this was consistent with being shot from someone from the driver's seat if the victim had

been in the passenger seat. (R. p. 375, line 5 – p. 376, line 21). Additionally, the doctor testified the decomposition evidence was consistent with the body being in the weather for three days. (R. p. 376, line 22- p. 378, line 3).

Shaquanda White, Sike's girlfriend, testified that she recalled September 12, 2007 as she was going to see a new-born niece. She recalled seeing Petitioner's Durango pulling-up at approximately 3:00 am, and Red was in the passenger seat. Scully came out and they all left together in the Durango. (R. p. 254, line 19 - p. 257, line 21). She testified she had ridden in Petitioner's Durango approximately a week before, in the passenger seat, and the "[s]eat belt was fine." (R. p. 253, line 14- p. 254, line 11).

Shakara Rose, a neighbor who knew the victim, testified that when the victim was missing, she recalled (though admittedly somewhat vaguely and less forcefully on cross-examination) that she heard Petitioner make reference to being "in the ditch stinking" while talking with others near her front porch. (R. p. 245, line 11 – p. 248, line 7).

The investigation further showed that Petitioner replaced the passenger seat in his Dodge Durango directly after the murder. Richard Johns and George Gallardo from LKQ Auto Parts testified that on September 14, 2007, Petitioner contacted them and requested a passenger side seat for the Durango and a seatbelt, which they pulled from a junk Durango at that time. (R. p. 392, line 8– p.395, line 21; p. 401, line 1– p.402, line 9). The serial number found on the passenger seat of Petitioner's Durango matched those of the junk Durango at LKQ. (R. p. 548, lines 5-24). In spite of these cleanup efforts, two areas in Petitioner's Durango – on the center console – still tested positive for blood, however, the amount was insufficient to run a DNA test. (R. p. 502, line 11 – p. 504, line 25; p. 533, lines 8-18). Further, the seatbelt on the passenger side was still completely missing, "cut all the way down to the retractor." (R. p. 463, line 3 – p. 466, line 16). Detective Zensen testified, from review of the victim's body when found, the victim had blood down his back, and such blood

would likely transfer to a seat if he was seating in the seat at the time. (R. p. 472, lines 3-10). Officers also determined that in November 2007, Petitioner "withdrew his children from school and re-enrolled them in a Florida school district..." (R. p. 565, lines 2 –14). Officers enlisted the help of the United States Marshals Service and the Jacksonville Sheriff's Office to ultimately locate Petitioner. (R. p. 565, line 18 – p. 566, line 6).

Petitioner did not testify at trial. However, he presented one witness, his sister Ejuhavna Chisolm. Ms. Chisolm testified Petitioner purchased the Durango from her. She testified that it was in fair condition, but had "burn spots on the passenger side...." (R. p. 619, line 13 – p. 620, line 22). She testified that she had previously cut out the passenger side seat belt (though she could not recall when or how) as she had been "in an abusive relationship" and wanted to ensure she could escape the car if necessary. (R. p. 621, line 1 – p. 623, line 10). She testified Petitioner had moved to Florida with her (was there at the time of arrest), and testified that was to help with her abusive relationship and her children. (R. p. 621, line 16 – p. 622, line 4).

ARGUMENT

I.

The Court of Appeals properly found no abuse of discretion in admitting limited and brief evidence of prior drug sales through the testimony of Thomas Simonelli in proof of material facts directly related to the instant murder, namely possible motive, and as the context of the murder cleanup efforts immediately thereafter.

Relevant Facts:

The State advised the trial judge it would offer the testimony of Thomas Simonelli:

> ... The gist of Mr. Simonelli's testimony is that around September - - it would have been the 14th, that Friday, he received calls from Mr. Chisolm in reference to Mr. Simonelli paying LKQ automotive for the car seat. The payment arrangement for that seat was that Mr. Chisolm was going to pay him twice the amount in cocaine in exchange for him putting the seat on his credit card. ... Also, the testimony by Mr. Simonelli would be that he knows the defendant because that was his cocaine supplier.

(R. p. 382, lines 2-15). (See also R. p. 386, lines 10-19).

The State argued the testimony was admissible in two ways: "under Rule 404(b) to show motive," specifically, "that defendant was selling drugs in the Haven Oaks area, [and] the victim was selling drugs in the Haven Oaks area," and also to show he was "trading cocaine [in a straw-man purchase] to pay for a seat the day after a murder." (R. p. 382, lines 16-24; p. 384, lines 15-22). The State noted Tamekka Williams' testimony that the victim had just recently begun selling drugs in their area and argued "that would be quite a good reason for Mr. Chisolm to want to take out a fellow drug dealer that's cutting into his territory." (R. p. 384, line 23 – p. 385, line 10). (See also R. p. 241, line 20- p. 242, line 1). Further, "the payment arrangement was going to be twice as much cocaine as the value of the seat." (R. p. 386, lines 20-25). Petitioner asserted such was "pure speculation ... highly prejudicial... remote in time ... not res gestae... not subjection of conviction...." (R. p. 385, lines 11-14). (See also R. p. 388, lines 5-24).

The trial judge found the testimony relevant as to the purchase and payment by cocaine, and would allow the argument on motive, "though motive is not an element of the offense...." (R. p. 388, line 25 - p. 389, line 15). Before admitting the testimony, the trial judge considered the prejudicial effect compared to the probative value in allowing the testimony, but found cocaine was a major part of the testimony already given, "what brought them together," and the case was not a similar drug offense. (R. p. 390, lines 3-20). Thereafter, Mr. Simonelli testified he knew Petitioner because Petitioner sold him drugs. (R. p. 411, lines 21-24). He testified in exchange for purchasing the replacement seat as requested, he could cancel some of his drug debt to Petitioner, "and trade some more cocaine or something like that." (R. p. 413, line 25– p. 414, line 4)

On appeal, Petitioner argued the testimony was improper for a number of reasons: 1) remote in time; 2) irrelevant to murder; 3) irrelevant to prove motive; and 4) probative value substantially outweighed by unfair prejudice. (FBOA, p. 7). He argued the evidence of "prior drug dealing was highly prejudicial, failed to establish any logical motive based on the evidence

presented, and was extremely destructive to Petitioner's character and credibility." (FBOA, p. 10). The Court of Appeals found the trial judge did not abuse her discretion. (App. p. 2).

Discussion:

Certiorari review is not warranted as this is an ordinary application of the well-established rules of evidence. Further, the Court of Appeals correctly affirmed where the record supports there was no abuse of discretion.

"The [a]dmission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion." *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 - 248 (2000). "An abuse of discretion occurs when the trial court's ruling is based on an error of law," *State v. Cope*, 405 S.C. 317, 335, 748 S.E.2d 194, 203 (2013), or when the ruling lacks factual support in the record, *Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 588 (2010).

Prior crimes and bad acts may be admissible to show motive, intent, the absence of mistake or accident, common scheme or plan, or the identity of the perpetrator of the crime at bar. Rule 404 (b), SCRE. "Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged." *State v. Johnson*, 293 S.C. 321, 324, 360 S.E.2d 317, 319 (1987). A material fact is "[a] fact that is significant or essential to the issue or matter at hand." *Black's Law Dictionary* (9th ed. 2009). Even where admissible as evidence of a material fact, "the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury." *Id.* Reference to prior drug use or drug transactions should not be admitted unless such was part of the circumstances of the crime. *State v. Coleman*, 301 S.C. 57, 389 S.E.2d 659 (1990). Here, the State offered the evidence both as evidence of motive and as part and parcel of the clean-up attempt after the murder. The evidence was material and admissible.

The reference to Petitioner selling drugs to Mr. Simonelli explained the details of the request made by Petitioner and the enticements offered. Thus, the prior drug transactions – which were

referenced only briefly and without collateral details, see R. p. 411, lines 24 – were part and parcel of Petitioner's request to Mr. Simonelli. Further, the evidence demonstrated "an undeniable connection" in the precise area (in and round Haven Oaks), and other testimony that the victim had only just recently begun selling drugs in that area. This allows a reasonable inference of motive. (See R. p. 389, lines 16-24). Even so, the past sales show an existing relationship which strengths and gives context to the request to purchase the replacement seat where victim was shot. In short, the testimony was admissible to establish material facts – 1) possible motive; and 2), the fact the seat was replaced due to victim's blood being in the seat, not mere cosmetic reasons as offered by Petitioner. *Johnson, supra.*

Further, as the trial judge properly reasoned, the possibility of unfair prejudice did not outweigh the great probative force of the evidence. Cocaine use was already a part of the narrative – Scully testified that he and Petitioner used cocaine, and they were searching for cocaine the night of the murder. (See R.p. 273, lines 10-15; p. 277, lines 2-9; p. 289, lines 5-17). Further still, the trial judge reasoned that this was a crime with actual violence not a similarly situated drug charge, which tended to reduce the danger of unfair prejudice. *See, e.g., State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) (where "strikingly similar... the danger of prejudice is enhanced.").[1]

Petitioner's further argument that the Court of Appeals failed to consider *State v. Coleman, State v. Bolden,* and *State v. Smith,* (Petition, p. 9), lacks merit for several reasons. First, Petitioner presented this cases and offered similarities in his brief. (FBOA, pp. 9-10). Second, these cases

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[1] Similarly, because the past drug transactions explain the attempt to pay a current drug debt by helping Petitioner to purchase the seat the evidence is admissible as *res gestae. State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) ("The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred."). This theory requires "the temporal proximity of the prior bad act ... be closely related to the charged crime." *State v. McGee*, 408 S.C. 278, 288, 758 S.E.2d 730, 736 (Ct. App. 2014). Mr. Simonelli testified to an existing relationship with Petitioner as his drug dealer at the time of Petitioner's request. (R. p. 413, lines 20-25). This would satisfy the temporal requirement.

were referenced in oral argument to this Court. Third, the cases simply do not apply. The reference to prior drug dealing was specifically a part of this case by virtue of Petitioner's own offer. These cases do not support Petitioner's position.

Even so, had the evidence been admitted in error, it could only be harmless for two distinct reasons. First, the connection to drug use was already a part of the record with Scully's testimony. In this sense, the additional drug testimony was harmlessly cumulative. *See State v. Price*, 368 S.C. 494, 499-500, 629 S.E.2d 363, 366 (2006) (appellant unable to show prejudice where inadmissible hearsay merely cumulative). Second, the record shows overwhelming evidence of guilt, not the least of which is Scully's eyewitness account of the shooting and dumping of the body and gun – testimony that was systematically corroborated by the forensic and investigative evidence. There is also the fact Petitioner replaced the passenger seat, cut out the passenger side seatbelt, and blood was found on the center console despite the cleanup efforts. The evidence is solid, and supportive of guilt; thus, if error in admitting the instant testimony, it could only be harmless. *See Wilder*, 388 S.C. at 285, 696 S.E.2d at 589 (noting overwhelming evidence of guilt supporting harmless error). However, the record shows the trial judge did not abuse her discretion in allowing the evidence in proof of material facts. The Court of Appeals properly affirmed. Certiorari is not warranted.

II.

The Court of Appeals did not err in finding Petitioner's issue challenging the admission of the gun was procedurally barred from review where Petitioner argued a different ground at trial than the ground raised on appeal.

Relevant Facts:

As noted above, "Scully" White told officers about the discarded weapon, and based on his information, officers located a gun matching the description. (R. p. 430, line 2 – p. 431, line 4). Scully testified at trial the recovered gun appeared to be the same gun used in the murder. (R. p. 284, lines 17-18). Detective Greer testified how the gun was recovered. (R. p. 437, line 23 – p. 440, line 25). Detective Zensen testified he secured the gun and transported the gun to SLED. (R. p. 473,

line 13 – p. 475, line 25). The State again offered the gun into evidence. The trial judge admitted the gun as State's Exhibit 14 over Petitioner's objection to foundation. (R. p. 475, lines 18-23).

Ira Parnell, a firearm and tool mark examiner for SLED, testified he received the weapon from officers. He testified the bullet retrieved from autopsy was too badly damaged to match; however, it was consistent with a twenty-two which was consistent with the ammunition the recovered gun required. (R. p. 374, lines 8-18; p. 612, line 22- p. 614, line 11).

On appeal, Petitioner complains the trial judge erred in admitting the weapon as the evidence did not show the weapon was the actual weapon used in the murder. (FBOA, p. 14). The Court of Appeals found the issue barred from review on appeal. (App. p. 2).

Discussion:

It is well-settled that to preserve an issue for review, the issue must be raised to and ruled upon by the trial judge. *See, e.g., State v. Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003). Here, Petitioner argued lack of foundation, specifically chain of custody:

> Your Honor, there's nothing particularly unique about this weapon. How can she be so sure that that's the same weapon we're talking about. I object. No foundation.

(R. p. 434, lines 1-4). The trial judge considered lack of foundation, specifically chain of custody:

> ... I would have no concern if there was a serial number identified at the scene where it was found ... I'm a little bit concerned about that. Of course, there hadn't been any kind of chain of custody. I don't even know where it's been kept.

(R. p. 435, lines 9-16).

Petitioner also argued the evidence from Scully was insufficient as "he was high on cocaine, freaked out, he was in a dark car" and added the divers had "found another gun inside the lake as well" which was not connected to the case. (R. p. 436, lines 1-12). Detective Greer confirmed her testimony was it appeared to be the gun recovered on the second dive. (R. p. 436, lines 22-23). The trial judge ruled, "I need more foundation." (R. p. 436, line 24). Thus, the objection and the ruling were based upon sufficient of the evidence in proof of the chain of custody. There was no argument

or objection to relevance as in connection to the murder. (See also R. p. 475, lines 18-23, trial judge admitted the gun over Petitioner's same objection to foundation). Consequently, the Court of Appeals correctly found Petitioner's argument on appeal procedurally barred.[2] Petitioner has failed to show certiorari is warranted.

III.

The Court of Appeals did not err in finding no abuse of discretion in denying Petitioner's motion to suppress based on incorrect information in the search warrant where Petitioner's only actual argument of incorrect fact in regard to the assertion of a purchase was simply an incorrect date.

Relevant Facts:

Petitioner's Dodge Durango was searched pursuant to a warrant on September 27, 2007. (R. p. 458, lines 4-9). At that time, investigators were aware that Petitioner had switched out the passenger seat; however, the car was still searched for any other evidence of the murder. (R. p. 460, lines 9-12). Detective Jamie Zensen testified that he determined that the passenger side seat belt had been cut and removed. (R. p. 463, lines 5-11). Detective Zensen testified, from review of the victim's body when found, the victim had blood down his back, and such blood would likely transfer to a seat if he was seating in the seat at the time. (R. p. 472, lines 3-10). Nine swabs were ultimately taken, two tested positive for blood. (R. p. 502, lines 12-20). The two swabs tested as

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[2] Petitioner also argues merits of the issue; however, an alternative merits analysis is unnecessary. Even so, there was no error. Mr. White, the witness to the murder, testified Petitioner shot the victim with a twenty-two long gun and subsequently threw the murder weapon into the river from Bacon Bridge. The weapon admitted at trial was recovered from that site and shared the same caliber – the caliber having been determined from the bullet retrieved at autopsy. (See R.p. 282, line 14 – p. 289, line 23; p. 430, line 2 – p. 431, line 4). Further, evidence Petitioner had a similar gun to that used to kill the victim would be admissible regardless of whether the actual gun used in the murder is recovered. *See State v. Gillian*, 373 S.C. 601, 610, 646 S.E.2d 872, 877 (2007) ("The burglary evidence was presented in an effort to show the identity of the perpetrator by showing that petitioner was in possession of a stolen gun that was consistent with the type of weapon used to kill the victim."); *State v. Pruitt*, 260 S.C. 396, 401, 196 S.E.2d 107, 109 (1973) (while weapon not found, other evidence demonstrated possession of gun with characteristics of weapon used in the murder). Further still, the gun could still be admitted as a demonstrative aid. Thus, the danger of any unfair prejudice leading to reversal was minimal.

blood were from the center counsel. (R. p. 533, lines 8-18). However, the amount was insufficient to perform DNA testing. (R. p. 502, lines 14-18).

Officers had originally obtained a warrant and searched the vehicle on September 17, 2007. No evidence was noted at that time. However, upon further investigation, Detective Giglio determined that Petitioner had called various auto parts and auto services businesses on September 14, 2007, the day after the murder. (R.p. 546, lines 3-10). This included a call to LKQ Automotive. (R.p. 547, lines 10-15). With the additional information about the replacement seat, Detective Giglio obtained the second warrant. (R.p. 554, lines 7-22). When notified of the second search warrant, Petitioner reacted – and interrupted the reading of the warrant – upon learning about the information concerning a purchased replacement seat shortly after the murder. (R.p. 556, lines 6-8). When asked if he wanted to explain, Petitioner declined to speak with the officer. (R.p. 556, lines 18-20). Detective Giglio testified at trial that he was then able to match the serial number of the replacement seat to the passenger seat in Petitioner's vehicle. (R.p. 548, lines 11-24).

In pre-trial motions, Petitioner moved to suppress the evidence from the second search arguing the assertion, "Officers obtained verbal and written statements that Donsurvi Chisolm purchased a passenger side front seat for a Dodge Durango on 9/14/07," was false. (R.p. 138, line 10- p. 140, line 5). Detective Giglio testified officers had "received a sales quote form the LKQ Auto Parts" and a "written statement from a Mr. Richard Johns on 9/26/2007, who stated [Petitioner] came in to purchase the seat and the next day you came back and paid cash." (R. p. 143, line 23- p. 144, line 1; p. 151, lines 6-16). Another statement of George Gallardo of LKQ, also taken September 26, 2007, reflected he "pulled" the requested replacement seat for Petitioner on Friday, September 14, 2007. (R. p. 145, lines 9-23). However, upon further investigation, officers "weren't able to confirm a lawful purchase had occurred," though the attempt was noted on September 15, 2007. (R.p. 152, line 16-p.153, line 8;p.157, lines 12-14). Dectective Giglio testified

that the "original thought" after talking to LKQ personnel was that Petitioner had purchased the seat; however, there was some later confusion whether it was purchased or stolen. (R.p. 162, lines 2-13; p. 164, lines 6-17). Even so, the detective acknowledged the initial request for the part on the 14th did not result in a "final purchase," nor did the credit card attempt (which was declined) on the 15th and to that extent, the affidavit reflects a clerical error. (R.p. 166, lines 2-12).

The trial judge found the allegations in the affidavit supported a finding of probable cause for the warrant. She specifically found the officers did not act "in bad faith or recklessly," but relied upon information from interviews with LKQ personnel. (R.p. 169, lines 14-21). Whether purchase or theft, "the officers were intending to tell the magistrate ... that based on their interviews they had probable cause" to search the vehicle again based upon the information on the replacement seat, though the information received ultimately lacked clarity as to the actual purchase. (R.p. 169, line 24 – p. 170, line 10). She denied the motion to suppress. (R.p. 170, lines 11-15).

On appeal, Petitioner argued the judge abused her discretion and that statement about the purchase was false. (FBOA, p. 21). In affirming, the Court of Appeals found there was evidence in the record to support the ruling and, even so, that absent the contested evidence, the search warrant affidavit would still support a finding of probable cause. (App. p. 2).

Discussion:

Again, certiorari review is not warranted as this is an ordinary application of the well-established rules of evidence. Further, Petitioner suggests a position rejected in 1975 in *State v. Sachs*: "Mere error in the facts relied upon does not offend the protection sought to be achieved by the warrant requirement." *State v. Sachs*, 264 S.C. 541, 556, 216 S.E.2d 501, 509 (1975). The Court eschewed the notion to the contrary reasoning "[h]indsight invalidation of the warrant would be incompatible with the legitimate demands of law enforcement." *Id.*

Detective Giglio in the pre-trial hearing reviewed the statements supporting the affidavit in detail. In particular, he reviewed the statement of Mr. Johns who indicated an attempt was made on the 14th when a card was decline, and "customer came back the next day and paid cash." (R. p. 151, lines 6-16). The second statement indicated that nothing was actually purchased. (R. p. 151, lines 17-20). However, Detective Giglio did not know there was a "clerical" error concerning the dates 9/14 and 9/15, (R. p. 157, lines 8-24; 165, line 24 – p. 166, line 4); and had confirmation from a photograph from the first search that the seat – whether purchased or obtained otherwise – was in Petitioner's vehicle, (R. p. 166, lines 21 – p. 167, line 16). The fact the first statement by Mr. Johns was factually inaccurate as to actual purchase falls specifically in line with the caution in *Sachs* that the eventual disproof of the facts does not invalidate the warrant. The facts neither show an intentional assertion of a known false fact nor recklessness in making such assertion. At any rate, the probable cause was not the purchase (or theft) of the seat but possession of the seat. That was a fact that Petitioner could not deny. The actual method of possession was never fully uncovered, but, again, the actual possession was firmly established. Thus, probable cause is shown.

The Court of Appeals also properly relied upon its previous holding in *State v. Robinson*, 408 S.C. 268, 758 S.E.2d 725 (Ct.App. 2014), *cert. granted,* (December 3, 2014). (See App. p. 2). In *Robinson*, the Court of Appeals noted: "the court may not order suppression simply because the officer made a false statement in, or omitted key facts from, an affidavit supporting a search warrant" rather, the appellant must show the statements were material and affected the finding of probable cause. 408 S.C. at 274, 758 S.E.2d at 728. Again, the officers relied on information received from the auto parts personnel which support probable cause. Further, the key fact is Petitioner's looking for and obtaining, by whatever means, the replacement seat shortly after the murder. The date of purchase, if any, is less important than the fact of looking for and obtaining the

replacement seat.[3] If anything, Petitioner points to an incorrect fact of no consequence. Again, he has failed to show certiorari review is warranted.

IV.

The Court of Appeals properly found no abuse of discretion in disallowing cross-examination concerning testing of a gun in another matter that could not have been the murder weapon in this case given there was neither a nexus to the crime nor proper point of impeachment to be made based on same.

Relevant Facts:

Detective Zensen testified that she worked as a crime scene technician in the case. On cross-examination, after lengthy questions on items submitted for DNA testing, (see R.p. 498, line 11- p. 506, line 13; p. 510, line 2- p. 515, line 25), Petitioner asked about a January 7, 2008 request for testing on a .25 automatic handgun. (R.p. 516, lines 3-5). The detective originally began to answer concerning the .22 handgun recovered from the river, but Petitioner corrected the witness to focus on a question about another weapon, "a 25 automatic handgun found on another person...." (R.p. 516, line 25 – p. 517, line 1). The State objected as to relevance and the trial judge heard argument outside the presence of the jury. The trial judge reviewed the SLED report relied upon by Petitioner. The trial judge found the report was from a case with a separate SLED case number, and the gun tested was a different caliber "semi-automatic pistol which could not fire the bullet that was removed from the body of this alleged victim." She declined to allow impeachment finding, "I don't know what the relevance is." (R. p. 521, line 8 – p. 529, line 4).

Petitioner argues the trial court erred in not allowing him to address the inaccurate statement that another weapon was not submitted when investigators actually had submitted another weapon "as being involved in the murder." (FBOA, p. 26). Further, he argued "[t]he fact that law enforcement was investigating a second weapon indicated that officers from the Dorchester County

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[3] The evidence certainly supports the trial judge's ruling that the officers acted in good faith. They depended on statements from LKQ personnel, the pulled parts from the junk Durango, and cell phone records to confirm contact between Petitioner and LKQ.

Sheriff's Office were not firmly convinced that the gun recovered from the Ashley River was the murder weapon and that the officers considered that someone else may have been involved in the murder." (FBOA, p. 26). The Court of Appeals found the limitation was not an abuse of discretion and cited *State v. Lyles*, 379 S.C. 328, 336-37, 665 S.E.2d 201, 205-06 (Ct.App. 2008), for the principle that "only relevant evidence is admissible." (App. p. 3).

Discussion:

Again, Petitioner has shown no reason to warrant certiorari review. The Court of Appeals reviewed a discretionary ruling and affirmed accordingly: "An appellate court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion." *State v. Johnson*, 338 S.C. 114, 124-125, 525 S.E.2d 519, 524 (2000). As the Court correctly found: "Although the Confrontation Clause 'tips the scales' in favor of permitting cross-examination if it could reasonably be expected to have an effect on the jury, a court may prohibit cross-examination for impeachment purposes when the probative value of the evidence that the defendant seeks to elicit is substantially outweighed by the risk of prejudice." *State v. Boiter*, 302 S.C. 381, 383, 396 S.E.2d 364, 365 (1990). (App. p. 3). "A criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." *State v. Gillian*, 360 S.C. 433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004), *affirmed as modified* 373 S.C. 601, 646 S.E.2d 872 (2007) (citing *Delaware v. Van Arsdall,* 475 U.S. 673, 106 S.Ct. 1431 (1986). Petitioner failed to show error.

As a first matter, Petitioner failed to show a false statement to correct. Detective Zensen testified concerning the weapon that was recovered and was tested in regard to the bullet recovered

from autopsy, but not that it was "sent in" for some type of DNA testing to the victim. (R. p. 516, lines 13-17). As the trial judge found, the separate gun Petitioner wanted to question the detective about was not submitted with the same SLED case number, could not have involved in the murder as it was a different caliber, and Petitioner failed to show any connection in investigation or personal knowledge for the request. (R. p. 521, line 8 – p. 522, line 24; p. 523, line 21 – p. 524, line 25; p. 527, line 24-p. 529, line 4). The trial judge reasonably found on these facts that Petitioner's inquiry simply did not reflect fair impeachment. (R. p. 523, line 21-p. 524, line 16). Thus, there was neither an incorrect fact nor a basis to show bias or impartial – the general points to impeach a witness upon. *See Gillian*, 360 S.C. at 450, 602 S.E.2d at 71 ("On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.").

As to the argument there is a defense to be offered because investigators continued to investigate matters related to the victim, that does not show some fact of bias or dishonesty necessitating cross-examination on same. *See State v. Saltz*, 346 S.C. 114, 132, 551 S.E.2d 240, 250 (2001) ("Appellant sought to ask Mengedoht what she would do 'if she had to make a choice between being loyal to her friend and ***protecting*** her son.' This question did not seek to elicit a **fact** tending to show bias.") (emphasis in original). It certainly would not constitute proper third party guilt evidence. *See State v. Gregory,* 198 S.C. 98, 104, 16 S.E.2d 532, 534 (1941) ("[E]vidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible." (internal quotation marks omitted)). Further, Petitioner did not establish that officers, particularly this officer, continued to investigate the murder. (See R. p. 524, lines 4-10). The questioning on same could only work to inject irrelevant and confusing matter into the trial of the case. Thus, the testing of an unrelated gun that could not have been the murder weapon, in a separate submission with a separate SLED number, is too tenuous to constitute necessary cross-examination. The trial judge did not

abuse her discretion in limiting cross-examination on this irrelevant subject and the Court of Appeals properly affirmed. Certiorari is not warranted.

V.

The Court of Appeals did not err in resolving the record fully and fairly supports the finding of a knowing and intelligent waiver of the right to counsel where it reflects the judge engaged in lengthy inquiry and personalized inquiry on the understanding of the dangers and disadvantages of self-representation affirming the knowing and intelligent waiver of the right to counsel where the trial judge made inquiry on the understanding of the dangers and disadvantages of self-representation.

Relevant Facts:

Petitioner requested to represent himself at a February 11, 2011 pre-trial hearing. (R.p. 7, lines 11-19). The trial judge thereafter questioned Petitioner at length regarding his decision, first asking about his charge, which Petitioner acknowledged was murder. Petitioner also acknowledged a separate murder charge in Berkeley County and that he was also representing himself on that charge. (R.p. 9, lines 4-11). The trial judge questioned Petitioner to ensure he was not seeking to represent himself to interpose a delay. Petitioner confirmed his case had not at that time been scheduled for trial, and he was not seeking to delay the trial by the request. (R.p. 10, lines 3-10).

The trial judge then gathered background and personal information from Petitioner, such as Petitioner's age which he reported as thirty-one; that he was married with four children; had worked for Sonic before incarceration; had one year of college; had a military background including additional college credits; "Did 10 months in Afghanistan in the army, was trained in fuel and ammo provisions; and stayed in the Army until discharged for injury. (R. p. 11, line 11 – p. 15, line 25). Upon release, Petitioner worked with "trucks and heavy machinery" including "semi-trucks; Charleston Portable Storage, the pods... Cranes, factories" driving or working on heavy equipment. (R. p. 16, line 18 – p. 19, line 4). He left because of the work hours which caused him to drive in the early morning hours after a twelve-hour shift and he "could possibly wreck...." (R. p. 19, lines 8-17). After leaving his job, he was arrested for murder in Dorchester County. (R. p. 19, lines 22-23).

He bonded out and worked in the fast food industry and was then charged with the murder in Berkeley County. (R.p. 20, line 4 – p. 21, line 6). He did not bond out again. (R. p. 21, lines 7-10).

Judge Goodstein found his work history and education to be "exceptional." (R. p. 21, lines 11-12). Petitioner denied any mental health treatment (including specifically post-traumatic stress syndrome), and denied treatment for alcohol or drug abuse. (R. p. 21, lines 14-18). Judge Goodstein advised not only did Petitioner have the constitutional right to counsel but that "there's a benefit to counsel." (R. p. 21, lines 22-25). She cautioned he was facing murder with a sentence of thirty years to life, and explained in terms of his prior work experience and underscored the danger. (R. p. 22, line 12-p. 23, line 18). The judge then cautioned that he would need to develop defenses, and "you've got to have somebody who has the capacity to do that ... which is another reason why it's important and - - and why you put yourself in danger by not having a lawyer represent you." (R. p. 28, lines 11-18). The judge noted, without going into facts or the "relationship between the Berkeley County allegations and the Dorchester County allegations," that she could advise "that having two allegations and –and two murders in two counties is not helpful." (R.p. 29, lines 1-8). She plainly advised: "I know that the overlay of that's not good" and he was at "risk in representing yourself with regard to one murder charge, having two of them has got to make that even more risky and even more problematic exponentially. It's got to." (R. p. 29, lines 11-21). She advised him he would have to comply with the rules of evidence and the court rules. (R. p. 32, lines 11-18). The trial judge found Petitioner to be "obviously very bright" and that while she did not like the waiver of his right, the trial judge stated: "I can find no reason to disallow you to—to self-represent yourself...." (R. p. 33, line 15 - 35, line 18). Judge Goodstein advised that if Petitioner should change his mind, he should not hesitate to file a motion to appoint counsel. (R.p. 36, lines 16-22). Over a series of pre-trial appearances, Petitioner continued to opt to represent himself without requesting appointment. (See R. p. 41, line 8 – p. 44, line 21; p. 48, line 11 – p. 50, line 21; p. 73

line 3 – p. 74, line 10). Further, Petitioner's case was originally called to trial on August 22-23, 2011, before the Honorable Edgar W. Dickson. Petitioner represented himself. Petitioner moved for a mistrial based on an answer received from a prosecution witness during cross-examination, which was ultimately granted. (R. p. 116, line 3 – p. 131, line 16). Prior to the mistrial, he had moved and argued to suppress evidence from the search warrant; (R. p. 87, line 7 – p. 95, line 13); participated in selection of the jury, (see R. p. 109, lines 21-23; p. 110, line 23 – p. 111, line 24); and presented an opening statement, (R. p. 112, line 25 – p. 115, line 18). He clearly knew what would be expected of him when he appeared for the next trial.

Petitioner complained on appeal, however, his waiver was not knowing and voluntary as he was only vaguely advised of the dangers and disadvantages of self-representation. (FBOA, p. 29). He further complained that though the judge referenced the rules of evidence, there were not concrete examples of same. (FBOA, p. 30). He suggested the trial judge should have explored the "friction" between Petitioner and Mr. Loy. (FBOA, p. 30). Lastly, he suggested that the trial judge did not advise the murder conviction could be used to establish an aggravating circumstance to seek the death penalty in his other pending murder case. (FBOA, p. 30). The Court of Appeals affirmed and noted even if a specific inquiry was not made, "the appellate court will look to the record to determine whether [a defendant] had sufficient background or was apprise of his rights by some other source." (brackets in original). (App. p. 3).

Discussion:

It is has long been established that a defendant may choose to waive his right to counsel and represent himself, as long as the waiver is "knowingly and intelligently" made. *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525 (1975). "[I]t is the trial judge's responsibility to determine whether there is or is not an intelligent and competent waiver." *State v. Dixon,* 269 S.C. 107, 236 S.E.2d 419 (1977). Here, the record reflects continuing and lengthy discussions between

the judge and Petitioner, referencing not only the right to counsel, but specifically its value. The judge fully and fairly advised Petitioner on the dangers and disadvantages of self-representation, and she did so in a manner that related the danger to his own experiences for ease in understanding. To the extent Petitioner argues a more formal and structured inquiry is necessary, precedent is against him:

> We have described a waiver of counsel as intelligent when the defendant "knows what he is doing and his choice is made with eyes open." We have not, however, prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must possess in order to make an intelligent election, our decisions indicate, will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.

Iowa v. Tovar, 541 U.S. 77, 88, 124 S.Ct. 1379 (2004)(citations omitted). The Court, however, did provide some guidance in *Tovar* expressing the "pragmatic approach" that "what purpose a lawyer could serve," and "what assistance he could provide to an accused at" the relevant stage of the trial should be considered to determine the scope of the advice needed. *Tovar*, 541 U.S. at 90. Exact verbiage, though, has never been mandated. *Id.* This precedent is consistent with our well-settled notion that "the ultimate test is not the trial judge's advice but rather the defendant's understanding." *Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 575 (1990).

Thus, the key in review of such advice is whether the dangers and disadvantages of self-representation are explained in such a manner that a defendant may understand. Here, Judge Goodstein took extra effort to explain the dangers and disadvantages of self-representation in such a manner that Petitioner would understand. On two separate occasions during the hearing, she related Petitioner's decision to his prior work history and experience in the military. (R. p. 22, line 12- p. 23, line 15; p. 30, lines 2-13).

At any rate, if the advice is not sufficient, the reviewing court would look to the record to determine if the waiver was sufficient.[4] *See generally State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App.1992) (listing factors to consider). In considering the *Cash* factors in context of the information here, there is evidence supportive of finding a sufficient waiver: 1) Petitioner was in his thirties with college and military experience and no evidence of mental or physical ill health; 2) he had been previously involved in the trial that resulted in a mistrial and had also been involved to some extent with representing himself in his other murder charge; 3) he certainly understood he was being tried for murder and knew he faced on this first charge a sentence of thirty years to life; 4) he was represented by Mr. Loy prior to his decision to represent himself and requested Mr. Loy remain as standby counsel (Petitioner's present argument aside, there appeared to be no difficulties evident in record between the two, and Petitioner often consulted with Mr. Loy, see for example, R. p. 231, line 23; p. 232, line 25; p. 233, line 8; p. 234, line 19); 5) he did not appear to be delaying the proceedings; 6) he not only was appointed standby counsel, but consulted with standby counsel; 7) the judge advised him he would have to abide by the rules of court and he confirmed he understood; 8) he did not discuss legal or factual defenses but was advised that counsel would be charged with presenting defenses, and defense would be important in the representation; 9) the conversation was tailored specifically to Petitioner; and 10) there was no evidence of "coercion or mistreatment" prompting the waiver. Thus, should the Court review the record under these facts, the record well and fully supports a knowing and intelligent waiver.

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[4] Only "[i]f the trial judge ***fails*** to address the disadvantages of appearing *pro se,* as required by the second prong of *Faretta,*" will the reviewing court "look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002) (quoting *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990)(emphasis added)). Our courts only resort to such analysis if there is an "absolute failure" to inquire of the defendant. *Gardner*, 351 S.C. at 412, 570 S.E.2d at 186. That cannot be fairly argued to be the case here.

However, the trial judge carefully reviewed the dangers and disadvantages with Petitioner. Moreover, she encouraged him to change his mind and request counsel. He never did so, even while he appeared before the same judge two additional times in pre-trial, and also had a trial run at self-representation in the August trial that resulted in a mistrial. He was given an opportunity to change his mind, and experiences to know what would be expected of him. Petitioner stood firm in his choice. Petitioner has failed to show error in regard to the waiver or the Court of Appeals opinion reviewing same. Certiorari review is not warranted.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits Petitioner has failed to show that any of the questions presented warrant certiorari review. His petition should be denied.

Respectfully submitted,

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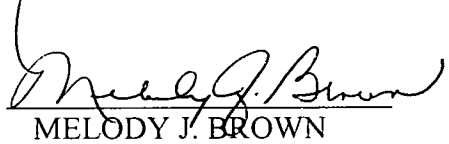
BY: 
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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
The Honorable Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2015-UP-501 (Ct.App. Filed October 28, 2015)

THE STATE, Respondent,

vs.

DON-SURVI CHISOLM, Petitioner.

Appellate Case No. 2016-000092

CERTIFICATE OF SERVICE

I, Melody J. Brown, Senior Assistant Attorney General, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two (2) copies of same in the United States mail, first class, postage prepaid, to his attorneys of record, addressed as follows:

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This 9th day of March, 2016.

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