

RECEIVED

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

AUG 17 2017

APPEAL FROM YORK COUNTY S.C. SUPREME COURT
LEE S. ALFORD, CIRCUIT COURT JUDGE

92-GS-46-1224

UNPUBLISHED OP. NO. 2017-UP-139

RE: THE STATE v JEFFREY LYNN CHRONISTER, pro se
APPELLATE CASE No. 2017-001374

REPLY TO RESPONDENT'S RETURN TO PRO SE PETITION
FOR WRIT OF CERTIORARI

JEFFREY LYNN CHRONISTER, #189827
KIRKLAND R+E CENTER, B-II, #39
4344 BROAD RIVER ROAD
COLUMBIA, S. C., 29210

ALAN WILSON, ATTORNEY GENERAL, AND
DONALD J. ZELENKA, DEPUTY ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, S. C., 29211

KEVIN S. BRACKETT, SOLICITOR
1675-1A YORK HIGHWAY
YORK, S. C., 29745
ATTORNEYS FOR RESPONDENT

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PETITIONER RECEIVED ON JULY 20, 2017 THE RESPONDENTS RETURN TO PROSE PETITION FOR WRIT OF CERTIORARI, DATED JULY 17, 2017, AND SUBMITTING ON JULY 28, 2017 A MOTION FOR ENLARGEMENT OF TIME TO FILE A REPLY. THE TIME WAS EXTENDED UNTIL AUGUST 16, 2017 (COPY OF ORDER AT PAGE 14)

STATEMENT OF CASE: THIS MATTER AROSE FROM THE APPEALING OF THE HONORABLE LEE S. ALFORD'S LETTER ORDER ON PETITIONER'S PRO SE MOTION FOR AFTER NEWLY DISCOVERED EVIDENCE THAT WAS SUBMITTED "UNDER RULE 29(b), SORCRIMP" AND "PURSUANT TO RULE 60(b) SERCP" (MOTION p.1, SUPP R. p 1). THE ORDER STATING THAT;

"THIS WILL ACKNOWLEDGE RECEIPT OF YOUR MOTION AND CORRESPONDENCE, THIS COURT CANNOT GRANT RELIEF ON A MOTION UNLESS TIMELY MADE YOU WOULD NEED TO FILE A POST CONVICTION RELIEF ACTION FOR THE COURT TO CONSIDER YOUR MOTION"

(MOTION p. 27, SUPP R. p. 27)

ARGUMENT

ADDRESSING PAGE 1 (ONE) OF THE RETURN PETITIONER'S QUESTIONS 1 (ONE) AND 2 (TWO), ALSO I. UNDER RESPONDENTS COUNTER-ISSUES THAT ARE INCLUDED IN ARGUMENT I. ON PAGE 13-16 OF THE RETURN.

ON PAGE 13 TO THE STATEMENT OF, "IN HIS ARGUMENT BEFORE THE COURT, HE WHOLLY FAILS TO ADDRESS ANY ENTITLEMENT UNDER RULE 29 FOR THIS BELATED ASSERTION OF HOW JUDGE ALFORD'S SUMMARY REJECTION OF THE MOTION AS UNTIMELY WAS INCORRECT AS A MATTER OF LAW OR FACT"

IT HAS BECOME APPARENT THAT IN PETITIONER'S EFFORTS TO PROPERLY SUBMIT THE MOTION IN STATING "UNDER RULE 29(b)" WAS A

ERROR, WHERE AS IN THE PETITION FOR REHEARING "LENIENCY" WAS ASKED FOR, AND REQUESTING CONSIDERATION ON "PURSUANT TO RULE 60(b)" WHICH PETITIONER ALSO RESPECTFULLY REQUEST OF THIS COURT TO DO. BECAUSE OUTSIDE OF STATING "UNDER RULE 29(b)" THE FACTS OF THE MOTION'S ARGUMENTS SHOW THAT IT IS IN COMPLIANCE WITH, AND IN ACCORDANCE TO THE ENTITLEMENTS OF RULE 60(b), FOR THE REASONS OF SHOWING ACTIVE FRAUD ON THE COURT, AND INCLUDING THE EXTRINSIC FRAUD OF MISLEADING BY COUNSEL IN SUBORNATION OF FALSE TESTIMONY, WHICH WAS MATERIAL TO THE ISSUES AND ALSO ON PROBABLE CAUSE, RULE 60 (11): "THE ACT OF PERJURY OR CONCEALMENT OF A DOCUMENT COUPLED WITH OR INTENTIONAL SCHEME TO DEFRAUD THE COURT JUSTIFIES THE SETTING ASIDE OF A JUDGMENT DUE TO EXTRINSIC FRAUD" CHEWNING v FORD MOTORS (S.C. 2003) 354 S.C. 72, 570 SE2d 605; RAY v RAY (S.C. 2007) 374 S.C. 77, 647 SE2d 237, "EXTRINSIC FRAUD WARRANTING RELIEF FROM JUDGMENT IS NOT LIMITED TO MISCONDUCT PERPETRATED BY ATTORNEY" RULE 60 (11); WEST'S 20 SCB2d 55; S.C. 2005, "PLEADINGS IN A CASE SHOULD BE CONSTRUED LIBERALLY AND TRIAL COURT AND APPELLATE COURT MUST PRESUME ALL WELL PLED FACTS AS TO BE TRUE SO THAT SUBSTANTIAL JUSTICE IS DONE BETWEEN THE PARTIES" OVERCASH v S.C. ELEC. + GAS CO. 614 SE2d 614, 364 S.C. 569; ERICKSON v PARDUS, 551 U.S. 89, 167 LEd 1081, 127 S.Ct. 2197 (U.S. JUNE 4, 2007) (per curiam) "A DOCUMENT FILED pro se IS TO BE LIBERALLY CONSTRUED, AND A pro se COMPLAINT, HOWEVER INARTFULLY PLEADED, MUST BE HELD TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS DRAFTED BY LAWYERS" FEDERAL RULES CIV. PROC. RULE 8 (a) (c) (5), USCA 28

(1) THE JUDGE'S ASSERTION OF "UNTIMELY" AND THE STATEMENT ARE IN ERROR. BECAUSE FOLLOWING THE SUBMITTAL OF PURSUANT TO RULE 60 (b) PETITIONER CITED AQUAV MUBILOIL CORP. 892 F3D1115, 1118 (1st Cir 1977) "THERE IS NO STATUTE OF LIMITATIONS WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD ON THE COURT" (SUPP. R. p.1, MOTION p.1). ALIKE BY COMPUTER READOUT OF CHEWNING V. FORD MOTOR Co (S.C. 2003) 354 S.C. At 72, 80, "OUR STATE SUPREME COURT HAS EXPLAINED THAT WHILE IN MOST CIRCUMSTANCES THERE IS A TIME LIMITATION ON A PARTY SEEKING TO REOPEN A FINAL JUDGMENT, THERE IS NO STATUTE OF LIMITATIONS WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD ON THE COURT" RULES CIVIL PROC. 60(b)

(2) AS TO THE "NEED TO FILE A POST CONVICTION RELIEF ACTION IN ORDER FOR THE COURT TO CONSIDER YOUR MOTION". PETITIONER FAILS TO FIND THIS ADDRESSED IN THE ARGUMENT, AND PURSUANT TO THE ENTITLEMENTS OF RULE 60 IT IS AN ERROR. BECAUSE "THE RULE DOES NOT LIMIT THE POWER OF A COURT TO ENTERTAIN AN INDEPENDENT ACTION TO RELIEVE A PARTY FROM A JUDGMENT, ORDER, OR PROCEEDING, OR TO SET ASIDE A JUDGMENT FOR FRAUD ON THE COURT" AND "THE PROCEDURE FOR OBTAINING ANY RELIEF FROM A JUDGMENT SHALL BE BY MOTION AS PRESCRIBED IN THESE RULES OR BY AN INDEPENDENT ACTION"

(3) AS TO PAGE 13 WHERE; "IN THE MOTION BEFORE THE COURT, CHRISTER FAILED TO ASSERT OR SHOW EXISTENCE OF ANY NEWLY DISCOVERED EVIDENCE TO SUPPORT THE MOTION. RATHER, HE ARGUED SUBSTANTIVE CLAIMS WHICH COULD HAVE BEEN RAISED AT TRIAL, ON DIRECT APPEAL, OR IN THE STATE POST CONVICTION RELIEF PROCEEDINGS THAT HAD PRECEDED THE NOVEMBER 12 MOTION." THIS DOES NOT APPLY TO THE MOTION BEFORE THE COURT. BECAUSE OF THE

FOREGOING SECTION(2) SHOWS THAT IT IS A PROPER PROCEDURE TO RAISE THE ISSUE OF FRAUD ON THE COURT. ALSO THE ISSUES WERE PRECLUDED FROM BEING RAISED AT THE TRIAL, BECAUSE OF THE FRAUD ON THE COURT INCLUDED MISREPRESENTATION BY COUNSEL THUS NO OBJECTIONS WERE MADE FOR DIRECT APPEAL.

AS TO "ASSERT OR SHOW EXISTENCE OF NEWLY DISCOVERED EVIDENCE TO SUPPORT THE MOTION". PETITIONER INCLUDED A SWORN AFFIDAVIT IN THE MOTION'S BRIEF AT PAGE-29. THAT THE FACTS FOR FILING OF THE MOTION WERE NOT DISCOVERED UNTIL "ON OR ABOUT THE 16TH OF SEPTEMBER, 2014", AND PAGE 12 OF THE RETURN SHOWS THAT THE MENTIONED "STATE POST CONVICTION BELIEF PROCEEDINGS" WAS FILED ON "FEBRUARY 9, 2006". ALSO THAT THE MOTION'S "ARGUMENTS HAVE NOT BEEN PREVIOUSLY PRESENTED IN AN COURT OF LAW" / TO A COURT OF LAW. WHICH IS SUPPORTED BY PAGE 6-12 OF THE RETURN. RULE 60(B) "TO RECEIVE A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE (1) WILL PROBABLY CHANGE RESULTS IF A NEW TRIAL IS GRANTED, (2) HAS BEEN DISCOVERED SINCE THE TRIAL, (3) COULD NOT HAVE BEEN DISCOVERED BEFORE THE TRIAL (4) IS MATERIAL TO THE ISSUE AND (5) IS NOT MERELY IMPEACHING" SOUTHERN HOUSING FOUNDATION V SMITH (S.C. 2008) 380 S.C. 621 670 SE2d 680

PAGE 2 OF THE RETURN: I. "WAS A DIRECT VERDICT PRODUCED BY PROSECUTORIAL MISCONDUCT AND MISREPRESENTATION BY COUNSEL? (SUPP. R. p. 2-16, MOTION p 2-16). FACTS OF MOTION'S ARGUMENT A SHOW THAT ISSUE OF THE VERDICT IS PROPERLY RAISED PURSUANT TO RULE 60(B). BECAUSE OF IT BEING PRODUCED BY FRAUD ON THE COURT DUE TO THE MISREPRESENTATION BY COUNSEL AND SOLICITORS'

PROSECUTORIAL MISCONDUCT. WHICH ON PAGE 1 OF THE MOTION, SUPP. R. p. 1, PETITIONER CITED U.S. v McDONALD 161 F2d (TABLE) CA. 4 (N.C. 1998) "A DECISION PRODUCED BY FRAUD ON THE COURT IS NOT IN ESSENCE A DECISION AT ALL AND NEVER BECOMES FINAL." WRIGHT v MILLER FEDERAL PRACTICE AND PROCEDURE § 2870 AT 409 (1995), QUOTING KENNES v COMM. OF INTERNAL REVENUE 387 F2d 689, 691 (7TH CIR. 1968)

STATEMENT: PETITIONER PROVIDING THE COURT WITH HIS COPY OF THE SUPPLEMENTAL RECORD, AND DIRECTING TO THE PAGE NUMBERS OF TRANSCRIPT OF RECORD AS IN THE MOTION.

GROUNDS FOR MOTION p. 2, SUPP. R. p. 2: WHICH SHOWS THAT THE "OFFICER" MENTIONED ON PAGE 16 OF THE RETURN IS OTIS J. WHISTNE, AND THE STATEMENT SHOWING HE WAS THE PRIMARY OFFICER / DETECTIVE OF THE CASE. FOR ONE BEING THE "AFFIANT" OF THE ARREST WARRANT [MOTION p. 22-23, TR. p. 442-443] AND THE ONLY LAW OFFICIAL TO TESTIFY INTERVIEWING THE STATE'S "EYE WITNESS IDENTIFICATION AND LINE UP" TOMMY AUTEN [TR. p. 119, L. 17-20], ALSO WARRANT STATES "PROBABLE CAUSE BASED ON WITNESS'S."

ARGUMENT A [PAGE 2-7, SUPP. p. 2-7] PERTAINS TO OFFICER'S INTERVIEWING OF WITNESS ON MORNING OF TRAGEDY, AND SHOWS THAT THE OFFICER WAS NOT CREDIBLE. BECAUSE THE FACTS SHOW THAT THE ONLY EVIDENCE OF INVOLVEMENT IN INVESTIGATION IS PRESENTING OF PHOTO LINE-UP TO WITNESS AT THE WITNESS'S RESIDENCE ON AFTERNOON OF TRAGEDY, AND VIOLATIONS OF WELL ESTABLISHED STATUTES AND ALSO CONSTITUTIONAL DUE PROCESS RIGHT IS SHOWN BY:

(1) THE EXTRINSIC FRAUD OF COUNSEL'S MISLEADING EFFORTS

TO FALSELY APPEAR AN INTERVIEW OCCURRED. BY IMPROPER USE OF LEADING QUESTIONS AND WHICH IS EVIDENT IN THE FOLLOWING FINAL CROSS EXAMINING BEFORE THE JURY, ALSO SHOWING IS THE FALSE TESTIMONY WILLFULLY GIVEN, AND THE MISCONDUCTS BEING COMMITTED IS SUPPORTED BY THE ARGUMENT, SHOWING THE ONLY EVIDENCE OF OFFICER'S INVOLVEMENT IS PRESENTING OF AN PHOTO LINE UP TO WITNESS AT WITNESS'S RESIDENCE. OUTSIDE OF HIS TESTIMONY OF INTERVIEW THERE IS NO EVIDENCE THAT HE WAS INVOLVED IN THE INTERVIEWING OF ANY WITNESS ON THAT MORNING FOR PROBABLE CAUSE IN OBTAINING THE WARRANT.

THE RECORD FAILS TO SHOW ANY INITIAL DIRECT EXAMINING AS TO TALKING WITH OR INTERVIEWING WITNESS ON THAT MORNING: CROSS EXAMINING;

(Q) "NOW WHEN YOU TALKED WITH HIM, DID YOU TALK WITH HIM EARLIER IN THE MORNING THAT DAY?" (A) "I DON'T RECALL BUT ITS POSSIBLE THAT I DID" [TR. p. 135, L.

DIRECT: (Q) "AND WHERE DID YOU TALK TO HIM PLEASE?" (A) "THE FIRST TIME I BELIEVE WAS AT DUKE POWER CATAWBA NUCLEAR STATION, AND THE SECOND TIME WAS AT HIS RESIDENCE"

[TR. p. 205, L.

FINAL CROSS: (Q) "DETECTIVE, YOU SAY THAT YOU HAD TALKED WITH MR. AUTEN OUT AT THE CATAWBA STATION EARLY IN THE MORNING, CORRECT, SIR?" (A) "YES SIR, DOING INTERVIEWS"; (Q) AND THAT THAT WOULD HAVE BEEN ABOUT 8:00 - 7:30, 8:00 O'CLOCK, CORRECT, SIR?"; (A) "I ASSUME, IT WAS EARLY IN THE MORNING" [TR. p. 207, L. 10-17, MOTION p. 2-4, SUPP. R p. 2-4]

(2) INCIDENT REPORT [MOTION p. 4-7, SUPP. R. p 4-7]. THE ONLY COPY OF AN INCIDENT REPORT ENTERED INTO PETITIONER'S TRANSCRIPT

OF RECORD SHOWS WITNESS AUTEN AS THE REPORT'S "COMPLAINANT" BUT IT FAILS TO SHOW THE REPORTING OFFICER(S) NAME [TR. p. 452, MOTION p. 23], AND THE COMPLETE COPY OF THE REPORT [MOTION p. 24] NOT ONLY SUPPORTS THE LACK OF EVIDENCE OF OFFICER WHITSTINE IN INTERVIEWING WITNESS THE ARGUMENT SHOWS THAT IT SUPPORTS THE LACK OF ANY LAWFUL PHYSICAL EVIDENCE OF ANY WITNESS BEING INTERVIEWED ON THAT MORNING FOR PROBABLE CAUSE. FOR OUTSIDE OF REPORTING OFFICER "T. B. SMITH" NAME ON THE REPORT THE ARGUMENT ALSO SHOWS THERE IS NO EVIDENCE HE HAD INTERVIEWED ANY WITNESS AT ANYTIME, AND THE REPORT IS SHOWN UNLAWFULLY FABRICATED FROM OTHER SOURCES, AND ALSO WITH FALSE STATEMENTS.

ACTIVE FRAUD ON THE COURT IS SHOWN BY⁽¹⁾ COUNSEL'S ATTEMPTS TO INDUCE FALSE TESTIMONY TO MISLEAD THAT AN INTERVIEW OF THE WITNESS OCCURRED ALSO BY⁽²⁾ COUNSEL'S AND SOLICITOR'S KNOWLEDGE OF THE REPORT, AND FAILING TO ENSURE T. B. SMITH'S PRESENCE TO PRESENT AND ALSO TESTIFY AS TO ITS CONSTRUCTION. THE OFFICER'S NAME WAS CALLED ON THE FIRST DAY OF TRIAL [TR. p. 21, L. 2-3] AND HIS ABSENCE WOULD HAVE MISLEAD THAT AN INTERVIEW OCCURRED. BECAUSE OF COUNSEL'S QUESTIONING WITNESS OF GIVING "A DESCRIPTION TO ANY OFFICER AT THE SCENE"; AND AFTER ANSWER OF "YES SIR" COUNSEL FAILED TO QUESTION THE OFFICER'S NAME [MOTION p. 7, TR. p. 131, L. 20 - p. 134, L. 4] Id. CHEWNING

(3) PHOTO LINE-UP [MOTION PAGE 7-15, SUPP. R p. 7-15] THE ISSUE SHOWS; ^(a) WITNESS AUTEN WAS UNRELIABLE IN IDENTIFICATION, AND THE LINE-UP WAS THE LINCHPIN IN IDENTIFICATION BECAUSE OF TESTIFYING; "NO SIR. WHAT I'M TELLING YOU IS THE PERSON I IDENTIFIED IN THE LINE UP WAS THE PERSON I SAW IN THE PARKING

LOT [TR. p. 130, L. 12-20], AND "IF THIS MAN IS THE MAN THAT I IDENTIFIED ON THE PHOTOGRAPH, THEN HE IS INDEED THE SAME PERSON" TR. p. 204, L. 1-3] (b) OFFICER WHITSTINE'S TESTIMONY THAT WOULD HAVE RENDERED THE LINE-UP UNDULY SUGGESTIVE IN HAVING HAD THE LIST OF SUSPECTS NAMES THAT WERE ASSOCIATED TO THE NUMBERS BESIDE OF THEIR PHOTOGRAPHS AND PREPARING LINE-UP "PRIOR TO MEETING WITH WITNESS [TR. p. 133, L. 24 - p. 134, L. 4] (c) A DETECTIVE JETER HAD PREPARED THE LINE-UP'S RECORD [TR. p. 135, L. 14-19]. BUT THE ONLY EVIDENCE IS DETECTIVE'S PREPARING OF RECORD WITH PHOTOGRAPHS TR. p. 210 - p. 212] AND (d) PRESENTING THE LINE UP ALONE [TR. p. 137, 4-6] FRAUD ON THE COURT AND ALSO MISREPRESENTATION BY COUNSEL IS SHOWN BY ACTIVE IMPROPER USE OF LEADING QUESTIONS TO MISLEAD THAT OFFICER HAD NO KNOWLEDGE AND NOTHING TO DO WITH LINE-UP'S PREPARATION IN CROSS EXAMINING. [TR. p. 138, L. 9-19] THE MISCONDUCT BEING COMMITTED IS SUPPORTED BY FAILING TO QUESTION OF THE IMPLICATING TESTIMONY OF HAVING LIST OF NAMES, AND PREPARING LINE-UP PRIOR TO MEETING WITNESS, ALSO BY FAILING TO OBJECT TO PRESENTING THE LINE-UP ALONE, AND RENEWING MOTION TO QUASH / OBJECT TO LINE UP BEING ENTERED AS THE STATE'S EXHIBIT No. 7", LIST OF NAMES No. 8 [TR. p. 119 L. 4-6, p. 135, L. 6-24] PHOTOGRAPH'S NUMBER PAGE 10-11; THE MISCONDUCT BY COUNSEL AND PROSECUTORIAL MISCONDUCT BY SOLICITOR IS SHOWN BY ONLY QUESTIONING OFFICER WHITSTINE OF THE NUMBER BESIDE OF SUSPECT'S PHOTO THAT HE TESTIFIED WITNESS GAVE AT PRESENTATION, AND FAILING TO CORROBORATE TESTIMONY BY QUESTIONING WITNESS, WHICH WAS CRUCIAL EVIDENCE, GIVEN THAT THEY WERE ALONE, COUNSEL AND SOLICITOR HAVING KNOWLEDGE OF THIS. [MOTION p. 10-11 - CROSS + DIRECT]

THE MISCONDUCTS, AND FRAUD ON THE COURT WAS FURTHERED BY THE FOLLOWING OFFICER'S IDENTIFICATION, BECAUSE OF ITS STATUTORY AND CONSTITUTIONAL VIOLATIONS. FOR OUTSIDE OF CONFIRMING BEING ALONE WITH WITNESS IT ALSO SHOWS BASED ON THE LINE-UP BY THE ANSWER OF NOT KNOWING "NO. 3" UNDER THE RE-CROSS EXAMINING, AND WHICH IS SUPPORTED BY THE RECORD'S FAILURE TO SHOW ANY EVIDENCE OF OFFICER MEETING OR OBSERVING PETITIONER PRIOR TO THE TRIAL.

DIRECT: (Q) "WAS ANYBODY THERE BESIDES YOU AND HIM?", (A) "NO SIR"
(Q) "AND WHO WAS THE PICTURE THAT HE PICKED OUT?", (A) "JEFFREY LYNN CHRONISTER NO. 3 IN THE LINE-UP"; (Q) "AND DOES MR. CHRONISTER APPEAR DIFFERENT TODAY IN COURT?"; COUNSEL: "OBJECTION TO LEADING YOUR HONOR", SOLICITOR: "IS THERE ANY DIFFERENCE IN MR. CHRONISTER'S APPEARANCE TODAY IN COURT AS IN THE PICTURE LINE-UP?", (A) "HE HAS NO BEARD AT THIS TIME" [TR. p 206, L. 22 - p. 207]

RE-CROSS: (Q) "AND YOU DIDN'T KNOW NO. 3 FROM ADAM'S HOUSE CAT OF YOUR OWN KNOWLEDGE DID YOU SIR?", (A) "NO SIR"
[TR. p. 209, L. 5-19, MOTION p. 13-14]

PETITIONER RESPECTFULLY CONTENDS THAT COUNSEL'S CROSS EXAMINING SHOWS MISLEADING TO FALSELY APPEAR THAT THE IDENTIFICATION TESTIMONY WAS RELIABLE TO THE JURY. BECAUSE OF AGAIN IMPROPER USING OF LEADING QUESTIONS TO FALSELY APPEAR THAT HE HAD NO KNOWLEDGE AND ANYTHING TO DO WITH PREPARING OF LINE-UP.

THE MISCONDUCT BEING COMMITTED IS SUPPORTED BY AGAIN FAILING TO QUESTION ABOUT HIS TESTIMONY THAT WOULD HAVE IMPLICATED HIM. [MOTION p. 14-15, SUPP. R p. 14-15; TR. p. 205-L. 5-19]

DIRECT VERDICT

[MOTION p. 15-17, SUPP. B p. 15-17]. ADDRESSING THE RESPONDENT'S

ARGUMENT B. DIRECTED VERDICT IS TIME-BARRERD: TO THE STATEMENT OF "CLEARLY, THE DIRECTED VERDICT ARGUMENT IN THE NEW TRIAL MOTION WOULD BE APPLICABLE TO RULE 29(a) AND TIME BARRERD" (PAGE 16). THE ARGUMENT OF THE MOTION SHOWS COUNSEL MOVED FOR THE VERDICT ON THE GROUNDS OF ⁽¹⁾ IDENTIFICATION ISSUE OF TESTIMONY BY THE PEOPLE ⁽²⁾ NO WEAPON PRODUCED OR PROJECTILES ⁽³⁾ NO EVIDENCE TO MAKE OUT NECESSARY CASE FOR MURDER THOUGH MALICE MAY BE INFERRED FROM USE OF A WEAPON ⁽³⁾ NO WEAPON CONNECTED TO CLIENT; ⁽⁴⁾ BASED ON TESTIMONY THE STATE HAS FAILED TO MAKE OUT A CASE FOR MURDER. FAILED TO SHOW THE REQUIRED MALICE [TR. p. 230; L. 19. p 231]

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

"FOR THOSE REASONS THE MOTION FOR DIRECTED VERDICT AT THIS STAGE IS DENIED [TR. p 231, L. 16 - p. 232, L. 2]

COUNSEL'S SUBSEQUENT RENEWAL OF THE MOTION ON THE SAME GROUNDS WAS DENIED BY THE JUDGE ON THE SAME REASON [TR p. 240, L. 8-10]

PETITIONER RESPECTFULLY CONTENTS THAT THE RESPONDENT'S ARGUMENT, AND THE STATEMENT IS ERROR. BECAUSE PETITIONER'S RAISING THE CASE OF McDONALD, AND THE FOREGOING FACTS OF PHOTO LINE-UP SHOW THAT AT THE VERDICT WAS PRODUCED BY FRAUD ON THE COURT BY THE USE

OF OFFICER WHITSTINE'S FRAUDULENT IDENTIFICATION TESTIMONY, WHICH IS SUPPORTED BY THE INCLUSION OF "THE STATEMENTS MADE BY THE OFFICER.", IT BEING USED IN THE CONTEXTS OF THE TRAGEDY OCCURRING THAT MORNING, AND WITNESS AULEN UNRELIABLE AS PETITIONER BEING THE PERSON HE SAW "IN THE PARKING LOT" ON PAGE 7-8. ALSO THERE IS THE OTHER WITNESSES OF THAT MORNING JOEL SMITH - TESTIFIED TO HE "SAW NOTHING AND HEARD NOTHING" AND RELEASED [TR p 87 AT p. 99 L. 10-12]; DANNY WILSON - "NO SIR. MY ATTENTION WAS RIVETED ON HIS WEAPON, AND I DIDN'T LOOK AT HIS FACE THAT WELL" [TR p 100, AT p. 105 L. 23 - p 106] AND SIDNEY BALLANGER - "SORT OF DARK FACIAL HAIR WITH A MUSTACHE. LOOKED LIKE A BEARD TYPE GROWTH DOWN HERE. IT BEING SORT OF DARK HIS HAIR LOOKED DARK"; "AVERAGE SIZE, AVERAGE BUILD" AND "I DON'T REMEMBER SPECIFICALLY HOW HE WAS DRESSED" [TR p 179, AT p. 187, L. 10-17]

EVEN THOUGH THE MOTION WAS RENEWED THE ISSUE WAS NOT TAKEN ON DIRECT APPEAL (RETURN p. 6-7).

C. ARREST WITHOUT PROBABLE CAUSE ISSUE IS TIME BARRED (RETURN PAGE 18-19). THIS ARGUMENT IS IN ERROR BECAUSE OF STATING THAT:

(1) "CHRONISTER MISREADS RULE 29(B) (OR RULE 60) AS ALLOWING A BELATED NEW ARGUMENT BASED UPON A TRIAL RECORD"; THE FOREGOING SHOWING ON PAGE 3 SHOWS RULE 60 DOES NOT LIMIT THE POWER OF A COURT TO ENTERTAIN AN INDEPENDENT ACTION TO RELIEVE A PARTY FROM A JUDGMENT, ORDER, OR PROCEEDING, OR TO SET ASIDE A JUDGMENT FOR FRAUD ON THE COURT, AND THERE IS NO TIME LIMITATION WHEN RAISING FRAUD ON THE COURT.

PETITIONER RESPECTFULLY CONTENDS THAT WHERE THE PERVERSION OF THE TRUTH RAISES FRAUD ON THE COURT IT WAS ALSO SHOWN IN OFFICER WITSTINE'S VIOLATION OF THE OATH AS AN AFFIDAVIT AND FRAUDULENTLY OBTAINED THE WARRANT WITHOUT PROBABLE CAUSE. HIS WILLFUL GIVING OF FALSE, AND MILEADING INFORMATION WAS UNLAWFUL BY WELLESTABLISHED LAWS OF THIS STATE WHICH ALSO DEEMED THE WARRANT DEFECTIVE AS AN LAWFUL ORDER TO ARREST. Id. SOUTHERN HOUSING FOUNDATION RULE 60

JUDGE ALFORD ERRED IN THIS REJECTION (PAGE 19)

D. SUBJECT MATTER JURISDICTION ISSUE IS TIME BARRED (PAGE 19-20). PETITIONER RESPECTFULLY CONTENDS THAT THIS ARGUMENT IS IN ERROR. BECAUSE OF THE MOTION'S ARGUMENT RAISES THE COURT LACKED SUBJECT MATTER JURISDICTION IN THAT THE INDICTMENT FOR MURDER FAILS TO SHOW ANY INDICATION OF BEING STAMPED TRUE BILL. WHICH WOULD BE IN COMPLIANCE WITH STATUTORY LAW AND JURISDICTIONAL NATURE OF TRUE BILLED INDICTMENTS. THE DEFECTIVENESS OF THE INDICTMENT IS ALSO BECAUSE OF ITS FAILING TO SHOW BEING PROCEDURALLY WRITTEN AND PUBLISHED BY THE CLERK OF COURT. THE RECORD FAILS TO SHOW ANY EVIDENCE PRESENTED IN COURT THAT THE INDICTMENT WAS IN FACT A FORMAL TRUE BILL, AND THE MOTION PRESENTS CASE AUTHORITIES WHERE THE ISSUE OF SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANYTIME.

AS TO THE STATEMENT OF "THE PETITIONER RAISED AN ISSUE CONCERNING WHETHER THE INDICTMENT WAS DEFECTIVE IN PRIOR PROCEEDINGS IN THE STATE COURT IN SECOND AND THIRD PCR ACTIONS THROUGH 2006" ISSUES TO COURT WERE NO PRESENTMENT FOR FIREARMS CHARGE,

AND OFFICER WHITSTINE BEING THE INDICTMENT'S SOLE WITNESS.

THE ARGUMENT SHOWS THAT THE CONVICTION WAS ALLOWED BY CONSTITUTIONAL DUE PROCESS RIGHT VIOLATION, AND VIOLATIONS OF STATUTORY LEGAL DUTIES. THAT WAS DUE TO THE MISREPRESENTATION OF COUNSEL AND PROSECUTORIAL MISCONDUCT OF THE SOLICITOR.

AS TO PAGE 2 OF THE RETURN UNDER "THE MOTION PROCEEDINGS" THE FOREGOING FACTS OF THE ARGUMENTS SHOW THAT IT WAS INCORRECT TO STATE THAT, "IN AN ATTEMPT TO AVOID THE STATUTE OF LIMITATIONS, HE CLAIMED THAT THE TIME LIMITS UNDER RULE 29(b) DID NOT APPLY WHEN A PARTY SEEKS TO SET ASIDE A JUDGMENT DUE TO FRAUD ON THE COURT "IN HIS GROUNDS FOR A NEW TRIAL," HE

CONCLUSION

FOR THE REASONS STATED PETITIONER ASK THE COURT TO GRANT THE WRIT OF CERTIORARI. ACCEPT JURISDICTION OVER THE MATTER

AUGUST 13, 2017

RESPECTFULLY SUBMITTED:

Jeffrey Lynn Chronister
JEFFREY LYNN CHRONISTER #189827
KIRKLAND REC'D. B-II, 39
4344 BROAD RIVER ROAD
COLUMBIA, S.C., 29210

The Supreme Court of South Carolina

The State, Respondent,

v.

Jeffrey Lynn Chronister, Petitioner.

Appellate Case No. 2017-001374

ORDER

The request for an extension to serve and file the Reply to Return to Petition for Writ of Certiorari is granted and extended until August 16, 2017. Please refer to the order of the Supreme Court of South Carolina dated July 16, 2014 (<http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=963>), regarding any further extension requests in this matter.

FOR THE COURT

BY *Dwenda J. Shealy*
Chief Deputy CLERK

Columbia, South Carolina

July 31, 2017

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
John W. McIntosh, Esquire
Kevin Scott Brackett, Esquire
Jeffrey L. Chronister, 189827

RECEIVED

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

AUG 17 2017

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
LEE S. ALFORD, CIRCUIT COURT JUDGE

STATE OF SOUTH CAROLINA, RESPONDENT v JEFFREY L. CHRONISTER,
APPELLANT; 92-GS-46-1224, UNPUBLISHED OP. NO. 2017-UP-139

APPELLATE CASE NO. 2017-001374

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE REPLY TO RESPONDENTS RETURN
TO PROSE PETITION FOR WRIT OF CERTIORARI ON THE BELOW PARTIES
BY DEPOSITING A COPY OF IT TO EACH ADDRESS IN THE UNITED STATES
MAIL POSTAGE PREPAID ON AUGUST 15, 2017.

ATTORNEYS FOR RESPONDENT

ALAN WILSON, ATTORNEY GENERAL AND

DONALD J. ZELENKA, DEPUTY ATTORNEY GENERAL

POST OFFICE BOX 11549

COLUMBIA, S.C., 29211

Jeffrey Lynn Chronister
JEFFREY LYNN CHRONISTER, #189827

KEVIN S. BRACKETT, SOLICITOR

1675-1A YORK HWY.

YORK, S.C., 29745

JEFF CHRONISTER, 189827
KIRKLAND R&E CTR. B-II, 39
4344 BROND RIVER RD.
COLUMBIA, S.C., 29210

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