

STATE OF SOUTH CAROLINA

RECEIVED

IN THE SUPREME COURT

MAY 30 2017

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

Ronnie C. Swofford, Jr.

PETITIONER

V.

State of South Carolina,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Pro Se Response to Johnson Petition for Writ of Certiorari has been put into the U.S. mail postage prepaid to the following Authority South Carolina Supreme Court, ATTN: Daniel Shearhouse, Clerk of Court, P.O. Box 11330, Columbia, S.C. 29211

Ronnie C. Swofford Jr

Ronnie C. Swofford, Jr.

Petitioner, Pro Se

SUBSCRIBED AND SWORN TO before me on this 24 day of May, 2017.

J. Franklin

Notary Public for South Carolina

My Commission Expires: 12-16-2019

REC'D MAY 30 2017

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RONNIE C. SWOFFORD JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_  
APPELLATE CASE NO. 2016-000508

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PRO SE RESPONSE

JOHNSON PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
Ronnie C. Swofford Jr.

Petitioner, Pro Se

McCormick C.I. F1-233-B

386 Redemption Way

McCormick S.C., 29899

TABLE OF CONTENTS

Table of Contents . . . . .I

Table of Authorities . . . . . II

Designation of Matter . . . . .V

Letter to Disregard . . . . .VI

Statement of Issues on Writ of Certiorari . . .1

Statement of Case . . . . .3

Argument I . . . . . 4

Argument II . . . . .11

Argument III . . . . . 14

Argument IV . . . . .18

Argument V . . . . . 20

Argument VI . . . . .27

Argument VII . . . . . 37

Argument VIII . . . . .46

Conclusion . . . . .51

TABLE OF AUTHORITIES

CASES:

ARD v. CATOE 372 S.C. at 331-332, 642 SE2d at 597 (2007).....10,17

BELL v. EVATT 72 F3d 421 (4th 1955).....10

BELL v. MILLER 500 F3d 149, 155 (2nd Cir 2007).....29

BENTON v. PELLUM 232 S.C. 26, 33-34, 100 SE2d 87,88 (1990)....23

BUTLER v. STATE 302 S.C. 466,468 397 SE2d 87,88 (1990).....50

CALIFORNIA v. TRUMBETTA 467 U.S. 479 (1984).....23

CHERRY v. STATE 300 S.C. 115,117-118, 386 SE2d 624, 625 (1989),17,19,23,29,40

COY v. IOWA 487 U.S. 1012, 1019 (1988).....40

CRAWFORD v. WASHINGTON 541 U.S. 36, 53-54 (2004).....40

DANIELS v. LEE 316 F3d 421 (4th 2003).....10

DAVIS v. ALASKA 415 U.S. 308 (1974).....29

DAVIS v. WASHINGTON 547 U.S. 813 (2006).....40

DEMAREST v. PRICE 130, F3d 922 (10th Cir 1997).....17

GIGLIO v. U.S. 405 U.S. 150 (1972).....10

GROSECLOSE v. BELL 130 F3d 1161 (6th 1997).....29

HAMMON v. INDIANA 547 U.S. 813 (2006).....40

HAYDEN v. STATE 278 S.C. 610 299 SE2d 854 (1983).....50

HOUSE v. BALKCOM 725 F2d 608 (4th Cir 1984).....17,29

JOHNSON v. CATOE 345 S.C. 389,401,548,SE2d 587,593 (2001).....50

LILJEBERG v. HEALTH SERVICES ACQUISITION CORP 486 U.S 847,  
108 sct 2194 (1984).....13

LITEKY v. U.S. 114 S.Ct 1147,1162 (1994).....13

LORD v. WOOD 184 F3d 1083 (9th Cir1999).....17

MARYLAND v. CRAIG 497 U.S. 836, 846 (1990).....40

MCKNIGHT v. STATE 378 S.C. 33,46 661 SE2d 334 359 (2008).....29,23

(citing WIGGINS v. SMITH 539 U.S. 510,524 S.C.2527,2523)

<u>MILLER v. PATE</u> 386 U.S. 1 (1967).....	10
<u>MOONEY v. HOLOHAN</u> 294 U.S. 103 386 U.S. 2-7 (1935).....	17
<u>NANCE v. OZMINT</u> 367 S.C. 547 557 n.8 (2003).....	23,29
626 SE2d 878,883 n.8 (2008).....	
(quoting Wiggins 539 U.S. at 524-525)	
<u>NAPUE v. ILL</u> 360 U.S. 264 (1959).....	10
<u>NEWSON v. UNITED STATES</u> 311 F2d 74 (5th Cir 1962).....	50
<u>OHIO v. DOYLE</u> 426 U.S. 610 (1976).....	13
<u>PEOPLE v. NATION</u> 26 Cal 39 169,161 Cal Rptr 299 604 P2d 1051 (1980).....	10
<u>PORTER v. STATE</u> 368 S.C. 378,383,629 SE2d 353,356 (2006).....	17,19,23,29,40
<u>PORCARO v. UNITED STATES</u> 784 F2d 381 41-42 (1st Cir 1986).....	13
<u>PORTER v. SINGLETARY</u> 49 F3d 1483 (11th 1990).....	13
<u>RIDDLE v. OZMINT</u> 631 SE2d 70 (sc 2006).....	10
<u>STATE v. HATCHER</u> 384 S.C. 372, 681 se2d 925 (CT App 2009).....	23
<u>STATE v. KING</u> 623 SE2d 865 (S.C. CT App 2005).....	10
<u>STATE v. PRINCE</u> 316 S.C. 57, 447 SE2d 177 (1993).....	50
<u>STATE v. SPANN</u> 344 S.C. 618, 513 SE2d 98 (1998).....	50
<u>STEPHENS v. KEMP</u> 846 F2d 642 (11th Cir 1988).....	17
<u>STRICKLAND v. WASHINGTON</u> 466 U.S. 668 104 S.Ct 2052 (1984).....	17
<u>TOSH v. LOCKHART</u> 879 F2d 412 (8th Cir 1989).....	40
<u>TRUEDEL v. WAINWRIGHT</u> 667 FSupp 1456,1461,(So.Fla 1986) affid F2d 620 (11th Cir 1987).....	17
<u>U.S. v. LOAYZA</u> 107 F3d 257 (4th 1997).....	10
<u>U.S. v. MADDOX</u> 156 F3d 1280 (PC 1998).....	10
<u>U.S. v. OLLIVIERRE</u> 378 F3d 412 (4th 2004).....	10,17

**STATUTES:**

**S.C. CODE OF LAWS** 16-9-10 Perjury.....10  
**S.C. CODE OF LAWS** 17-23-60.....29,40  
**S.C. CODE OF LAWS** 17-28-320 (B) (1)(2)(3).....23

**RULES:**

Cannon 3B(5) SCACR.....13  
Rule 407, Rule 3.3 SCACR.....10  
Rule 6 (B) SCRCrimP.....23

**CONSTITUTIONAL PROVISIONS:**

U.S. CONST. AMEND V.....4-13  
U.S. CONST. AMEND VI.....14-45  
U.S. CONST. AMEND XIV.....4-13,37-45  
U.S. CONST. ART 1§14.....17,19,23,29,40

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO GREENVILLE COUNTY  
HONORABLE PERRY H. GRAVELY, CIRCUIT COURT JUDGE

---

RONNIE C. SWOFFORD, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000508

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DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL


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Appellant proposes the following be included in the record on Appeal:  
Petitioner included the following at the PCR Hearing. Left out of  
the Appendix by PCR Counsel.

1. Petitioners Exhibits 3.A pg 24, 3.B pg 25, 3.C pg 26; (Failure to preserve);
2. Petitioners Exhibits 1.A pg 30, 2.A pg 31 - 2.F pg 36, (Medical Reports and Victim Statement);
3. Petitioners Exhibits B.7 pg 41 - B.11 pg 45 (Ineffective Assistance and Confrontation Clause).

I certify that this designation contains no matter which is irrelevant to this appeal.

May 24, 2017

  
Ronnie C. Swofford, Jr.  
Pro Se (Response)  
386 Redemption Way  
McCormick, SC 29899

LETTER TO DISREGARD

Honorable Court,

Petitioner respectfully requests this Honorable Court to Disregard the Appellate Counsels contents of the argument portion of the Johnson Petition for Writ of Certiorari for Appellate Counsels failure to present factual evidence to this Honorable Court, This very reason Petitioner is here is due to Trial Counsel and PCR Counsel failure to understand the DNA evidence and the terminology to properly present factual evidence on behalf of the Petitioner. the following is the misinformation Appellate Counsel is providing this Honorable Court to basically state their is no merit.

**Definition:**

**Splatter** - Probable blend of Splash and Spatter; To scatter or fall in or as if in drops.

**Blood** - The Red Liquid that circulates in the arteries and veins of humans and other vertebrate animals carrying oxygen to and carbon dioxide from the tissues of the body;

**Tissue** - An aggregate of similiar cells and cell products forming a definite kind of structural function, in a multiple cellular organism. there are 4 types of Tissue: Muscle, Nerve, Epithelial, and Connective.

**Body Fluids** - Blood, Saliva, Semen, Vaginal Semen, Mucus, Urine.

Appellate Counsel states in her argument that Petitioner admits his Tissue, and Hair were found at the Crime Scene, which is **FALSE**, Petitioner answered PCR counsels question as to what thw States DNA expert found App 810 line 8 - 12, The Cloth Cutting (Table cloth blanket material) that Appellate Counsel claims matches the Petitioner

DNA is **FALSE**, The Cloth cutting material was Identified as matching the Victim Mr. Wooten App 279, Line 18 - 25, Cutting of Yellow Gingham print table cloth item 2.1, and the Cutting of beige material blanket item 3.1, then DNA Expert A. Hefney states "2.1 and 3.1 matches the victims DNA profile from the Victims swab of DNA" App 280, Lines 16 - 23. Then Appellate Counsel states that Solicitor did not say Petitioners blood was stated in the States opening argument but a splatter on the kitchen wall and body tissue and hair belonging to the Petitioner. The states theory was the assailant was hit in the arm in a return fire, that being said the only body fluid that can be splattered on the wall is Blood. In addition Appellate Counsel says the Solicitor did not say Blood in the States Closing arguments, this is **FALSE** Solicitor Hodge states 4 times Blood App 715, Lines 10 - 23 and 1 time App 727, Lines 7 - 15, I point out on Line 7 - 10 "Touch DNA". Because there is such a thing as touch DNA Thats not the kind of DNA we have. We have tissue, hair, and **Blood DNA.**"

The Petitioner understands the heavy case loads the Appellate Counsels have, and understands the misinformation given by Appellate Counsel was not intentional. PCR Counsel App 810, 2 - 25 and App 811, 1 - 25, is reacting in manner that Blood Tissue is what The state has as evidence, "Blood Tissue" is merely a term people tend to use. The State showed a picture of the "Section of Wall" with a red substance appearing to be blood, and as the Petitioner has stated many that blood and tissue were not found that wall. There was "NO BLOOD" found in the home of the Victim Period, in no way shape or form, belong to the Petitioner. This Scientific evidence has confused the Counsels at various levels. Due to the aforementioned reasons I asked that the contents of the Appellate Counsels argument, to please be disregarded as they are false.

STATEMENT OF ISSUES ON WRIT OF CERTIORARI

- I. Did PCR Judge err in holding that the Petitioners Due Process Rights were not violated when the Prosecutor Knowingly elicited and failed to correct false statements and evidence, and obtained a conviction through misinformation, failing to produce all material evidence at trial, failed to preserve potentially exculpatory evidence, and made prejudicial remarks during opening and closing arguments?
  
- II. Did PCR Judge err in holding Petitioner's Due Process was not violated when the Honorable Trial Court Interjected himself into the proceedings during a Proffer by telling the Prosecutor what questions to ask and informing the the Detective how to answer those questions?
  
- III. Did the PCR Judge err in holding that Petitioner's Trial Counsel were not ineffective in failing to investigate the facts of the crime and the crime scene and failed to to present an adequate defense based on the facts?
  
- IV. Did the PCR Judge err in holding that Trial Counsel was not ineffective for his damaging opening arguments...lied to the jury and bolstered the states case?
  
- V. Did PCR Judge err in holding that Petitioners Trial Counsel was not ineffective in failing to cross-examine or impeach forensics witnesses about processing and preserving evidence and follow chain of custody procedures?
  
- VI. Did the PCR Judge err in holding that Petitioners Trial Counsel were not ineffective in failing to consult with a Medical Expert regarding the reliability of the Witness - Victim Identification "Witnesses memory was obviously impacted by Medical Trauma"?

VII. Did the PCR Judge err in holding that Petitioners Trial were not ineffective in allowing the Trial Court to admit "Testimonial" Hearsay statements from non-testifying witness Ms. Rikki D. Edwards?

VIII. Did the PCR Judge err in holding that Petitioners Newly Discovered evidence had no merits, and no constitutional violation occurred?

2025-01-15 10:00 AM

## STATEMENT OF THE CASE

— Petitioner Ronnie Cleveland Swofford, Jr., was convicted of first degree burglary, assault and battery with intent to kill, assault with intent to kill, possession of a weapon during the commission of a violent crime, and possession of a pistol by a person convicted of a violent crime during the May 2012 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Petitioner was sentenced to two concurrent life without parole sentences, ten years on the AWIK conviction, and five years on the conviction of possession of a pistol by a person convicted of a violent crime. Petitioner was not sentenced on the weapon conviction after receipt of his life without parole sentences. App. 1-755. Andrew J. Johnston represented petitioner at trial and Assistant Solicitor Kris Hodge appeared on behalf of the state. Petitioner appealed, but subsequently withdrew his appeal. An order dated June 23, 2014 was issued by the Court of Appeals therein dismissing the direct appeal. Lanelle C. Durant, Esquire, of the South Carolina Office of Appellate Defense, represented petitioner on appeal before the appeal was dismissed.

On July 8, 2014, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. APP.757-763. The respondent filed a return dated January 13, 2015, requesting that a hearing be held in the case. APP. 764-770. A PCR hearing was held on October 21, 2015, before Judge Perry H. Gravely at the Greenville County Courthouse. APP.772-850. Petitioner was present at the hearing and represented by R. Mills Arial, and Assistant Attorney General Karen Ratigan appeared

on behalf of the state. On December 30, 2015, Judge Gravely issued an Order of Dismissal therein denying petitioners PCR allegations in the case. App.852-862. Judge Gravely denied petitioner's Motion for Reconsideration by Order dated February 17, 2016. App.863-893. Petitioner appealed the Order of Dismissal. The petition follows.

## ARGUMENT

Did PCR Judge err in holding that the Petitioners Due Process rights were not violated when the Prosecutor knowingly elicited and failed to correct false statements and evidence, and obtained a conviction through misinformation, failing to produce all material evidence at trial, failed to preserve potentially exculpatory evidence, and made prejudicial remarks during opening and closing arguments.

## FACTS

Prosecuter violated Petitioners Due Process rights when she knowingly elicited and failed to correct false statements and false evidence, failing to produce all material evidence at trial, by failing to preserve potentially exculpatory evidence and by making prejudicial comments during her opening and closing arguments, and therefore obtained a conviction through misinformation.

Petitioner's Due Process rights were violated by the Prosecutor by allowing the introduction of false DNA evidence into the trial, manipulating the Trial Court, the Defense, and the jury. Solicitor Hodge knew or should have known that the "splatter of DNA" on the section of wall did not exist, and therefore had a duty to correct any false statements made by witnesses, experts, or law enforcement that testified for the state and any made by Trial Counsel or Trial Court. Everyone who took the stand for the state testified as to the DNA splatter that existed on the section of wall that forensics removed from the crime scene except for SLED expert V. Gibson who testified all test for blood and tissue were negative. Regardless of Trial Counsels inability to understand and challenge the alleged DNA evidence, or to understand Mrs. Gibson when she testified that no blood or tissue existed, or to read forensic reports that no such DNA existed on the section of wall period, Solicitor Hodge was ethically bound to correct any false statements made concerning DNA. DANIELS v. LEE, 316 F3d 477 (4th 2003)"Defendents

convictions must be reversed on Due Process grounds where the Government knowingly elicits, or fails to correct, materially false statements from its witnesses." Defendant has the Due Process right to be sentenced on the basis of accurate info, Solicitor Hodge's deliberate deception of a Trial Court, and jurors by knowingly "presenting false evidence is incompatible with rudimentary demands of justice." **GIGLIO v. U.S.**, 405 U.S. 150 (1972). Solicitor Hodge allowed the victim Mr. Wooten to state on cross examination (App 133 lines 2-5) "basically after they found the bullet I shot him with, with his blood on it in my wall, I'm 100% sure." No bullet was recovered with Petitioners blood on it, nor was there any blood on the wall period. This is a false statement Solicitor Hodge knowingly allowed.

Solicitor Hodge on direct, questioned SLED DNA expert Verona Gibson (App 260 lines 4-25 and App 261 lines 1-10) about the test results of states exhibit's numbers 39 & 53 and SLED's item 7 the section of wall that was removed from the crime scene ( App 261 lines 2-9).

APPENDIX page 260 lines 4-15

**V. GIBSON - - DIRECT BY SOLICITOR K. Hodge**

4) A: It is our item number seven, a section of wall.

5) Q: All right. I think what has now been marked State's No. 53; see if you can identify this.

7) A: Yes ma'am. This is a section of the wall that

8) I processed

9) Q: Okay. What did you do with that?

10) A: The request was for blood and DNA, other, which  
11) usually means hair. So I swabbed the area that is  
12) circled and tested it for the presumptive presence  
13) for blood. There was one possible hair that I collected  
14) And there was, what appeared to be fibers, that I  
15) collected.

V. GIBSON - - DIRECT BY SOLICITOR HODGE

- 2) Q: Do you know what the other material on this board
- 3) might be? Did you do any testing for that?
- 4) A: The other material?
- 5) Q: The yellowish?
- 6) A: No ma'am.
- 7) Q: Okay. And your presumptive test on this one?
- 8) A: Was negative.
- 9) Q: Was negative for blood. Okay.

In lines 4 & 5 above Mrs. Gibson seemed confused by Solicitor Hoge's question of "the yellowish material", this is because what the Solicitor is referring to, what she wants the jury to believe is tissue, is in fact simply the wood paneling under the paint.

The Petitioner would like to show that in **STATE v. KING**, 623 SE2d 865 (S.C. CT. App 2005), Solicitor Kristie B. Hodge withheld potential exculpatory evidence favorable to the defense. Ms. King had been found guilty and sentenced to life in prison, until the Court of Appeals reversed and remanded (Cert. denied).

In the instant case Solicitor Kristie B. Hodge, released the Trace evidence results against Petitioner ( results from test on the section of wall alleged to have Petitioners blood, tissue, and hair) on April 9, 2012, as part of Rule 5, discovery, for Trial Counsel to review. Petitioners trial date had been set for April 16, 2012, allowing the defense only 7 days to prepare. Trial Counsel did however request and was granted a thirty day continuance, as explained in other allegations.

Trial Counsel and Solicitor Kristie B. Hodge both knew if not before SLED expert witness V. Gibson testified, then most certainly after Mrs. Gibson's testimony that the test results for both blood and tissue on the section of wall removed from the crime scene were negative. That what was being portrayed as blood and tissue evidence belonging to Petitioner, was in fact exculpatory evidence favorable to Petitioner. Solicitor Hodge carefully led the questioning of Mrs. Gibson in a way

that would not differentiate between blood that belonged to the victim Mr. Wooten, and alleged blood belonged to the assailant. The only positive for blood test results found came exclusively from blood left by Mr. Wooten. So by not correcting false statements and by knowingly eliciting statements from Greenville county Law Enforcement and forensics the Trial Court Petitioner, and jury were led to believe that Petitioners "fresh, red, liquid blood" was found at the scene. By doing so the Solicitor Kristie B. Hodge withheld exculpatory evidence, even though it may have been through negligence, that gained the conviction against Petitioner.

Petitioner was denied Due Process by the State failing to preserve exculpatory evidence **PEOPLE v. NATION**, 26 Cal 3d 169, 161, Cal Rpter 299 604 P2d 1051 (1980). On July 27, 2009 when Forensics J. Derby observed and document what he saw on the section of wall that had been sawed from the kitchen wall at the crime scene, no hair was listed as being observed or removed.

Four days after Mr. Derby's observation, Four officers attest that they took the section of wall, with alleged DNA untested, back to the crime scene. Yet there were no signatures of who removed it from forensics, when it was removed, who had possession while it was out of forensics, how long it was kept in an unclean environment thus making it virtually unaccounted for the entire eight days it was out. While at the crime scene it was handled carelessly an unprofessionaly by officers without gloves, it was exposed to and possibly contaminated by an unclean environment caused by officers tearing away more of the main wall with removed section exposed, by inserting trajectory rods back into the holes and holding it up to the main wall (see failure to preserve allegations).

In addition Prosecution failed to stipulate that Master Deputy Lewis was one of the officers who was in possession of the section of the wall when it was returned to the crime scene. Master Deputy Lewis was not present during the trial, he was not announced as a potential witness, Prosecution failed to announce him in the stipulation of establishing a complete Chain

of Custody, and there was no signed affidavit from Master Deputy Lewis put into the record of handling. Therefore the state failed to establish a proper and complete Chain of Custody, and failed to publish the true , or uncompromised Chain of Custody results. These results could have raised reasonable doubt for the jury, had the jury been allowed the opportunity to hear the true facts and given proper respect by allowing them to evaluate how the state failed to preserve the DNA evidence, so they could make a truly impartial decision based on fact.

When viewed as a whole, Solicitor Hodge's closing argument ( App 699- 728) begin with her telling the jury "the truth is at stake, or this is a farce or a mockery. Evidence that comes into this courtroom shall be true." Yet throughout her entire closing argument Solicitor Hodge misstated the facts while acting as a "witness and prosecutor for the state". Petitioner suffered severe prejudice when the state was able to give closing argument last, because the last information the jury heard or were given was misinformation. Solicitor Hodge constantly made statements that were inconsistent to witness testimony and constantly misquoted witnesses and even vouched for the credibility of police officers who testified to being nothing but truthful. ( App 708 lines 9-25) then stated that all of the Petitioners witnesses " were lying in some fashion" U.S. v. LOAYZA 107 F3d 257 (1997) "It is improper for a prosecutor to directly express an opinion as to the veracity of a witness".

#### EXAMPLES

- 1) **FALSE:** Solicitor Hodge stated that Ms. Lawter looked to have been more than two weeks pregnant" implying that Ms. Lawter had been untruthful. (App 711 lines 23-25 and App 712 lines 1-2)

**FACT:** Ms. Lawter had testified that she was in fact two months pregnant. ( App 422 lines 8-9)

- 2) **FALSE:** Solicitor Hodge stated that " Ms. Edwards never said

1. Mr. Swofford's name and related the same information as Mr. Wooten about what happened.

**FACT:** Ms. Edwards had given Petitioners name more than once (see confrontation clause) Sgt. Weiner also stated (App 41 lines 8-9) "Rikki Edwards gave the name" (Ex. B.4, B.5, B.8) App 884-885, (pg 41 = Petition)

3) **FALSE:** Solicitor Hodge stated that "ballistic test were constant in matching the bullet to the (Mr. Wooten's) gun. (App 722 lines 21-23)

**FACT:** State ballistics expert J. Armstrong testified " the fired bullet jacket, was similar but insufficient microscopic marks prevent identification to the pistol. (App 231 line 21-24)

4) **FALSE:** Solicitor Hodge refers to the "tissue, hair, and blood found on the kitchen wall" (App 715 lines 10-23) and "we have tissue, hair, and blood DNA." (App 727 lines 8-9)

**FACT:** No blood or tissue was found on the kitchen wall, the hair was not challenged to afford an opportunity to raise doubt due to contamination. (App 261 lines 2-9)

5) **FALSE:** Solicitor Hodge stated the 911 call placed by Mr. Wooten revealed information of a masked shooter. ( APP 719 lines 8-14)

**FACTS:** When asked twice by the 911 operator "do you know who shot you" Mr. Wooten said "no" both times but stated two other times that "she shot me" (App 108 lines 11-20)

The State's (and Trial Counsel) constant use of false evidence and false statements corrupted the jury's ability to make an impartial and just decision based on the facts and the truth beyond a reasonable doubt. The Prosecutors legal and ethical duty to present all material evidence to the jury was not

fulfilled, which is a direct violation of Petitioners Due Process rights. **NAPUE v. ILL**, 360 U.S. 264 (1959)

Trial Counsel became an ally to the state, bolstering the states position by stating that the blood evidence found on the wall did in fact belong to the Petitioner, making it impossible to raise a reasonable doubt. The actual truth surrounding this trial has never been identified. The state and defense counsel's manipulation of the facts, the lies told to the trial Court, jury, and Petitioner from the beginning kept the Petitioner right to a fair trial from being met.

Solicitor Hodge also stated that "Petitioner failed to tell his version of the incident and what happened" (App 706 lines 8-14) This is a direct violation of **OHIO v. DOYLE**, 426 U.S. 610 (1976) " It would be fundamentally unfair to allow an Arrestee's silence to be used to impeach an explanation subsequently given at trial, after he has been implicitly assured by Miranda warnings, that silence would carry no penalty"

**BELL v. EVATT**, 72 F3d 421 (4th 1955)  
**DANIELS v. LEE**, 316 F3d 477 (4th 2003)  
**GIGLIO v. U.S.**, 405 U.S. 150 (1972)  
**MILLER v. PATE**, 386 U.S. 1 (1967)  
**NAPUE v. ILL**, 360 U.S. 264 (1959)  
**PEOPLE v. NATION**, 26 Cal 3d 169, 161 Cal RPTER 299 604  
P2d 1051 (1980)  
**RIDDLE v. OZMINT**, 631 SE2d 70 (S.C. 2006)  
**S.C. CODE OF LAWS** 16-9-10 perjury  
**S.C. RULES OF COURT**, RULE 407, RULE 3.3 Candor towards  
Tribunal  
**STATE v. KING**, 623 SE2d 865 (S.C. Ct. App 2005)  
**U.S. v. LOAYZA**, 107 F3d 257 (4th 1997)  
**U.S. v. MADDOX**, 156 F3d 1280 (PC 1998)  
**U.S. v. OLLIVIERRE**, 378 F3d 412 (4th 2004)  
**OHIO v. DOYLE**, 426 U.S. 610 (1976)

## ARGUMENT

Did PCR Judge err in holding Petitioner's Due Process was not violated when the Honorable Trial Court interjected himself into the proceedings during a Proffer by telling the Prosecutor what questions to ask and informing the Detective how to answer those questions?

## FACTS

The Honorable Trial Court interjected himself into the Adversarial Process during a Proffer by telling the Prosecution what questions to ask and informing the detective how to answer those questions.

Trial Counsel (without objecting), outside the presence of the jury, states his concern that Petitioner's rights were about to be violated by Testimony elicited by Solicitor Hodge. ( App 334 lines 2-24) Trial Court then asks Solicitor to Proffer questions, to see if the elicited testimony would be objectionable. ( App 334 line 25 and App 335 lines 2 - 24) Solicitor proceeded to ask Det. Miller three questions ( App 335 lines 6-14) Trial Court then interjected by saying "just what happened next." Solicitor begins again and after six questions and answers, Trial Court starts to offer questions that would be acceptable in his opinion and proceeds to give Det. Miller the best answers to get around informing the jury that Petitioner invoked his Miranda rights that would not allow Trial Counsel to object. Trial Court was adamant that there be no "comment on his assertion of his constitutional rights." (App 336, ln 12-20) Trial Court then began coaching the Prosecution and Det. Miller on how to ask and answer questions to get around mentioning that Petitioner had invoked his right to remain silent (App 334 lines 16-20) Trial Court the ask Trial Counsel if he could find anything to object to, (App 336 lines 22-23) Trial Counsel stated " two things that I think are objectionable" (App 337 lines 2-6) Trial Court continued to coach Det. Miller on what to say and how to say it until Trial Counsel stated "if its done pecisely the

way your Honor just did it, I'll have no objection." (App 337 lines 21-22) To which Trial Court replied " You dont have to flatter me" (App 337 lines 23-24) Trial Counsel replied that "I was saying that the way you did it was precisely the only way I could not object to" ( App 337 line 25 - 338 lines 1 and2). Petitioner feels that Trial Court showed extreme bias against defense throughout the proceedings, and that everything said starting on App page 334 and going thru App page 339 lines 1-9 not only support this, but that it also shows how ineffective Trial Counsel was by not only allowing but assisting Trial Court to violate Petitioners 5th amendment right to remain silent. Trial Court and Solicitor continue working on questions and answers, specifically App 338 lines 23 - 25. Solicitor states "Without mentioning that he invoked his right to his attorney" Trial Court states "Yeah. Just leave that out". Petitioners family was very upset, disturbed, and confused by Trial Courts actions wanting to know if " the judge is allowed to assist and coach the state with questions and answers" and several stated that it didn't seem fair. Petitioner doesn't have any signed affidavits from his family concerning this but wanted to include their feelings on this issue. Petitioner feels it showed blatant bias towards himself and a complete disregard of Petitioner's rights and the fulfillment of the Adversarial system. Solicitor Hodge and Trial Counsel are suppose to be professional's in their chosen profession's with ethics and a high moral standard, if Det. Miller could not give honest, proper answers to the Solicitor's question's concerning his "interview" with Petitioner, then Trial Counsel should not be impeded in preserving any potential error on record for the Court of Appeals, by objecting. Trial Court intervened seven different times during Proffer to coach the Solicitor and Det. Miller on how to ask and answer questions in a way that avoids infringing on Petitioners Constitutional right to remain silent so the jury can be led to believe something other than the actual facts.

In essences the jury heard a doctored version of what was said that was coached and supported by Trial Court while

simultaneously preventing Trial Counsel from being able to do anything. Trial Counsel was ineffective for allowing this to take place without even objecting for the record to preserve any potential error for appeal. **PORCARO v. UNITED STATES**, 784 F2d 38, 41-42 (1st Cir 1986) Courts have repeatedly held that positive proof of the partiality of a Judge is not required, only the appearance of partiality, **LILJEBERG v. HEALTH SERVICES ACQUISITION CORP**, 486 U.S. 847, 108 SCT 2194 (1984) What matters is not the reality of bias or prejudice but its appearance. Because of Trial Counsels ineffectiveness by not only not objecting to these bias and impartial actions but by agreeing with Trial Court and allowing the jury to hear what the prosecution wants them to with a total disregard to Petitioner's Constitutional rights and shifting the burden of proof entirely onto Petitioner. **PORTER v. SINGLETARY**, 49 F3d 1483 (11th 1990)

Petitioner means no disrespect to the Honorable Judge Miller but the afore mentioned impartiality and bias prejudiced the Petitioner, when Solicitor Hodge was shown a way to impede on Petitioners Constitutional right to silence by Trial Court thru testimony and closing arguments.

**LILJEBERG v. HEALTH SERVICES ACQUISITION CORP.**, 486 U.S.

847, 108 SCT 2194 (1984)

**OHIO v. DOYLE**, 426 U.S. 610 (1976)

**PORCARO v. UNITED STATES**, 784 F2d 38, 41-42 (1st Cir 1986)

**PORTER v. SINGLETARY**, 49 F3d 1483 (11th 1990)

**S.C. RULES OF COURT**, Cannon 3B (5)

**LITEKY v. U.S.** 114 S.Ct 1147,1162 (1994)

"Liteky V. U.S. states that in 1994 the U.S. Supreme court held that "Disqualification is required when an objective observer would entertain reasonable questions about the Judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the Judge must be disqualified."

## ARGUMENTS

Did the PCR Judge err in holding that Petitioner's Trial Counsel were not ineffective in failing to investigate the facts of the crime and the crime scene and failed to present an adequate defense based on the facts?

## FACTS

Trial Counsel failed to investigate the facts of the crime and the crime scene and failed to present an adequate defense based on the facts.

Trial Counsel A. Johnston and G. Wilson were deficient for not investigating the facts of this case, the crime scene, and failed to present an adequate defense based on the facts. Petitioner retained Trial Counsel for their experience and resources in DNA cases. Trial Counsel conducted their defense entirely from their office. Trial Counsel never visited the crime scene, never interviewed residence living around crime scene for potential witnesses, never inquired with local businesses for any possible surveillance footage that may have shown any vehicles leaving the area at the time the crime was committed. Trial Counsel never attempted to interview the victim Mr. Wooten, or the only known witness Ms. Edwards, or any law enforcement and medical professionals involved with the case. Trial Counsel never consulted with any DNA, medical, or ballistics experts to dispute any irregularities in the states findings or to even help them understand the complexities or terminology of the states scientific evidence as stated by Trial Counsel A. Johnston (App 832 lines 12-16, App 848 lines 21-25, and App 849 lines 1-10). Trial Counsel states that the strategy was to merely give an explanation that the reason the Petitioner's blood was "on the section of wall" was that Petitioner was shot at the crime scene a week prior to the crime. Trial Counsel admittedly second guessed himself for not getting an expert to advise him to the proper meanings of the "somewhat complicated scientific evidence" This was defective because had Trial Counsel investigated and

understood the Discovery given by the state, Trial Counsel would have known that no blood or tissue was indicated on the section of wall that was removed from the crime scene. (App 867- Ex. A.2, App 869 Ex. A.3, " items of evidence' item 7) " no appreciable stain of blood belonging to petitioner on the bullet jacket (App 871 Ex. A.4) Trial Counsel requested a 30 day continuance on April 12, 2012 to review what trace evidence the state had, and had Trial counsel understood the findings he would not have still preceded to claim during opening arguments to the jury that Petitioners blood and tissue was found at the scene of the crime (App 874 lines 15-24 Ex.A.7). No blood belonging to the Petitioner was found anywhere at the crime scene period. Solicitor Kristie Hodge opened her arguments by stating that Petitioner had left behind his DNA (App873 lines 5-9, Petitioners Ex. A.6). "A splatter on the kitchen wall and body tissue, and hair, is the DNA of the Defendant Ronnie Swofford" this is a false statement made to the jury. No blood or tissue was found on the "section of wall" and the hair was potentially compromised (please see failure to preserve evidence and follow chain of custody procedures). The states case built around DNA in which the only DNA evidence available was the genetic material found on an alleged bullet jacket found lying on the floor is misleading, there was no blood on this alleged jacket or on the floor where it was found. Trial Counsel did not attempt to retest or have an independent expert read the results of the states test on the section of wall, nor did Trial Counsel show that ballistics couldn't even show if the copper jacket came from Mr. Wootens gun (App 231 lines 22-24). Trial Counsel heard testimony from the states DNA expert Verona Gibson testify that the test for blood on the section of wall were all negative (App 875 lines 2-11, Petitioners Ex A.8). Solicitor Hodge even repeated the statement "was negative for blood? ok" in response to this expert witness. Trial Counsel states (App 876 line 12, Petitioners Ex A.9) "I have NO questions for the lady". Trial Counsel failed to utilize the States DNA and Medical Experts on cross-examination to raise any doubt that referenced scientific results. Through out trial law enforcement repeatedly stated they saw blood on the wall with no objection from Trial

Counsel. The victim Mr. Wooten stated the he became 100% sure it was the Petitioner (App 133 line 2-11) who had shot him when officers told him "They had found the bullet he shot Mr. Swofford with in nhis wall with Mr. Swoffords blood on it". This was a false statement because no bullet was recovered with any blood on it or that could be matched to any weapon in this trial and still Trial Counsel did not object. Trial Counsel challenged the experience of Det. Miller by debating the freshness of the blood on the wall (App 666 line 7-15 and App 669 lines 11-14) continually allowing the jury to infer that the Petitioners blood in fact was splattered on the wall. These deficient errors by Trial Counsel allowed false evidence and false testimony into this case.

The red substance that was found on the section of wall was tested and found as negative for blood. The Petitioner does not mean blood tissue, or any other meaning. The petitioner states that any "red fresh blood in a liquid state" or that " the blood was still fresh as in actual red liquid blood" that the state and Trial Counsel constantly refer to during trial, in front of the jury, who believe what they are hearing is scientific fact, was in fact not blood, which the scientific test had proven, thus allowing false evidence to become a deciding factor in this case. This is fraud upon the court allowing a lie to be a determining fact, To a trier of fact asked to use comon sense when looking at a red substance, constantly being refered to as the Petitioners blood from opening arguments thru closing arguments by the solicitor ( App 715 line 10-23 and App 723 lines 12-24) there could be only one conclusion drawn from the refrence of blood. The petitioner could go on and on on how prejudice was set in thru the entire trial, of having to explain why his blood and tissue were on a kitchen wall. Trial Counsels strategy was to rebut the states reason why Petitioners blood was on the kitchen wall, that it was old dry blood. Four days of trial was wasted due to Trial Counsels inability to read and/or understand the DNA trace results that led the jury to believe that blood existed and that the Petitioner was present at the scene when the crime was committed and that he was an exceedingly dangerous person that an acquittal would put back into society. Therefore prongs 1 and 2 of Strickland were met in this regard, as there was no probative value to this false evidence and/or testimony except severe prejudice to Petitioner, which believes by rulings of the

Supreme Court of the United States and South Carolina that this deprivation of Petitioners right to an adequate legal assistance was not met and thus undermines the outcome of the precedings.

**ARD v. CATOE**, 372 S.C. at 331-332, 642 SE2d at 597(2007)

**DEMAREST v. PRICE**, 130, F3d 922 (10th Cir 1997)

**GIGLIO v. U.S.**, 405 U.S. 150 (1972)

**HOUSE v. BALKCOM**, 725 F2d 608 (4th Cir 1984)

**LORD v. WOOD**, 184 F3d 1083 (9th Cir 1999)

**MILLER v. PATE**, 386 U.S. 1 (1967)

**MOONEY v. HOLO AN**, 294 U.S. 103, 386, U.S. 2-7 (1935)

**RIDDLE v. OZMINT**, 631, SE2d 70 (SC 2006)

**S.C. CODE OF LAWS**, 16-9-10

**S.C. RULES OF COURT**, Rule 407, Rule 3.3.

**STEPHENS v. KEMP**, 846 F2d 642 (11th Cir 1988)

**TROEDEL v. WAINWRIGHT**, 667 FSupp 1456, 1461, (SD Fla 1986)

aff'd F2d 620 (11th Cir 1987)

(emphasis in original)

**CHERRY V STATE** 300, SC 115, 117-118, 386 SE2D 624, 625, (1989)

**PORTER V STATE** 386 SC 378, 383, 629 SE2d 353, 356 (2006)

**STRICKLAND V WASHINGTON** 466 U.S. 668 104 S.Ct 2052(1984)

## ARGUMENT

Did the PCR judge err in holding that Trial Counsel was not ineffective for his damaging opening arguments...lied to the jury and bolstered the states case.

## FACT

Trial Counsel erred in conceding Petitioners' guilt during opening arguments by stating the blood found at the crime scene belonged to Petitioner.

Trial Counsel A. Johnston was deficient by stating the Petitioners blood and tissue was at the home of the victim Mr. Wooten in opening arguments which were damaging to an alibi defense, and by lying to the judge, jury, and Petitioner by stating that such DNA would be found in the home placing an undue burden of proof on Petitioner as to why such DNA would be there. However no blood was matched to the Petitioner. If tissue is in reference to the hair, then Petitioner argues that under a different allegation. (see failure to preserve) Trial Counsel was deficient by stating that Petitioners blood would be found at the home, which is a false statement. This was highly prejudicial to the Petitioner because all through the trial the Judge, jury, and Petitioner were led to believe that blood had been found in the house, by stating this in opening arguments Trial Counsel introduced the word 'blood' and the phrase 'blood evidence' allowing Solicitor Hodge to use these terms which she knew to be false, and causing the jury to believe throughout that blood existed, bolstering the states case, when in fact it did not exist. This also opened the door to admissions of testimony referencing "blood evidence matching Petitioners DNA". Solicitor Hodge carefully used the term "a splatter on the wall and tissue and hair" during her opening arguments but later after Trial Counsels opening argument starts using the term blood evidence. Petitioner states that the reference of blood is meaning: the actual red liquid substance that every person has in their body. Trial Counsel states the term blood may have gotten intermingled with tissue ( App 847 lines 11-18) as in genetic material. Yet Trial Counsel's debate with Det. Miller is in reference to a "red, in a liquid state, fresh red blood" because Trial Court qualified Det. Miller as an expert in the freshness of blood allowing him to attest

to the 'fact' that when he arrived on scene "the blood on the wall was still fresh and in a red liquid state" which was a false statement because forensic test showed there was no blood on the section of wall.

**CHERRY V STATE** 300 S.C. 115, 117-118, 386 SE2d 624, 625 (1989)  
**PORTER V STATE** 368 S.C. 378, 383, 629 SE2d 353, 356 (2006)  
**STRICKLAND V WASHINGTON** 466 U.S. 668 104 S.Ct. 2052 (1984)

## ARGUMENTS

Did PCR Judge err in holding that Petitioners Trial Counsel was not ineffective in failing to cross examine or impeach forensics witnesses about processing and preserving evidence and follow chain of custody procedures?

## FACTS

Trial Counsel was ineffective in failing to cross examine or impeach forensics witnesses about processing, and preserving evidence and following chain of custody procedures.

Trial Counsels failure to cross examine or impeach forensics witnesses about the states processing and preservation of evidence methods and chain of custody procedures by not investigating the facts. Trial Counsel failed to cross examine or impeach forensics J. Derby on direct testimony after J. Derby stated his job duties (App 152 lines 9-11) "my job is to document, collect, and observe physical evidence from a crime scene. Trial Counsel never questioned forensics J. Derby in reference to a possible hair that was not initially documented but that was later "found" on the section of wall that had been removed from the crime scene. The Petitioner believes that J. Derby<sup>documented</sup> everything exactly as he observed it when the section of wall was removed but never mentioned a hair in any reports. Trial Counsel had received the trace evidence results and should have known a possible hair now existed on the wall two and a half years later. In addition J. Derby testified that he sealed the section of the wall, labeled JD-G and states exhibit 39 & 53 and sled item 7 then he packaged up the evidence (App 182 lines 15-16). However while still on direct testimony J. Derby was asked what he did with the items once he returned to the crime scene office (App 182 lines 17-25 and App 183 lines 1-4), he states it wasn't until days later that he put the evidence into P&E control, but then stated (App 196 lines 17-25 and App 197 lines 1-3) "the item was packaged then sent to our P&E section. J. Derby also stated that he used trajectory rods to determine the angle and flight paths

he did this by basically inserting the rods into the holes (App 176 lines 18-24). Forensics J. Derby then documented his findings of the section of the wall at 0525 a.m. on July 27, 2009 (App 891 Petitioners Ex. E.1). Petitioner would like for you to please note that the P&E report shows that the section of the wall was not turned in to the crime scene office until 8 days later on August 4, 2009 (App 891 Petitioners Ex. E.1). Trial Counsel also failed to cross examine Sgt. Shaw in reference to the section of the wall. Sgt. Shaw was asked to go back to the crime scene on July 31, 2009 (App 211 lines 12-25) Sgt. Shaw testified that he took previously collected evidence with him including the section of the wall (App 212 lines 5-23). Later when Solicitor Hodge asked Sgt Shaw "and at that time did you remove it from the box in the packaging?" (App 212 lines 24-25) Sgt. Shaw replied "I did" (App 213 line 1). Sgt. Shaw stated in his crime scene investigation report dated July 31, 2009 (Petitioners \*Ex.3.B) that he reinserted the section of the wall collected previously by forensics J. Derby and then inserted a trajectory rod into the hole in the section of the wall to determine directionality. Sgt. Shaw then took pictures of the section of the wall (Petitioners \*Ex. 3.A) being put back into place while an officer was holding the trajectory rod with the tip inserted into the section of the wall and the officer holding the section of the wall has on no gloves. Sgt. Shaw also stated that he began breaking pieces of that black fiber board away. Trial Counsel Failed to ask Sgt. Shaw or any other witness if it is common practice to take sealed evidence containing alleged DNA back to a crime scene with the high risk of contamination. Det. Miller testified (App 321 lines 14-22) that himself, Master deputy Lewis, and Sgt. Shaw went back to the crime scene on July 31, 2009 to determine directionality using trajectory rods. Trial Counsels deficient errors in failing to investigate any of the facts in this case was shown by his not using the forensic pictures, reports, and by his failure to cross examine or impeach the four known law enforcement agents, including two forensic examiners, that had access to the section of the wall after forensics J. Derby sealed and documented it, during the officers direct testimony. After J. Derby documented what he

**\*EX 3.A pg 24**

**\*EX 3.B pg 25**

found on the section of the wall and sealed it in its box no one ever signed the P&E report showing they had possession of or even handled the section of the wall which is a direct violation of S.C. code of laws 17-28-320(B) (1) (2) (3), S.C. Rules of Court SCRCrimp rule 6, State v. Hatcher 384 sc372, 681 SE2d 925(ct App 2009) California v. Trombetta 467 U.S.479 (1984).

In addition Trial Counsels failure to cross examine or impeach forensic witnesses in reference to preservation of evidence or chain of custody would have shown the state failed to establish a complete chain of custody. Master Deputy Lewis was present at the crime scene on July 31,2009 with Sgt. Shaw and Det. Miller when they brought the section of the wall back to the crime scene, but Master Deputy Lewis was not announced during the stipulation of chain of custody witnesses before trial, nor was Master Deputy Lewis available for trial. There was no testimony from or any sworn affidavit signed by Master Deputy Lewis which is mandated by the SCRCrimp Rule 6(b) when a witness is not available. Therefore the chain of custody is incomplete by failing to establish the identity of each custodian and the manner in which this evidence was handled. Trial Counsel had access to all the reports and pictures from the crime scene for two and a half years to go through and find these violations.

Petitioner was severely prejudiced because Trial Counsel failed to bring to light through cross examination or impeaching forensic witnesses, the states incomplete chain of custody, law enforcement ( to include two forensic witnesses) failing to preserve potential exculpatory evidence by not wearing gloves, reinserting trajectory rods into the section of wall, cutting and breaking apart additional sections of the wall in an already unclean environment exposing the alleged DNA evidence on the section of the wall to the elements was very highly likely causing the section of the wall to become contaminated because two and a half years later SLED DNA experts testified that no blood or tissue ever existed on the wall, but somehow a hair belonging to the Petitioner, that wasn't documented when the crime was investigated could possibly exist. Trial Counsel could have cross examined the forensic experts as to what type of possible hair was found. The states theory was that the assailant was shot in the arm by the victim. Trial Counsel failed to ask any

witness or inquire of any expert as to what size or type the hair was. At least as a exclusionary defense goes if the hair was say 5 inches long then it would raise doubt to the states theory that the assailant was shot in the arm, keeping that Petitioners arm hair was not 5 inches long and that Petitioner had been an invited guest many times to Mr. Wootens home. By asking no questions at all in reference to the hairs characteristics Trial Counsel allowed the jury to infer that the hair indeed came from the Petitioners arm. Trial Counsels failure to cross examine or impeach forensic witnesses as to preservation methods and following chain of custody procedures severely prejudiced the Petitioner by not having a defense as to why the hair may have been there or if it was indeed an arm hair. Trial Counsel also failed to cross examine forensic witnesses about failing to preserve evidence that had been collected, failing to follow chain of custody procedures, and as to why the state had not established a complete chain of custody. ( A party offering into evidence fungible items such as drugs or blood samples, must establish a complete chain of custody as far as practicable. State v. Sweet 374 S.C. 1, 6, 647 SE2d 202, 205 (2007)

When the substance Analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. Benton v. Pellum, 232 S.C. 26, 33-34, 100 SE2d 534, 537 (1957))  
The afore mentioned was a violation of Petitioners 6th amendment Constitutional right to effective counsel and 14th amendment Constitutional right to due process.

**BENTON v. PELLUM**, 232 S.C. 26, 33-34, 100 SE2d 534, 537 (1957)

**CALIFORNIA v. TROMBETTA**, 467 U.S. 479 (1984)

**MCKNIGHT v. STATE**, 378 S.C., 33, 46 661 SE2d 334 359 (2008)

citing **WIGGINS v. SMITH**, 539 U.S. 510 524 S.C., 2527, 2537 (2003)

**NANCE v. OZMINT**, 367 S.C. 547, 557 n.8, 626 SE2d 878, 883 n.8

(2008) (quoting Wiggins, 539 U.S. at 524-25)

**S.C. CODE OF LAWS** 17-28-320 (B) (1) (2) (3)

**S.C. RULES OF COURT** SCRCrimp rule 6 (b)

**STATE v. HATCHER**, 384 S.C. 372, 681 SE2d 925 (CT App 2009)

**CHERRY V STATE** 300 S.C. 300 S.C. 115, 117-118, 386 SE2d 624, 625

**PORTER V STATE** 368 SC 378, 383, 629, SE2d 353, 356 (2006)

**STRICKLAND V WASHINGTON** 466 U.S. 668 104 S.Ct 2052 (1984)

Greenville Forensics

Case Id: 1-09-119378

Call Id: 26784

Description: Shooting Incident / Home Invasion

Description: Photographs of kitchen area

3.A



Image Id: 1960620



Image Id: 1960623

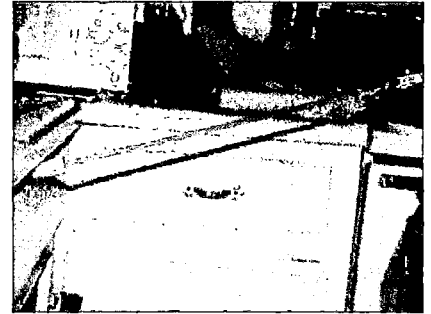


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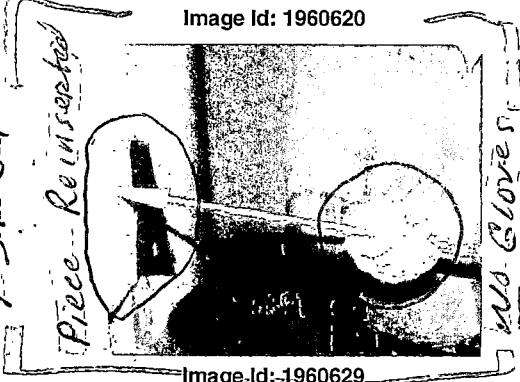


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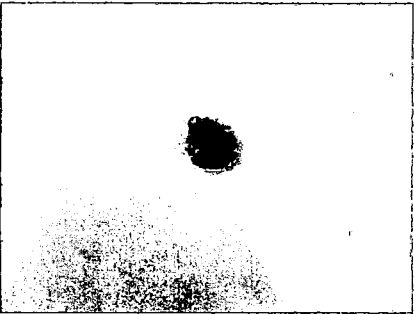


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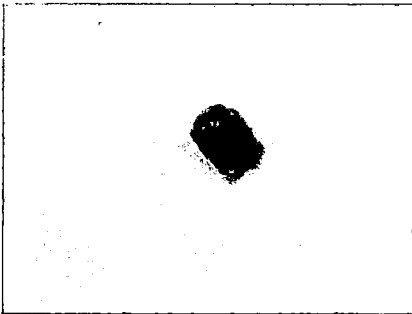


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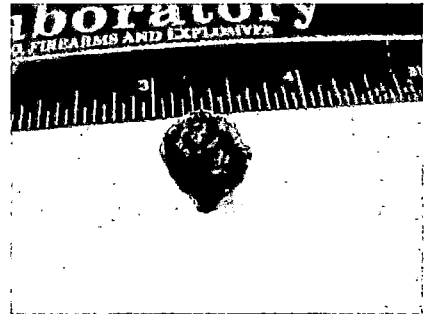


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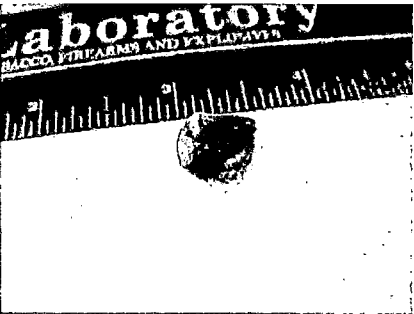


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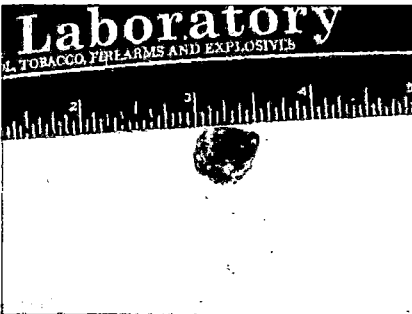


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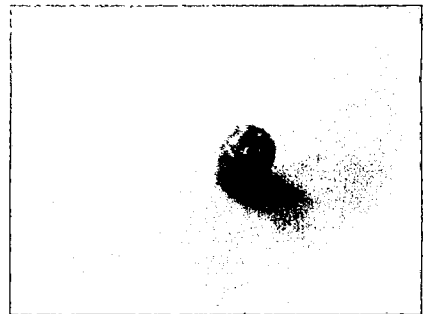


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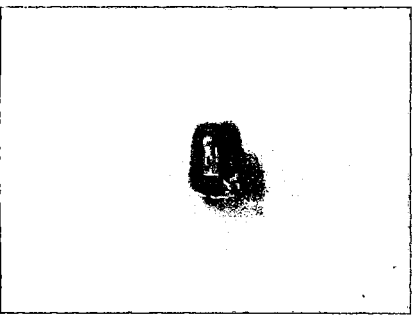


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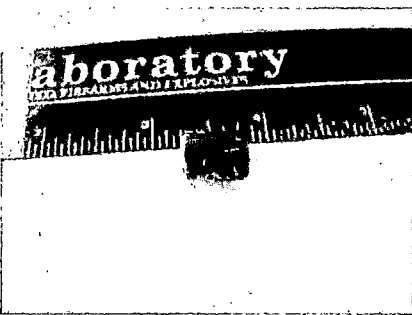


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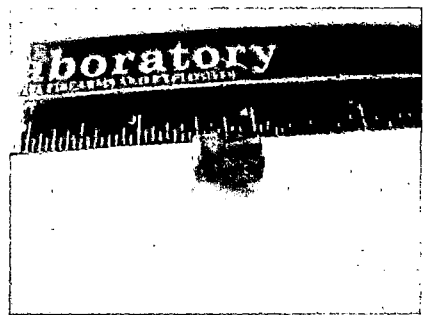


Image Id: 1960677

section or view with trajectory  
Blood Reinserted for trajectory  
purpose - Cross-contamination

3.B

Greenville County Forensic Division  
CRIME SCENE INVESTIGATION REPORT

AGENCY: Greenville County Sheriff's Office  
AREA: 03

CASE NUMBER: 1-09-119378

INCIDENT TYPE:	Gunshot Victim (Follow Up)	INCIDENT LOCATION:	608 Memorial Dr. Ext. Greer SC
VICTIM:	Wooten, Curtis	ADDRESS:	Same as above
COMPLAINANT:		ADDRESS:	
INV. OFFICER	Miller	UNIT NUMBER	614

INCIDENT SUMMARY/ACTION(S) TAKEN:

PAGE 1 Of 1

On 7/31/09, the R/O responded to the incident location and met with Inv. Miller regarding the examination of the scene and the possibility of locating additional evidence related to a shooting that took place at that location on 7/27/09.

Upon arrival, the R/O met with John Wooten, who is the father of the victim. Mr. Wooten had a key to the residence and had given permission to Inv. Miller to conduct further investigation relating the shooting of his son.

The R/O entered the residence and went into the kitchen, where a hole was observed in the wall between the living room and kitchen.

~~The missing piece of paneling/wall had been collected by Technician Derby during the original investigation.~~

The R/O observed insulation behind the wall as well as black fiber board.

In an effort to locate a possible projectile that had not been recovered, the R/O cut out a section of the exterior wall and then cut out an area of the fiber board. The R/O observed an area on the exterior wall that had what appeared to be tissue on it and since it was not collected originally, the R/O later collected it as DLS-1.

The R/O observed behind the fiber board, brick that had mortar protruding out of the seams. The R/O temporarily put the cut-out piece of wall that had been cut by Technician Derby in place and used a trajectory rod in an effort to find where the projectile may have struck on the brick or mortar. The R/O located a spot above an area of mortar that appeared to be a lead swipe. After cutting out the section of the fiber board, the R/O examined between the fiber board and cement wall and located a lead projectile. This lead projectile was collected as DLS-2.

The piece of wall that had been collected by Technician Derby was put in place where it had been taken out of and a trajectory rod was put in place in an effort to determine the directionality and trajectory of the projectile that had entered the wall. An angle finder was placed on the trajectory rod and it was determined the projectile entered the wall at an app. 11 degree angle of ascent.

Using the laser, the projectile entered the wall at an angle consistent with the weapon being fired approximately straight on. The laser indicated a travel path that was in the direction of where an unknown caliber projectile had struck the cupboard in front of the sink and was recovered under the cupboard. This had been photographed and collected by Technician Derby.

The R/O located a suspected projectile hole in the wall near the back door and a trajectory rod was put in place with the laser attached. The laser dot struck the wall just above the hole in the wall where the piece of wall had been removed by Technician Derby. The projectile entered the kitchen wall near the back door, continued through the interior wall and was found to have penetrated the wall in the master bathroom, exited the back wall behind the toilet and entered into the side wall of the bathroom.

The R/O cut a hole in the side wall in the master bathroom and after removing some insulation, located an unknown caliber projectile in the space between the walls. The area where the projectile was located was photographed. The projectile was collected as DLS-3. No further actions were taken.

Upon returning to the Crime Scene Office the digital images were scanned into the photo database under call id # 26784. The collected items were packaged for placement into P&E.

The above actions took place between 0900 and 1045 hours.

REPORTING OFFICER	Shaw-D.L. Sgt. D	STAR#	8561	UNIT #	918	DATE	7/31/09
REPORTING OFFICER		STAR#		UNIT #		DATE	
APPROVING SUPERVISOR	Sgt D.L. Shaw	STAR#	8561	UNIT #	918	DATE	7/31/09

14 AUG 2009 15 33

Section of wall

12

2

3

Case Id: 1-09-119378  
Call Id: 26784

Greenville Forensics  
Description: Shooting Incident / Home Invasion  
Description: Photographs of kitchen area

Disc Copy

3.C

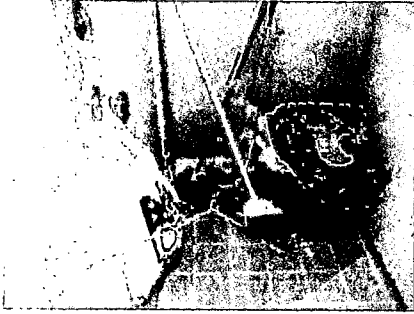


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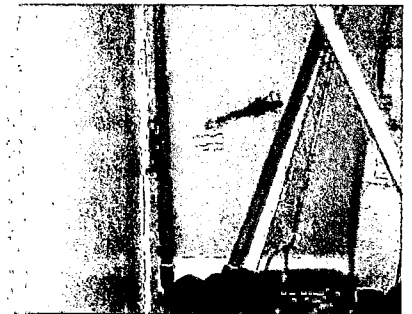


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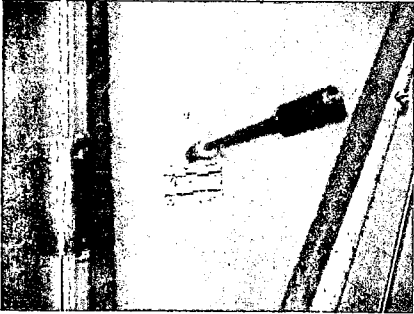


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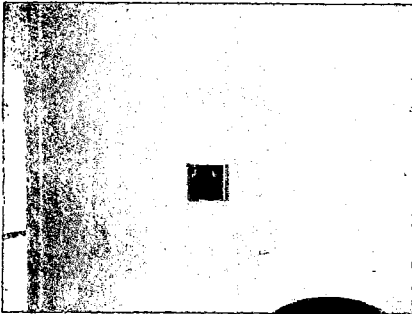


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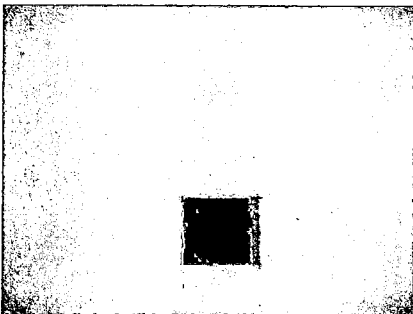


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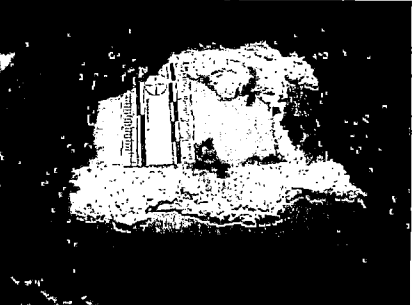


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## ARGUMENTS

Did the PCR Judge err in holding that Petitioners Trial Counsel were not ineffective in failing to consult with a Medical Expert regarding the reliability of the Witness/Victim Identification "Witness memory was obviously impacted by Medical Trauma".

## FACTS

Trial Counsel was ineffective by failing to consult with a Medical Expert regarding the reliability of the Witness/Victim Identification "Witness memory was obviously impacted by Medical Trauma".

Trial Counsel Failed to consult with an Independent Medical Expert to understand terminology and the potential impact of trauma suffered by the Victim and to prepare a case that shows the Victim may have possibly misidentified the Petitioner as the shooter, In addition Trial Counsel did not question the States Medical Expert Dr. Dach, a Trauma Surgeon (App 125, Line 11-12). Trial Counsel deficient error of not cross-examining Dr. Dach would have shown that (App 136, Line 13-16) Victim Mr. Wooten was showing signs of shock, In fact Victim Mr. Wooten was exhibiting class three/four shock which also means 30% to 40% of his blood volume (App 136, Line 20-25 and App 137, Line 1) loss. This amount of loss required a large amount of resuscitation (App 138, Line 5-6) in addition Victim Mr. Wooten would have expired if not treated immediately (App 138, Line 21-23) See *Bell v. Miller*, 500 F3d 149, 155-157 (2nd Cir 2007) "Trial Counsel failure to consult a Medical Expert concerning the reliability of Victim Identification". 1. Victim Mr. Wooten calls 911, when asked does he know who shot him, Victim states "No" 2 times, but did state "She Shot me" 2 times. 2. Sgt. Hayes states in his Supplemental report (Petitioners<sup>\*</sup> Ex. 1.A) while at the emergency room "I asked Wooten if he know why someone would come in and shoot him and he stated "Ronnie Swofford", Sgt Hayes then stated "I asked Wooten if he could say for sure it was the Swofford subject and he (Wooten) said No". At that point Sgt

Hayes was removed from the ER. Victim Mr. Wooten states in his testimony (App 71, Line 8-9) "that the assailant was 4 or 5 feet away" and "The incident happened less than a minute" (App 86, Line 18-19), Victim Mr. Wooten states (App 85, Line 14-16) that he saw Petitioner with a mask on with an open face. Later, Mr. Wooten on cross-examination states he could see the eyes but the mouth is covered (App 114, Line 12-25 and App 115, Line 1-8), which is completely opposite to what the Witness Ms. Edwards states the Alleged Assailant was Wearing (See Confrontation Clause). 3. Victim Mr. Wooten states on Cross-examination (App 133, Line 2-5) "I was 99.9% sure and after they found the bullet I shot him with, with his blood on it in my wall, I'm a 100% sure. Mr. Wooten called 911 while coherent and did not say who shot him, and then drove himself and the Witness Ms. Edwards to the hospital, was not sure who in fact shot him then when asked by Sgt Hayes. Once Mr. Wooten is aware that the Petitioner has been charged with this shooting and upon Mr. Wootens release he becomes 99.9% sure then some how 100%, however there was "NO" bullet recovered in the wall with any blood or tissue belonging to the Petitioner, Trial Counsel did not object to this false statement. Trial Counsel failing to consult with a Medical Expert or atleast cross-examine the States Medical Expert, Dr. Dach severely prejudiced the Petitioners Defense by not putting up any defense to raise doubt as to the accuracy of the Victims Identification. Trial Counsel had the Medical records from the Hospital available to raise inquiries of various Medications that may have impacted his memory. The records would not be considered Hearsay because the records were generated to monitor the victim Mr. Wootens progress from the surgery and to gather information to help Doctors properly diagnose and/or prescribe the necessary medications to help Victim Mr. Wooten recover. These records were not generated for prosecution and Trial Counsel had them as part of his discovery. These records would have revealed that Mr. Wooten was on disability due to Psychiatric illness, suffers from having Bipolar disorder, Depression, Anxiety disorder, Opiate dependent, currently on Methadone, with a history of Drug Over dose (Petitioners \*EX. 2.A - 2.F) The Jury listened to the difficult time Victim Mr. Wooten had from the gunshot wound and almost losing

**\*EX 2.A - 2.F, pgs 31-36**

his life. The Petitioner had a right of Cross-examination which demands the right of effective cross-examination, **Davis v. Alaska**, 415 US 308 (1974) however Trial Counsel did "NO" cross-examination. Failing to do any Medical Research, Consult with an Independent Medical Expert, and failing to question Dr. Dach, the States Medical Expert in Trauma as to the injuries and trauma experienced by the Victim while Mr. Wootens body is shutting down from shock and the massive blood loss, and the heavy medications taken before, during, and after his hospital stay was unreasonable for Trial Counsel to do nothing at this stage severely prejudiced the Petitioner because the jury obviously felt empathy for the Victim Mr. Wooten which is understandable, but it also inflamed and infuriated the Jury as to the meanness the Petitioner possessed, which is not true. Trial Counsel abandoned their role again as an adversary for the Petitioner, which believed a reasonable cross-examination would have shown the Identification was inaccurate.

**Bell v Miller**, 500 F3d 149, 155-157 (2nd Cir 2007)

**Davis v Alaska**, 415 US 308 (1974)

**Groseclose v Bell**, 130 F3d 1161 (6th 1997)

**House v Balkcom**, 725 F2d 608 (11th 1984)

**McKnight v State**, 378 SC, 33, 46, 661 SE2d 334 359 (2008)  
citing **Wiggins v Smith**, 539 US 510 524 Sct 2527, 2537 (2003)

**Nance v Ozmint**, 367 SC 547, 537 n.8. 626 SE2d 878, 883 n.8 (2006)  
(quoting **Wiggins**, 539 US at 524-25)

**S.C. Code of Laws 17-23-60**

**CHERRY V STATE** 300 S.C. 115, 117-118, 386 SE2d 624, 625 (1989)

**PORTER V STATE** 368 SC 378, 383, 629 SE2d 353, 356 (2006)

**STRICKLAND V WASHINGTON** 466 U.S. 668 104 S.Ct 2052 (1984)

OF

AGENCY I.D.  
SC0230000

# Greenville County Sheriff's Office SUPPLEMENTAL REPORT

CASE NUMBER

09000119378

<input type="checkbox"/> ORIGINAL REPORT	<input type="checkbox"/> STATUS CHANGE	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	ABWK / BURGLARY (GUN SHOT VICTIM)
<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> OTHER	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	01B
				PAGE	1 OF 1 PAGES

Victim: Wooten- Curtis WM (redacted)  
608 Memorial Drive Ext. Greer, SC 29651

Ex. 1.A

Witness: Edwards- Rikki (redacted)  
608 Memorial Drive Ext. Greer, SC 29651

I responded to Greer Memorial Hospital ER and found the victim (Wooten) being treated by ER staff. I was able to get Wooten to give me a brief description of the events that transpired at his residence which led to his being shot. Wooten who appeared to be in serious pain stated he was returning from grocery shopping and while he was entering his residence a unknown subject dressed in dark clothing (possibly a green jacket) and wearing a ski-mask had entered the residence behind him and just started "shooting" at him. I asked Wooten if he knew why someone would come in and shoot him and he stated "Ronnie Swafford". When asked why this subject he stated that the Swafford subject owed him money and that the two had been in prison together. I asked Wooten if he could say for sure it was the Swafford subject and he said no but that he lived in Spartanburg and had a 40cal. handgun. At this time the ER staff began administering med's and Wooten just continued to say he was in pain. I observed a wound that appeared to be a gunshot in Wooten's lower back area. I then instructed Deputy Cassel (D34) to obtain a consent to search of the residence from the Witness (See Cassel's Supplemental) and for him to take possession of Wooten's clothes. I then had the county duty wrecker respond and transport the victim's vehicle to the forensics office. Wooten had apparently driven himself to the ER after the incident. I then responded to the incident location and stood by with MD Grice (D29). Investigator's Miller and Weiner with CID responded and the consent to search and the crime scene were turned over to them.

4 AUG 2009 08 13

WOOTEN ①

SUBJECT IDENTIFIED		SUBJECT LOCATED		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADMIN. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18	<input type="checkbox"/> EX-CLEARED UNDER 18
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEARED 18 AND OVER	REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> VICTIM/DECLINES COOPERATION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> JUVENILE-NO ARREST	
REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER	DATE	UNIT NO. / STAR #	
Sgt. David Hays *163	7/27/09	D03	Sgt. David Hays *163	7/27/09	D03	
FOLLOW-UP INVESTIGATION			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	(OFFICER) CID		

Ex.  
2.A

HGW

2405

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER  
GREENVILLE MEMORIAL HOSPITAL  
MEDICAL RECORD

NAME: WOOTEN, CURTIS RANDOLPH

DATE OF ADMISSION: 07/27/2009  
DATE OF CONSULTATION: 08/13/2009

ATTENDING PHYSICIAN: Dr. Brian Dach.

REASON FOR CONSULTATION: Profound debilitation. Assess his gunshot wound to the abdomen with multiple medical comorbidities.

HISTORY OF PRESENT ILLNESS: The patient is a 46-year-old right hand dominant disabled gentleman secondary to psychiatric illness who has been on a methadone wean program secondary to drug addiction with a prior history of bipolar, depression, anxiety disorder, and prior hospitalization in 2007 secondary to drug overdose. The patient has a prior history of a gunshot wound to the leg for which he has had chronic pain. He was admitted through the emergency department on 07/27/2009 status post gunshot wound to the mid abdomen that was exiting through the left flank. The patient was brought to the operating room for exploratory laparotomy, right and left chest tube placements, and small bowel repair as well as transverse colon segmental resection, left nephrectomy, and left splenectomy. He also required endotracheal intubation performed by Dr. Dach. On 07/30/2009, he underwent end-to-end hand sewn jejunoduodenostomy as well as side-to-side functional end-to-end transverse colon anastomosis and repair of mesenteric hernia and jejunostomy tube placement as well as placement of abdominal wound vac which remains in place at this time. He subsequently underwent abdominal wound closure and superficial vac placement on 08/01/2009. He was maintained on mechanical ventilation and is status post tracheostomy secondary to respiratory failure on 08/07/2009. The patient has since been transferred out of the intensive care unit on 08/12/2009 and today, 08/13/2009, Roger C. Peace is being consulted. Speech did see him for bedside evaluation and he is approved for a mechanical soft diet. He is moderate assistance for supine-to-sit and sit-to-supine. He is able to go from sit-to-stand to the bedside chair with moderate assistance. hand-held assist. He is nonambulatory. The patient has some questionable premorbid cognitive status issues or more related to his psychiatric illness. He is currently incontinent of bowel. He is currently tolerating the Passe-Muir valve. He has had some acute renal failure status post nephrectomy. Current BUN and creatinine are 38 and 1.4, down from 50 and 1.7. He has significant drop in hemoglobin from 9.3 yesterday to 7.8 today. He has had ongoing leukocytosis with a white blood cell count now of 24,700, which is stable from yesterday but up from August 11, 2009 at which time it was 20,400. The patient has noted thrombocytopenia with platelet count of 59,000. His ionized calcium is also low at 4.1. His calcium has dropped from 8 to 7.2.

CONSULTATION  
Page 1 of 4

CHART COPY

Ex.  
2.B

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER  
MEDICAL RECORD

NAME: WOOTEN, CURTIS RANDOLPH

[REDACTED]

[REDACTED]  
[REDACTED]

His phosphorus is also low at 2.3. Roger C. Peace is being asked as part of the patient's treatment program to assess whether he would be appropriate for an inpatient rehab stay. The patient has not been followed by occupational therapy. He has only been seen by physical therapy on 2 occasions and a cognitive evaluation has not been performed by speech therapy. Nevertheless, Roger C. Peace is being asked to assess.

PAST MEDICAL HISTORY:

- 1. History of drug addiction for which he has been on a methadone program.
- 2. Bipolar, depression, and anxiety disorder.
- 3. Prior gunshot wound to the leg with chronic pain.
- 4. Prior tonsillectomy.
- 5. Prior herniography.

SOCIAL HISTORY: The patient is divorced. He lives with his parents and is disabled secondary to psychiatric illness. He smokes 1 pack per day of cigarettes for the past 30+ years. He has had prior history of cocaine use as well as alcohol abuse. Mother reports none recently.

ALLERGIES: Penicillin.

CURRENT MEDICATIONS:

- 1. Mycamine 100 mg IV daily and this is secondary to blood cultures being positive for yeast.
- 2. Reglan 10 mg IV q.8h.
- 3. Free water 100 mL via tube q.6h.
- 4. Avelox 400 mg IV daily.
- 5. Prevacid 30 mg via tube daily.
- 6. Haldol 5 mg IV q.12h.
- 7. Catapres patch 0.3 mg patch change weekly.
- 8. Heparin 5000 units subcutaneously q.8h.
- 9. Peridex 15 mL p.o. twice daily.
- 10. Duragesic patch 75 mcg patch change q.3days.
- 11. He is on p.r.n. Ativan and morphine.
- 12. He is on Fiber Source HN tube feedings.
- 13. P.r.n. Haldol.
- 14. Apresoline.
- 15. Zofran.
- 16. Geodon.
- 17. Tylenol.
- 18. Lopressor.

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER  
MEDICAL RECORD

Ex  
2.c

NAME: WOOTEN, CURTIS RANDOLPH

[REDACTED]  
BIR [REDACTED]

FAMILY HISTORY: There is no family history of psychiatric illness, stroke, or cancer.

REVIEW OF SYSTEMS: Somewhat difficult to obtain as the patient is not the best historian. He complains of pain right now in his abdomen as well as low back and lower extremities. He denies any chest pain or shortness of breath. He is incontinent of bowel. His mother is currently present. The patient does have a right PICC line in the right upper extremity. The patient was advanced to a mechanical soft diet today. Otherwise, review of systems is negative.

PHYSICAL EXAMINATION: VITAL SIGNS: Temperature 98.9. Respirations 18. Heart rate 94. Blood pressure 133/76. The patient is 5 feet 11 inches tall and 240 pounds stated.

GENERAL: This is a well developed, well nourished slightly obese Caucasian gentleman in no acute distress. He has got bilateral upper extremity tremor. His mother notes that he normally has a tremor due to his severe anxiety.

HEENT: Normocephalic. Atraumatic. Pupils equally round and react to light and accommodation. Extraocular movements are intact. Oropharynx is clear. However, the patient would not cooperate with this part of the exam.

NECK: Supple. Trachea is midline. Pässe-Muir valve is on.

CARDIOVASCULAR: Regular rate and rhythm.

LUNGS: Clear to auscultation with scattered crackles throughout.

ABDOMEN: Soft. Nontender. Wound vac is in place. Abdominal wound with some sutures noted visible at the inferior and superior aspect of the wound. Peri wound area is clean.

EXTREMITIES: Without clubbing, cyanosis, or edema. Distal pulses are 2+.

NEUROLOGIC: Cognitively, it is difficult. The patient will not speak at first. He gives me hand signals, which made no sense. However, then he started to mouth words. He thought it was either July or September. He told me it was 2008. His mother often intervened during the exam stating that he was cognitively intact. The patient had difficulties following commands. He would not lift his arms off the bed. Manual muscle testing was impossible. He is moving all extremities but he is diffusely weak and has a tremor throughout.

IMPRESSION AND PLAN: This is a 46-year-old gentleman with a significant past medical history of psychiatric illness status post gunshot wound to the abdomen with profound debilitation as well as ongoing medical needs including bacteremia and wound vac placement to the abdomen, bowel incontinence, dysphagia, questionable cognitive dysfunction, and most profound debilitation.

PLAN: I will order occupational therapy evaluation and treatment for ADLs. I will also order speech therapy for cognitive evaluation. I would continue his physical therapy and occupational therapy. It is too early to tell how his recovery and progress will go. However, I think overall in the long term his rehab potential is good given his premorbid independent status. He is limited by cognition as well as his anxiety. Roger C. Peace will be pending medical and social as well

CONSULTATION  
Page 3 of 4

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GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER  
MEDICAL RECORD

Ex  
2.D.

NAME: WOOTEN, CURTIS RANDOLPH  
[REDACTED]

[REDACTED]

as financial clearance as well as mother's choice. We spoke at length and the patient will need 24-hour supervision and probably physical assistance at discharge. Mother continues to work at The Cottages. Therefore, she is wanting to try to get him into The Cottages. However, this may be a financial issue that needs to be addressed. Therefore, I have notified case management. I will continue to follow with you. Thank you very much for allowing Roger C. Peace to participate in Curtis Wooten's care.

ELECTRONICALLY SIGNED BY  
Robbins, Amy - 28596  
10/08/2009 12:23:23

Amy Robbins Cantillion, MD

cc: Amy Robbins Cantillion, MD  
Brian Wayne Dach, MD

D: 08/13/2009 12:33 P T: 08/13/2009 01:26 P zjk

DVI: 529540 C/S#: 2845445

CONSULTATION  
Page 4 of 4

CHART COPY

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER  
GREENVILLE MEMORIAL HOSPITAL  
MEDICAL RECORD

NAME: NEVADA, CURTIS RANDOLPH

[REDACTED]

[REDACTED]

DATE OF ADMISSION: 07/27/2009  
DATE OF CONSULTATION: 08/20/2009

INFECTIOUS DISEASE CONSULTATION

REQUESTING PHYSICIAN: General Surgery

REASON FOR CONSULTATION: Persisting candidemia, please assist in care.

HISTORY OF PRESENTING ILLNESS: Mr. Nevada is an unfortunate 46-year-old Caucasian male with multiple medical problems including bipolar disorder, anxiety disorder, opiate dependence, history of gunshot wound to the left thigh with chronic pain, prior tonsillectomy, prior herniography, who was admitted on 07/27/09 after suffering a gunshot wound to the abdomen by an acquaintance. The patient was admitted by the trauma service. The bullet had entered mid abdomen and exited through left flank. He was taken to the OR emergently, had right and left chest tubes placed, had exploratory laparotomy, small bowel repair, transverse colon segmental resection, left nephrectomy, splenectomy, necessitated intubation and now currently has a trach in place which is capped. On 07/30/09, he underwent end-to-end hand sewn jejunoduodenostomy as well as side-to-side functional end-to-end transverse colon anastomosis and repair of mesenteric hernia and jejunostomy tube placement, also placement of wound vac at that time. He subsequently underwent abdominal wound closure and superficial vac placement on 08/01/09. He is now transferred to the floor. He is afebrile with chronic leukocytosis but this is slowly and steadily improving. On 08/16/09, his white count was 25, then 22.9, then 23.3, now on 08/19/09 he was 15.6. His hemoglobin is stable at 9. Platelets are mildly elevated. He is status post left nephrectomy. He has a creatinine which is stable between 1.3 to 1.4. He had central lines placed on admission. On 08/05/09 he had blood cultures done. Urine cultures were done at the same time and those were negative. Blood culture noted coag negative staph but candida glabrata also. Sputum culture grew streptococcal pneumonia which was intermediate to penicillin, resistant to Bactrim, sensitive otherwise. He had a catheter removed on 08/07/09 and the cath tip had greater than 15 colonies yeast. Blood culture repeated on 08/08/09, 2/2 noted candida glabrata. Urine culture the same day was negative. Blood cultures were repeated on 08/12/09, 2/2 noted candidate glabrata. Blood cultures again repeated on 08/13/09, 3/3 candidate glabrata. His catheter was removed on 08/14/09. Cath tip noted one colony coagulase negative staph. He has not had an echocardiogram. He has no acute visual complaints at this point in time. He has been on both Mycamine and Diflucan. Diflucan I think is renal dosed due to the nephrectomy and mildly elevated creatinine.

CONSULTATION  
Page 1 of 4

CHART COPY

GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER  
MEDICAL RECORD

NAME: NEVADA, CURTIS RANDOLPH

[REDACTED]

[REDACTED]

Ex.  
2, F

Chest x-ray last done 08/11/09, essentially benign. CT scan of the abdomen last done 08/09/09 noted right lateral chest tube removal. dense consolidation in posterior lung base, left greater than right. Cardiomegaly with a small left pleural effusion. No pneumothorax. He had postoperative changes in the left abdomen, stranding throughout the mesenteric and retroperitoneal spaces but no gross loculated fluid was appreciated at that time. The small amount of fluid in the left retroperitoneal space had minimally increased compared with 08/04/09. He had multiple nonobstructive renal calculi throughout the right kidney. No evidence for right sided hydronephrosis. Multiple small sub centimeter short axis lymph nodes were noted.

Today the patient is quite anxious and just wants to discuss about when he will go home. Discussion with case management. His mother works at the cottages and has offered to take him home. care for him herself. The patient denies any recent history of IV drug use. He reports that he had been \_\_\_\_\_ with the methadone clinic prior to this admission. States he does not desire to restart with them.

PRIMARY CARE PHYSICIAN: Dr. Daniel Jebens on Wade Hampton.

He reports no acute shortness of breath, no acute pain at this point in time. Denies diarrhea. States he is ambulating to some degree and can rehab at home. He does not appear to have a Foley catheter in. He has peripheral IVs in.

PAST MEDICAL HISTORY: As above.

SOCIAL HISTORY: He is divorced. He lives with his parents and is disabled secondary to psychiatric illness. One pack per day cigarettes for 30 years. Prior history of cocaine as well as alcohol use. His mother confirmed none recently.

**ALLERGIES: PENICILLIN, UNSURE OF REACTION.**

CURRENT MEDICATIONS: As per HPI. otherwise please see MAR.

FAMILY HISTORY: Reviewed and noncontributory.

PHYSICAL EXAMINATION:

VITAL SIGNS: T-max 96.9. pulse 77. respirations 18, blood pressure 141/67. oxygen saturation 100% on room air.

GENERAL: A 46-year-old Caucasian male appearing stated age. well developed, well nourished. anxious but in no acute distress. Oriented to person, place and time. Somewhat pleasant.

CONSULTATION

Page 2 of 4

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## ARGUMENTS

Did PCR Judge err in holding that Petitioners Trial Counsel were not ineffective in allowing the Trial Court to admit testimonial hearsay statements from non testifying witness Ms. Rikki D. Edwards?

## FACTS

Trial Counsel was constitutionally ineffective by allowing Trial Court to admit Testimonial hearsay statements made by non-testifying witness Rikki Danielle Edwards, violating the Petitioners Constitutional right of confrontation.

Trial Counsel failed to challenge the ruling of the hearsay rule exception by not requesting an analysis to see if the Petitioner Confrontation clause was violated. Trial Counsels failure to investigate the facts of the crime reports, which clearly showed a pattern, given by witness Rikki Edwards, who was not present at trial. Trial Counsel objected to hearsay statements by Ms. Edwards from Det. Miller (App 309 lines 4-5), however Trial Court allowed the statement as part of the Res Gestae. Trial Counsel was deficient by not investigating the facts of this case and preparing a defense to the testimonial statements. First Ofc. Cassel stated (App 883 Petitioners Ex. B.3) at 0310 per Sgt. Hayes he made contact with Ms. Edwards in the ER waiting room, where an inform~~a~~l statement was given by Ms. Edwards as to what had happened. Later that morning Det. Miller arrives at the hospital, and initially ask Ms. Edwards "what happened" (App 308 lines 21-22) albeit while stating she is still pretty hysterical, and emotional (App 308 lines 17-25). Trial Counsel objected but Trial Court allowed the statement while under the Res Gestae. Trial Counsel at this time was deficient by not requesting a hearsay exception analysis. Ms. Edwards was in "no present danger", and there was "no on going emergency", at this point over an hour had passed. Trial Counsel failed to challenge the Res Gestae ruling by showing the Trial Court that this was a cumulative statement by Ms. Edwards and did not fit into the hearsay exception, and therefore violated Petitioners 6th amendment confrontation clause as set forth in Crawford v. Washington, 541 U.S. 36, 53-54 (2004).

Trial Counsel was never able to cross-examine Ms. Edwards at any stage of this case, not preliminary hearing, not grand jury, no independent interview, or deposition, and Ms. Edwards did not show up at trial.

The Supreme Court narrowed the reach as to how the lower courts are to interpret the statement as "testimonial" as **DAVIS v. WASHINGTON** and **HAMMON v. INDIANA** 547 U.S.813 (2006) was decided. The courts holding that statements made to the police after an 'emergency' situation has been resolved are not admissible (Hammon case) if they are intended to gather evidence for future prosecution. This instant case is identical to the Hammon case, there was 'no present danger' or 'an on-going emergency'. At this point Ms. Edwards was and had been in the presence of police officers for over an hour at the hospital, away from the scene of the crime. The line of questioning, while informal, was asked in the manner of "what happened" (Hammon case) by Det. Miller (App 308 lines 21-22) not "what is happening" (Davis case). The primary purpose at this point was to gather information for future prosecution. The state failed to procure the witness, Ms. Edwards, and did not show good faith efforts. Det. Miller states he went by Ms. Edwards only known address 2 different times. Trial Counsel did not challenge the procurement of the witness, Ms. Edwards, nor did Trial Counsel subpoena Ms. Edwards. Petitioner requested Trial Counsel move for a continuance to get her but Trial Counsel refused. **TOSH v. LOCKHART**, 829 F2d 412 (8th circuit 1989). This prejudiced Petitioner because it allowed the state to capitalize on the assumption that Ms. Edwards was scared and did not want to face Petitioner allowing the jury to infer that Ms. Edwards was indeed scared of Petitioner. ( See Prosecutorial Misconduct, Closing Arguments)

Trial Counsel was deficient for failing to request a hearsay exception analysis allowing Det. Miller and Solicitor Hodge to paint a picture to the jury that Ms. Edwards depiction of what happened was exactly the same as the victim Mr. Wooten. Prejudicial statements as such led the jury to infer that basically two people were giving identical accounts. In truth Ms. Edwards gave several conflicting accounts of what took place according to Sgt. Weiner, Det. Miller, and Master Deputy Lewis, so conflicting that officers began to feel (Petitioners \*Ex B.7-B.8, attached to argument)

pg 41 - 42

she was hiding something and maybe a suspect. Ms. Edwards stated that assailant was 5'8"- 5'9" tall around 200 pounds, with brown eyes. The Petitioner is 6'2" tall and weighed around 280 pounds. She stated she is Schizophrenic and she was having delusions and seeing things. She also stated that she saw her daughter and dead husband hanging from the tree in the front yard. The available Exhibits submitted at the PCR hearing (\*B.1-B.11) will explain why Ms. Edwards was not at trial and why her "testimonial" statements should have been inadmissible since Ms. Edwards clearly did not see what the victim Mr. Wooten saw. ie; Mr. Wooten stated that the mask Assailant wore was open around the eyes and nose but the "mouth was covered" (App. 115 lines 8-24). However Ms. Edwards stated ( Petitioners\*Ex.B.8, 2nd paragraph) "the guy was either white or Hispanic because of the skin I could see around his mouth, I know he was not black". Ms. Edwards gave numerous accounts of what she saw (App. 884 Petitioners B.4, 1st and 4th statement, and App.885 Ex.B.5) which contradicted Mr. Wootens account of events. In addition Det. Miller stated "Ms. Edwards was covered in blood" (App. 311 lines 22-25) even though a search warrant was issued for Ms. Edwards clothing no testing was ever done. Det. Miller stated that Ms Edwards was a person of interest until October 1,2009, almost 2 months after Petitioner was arrested, until Mr. Wooten excluded her with his statement. Ms. Edwards was arrested ( Petitioners\*Ex B.9, attached to argument) after going to the Law Enforcement Center on July 27,2009 on outstanding warrants ( Petitioners\*Ex.B.9) for bad checks (a crime of dishonesty), which was impeachable information Trial Counsel could have used had there been an investigation by Trial Counsel of the facts. Trial Counsel could have used this information to rebut testimony that Mr. Wooten gave claiming the large sums of money he had in his possession that night was Ms. Edwards and not his. (App. 67 lines 15-24) This deficient error by Trial Counsel is supported by Trial Counsels statement (App 846 Lines 3-13) "I can not... I did not then and do not now know of a basis to keep it out". By not reading, investigating, or understanding the facts Trial Counsel allowed such testimony by Ms. Edwards, which by the states assertion was exactly the same as Mr. Wootens when in fact it wasn't. This Analysis would have allowed Trial Counsel to keep the "Testimonial" statements out by requesting such analysis. Trial Counsel failed to know this tactic.

\* App 881- 886 , pg 41-43

This severely prejudiced the Petitioner, and by such error and prejudice, Trial Counsel was ineffective as well as the Petitioners Confrontation Clause being violated by no cross examination at any time and the fact that the testimonial statements read into evidence did not meet the hearsay exception as mandated by CRAWFORD v. WASHINGTON and HAMMON v. INDIANA.

COY v. IOWA, 487 U.S. 1012, 1019 (1988)

CRAWFORD v. WASHINGTON, 541 U.S. 36 53-54 (2004)

DAVIS v. WASHINGTON, 547 U.S. 813 (2006)

HAMMON v. INDIANA, 547 U.S. 813 (2006)

MARYLAND v. CRAIG, 497 U.S. 836,846 (1990)

S.C. CODE OF LAWS 17-23-60

TOSH v. LOCKHART 879 F2d 412 (8th circuit, 1989)

CHERRY v. STATE 300 S.C. 115, 117-118, 386 SE2d 624,625 (1989)

PORTER v. STATE 368 S.C. 378,383,629 SE2d 353,356 (2006)

STRICKLAND v. WASHINGTON 466 U.S. 668 104 S.Ct 2052 (1984)

Assault and Battery with Intent to Kill

ORIGINAL REPORT   
  STATUS CHANGE   
  ADDITIONAL VICTIMS   
  ADDITIONAL STOLEN PROPERTY  
 SUPPLEMENTAL REPORT   
  OTHER   
  ADDITIONAL OFFENDERS   
  ADDITIONAL RECOVERED PROPERTY

INCIDENT TYPE: Assault and Battery with Intent to Kill  
 PATROL DISTRICT: 01    PAGE 1 OF 2 PAGES

Ex. B.7

Case Assigned to Investigator C. Miller

Incident location: 608 Memorial Drive Extention, Greer, S.C. 29651

Witness: Edwards, Rikki Danielle

Address: 608 Memorial Drive Extention, Greer, S.C. 29605  
 Pack#: 234189 FBI#: 81831WC3 SCDL#: 100541634

Victim: Curtis Randolph Wooten

In reference to the above case number I was called to assist Inv. Miller and Weiner. I responded to the LEC where I obtained a search warrant for the victims 2000 Chevrolet Silverado. The truck was used by the victim to drive himself to the hospital. Once the warrant was completed, I took it to Judge Hudson who did sign the warrant.

Inv. Miller called and said the witness and her mother, Carolyn Edwards, were on their way to the LEC to give statements to the incident. I first spoke to Danielle. Her demeanor was initially one of that she did not seem to care about the victim, but about herself instead. She was very nervous and continued to nervously talk and ramble on about her ex-husband who had died in a wreck, and about her being an undiagnosed schizophrenic. Once we crest the doors of the office, she became even more nervous and was visibly shaking. She asked what we were doing here and I told her I was going to get a statement from her. She immediately asked "I'm not in trouble am I?" and then she said "I didn't shoot him. I didn't do anything wrong." These statements were unprovoked as I asked her nothing. I told her to calm down and relax, and the only reason she was here was to give me the story about what happened to Curt. It didn't calm her, but she agreed to help.

She started off by telling me she was at home on her front porch reading a magazine and smoking. She said that at about 1am, she got a phone call from Curt saying he was on the way home from Wal-Mart with groceries and he needed help getting them in. She said she told him to hurry because she had been hearing things that sounded like someone beating on the car and the motion lights kept going on and off outside. Curt agreed to stay with her on the phone until he arrived and she said he did. She said he pulled into the driveway a few minutes later. She said he parked out front and she helped him get the groceries into the house. She said they went into the kitchen and the two were joking with each other and playing around. She said while in the kitchen she heard the front door screen open. She said she asked Curt if he heard anything and he said no. She said he dismissed it as her hearing things again and grabbed some pudding and started eating it. She said he took about one bite, and she heard footsteps softly coming through the living room. She said she looked up and saw a man standing in the doorway of the kitchen next to the refrigerator. She said the man was dressed in all black. She said he had on black steel toe boots and black pants which were tucked into the boots. She said he was wearing a black sweater which looked like a turtle neck and he appeared to have a bullet proof vest or padding under the sweater. She said he was wearing black gloves and a black hunting or ski type mask. She said he was holding a gun by his side in his right hand. She also said she knew the subject was either a white or Hispanic male because she could see some of the skin color out of the side of his mouth. She said she asked Curt if she was seeing things and he didn't respond. Danielle said about this time, the subject pulled the gun up and leveled it between her and Curt. She said at this point, she could see the subject smile, and he pointed the gun at her head and started to fire. She said she could see the bullet coming at her and was able to duck in time so she did not get hit. She said she turned and was able to get to the back door as the subject shot at her about 4 more times. She said she unlocked the 3 locks on the back door and ran out.

This is the part of the statement where Danielle's story became somewhat distorted. She initially said she ran out the door, but could see Curt get shot. She said Curt went to the ground and she could see him pull a gun from his front pocket and shot back at the subject. She said she did not know if he hit the subject or not. Later she said she saw Curt pulled the gun from his back pocket after being hit, and shot back at the subject. Another story she told was that he was standing up and pulled his gun, and that's when the subject shot him and he went to the ground. An even bigger inconsistency in the story is when she changed the location she ran out from the back door to the front door. When confronted with the evidence on scene and the location where she said Curt was shot I asked her how it was possible for her to be exiting the house and see him do anything and she said she did not know and could not answer the question. When pressed on the inconsistencies of her story, she began to cry and steered off course talking about the death of her husband and her self-diagnosed schizophrenia. She continued to cry and said she did not know why she could not answer the simple questions correctly and was not sure what happened at this point. I told her all she had to do was simply tell the truth and she would be fine. She insisted that she was telling the truth and she went back to telling her version of the story. She said once she exited the back door, she ran around the house towards the front. She said as she was coming around the house she saw the subject crawling out the front door and thought he was coming for her. Again her story began lacking merit as she later said she did not know if she subject crawled from the front porch or not. She said he might have crawled from the back door, or she didn't even know where he might have crawled from. (Next Page)

<input type="checkbox"/> SUBJECT IDENTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> SUBJECT LOCATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADMIN. CLOSED <input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEARED UNDER <input type="checkbox"/> EX-CLEARED 18 AND OVER					
REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> VICTIM/DECLINES COOPERATION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> JUVENILE/NO ARRES													
ADMIN	REPORTING OFFICER(S)			DATE		UNIT NO./STAR #		APPROVING OFFICER		DATE		UNIT NO./STAR #	
	Miller, C. *545			7/30/09		615		Sgt. P. Silvaggio (*307)		7/30/09		605	
	Lewis, W. *783			7/30/09		B43		FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO            (OFFICER) Miller/Lewis					

ORIGINAL REPORT   
  STATUS CHANGE   
  ADDITIONAL VICTIMS   
  ADDITIONAL STOLEN PROPERTY   
 INCIDENT TYPE Assault and Battery with Intent to Kill  
 SUPPLEMENTAL REPORT   
  OTHER   
  ADDITIONAL OFFENDERS   
  ADDITIONAL RECOVERED PROPERTY   
 PATROL DISTRICT 01   
 PAGE 2 OF 2 PAGES.

Don't)

Ex. B-8

She continued to say after she saw him she ran across the street to 609 Memorial Drive Extension, and started knocking on the door and screaming for help. She said no one came to the door, so she ran around the house and hid under the porch where she stood for a moment. She said she didn't see the subject anymore, nor did she see a car or a car leave. Danielle said within moments of standing under the porch, Curt walked out of the front door and started screaming for her, telling her to come out because he had been shot and he was going to the hospital. Danielle said she ran out and got into the truck, where Curt drove himself to the hospital.

Danielle said Curt was holding, what she called, a "Dellinger" which she meant "Dillinger" type pistol. She said it was small and loud. As she was talking about the guns used in the shooting, she said the subject was carrying a "big gun". She said it was big, but not loud like Curt's gun. She said it almost sounded like a whisper when it was shot. She said when Curt shot back she knew the sound of his gun and it was much louder.

During the rest of the morning, Danielle changed her statement about 4 or 5 more times. When asked about why she didn't drive to the hospital she said she could not drive a stick (the truck was an automatic), then she said because Curt was hard headed and would not let her drive, and then later on in the morning she said she didn't know why he would not let her drive because she can drive anything.

We asked Danielle who she thought might have shot Curt. She said she could think of three names, Ronnie, Brent Cash, and Damien. Danielle said Ronnie and Curt were best friends and since, they had a falling out. She said she had not seen Ronnie in a while and she didn't know where he was. She did not elaborate on the reason they had a falling out, only said she knew they no longer got along. She said Brent because she uses to date him. She said he called her about 3 or 4 days ago and asked her for money for dippers and food. She said she refuse to meet him, but told him she would leave the money on her front porch and he could come and pick it up. Danielle said Curt and Brant didn't like each other. She said the only reason they didn't like each other is because she dated Brent before she dated Curt. She said that Damien and Curt were friends until today. Danielle said she and Damien's girlfriend, Crystal, are good friends and grew up together. She said that Sunday, Crystal and Damien came to her house with their new baby. She said while they were at the house, she left them alone for a few minutes while she went to the bathroom. She said she was gone for about 6 minutes and when she came back she found the two of them loading up all of the food in the house into garbage bags and taking them outside. She said she asked what they were doing and they told her they had no money and no food, and they ran out of the house, got into a yellow cab and left. Danielle said when Curt found out about this, he became enraged. She said he called them and cursed them out and told them they were not ever welcome back to the house again.

Based on the amount of pills in the house, and the statements of the persons we had talked to in the case, it was clear to us that Curt is an unlawful distributor of prescription medications. Several hundred pills were taken from the house and almost all we talked to said Curt was the "go too guy" for pills. We confronted Danielle with this and she denied all knowledge of Curt's distribution of any pills or any drugs at all. She said she knew he had back problems and knew that he often times had been prescribed medication for his pain, but she again said she had no knowledge of him selling pills.

SUBJECT IDENTIFIED		SUBJECT LOCATED		<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADMIN. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18	<input type="checkbox"/> EX-CLEARED UNDER
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEARED 18 AND OV	
REASON FOR EXCEPTIONAL CLEARANCE: <input type="checkbox"/> OFFENDER DEATH <input type="checkbox"/> NO PROSECUTION <input type="checkbox"/> VICTIM/DECLINES COOPERATION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> JUVENILE-NO ARRES						
REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER		DATE	UNIT NO. / STAR #
Miller, C. *545	7/30/09	614	Sgt. P. Silvaggio (*307)		7/30/09	605
Lewis, W. *783	7/30/09	B43	FOLLOW-UP INVESTIGATION	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	(OFFICER)	Miller/ Lewis

Ex. B.9

VICTIM/WITNESS STATEMENT

Case Number 09-119378  
Date 7/27/09

I, Rikki Danielle Edwards, do hereby give freely and voluntarily this statement to  
M/D W. Lewis \*783 and M/D C. Miller \*545 who have identified themselves to  
me to be Deputies of the Greenville County Sheriffs Office, Greenville, South Carolina.

I am 22 years old and I reside at 608 Memorial Drive Extention Greer 29651  
Education: completed 11th grade at Greer High School

[Redacted]

[Redacted]

Employed: N/A

\*\*\*\*\*  
I can read and write and M/D Lewis is typing this statement for me. At about 1am, I was at home by myself. I am schizophrenic and I was having 'delusions' and seeing things. I was seeing my daughter and my dead husband hanging from the trees in the front yard and it freaked me out. I called Curt and asked him where he was and to tell him I needed him and he said he was on his way home from the grocery store at Wal-Mart and needed help getting the groceries in. I was already on the front porch smoking and reading a tattoo magazine, and told him I would help him and he stayed on the phone with me until he got home. I kept thinking I was hearing things and the motion sensors around the house and lights kept going on and off. I kept thinking I was hearing noises that sounded like someone was banging a shovel against the car. Curt pulled into the drive way in front of the house and parked at the front porch. He pulled some of the groceries out and handed them to me and I took some inside and he took some inside. Curt followed me in the house and left the front door open but closed the screen door. Once we were in the kitchen we put up the groceries and we started talking and joking in the kitchen. I heard the front door screen open and it was loud. I asked Curt if he was expecting some one and he said no, and I was just hearing things again. Curt opened up a pudding and grabbed a spoon and started to eat it. I heard foot steps coming through the house and at about that time I saw a man in the kitchen door next to the refrigerator holding a gun by his side. He was holding the gun in his right hand. I asked Curt if he saw the same thing or if I was seeing things. The guy was about 5'08 or 5'09 and weighed about 200 pounds. He was muscular and dressed in all black from head to toe. He was wearing a ski mask and had brown eyes. He was wearing thick steel toed type work boots and had his black pants tucked into his boots.

I have read the above statement of 1 of 1 pages and it is true and correct as best as I recall.

WITNESS  
[Signature] 783

Rikki Danielle Edwards  
I have received a copy of this statement.  
[Signature]

Sworn before me this 27 day of July, 2009

[Signature] 13 April 2009  
NOTARY PUBLIC FOR SOUTH CAROLINA



Greenville County Sheriff's Office Ex. B.10

4 McGee St.  
Greenville, South Carolina 29601

①

VICTIM/WITNESS STATEMENT

Case Number 09-119378

Date 7/27/09

I, Con't, do hereby give freely and voluntarily this statement to Con't and Con't who have identified themselves to me to be Deputies of the Greenville County Sheriffs Office, Greenville, South Carolina.

I am Con't years old and I reside at Con't

He was wearing a black sweater with long sleeves and it looked like a turtle neck. He looked like he had a bullet proof vest on under his shirt. I could tell the guy was either white or Hispanic because of the skin I could see around his mouth. I know he was not a black guy. The guy pulled the gun up holding it with both hand and pointed it between the two of us. He looked at me and smiled and then he pointed the gun at my head and started to shoot. The light from the flash of the gun was very bright but the gun was kind of quiet compared to the one that Curt was shooting. I ducked and he shot at me about four times and I was running out the back door. I unlocked all three locks on the door and I could hear Curt get shot and he started yelling for me to help him because he was bleeding to death. Curt pulled his gun from his pants pocket and shot back at the guy two times. I ran out the back door and around the house. While I was running down the driveway, I could see the guy crawling down the front steps. I ran to the neighbors and tried to get them to help me but no one came to the door. I ran to the side of the neighbor's house and looked back to the front of my house and I saw Curt come out. He screamed for me telling me the guy was gone and he was going to the hospital because he was going to bleed to death if he didn't. I ran back across the street and got in the truck and Curt drove to the hospital. End of Statement.

I have read the above statement of 1 of 2 pages and it is true and correct as best as I recall.

WITNESS:

[Signature] 783

Rikki Danielle Edwards

I have received a copy of this statement.

Rikki Danielle Edwards

Sworn before me this 27 day of July, 2009

[Signature] 130841/2010

NOTARY PUBLIC FOR SOUTH CAROLINA



Ex  
B. 11

06/28/2009

EDWARDS, RIKKI DANIELLE  
SC0420300 DUNCAN PD  
CASE-20090628  
ATN-422100153173  
WARR-24090EX  
CIT-16-13-110 (B) (1)-MISDEMEANOR

ARREST CHARGE 01-SHOPLIFTING  
OFFENSE DATE-06/28/2009  
PALM PRINTS AVAILABLE

EDWARDS, RIKKI D  
SC0230000 GREENVILLE CNTY SO  
CASE-234189  
ATN-990000486992  
~~WARR-I507114~~ 1  
CIT-34-11-60-MISDEMEANOR

07/27/2009

\* Arrested that Day of questioning

~~ARREST~~ CHARGE 01-FRAUDULENT  
CHECK UNDER \$500 - 1ST  
OFFENSE DATE-~~07/27/2009~~  
PHOTOGRAPH AVAILABLE

~~WARR-I507115~~ 2  
CIT-34-11-60-MISDEMEANOR

~~ARREST~~ CHARGE 02-FRAUDULENT  
CHECK UNDER \$500 - 1ST  
OFFENSE DATE-~~07/27/2009~~

CIT--MISDEMEANOR  
DOC-23 WARR-I507114 1

COURT CHARGE 01-FRAUDULENT  
CHECK UNDER \$500 - 1ST  
COURT DISP-~~CONVICTED~~  
COURT DATE-10/16/2009  
ATN-990000486992

CIT--MISDEMEANOR 2  
DOC-23 WARR-I507115

COURT CHARGE 02-FRAUDULENT  
CHECK UNDER \$500 - 1ST  
COURT DISP-~~CONVICTED~~  
COURT DATE-10/16/2009

10/10/2009

EDWARDS, RIKKI DANIELLE  
SC0230300 GREER PD  
CASE-03200920950  
ATN-990000497982  
WARR-I581194  
CIT-44-53-370 (D) (1)-MISDEMEANOR

ARREST CHARGE 01-POSS SCHED  
I (B) (C) LSD/SCHED II 1ST  
OFFENSE DATE-10/10/2009  
PHOTOGRAPH AVAILABLE

04/18/2010

EDWARDS, RIKKI  
SC0230300 GREER PD  
CASE-03106322  
ATN-990000517413  
WARR-97188FB \*  
CIT-16-13-110 (B) (1)-MISDEMEANOR

ARREST CHARGE 01-SHOPLIFTING  
EXHIBIT B. (1)

## ARGUMENTS

Did PCR Judge err in holding that Petitioners newly discovered evidence had no merits, and no constitutional violation occurred.

## FACTS

Petitioners newly discovered evidence was such that a jury could reasonably find the Petitioner innocent of all charges

On October 26, 2012 Petitioner did receive a letter by U.S. mail containing a signed affidavit from one Terry Stephens. The affidavit claimed that Mr. Stephens was coming forward of his own free will, to testify that on the night of July 27, 2009 while visiting the home of Mr. Curtis Wooten with the intention of obtaining pills from Mr. Wooten for pain. While still at Mr. Wooten, Mr. Stephens was witness to the events that ended with Mr. Wooten being shot and ending up in a coma. Mr. Stephens had initially been scheduled to testify at Petitioners trial, as a part time employee of the Petitioner's Mr. Stephens was scheduled to testify that on the night of July 26, 2009 he and Petitioner had worked late and Petitioner had dropped Mr. Stephens off at home at 1230 a.m. and then Petitioner left pulling a trailer with a 550 gallon tank half full of water and two industrial pressure washers along with various other tools and equipment, heading for his home an hour away. Petitioner states that the Rule 29 (b) motion for a new trial was denied and dismissed on or about December 9, 2013 when the Honorable Judge Verdin ruled that the state had "ample forensic evidence" and Petitioner had failed to do a DeAngelis standard affidavit in support of the 29 (b) motion. The state now contends that Petitioner is barred by Res Judicata. Petitioner requested his full motion of discovery from Trial counsel by way of S.C. RULES OF COURT, rule 407 professional conduct, Rule 1.16 (d), and as a "Matter of Haddock". In 2014 Petitioner received approximately 3000 pages of material pertaining to his motion of discovery from Trial counsel. Petitioner had no idea there

was this much, Petitioner Avers that before he received his motion of discovery in 2014, he had seen less than 10% of the material sent by Trial Counsel. Petitioner met with Trial Counsel eight times in the two and a half years leading up to his trial and was never shown the pictures on Trial Counsels laptop/tablet and only discussed a few statements made by Law Enforcement, and any alleged statements by Petitioner. Regardless of Trial Counsels contention that he went over material with Petitioner, this was the first time Petitioner had honestly ever seen 90% of the motion of discovery. Petitioner began going over every word on every page, reviewing every picture, reading every report test result, and all findings. Petitioner studied every testimony and every experts statements looking up all medical and legal phrases to gain a complete and proper knowledge of what had been done throughout this investigation trying to understand how he had been convicted of a crime he knew nothing about. Petitioner learned that the "blood and tissue evidence" the state and Trial Counsel repeatedly talk about belonging to Petitioner in front of the jury and Trial Court never even existed, and the "hair found on the section of wall" should have been challenged as being contaminated after it was returned to an unclean crime scene and proper procedure was ignored. Petitioner has found new evidence since filing the 29 (B) motion. Therefore Petitioner has the right to reassert the newly discovered evidence based on details that were withheld during trial by Solicitor, Trial Court, and Trial Counsel.

Petitioner also believes that the PCR Judge misunderstood a question asked of Mr. Stephens on cross examination (App 825 lines 16-19) as to the date Mr. Wooten was attacked, leading the PCR Judge to feel Mr. Stephens was not a strong witness. The question was ambiguous because Mr. Stephens knew of two separate incidents involving Mr. Wooten. The first on July 21, 2009, this is the one that Mr. Stephens was suppose to testify about during the original trial had he been available, the other on July,27 2009 that he witnessed first hand. Had he been able to consult his affidavit he could have answered exactly with

no problems, but by going off his recollection and memory, Mr. Stephens simply gave an account of actual events. In doing so Mr. Stephens stated how Mr Wooten came out the front door and **shot once** . This statement is important because it clears up an unanswered question in Petitioners trial, a 380 bullet casing that was the same caliber as Mr. Wootens pistol was found by the front door but Mr. Wooten testified that he shot at assailant in the kitchen. Mr. Stephens account is much more believable than the states theory because it an eye witness account that the evidence supports without leaving any unanswered questions the way the states theory that Petitioner committed the crime does and Mr. Stephens account has more details than states theory that complete the picture without manipulating the facts. Mr. Stephens would have came forth sooner but due to personal reasons that that he has since been able to resolve, he was not able. Knowing that Petitioner wasn't involved in this crime and was in fact over an hour away when the crime took place, Mr. Stephens felt sure that Petitioner had nothing to worry about and his absence from Petitioners trial wouldn't matter. After learning that Petitioner had not only been convicted but sentenced to life in prison he felt compelled to come forth and give an accurate and honest account of what took place at Mr. Wootens home on July 27,2009. Mr. Stephens detailed testimony meets the 5 prongs Required for a new trial based on newly discovered evidence.

1) Mr. Stephens was admittedly at the home of the victim on the night the incident took place and gives such a detailed account of events, that a jury can reasonably, along with the new information regarding the false DNA entered at Petitioners trial, most likely come to a different decision.

2) While in Philadelphia, Mr. Stephens heard about Petitioners conviction, and sent a signed affidavit 6 months after trial ended.

3) Petitioner believes that even though Trial Counsel was

ineffective for repeatedly failing to investigate the facts of this case, Trial Counsel could not have known, even with Due Diligence, that there was an eye witness unless told by the victim or by Mr. Stephens coming forth with his account.

4) This affidavit is material because Mr. Stephens was at the crime scene in the minutes leading up to the attack and is able to describe certain attributes of the property and gave previously unknown details of events that answer several questions about evidence that was collected, that would rebut the states theory, especially if Ms. Edwards had been present to cross examine.

5) This new information is not cumulative or impeaching because these details potentially show Ms. Edwards as the shooter with malice, Det. Miller viewed Ms. Edwards as a person of interest until Mr. Wooten named Petitioner as shooter "after he was told Petitioners blood was found on the bullet" ( App 133 lines 2-5) except that there was no bloody bullet and the "blood evidence" of Petitioner never existed so it's obvious Mr. Wooten had either been given false information to elicit an ID of his attacker or he was lying. Either way it means that Ms. Edwards was dismissed as a person of interest by misinformation and not facts. A warrant was issued for Ms. Edwards clothes that were covered in blood, but they were never tested for gun shot residue, or anything else. After giving numerous conflicting statements to officers, Ms. Edwards was placed under arrest on an outstanding warrant for bad checks. Once she was released she never went to hospital to check on Mr. Wooten and didn't have any contact with him after he was released from hospital. Ms Edwards failed to show up for court or respond to attempts to notify her of Trial date. Mr. Stephens detailed and more accurate account finally explained the bullet casing ( App 705 lines 8-10) that was found in the living room roughly 40 feet away and around a wall in a different room from where Mr. Wooten alleged he shot at attacker.

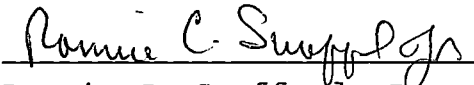
Mr. Stephens owes nothing to Petitioner and is not duty bound to do anything more, Mr. Stephens wants to testify to what he alone witnessed and is a valid witness to testify in this regard. A new jury hearing a true, accurate, and detailed account of events and is shown factual honest test results and evidence could only find that Petitioner is innocent of all wrong doing in this case, especially if Petitioner is afforded the opportunity to question Ms. Edwards on the stand. It has been obvious that something other than the states theory happened that night and now with an eye witness willing and able to give an accurate and detailed account that supports the evidence in this case evidence like the bullet casing found 40 feet away around a wall from where it was alleged to have been fired. It will also put an end to all the conflicting testimony and conflicting statements along with false evidence like the blood evidence belonging to Petitioner that doesn't exist in any form or capacity. JOHSON v. CATOE, 345 S.C., 389, 548, SE2d 587(2001) " I believe to deny Johnson a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute a denial of fundamental fairness shocking to the judicial sense of justice"(quoting J. Waller dissenting)PLEASE SEE MR. STEPHENS AFFIDAVIT (App 888- 890, Ex. D.1)

BUTLER v. STATE, 302 S.C. 466, 468, 397,SE2d, 87,88 (1990)  
HAYDEN v. STATE, 278 S.C. 610, 299 SE2d 854 (1983)  
JOHNSON v. CATOE, 345 S.C. 389, 401, 548, SE2d,587,593(2001)  
NEWSON v. UNITED STATES, 311 F2d 74 (5th Cir 1962)  
STATE v. PRINCE, 316 S.C. 57, 447 Se2d 177 (1993)  
STATE v. SPANN, 334 S.C. 618, 513 SE2d 98 (1998)

CONCLUSION

For the reasons stated, Petitioner asks this Honorable Court to grant the petition for a Writ of Certiorari.

May 24, 2017



Ronnie C. Swofford, Jr.

Petitioner, Pro Se (Reponse)

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