

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
HONORABLE R. KNOX MCMAHON,
CIRCUIT COURT JUDGE

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NATHAN D. MARTINEZ,

APPELLANT

APPELLANT CASE NO: ~~2016~~ 2016-002494

PRO SE BRIEF OF APPELLANT

NATHAN D. MARTINEZ
PRO SE, APPELLANT

NATHAN D. MARTINEZ # 370708
BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER ROAD
COLUMBIA, SC 29210

PRO SE, APPELLANT

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STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT ERR IN DENYING THE DEFENSE A CONTINUANCE TO CALL FORTH MATERIAL ~~WITNESS~~ EVIDENCE AND WITNESSES IN HIS DEFENSE TO PRESENT AN ADEQUATE DEFENSE AND CONTEST THE STATES EVIDENCE PURSUANT TO THE SOUTH CAROLINA CONSTITUTION; ARTICLE 1, SECTION 3; DUE PROCESS, EQUAL PROTECTION OF LAWS AND A FAIR TRIAL; ARTICLE 1, SECTION 14, WITNESSES, DEFENSE; AND ~~ARTICLE~~ ARTICLE 1, SECTION 15, CRUEL OR UNUSUAL PUNISHMENT AND THE UNITED STATES CONSTITUTION; 5TH AND 14TH AMENDMENTS, DUE PROCESS AND A FAIR TRIAL; 6TH AMENDMENT, CALL FORTH EVIDENCE AND WITNESS FOR A DEFENSE; 8TH AMENDMENT, MITIGATING EVIDENCE, CRUEL AND UNUSUAL PUNISHMENT. WHERE APPELLANT WAS CAUSED UNFAIR PREJUDICE BY NOT BEING ABLE TO ABLE TO CALL FORTH EVIDENCE TO PRESENT A DEFENSE AND DISPUTE THE STATE'S EVIDENCE?

DID THE TRIAL COURT ERR IN ADMITTING EVIDENCE THAT APPELLANT WAS "THE PRIME SUSPECT" AT "6 OR 7 O'CLOCK THE SAME DAY" OF TRIAL INCIDENT SOLELY BECAUSE A RICHLAND COUNTY ~~SHERIFF'S~~ SHERIFF'S OFFICER, KEVIN ISENHOWER, GAVE FOREST ACRES POLICE INVESTIGATOR RUSSELL SHUMARD APPELLANT MARTINEZ'S NAME BECAUSE OF "THE ROOT OF THE POISONOUS TREE," IN WHICH MARTINEZ WAS A SUSPECT BUT NO CHARGES COULD BE FILED, YET AFTER THE TRIAL INCIDENT, "THE FRUIT OF THE POISONOUS TREE," MARTINEZ WAS PLACED IN A UNUSUALLY SUGGESTIVE PHOTO LINEUP, ARRESTED AND CHARGED WITH NO EVIDENCE, ONLY BECAUSE OF "THE ROOT" AND A NECK TATTOO. YET DO NOT FIT DESCRIPTION GIVEN BY VICTIMS, NOR IDENTIFIED BY THE VICTIMS IN A UNUSUALLY SUGGESTIVE PHOTO LINEUP HE WAS IN BECAUSE OF WHAT THE OFFICER STATED PURSUANT TO RULE 404, SCRE, AND STATE V. JONES, 343 S.C. 562, 575 S.E.2d 813, (2001). WHERE APPELLANT MARTINEZ'S CHARACTER IS IMPROPERLY CALLED INTO QUESTION BY BEING NAMED "THE PRIME SUSPECT" SOLELY BECAUSE OF WHAT AN OFFICER STATED BECAUSE OF A SIMILAR ALLEGATION, NO CHARGES WERE FILED, TILL AFTER TRIAL INCIDENT, "THE FRUIT", THAT "THE ROOT" CAUSED APPELLANT TO BE WRONGFULLY NAMED "THE PRIME SUSPECT" AND THEN APPELLANT HAS ~~WITNESSES~~ SIMILAR ALLEGATIONS WITH NO EVIDENCE TO SUPPORT ANY OF THE CLAIMS AND IT CAUSED APPELLANT PREJUDICE THAT DENIED HIS RIGHT TO A FAIR TRIAL?

DID THE TRIAL COURT ERR IN ADMITTING EVIDENCE FROM RICHLAND COUNTY SHERIFF'S OFFICE, KEVIN ISENHOWER, THAT HE SEEN APPELLANT AT THE POLICE STATION PRIOR TO TRIAL INCIDENT PURSUANT TO RULE 404, SCRE, AND ~~STATE V. JONES, 343 S.C. 562, 575 S.E.2d 813, (2001)~~ WHERE OFFICER IMPROPERLY CALLED INTO QUESTION APPELLANT MARTINEZ'S CHARACTER AND CAUSED UNFAIR PREJUDICE TO HIS CHARACTER BEFORE THE JURY?

DID THE TRIAL COURT ERK IN ADMITTING EVIDENCE GATHERED FROM AN ILLEGAL SEARCH AND SEIZURE PURSUANT TO THE SOUTH CAROLINA STATE CONSTITUTION, ARTICLE I, SECTION 10, SEARCHS AND SEIZURES, AND THE UNITED STATES CONSTITUTION, 4TH AMENDMENT, SEARCH AND SEIZURES, SOUTH CAROLINA STATUTES, 17-29-20, 17-29-30, AND 17-29-40, ¹⁷⁻²⁹⁻¹¹⁰ AS WELL AS STATE AND FEDERAL RULES FOR FILING DOCUMENTS UNDER SEAL, UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA, 49.01: FILING DOCUMENTS UNDER SEAL. WHERE SPECIAL AGENT FROM SLED, MARK R. BERUBE, KNEW AND TESTIFIED THAT THE COURT ORDER HE STATED HE OBTAINED A JUDGE'S SIGNATURE AUTHORIZING THE INSTALATION OF A PEN REGISTER, TRAP, AND TRACE DEVICE TO BE PLACED ON APPELLANT'S MOTHER'S PHONE THAT HE POSSESSED AT ALL TIMES WAS SEALED WITH AN APPLICATION AND AFFIDAVIT WAS "FILED", "FILED UNDER SEAL" ACCORDING TO STATUTE THAT IS CLEARLY STATED IN THE "COPY" OF THE SAID FILED COURT ORDER WITH THE CLERK OF COURTS OFFICE. PURSUANT TO LOCAL CRIMINAL RULES FOR THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA, 49.01: FILING DOCUMENTS UNDER SEAL; (WHICH IS FEDERAL AND THE SAME RULES FOR STATE CRIMINAL, CIVIL AND ADMINISTRATIVE LAW COURT), UPCHURCH V. UPCHURCH, 367 S.C. 16, 24, 624 S.E. 2d 643, 646 (2006), "AN ORDER WASN'T VALID UNTIL IT WAS SIGNED BY THE JUDGE AND FILED WITH THE ~~CLERK~~ ^{CLERK} OF CLERK OF COURTS OFFICE." BOWMAN V. RICHLAND MEMORIAL HOSPITAL, 335 S.C. 88, 91, 515 S.E. 2d 259, 260 (Ct. App. 1999) (CITATION OMITTED), "EVEN A SIGNED BUT UNFILED ORDER IS STILL UNENFORCEABLE THAT IS BECAUSE THE ORDER DOES NOT BECOME VALID UNTIL IT IS ACTUALLY FILED WITH THE CLERK'S OFFICE." WHERE THERE IS NO RECORD OF "CASE NUMBER FC-14-03361" FOR A COURT ORDER AUTHORIZING ~~OR~~ INSTALATION OF A PEN REGISTER, TRAP AND TRACE DEVICE, NO APPLICATION OR NO AFFIDAVIT, NO MOTION TO SEAL OR NOTHING ON COURT RECORD WITH THE CLERK OF COURTS OFFICE, NOR WITH SLED. WHICH MAKES IT ILLEGAL AND USED ILLEGALLY ACCORDING TO LAW AND IT CAUSED APPELLANT UNFAIR PREJUDICE BECAUSE OF THE FRUIT OF THE POISONOUS TREE" AND ALL THE EVIDENCE GATHERED AFTER AND FROM THESE ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE, IS INADMISSIBLE IN THE COURT OF LAW AND CAN NOT BE USED AGAINST THE APPELLANT WHICH CAUSED UNFAIR PREJUDICE AND DENIED HIS GUARANTEED RIGHT TO A FAIR TRIAL AND EQUAL PROTECTION OF THE LAWS?

DID THE TRIAL COURT ERK IN ADMITTING AN UNCONVICTED PRIOR BAD ACT ALLEGATION PURSUANT TO RULE 404, SCRE, AND STATE V. WILE, 125 S.C. 406, 118 S.E. ~~803~~ 803 (1923) WHERE THERE WAS NO CLEAR AND CONVINCING EVIDENCE, NOT SUBJECT TO A CONVICTION AND ONLY ALLEGATIONS. WHERE APPELLANT MARTINEZ ALLEGEDLY COMMITTED SIMILAR CRIMES OF CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND KIDNAPPING SOME TIME BEFORE THE TRIAL INCIDENT WHERE HE WAS ON TRIAL FOR SEVERAL OFFENSES THAT INCLUDED CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND KIDNAPPING WHICH

WAS PREJUDICIAL TO APPELLANT BECAUSE THERE IS NO CLEAR AND CONVINCING EVIDENCE, NOR CONVICTION, NO LOGICAL CONNECTION, OR EVIDENCE CONNECTING THE SEPARATE ALLEGATIONS AND THE PROBATIVE VALUE WAS OUTWEIGHED BY THE PREJUDICIAL EFFECT?

DID THE TRIAL COURT ERR IN ADMITTING PHOTO EVIDENCE OF BRIONA HURSHMAN'S VAGINA PURSUANT TO RULE 403, SCRE. ~~WHERE~~ WHERE THIS EVIDENCE SHOULD OF BEEN EXCLUDED BECAUSE ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, WHERE THE PHOTO WAS ONLY SHOWN TO UNFAIRLY SERVE TO AROUSE THE SYMPATHY OR PREJUDICE OF THE JURY?

DID THE TRIAL COURT ERR IN ADMITTING EVIDENCE FROM A MENTAL EVALUATION FOR CRIMINAL RESPONSIBILITY WHERE THE FINDINGS ARE MISREPRESENTED AGAINST FACTS AND POLICE RECORDS AND ARE BASED FROM "THE ROOT OF THE POISONOUS TREE," FIRST OF THREE SEPARATE ALLEGED INCIDENTS, WHICH IS A SEPARATE, DIFFERENT UNCONVICTED ALLEGATION APPELLANT WAS NOT ON TRIAL FOR PURSUANT TO RULE 404, SCRE. WHERE APPELLANT WAS CAUSED UNFAIR PREJUDICE BECAUSE OF INACCURATE FINDINGS OF APPELLANTS CHARACTER OF BEING CRIMINALLY RESPONSIBLE WERE NOT BASED OFF OF OR FROM TRIAL INCIDENT WHERE HE WAS ^{ON} TRIAL FOR?

DID THE TRIAL COURT ERR IN ADMITTING IN COURT AND OUT OF COURT IDENTIFICATION OF APPELLANT MARTINEZ BY BRIONA HURSHMAN PURSUANT TO NEIL V. BIGGERS, 409 U.S. 188, 93 S. Ct 375 (1972) WHERE MS. HURSHMAN DID NOT IDENTIFY APPELLANT IN AN UNDULY SUGGESTIVE PHOTO UNEUP, THAT HE SHOULD NOT OF ~~BE~~ IN PURSUANT TO "THE FRUIT OF THE POISONOUS TREE" AND BEING DEEMED "THE PRIME SUSPECT" BY POLICE BECAUSE OF SIMILAR ALLEGATIONS "THE ROOT OF THE POISONOUS TREE" WHERE OVER TWO AND A HALF YEARS LATER, THE FIRST DAY OF PREVIOUS TRIAL, MS. HURSHMAN FABRICATED A STORY CLAIMING THAT HER HUSBAND, "DAYS AFTER" INCIDENT RECEIVED APPELLANTS NAME FROM LAW ENFORCEMENT, SHE GOOGLED IT, AND FOUND PHOTOS ~~OF~~ ON A FACEBOOK PAGE AND MADE A POSITIVE IDENTIFICATION, YET NEITHER HER NOR HER HUSBAND REPORTED THIS IDENTIFICATION TO NO ONE WHEN THEY BOTH HAD NUMEROUS OPPORTUNITIES TO WHEN THEY WERE WITH POLICE, SEXUAL TRAUMA THERAPISTS, VICTIMS ADVOCATES DURING COURT HEARINGS AND SOLICITORS. WHERE MS. HURSHMAN ONLY TOLD HER HUSBAND OF IDENTIFICATION WHO NOTIFIED NO ONE AND DID NOT TESTIFY CAUSED APPELLANT UNFAIR PREJUDICE AND DENIED HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAWS.

DID THE TRIAL COURT ERR IN ADMITTING IN COURT AND OUT OF COURT (FACEBOOK PHOTOS) IDENTIFICATION OF APPELLANT MARTINEZ BY BRIONA HURSHMAN PURSUANT TO NEIL V. BIGGERS, 409 U.S. 188, 93 S. Ct 375 (1972) WHERE MS. HURSHMAN WAS CAUED BY SOME "UNKNOWN"

CALLER WHO NOTIFIED HER ABOUT AN UNRELATED SIMILAR CASE, MS. TUCKER'S, BOND HEARING WHICH SHE ATTENDED. WHERE MS. HURSHMAN, DID NOT IDENTIFY MARTINEZ TO LAW ENFORCEMENT, NOR AUTHORITIES, THEN OVER TWO AND A HALF YEARS LATER WITH A FABRICATED FACEBOOK PHOTO, MORE CLEARER THAN THE PHOTO LINEUP, IDENTIFICATION OF APPELLANT. ~~THE~~ WHERE THE IDENTIFICATION WAS TAINTED BY THE CIRCUMSTANCES SURROUNDING THE BOND HEARING FOR AN UNRELATED SIMILAR ALLEGATION THAT CAUSED APPELLANT UNFAIR PREJUDICE THAT DENIED HIM HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAWS?

DID THE TRIAL COURT EVER IN ADMITTING IN COURT AND OUT OF COURT IDENTIFICATION OF APPELLANT MARTINEZ BY ASHLEY CUPEPPER AND CHARLISA MCRAE PURSUANT TO NEIL V. BIGGERS, 409 U.S. 188, 93 S.Ct. 375 (1972). WHERE APPELLANT WAS SUBJECTED TO AN UNDULY SUGGESTIVE PHOTO LINEUP HE SHOULD NOT OF BEEN IN BECAUSE HE WAS "THE PRIME SUSPECT" ONLY BECAUSE LAW ENFORCEMENT, KEVIN ISETHOWARD, CALLED INTO QUESTION THE CHARACTER OF APPELLANT ONLY BECAUSE HE WAS ACCUSED OF SIMILAR ALLEGATIONS "THE ROOT" WHERE THERE WAS NO PROBABLE CAUSE FOR AN ARREST. WHERE APPELLANTS CHARACTER WAS CALLED INTO QUESTION, ~~PROBABLE CAUSE FOR AN ARREST~~ PLACED IN A UNDULY SUGGESTIVE PHOTO LINEUP "THE FRUIT OF THE POISONOUS TREE" AND CAUSED APPELLANT UNFAIR PREJUDICE WHERE BOTH WITNESSES COULD NOT ACCURATELY DESCRIBE APPELLANT IN COURT, NOR IN THEIR STATEMENTS, NOR DESCRIBE ANY TATTOO LETTERING ON THE NECK OF ALLEGED PERSON THEY CLAIM TO OF SEEN WHICH DENIED APPELLANTS RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAWS?

^{OUT OF COURT FROM} DID THE TRIAL COURT EVER IN ADMITTING EVIDENCE OF IN COURT AND AN UNDULY SUGGESTIVE PHOTO LINEUP IDENTIFICATION OF APPELLANT BY ELEXIA TUCKER PURSUANT TO NEIL V. BIGGERS, 409 U.S. 188, 93 S.Ct. 375 (1972). WHERE THERE WAS NO IN-CAMERA NEIL V. BIGGERS HEARING WHERE MS. TUCKER DID NOT TESTIFY TO HER IDENTIFICATION OF APPELLANT IN COURT AND IN AN UNDULY SUGGESTIVE PHOTO LINEUP WHERE APPELLANT IS THE ONLY PERSON IN THE LINEUP WITH A TATTOO ABOVE HIS EYEBROW WHICH WAS AN IDENTIFYING FACTOR MS. TUCKER STATED IN HER DESCRIPTION OF THE ^{WITNESS} SUSPECT TO HER FATHER, GIRLFRIEND AND TO LAW ENFORCEMENT. WHERE APPELLANT WAS CAUSED UNFAIR PREJUDICE THAT DENIED HIM HIS GUARANTEED RIGHT TO A FAIR TRIAL UNDER THE 14TH AMENDMENT, DUE PROCESS CLAUSE AND ARTICLE I, SECTION 3 OF THE SOUTH CAROLINA STATE CONSTITUTION?

DID THE TRIAL COURT EVER IN ADMITTING APPELLANT'S INVOLUNTARY, PROMISE INDUCED STATEMENT TO FOREST ACRES POLICE FOR TRIAL INCIDENT PURSUANT TO JACKSON V. DENNO, 378 U.S. 368, 84 S.Ct. 1174, 12 L.Ed. 2d 908 (1964). WHERE APPELLANT WAS TAKEN TO FOREST ACRES POLICE DEPARTMENT, HANDCUFFED AND SHACKLED, WITHOUT HIS CONSENT OR KNOWLEDGE AND WAS COERCED BY POLICE DECEPTION TO SIGN A WAIVER OF RIGHTS NOT KNOWING

WHEN HE WAS UNDER ARREST AND WAS PROMISED MEDICAL ATTENTION, WHICH HE HAD BEEN SEEKING TO REMOVE MICROCHIP IMPLANTS FROM HIS HEAD WHICH ALL THREE POLICE WERE AWARE OF FROM OTHER POLICE OFFICERS AND HE BELIEVED HE WOULD BE ABLE TO ~~RE~~ "RESOLVE" HIS ISSUES AND BE ABLE TO PROVE TO POLICE THAT HE WAS INFECT MICROCHIPPED BY UTAH POLICE TO SHOW THAT HE HAD BEEN TELLING THE TRUTH. WHERE ~~CIRCUMSTANCES~~ "CIRCUMSTANCES EXISTS WHICH ESTABLISH THAT HIS WILL HAS BEEN OVERTBORN AND HIS CAPACITY FOR SELF-DETERMINATION CRITICALLY IMPAIRED." BECAUSE IT TOOK THREE POLICE OFFICERS TO KEEP HIM ON TOPIC BECAUSE HE ONLY WANTED TO TALK ABOUT HIS PROBLEMS WITH BEING MICROCHIPPED BY UTAH POLICE. WHERE THIS EVIDENCE WAS GATHERED ILLEGALLY AFTER ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE AND THEIR ILLEGAL ARREST WHICH IS ARGUED IN THIS ~~BRIEF~~ BRIEF, AND IS "THE FRUIT OF THE POISONOUS TREE" AND ANY AND ALL EVIDENCE GATHERED ILLEGALLY AND THEREFORE ILLEGAL AND INADMISSIBLE IN THE COURT OF LAW AND CAN NOT BE USED AGAINST APPELLANT, WHICH CAUSED HIM UNFAIR PREJUDICE THAT DENIED HIM HIS GUARANTEED RIGHTS TO A FAIR TRIAL IN THE DUE PROCESS OF LAWS?

DID THE TRIAL COURT EVER IN ADMITTING APPELLANT'S STATEMENT TO CITY OF COLUMBIA POLICE FOR TUCKER CASE PURSUANT TO JACKSON V. DENNO, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed 2d 908 (1964). WHERE APPELLANT DID NOT RECEIVE WARNING OF HIS RIGHTS FOR UNRELATED, SEPARATE ALLEGATIONS FROM DIFFERENT AGENCY WHERE APPELLANT REFUSED TO GIVE A STATEMENT, YET OFFICER WROTE A STATEMENT AND APPELLANT DENIED THE ALLEGATIONS AND STATED HE WAS LET INTO THE HOUSE ~~OUTSIDE~~ OF THE TUCKER'S WHOM APPELLANT KNOWS, MS. TUCKER LEFT WILLINGLY, AND A WITNESS WITNESSED THEM LEAVE THE HOUSE AND THAT THE SEX WAS CONSENTUAL WHICH IS NOT A CRIME. WHERE THIS EVIDENCE WAS GATHERED ILLEGALLY AFTER ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE AND THEIR ILLEGAL ARREST WHICH IS ARGUED PREVIOUSLY IN THIS BRIEF. WHICH IS "THE FRUIT OF THE POISONOUS TREE," AND ANY AND ALL EVIDENCE GATHERED ILLEGALLY AND THEREFORE ILLEGAL AND INADMISSIBLE IN THE COURT OF LAW AND CAN NOT BE USED AGAINST APPELLANT WHICH CAUSED HIM UNFAIR PREJUDICE AND DENIED HIM HIS RIGHT TO A FAIR TRIAL GUARANTEED HIM IN THE DUE PROCESS OF LAWS?

STATEMENT OF THE CASE

ON DECEMBER 6, 2014, THE RICHLAND COUNTY GRAND JURY INDICTED NATHAN MARTINEZ ON THE CHARGES OF BURGLARY FIRST DEGREE, ARMED ROBBERY, THREE COUNTS OF KIDNAPPING, CRIMINAL SEXUAL CONDUCT (CSC) FIRST DEGREE, AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. R. 61, 11.14 - R. 62, 11.1; R. 1783-1805. ON NOVEMBER 28 - DECEMBER 8, 2016, APPELLANT MARTINEZ PROCEEDED TO TRIAL BEFORE THE HONORABLE R. KNOX MCHAHON AND A JURY. APPELLANT MARTINEZ REPRESENTED HIMSELF WITH JASON KATA AS STANDBY COUNSEL. THE STATE WAS REPRESENTED BY E. WICK CAMPBELL, ~~KAREN~~ MEGHAN WALKER, AND JESSICA GODWIN R.I.

THE JURY FOUND MARTINEZ GUILTY ON ALL COUNTS AS INDICTED. R. 1767, 11.24 - R. 1768, 11.25. THE JUDGE SENTENCED MARTINEZ TO LIFE WITHOUT PAROLE ON THE BURGLARY FIRST DEGREE; THIRTY YEARS EACH ON THE ARMED ROBBERY, THREE COUNTS OF KIDNAPPING, CSC FIRST DEGREE; AND FIVE YEARS ON THE POSSESSION OF A GUN DURING A VIOLENT CRIME. R. 1780, 11.1 - R. 1781, 11.3.

MARTINEZ FILED A NOTICE OF APPEAL. THIS APPEAL FOLLOWS.

ON MARCH 27, 2014, BRIANA HURSHMAN, HER HUSBAND, AND THEIR TWO DAUGHTERS AGES FIVE AND ELEVEN WERE LIVING IN A THREE-STORY TOWNHOUSE IN FOREST ACRES. ON THE MORNING OF MARCH 27, 2014, MS. HURSHMAN WAS IN HER BEDROOM GETTING READY FOR HER JOB AT A SALON IN CAMDEN, AND HER TWO DAUGHTERS WERE GETTING READY FOR SCHOOL. HER HUSBAND HAD ALREADY LEFT FOR WORK. R. 448, 11.4 - R. 450, 11.11.

THE MAN MADE HER LAY DOWN ON HER BEDROOM FLOOR, AND HE TIED HER HANDS AND FEET WITH EXTENSION CORDS. THEN RETRIEVED THE OLDER DAUGHTER AND PUT THE GIRLS IN THE BATHROOM AND SHUT THE DOOR. ~~ROOSEVELT, R. 451, 11.14-24;~~ R. 451, 11.14-24; R. 452, 11.2-9; R. 457, 11.8-25. THE MAN HELD MS. HURSHMAN'S CELL PHONE AND HAD HER CALL HER WORK TO SAY SHE WOULD NOT BE IN. THERE WAS LIGHTING IN THE ROOM AND THE SUSPECT WAS "ON TOP" OF MS. HURSHMAN AND SHE STATED SHE GOT A GOOD LOOK AT HIM. HE THEN PROCEEDED TO ASSAULT MS. HURSHMAN SEXUALLY BUT WAS UNABLE TO PENETRATE HER VAGINA WITH HIS PENIS. HE THEN TOUCHED AND PENETRATED HER VAGINA WITH HIS FINGERS R. 458, 11.1- R. 464, 11.24.

FOREST ACRES POLICE ARRIVED AND MRS. HURSHMAN GAVE A VERBAL STATEMENT TO INVESTIGATOR RUSSELL SHUMARD AND GAVE HIM A DESCRIPTION OF THE SUSPECT AND THEN WENT TO THE HOSPITAL AND WAS EXAMINED BY A SEXUAL ASSAULT NURSE, BRIDGETT DE GUZMAN, WHO

TOOK PHOTOS AND DNA SWABS FROM THE AREAS SHE STATED SHE WAS TOUCHED AT AND MS. HURSHMAN GAVE THE NURSE A DESCRIPTION OF THE SUSPECT WHO ATTACKED HER WHICH WAS IN THE NURSE'S REPORT. R. 469, 11.17 - R. 470, 11.15; R. 488, 11.14 - R. 490, 11.1; R. 796, 11.6 - 22.

MS. HURSHMAN THEN MET WITH A SKETCH ARTIST AND GAVE THE DESCRIPTION OF THE SUSPECT WHO DREW A SKETCH THAT WAS SENT TO LAW ENFORCEMENT LOCALLY AND TO THE MEDIA. SHE EXPLAINED IN DETAIL THE DESCRIPTION OF THE SUSPECT AND THAT HE HAD A BIG NECK TATTOO WITH LETTERING BUT COULD NOT TELL WHAT THE LETTERS SPELLED OUT. SHE STATED THE SUSPECT HAD NO ACCENT BUT BELIEVED HE WAS HISPANIC. R. 470, 11.16-23; R. 462, 11.24 - R. 463, 11.9. THE NEXT DAY, MARCH 28, 2014, MS. HURSHMAN NOR HER OLDEST DAUGHTER WAS NOT ABLE TO IDENTIFY THE APPELLANT FROM A SUGGESTIVE PHOTO LINEUP THAT HE SHOULD NOT OF BEEN IN. R. 499, 11.22 - R. 501, 11.8; R. 549, 11.4-11.

AFTER SHOWN A PHOTO OF TWO RINGS BY INVESTIGATOR RUSSELL SHUMARD AT FOREST ACRES POLICE DEPARTMENT MS. HURSHMAN CHANGED HER STORY TO SHE WAS MISSING TWO RINGS WHICH ONE WAS HER HUSBAND'S WEDDING BAND BUT GAVE A DESCRIPTION THAT DOES NOT MATCH THE WEDDING BAND APPELLANT SOLD AT A PAWN SHOP. R. 472, 11.4-12; R. 492, 11.5 - R. 495, 11.4; R. 876, 11.5 - R. 878, 11.3.

MS. ELEXIA TUCKER LIVED IN COLUMBIA IN 2014. WHEN HER FATHER, CHRISTOPHER TUCKER SHOWED HER THE NEWS SKETCH OF THE MAN WHO ALLEGEDLY ASSAULTED MS. HURSHMAN, MS. TUCKER CALLED THE POLICE. SHE STATED THAT ON MARCH 25, 2014, AN "UNKNOWN MAN" HAD ASSAULTED HER. R. 908, 11.15 - 22. ACCORDING TO HER, SHE WAS STAYING AT HER FATHER'S HOUSE WHO WAS ASLEEP IN HIS ROOM. SHE CLAIMS SHE WAS WOKEN UP TO A MAN HOLDING A KNIFE TO HER NECK. THE MAN TOOK HER IN HER FATHER'S CAR TO AN ISOLATED PLACE NEAR HOPKINS. THERE HE HAD SEXUAL INTERCOURSE WITH HER AND THEN MADE HER PERFORM ORAL SEX ON HIM. HE THEN STARTED TO RETURN HER TO HER FATHER'S HOUSE BUT HE GOT OUT OF THE CAR NEAR LOWER RICHLAND SCHOOL AND SHE DROVE HOME. SHE DID NOT NOTIFY POLICE NOR ~~PROCEED~~ WENT TO THE HOSPITAL BUT CALLED POLICE AFTER HER FATHER SHOWED HER THE SKETCH. YET, SHE KNEW THE APPELLANT AND TOLD HER FATHER

WHO SHE BELIEVED THE SUSPECT WAS SOON AFTER RETURNING HOME FROM THE ALLEGED INCIDENT. R. 900, 11.8 - R. 909, 11.5.

SHE ~~STATED~~ STATED TO POLICE OF NUMEROUS TATTOOS ON THE MAN'S NECK ~~AND EYEBROW~~ AND EYEBROW. SHE IDENTIFIED MARTINEZ IN A HIGHLY SUGGESTIVE PHOTO LINE-UP WHERE HE IS THE ONLY PERSON IN THE LINEUP WITH ANY TATTOO, ESPECIALLY ON HIS NECK AND EYEBROW. R. 927, 11.16 - 24. YET, ONCE SHE RETURNED HOME AND TOLD HER GIRLFRIEND, BRITTANY, ABOUT THE ALLEGATIONS ON HER PHONE AND HER FATHER, SHE WAS ABOUT 99 PERCENT SURE THAT IT WAS "MARTINEZ, FROM BEING AT HER FATHER'S HOUSE BEFORE. R. 923, 11.18 - R. 927, 11.16.

INVESTIGATOR RUSSELL SHUMARD WITH THE FOREST ACRES POLICE DEPARTMENT RECEIVED A PHONE CALL FROM KEVIN ISENHWARD FROM RICHLAND COUNTY SHERIFF'S DEPARTMENT WHO SEEN THE SKETCH SENT TO LAW ENFORCEMENT AND DUE TO AN ACCUSATION OF A BURGLARY FIRST DEGREE AND CSC FIRST DEGREE THAT IS "THE ROOT OF THE POISONOUS TREE" THAT ~~MARTINEZ~~ MARTINEZ COOPERATED AND GAVE A STATEMENT WITH NO ARREST AND TOOK A LIE DETECTOR AND NO CHARGES COULD BE FILED BECAUSE THERE WAS NO EVIDENCE NOR PROBABLE CAUSE AND EVEN WITH THEN, GOOD LAW 16-3-657, NO CORROBORATION OF VICTIM NEEDED. BUT AFTER MS. HURSHMAN'S ALLEGATIONS, UPON ARREST, CHARGES WERE FILED TO FURTHER PREJUDICE MARTINEZ. YET, KEVIN ISENHWARD TOLD INVESTIGATOR SHUMARD MARTINEZ'S NAME AT "6 OR 7 O'CLOCK" THE SAME DAY AS INCIDENT IN FOREST ACRES AND HE BECAME THE "PRIME SUSPECT" WITH NO EVIDENCE, PLACED IN A PHOTO LINEUP AND WITH OTHER CRIME STOPPER TIPS THAT WERE NOT INVESTIGATED. R. 1131, 11.10 - R. 1133, 11.5; R. 878, 11.4 - R. 881, 11.8. ONE OF HIS INVESTIGATORS, CHARLES MORRISON, DID RESEARCH ON MARCH 28, 2014 AND LEARNED THAT MARTINEZ HAD CONDUCTED A TRANSACTION AT A LOCAL PAWN SHOP MANAGED BY KENDALL DECKER WHERE HE SOLD TWO RINGS THAT DID NOT MATCH THE DESCRIPTION GIVEN BY MS. HURSHMAN OF A MEN'S WEDDING BAND, EVEN AFTER SHE WAS SHOWN A PHOTO OF TWO RINGS. R. 472, 11.4-12; R. 492, 11.5 - R. 495, ~~11.4~~ 11.4; R. 876, 11.5 - R. 878, 11.3. MR. DECKER IDENTIFIED MARTINEZ IN A SUGGESTIVE PHOTO LINEUP. R. 684, 11.1 - R. 688, 11.24. INVESTIGATOR SHUMARD

OBTAINED WARRANTS FOR NATHAN MARTINEZ ON MARCH 30, 2014. HE THEN CONTACTED THE FUGITIVE TASK FORCE FOR ASSISTANCE IN APPREHENDING MARTINEZ. R. 1082, 11.1 - R. 1083, 11.19.

WARREN CAVANAUGH WITH THE FUGITIVE TASK FORCE STATED THROUGH INVESTIGATION HAD OBTAINED THE NUMBER TO A TELEPHONE, "GOVERNMENT VERIZON WIRELESS" THAT WAS OUT OF MINUTES BUT THAT MARTINEZ WAS A "USER" OF. HE STATED A GPS DEVICE LOCATOR WAS USED TO LOCATE THE PHONE AND MARTINEZ ON APRIL 2, 2014. R. 1280, 11.1 - R. 1288, 11.7.

LEUTENANT MARK R. BERUBE, A SPECIAL AGENT WITH SLED, STATED HE "ONLY OBTAINED A GPS LOCATOR" FROM THE PHONE COMPANY ON MARCH 31, 2014 DUE TO "EXIGENT CIRCUMSTANCES" OF THE CASE. HE STATED THIS COULD BE DONE UP TO 48 HOURS PRIOR TO OBTAINING A COURT ORDER FOR THE GPS LOCATOR. HE STATED TO THE JUDGE WHO ASKED HIM FOR THE "CLOCKED COPY", APPLICATION AND AFFIDAVIT THAT WAS REQUIRED WITH THE COURT ORDER WHEN HE GAVE A "COPY" OF THE SAID COURT ORDER AND HE STATED THAT THE ORDER WAS SEALED AND FILED IN THE SAME COURTHOUSE WE WERE IN. TO KNOW IT SHOULD OF BEEN FILED WITH THE CLERK OF COURT AND HE STATED EVERYTHING WAS FILED WITH THE CLERK OF COURTS OFFICE. R. 35, 11.11-23; R. 357, 11.19 - R. 360, 11.18. YET, THERE IS NOTHING "FILED" OR "FILED UNDER SEAL", AS STATED BY THE SOLICITORS, R. 35, 11.11-23, ON THE "COPY" OF SAID "FILED" COURT ORDER, WITH THE CLERK OF COURTS OFFICE IN RICHLAND COUNTY JUDICIAL CENTER FOR AN ORDER TO PLACE A PEN TRAP AND TRACE DEVICE, LEGALLY, PURSUANT TO STATUTE, ON ~~OUR~~ MARTINEZ'S MOTHER'S "GOVERNMENT (BECAUSE OF GOVERNMENT FUNDING, SHE WAS ELIGIBLE FOR A FREE PHONE, "OBAMA PHONE") VERIZON WIRELESS, NOT T-MOBILE. INC. AS THE ORDER STATES IS THE PHONE COMPANY, WHICH IT IS NOT, WITH A GPS LOCATOR. THE JUDGE REQUESTED A "CLOCKED COPY FROM THE CLERK OF COURTS OFFICE" FOR WHAT WAS ON FILE IN THE CLERK'S OFFICE BECAUSE MR. BERUBE PRESENTED A "COPY" OF SAID "FILED", "FILED UNDER SEAL" COURT ORDER TO THE JUDGE. R. 357, 11.19 - R. 360, 11.18. AFTER THE JUDGE ASKED FOR ~~AN AFFIDAVIT AND AN APPLICATION~~ AN AFFIDAVIT AND AN APPLICATION PRESENTED TO THE COURT MR. BERUBE GOES ON TO STATE TO THE

JUDGE ON R. 359 10 - R. 360, 11. ~~10~~ 14.

10. THE OFFICER: YES, SIR, THE ORIGINAL APPLICATION ~~THAT WAS~~

11. THAT GOES WITH THAT. I'M TRYING TO LOCATE THAT, SIR.

12. THE COURT: ALL RIGHT. THIS IS THE ORDER SIGNED BY

13. A CIRCUIT JUDGE, JAMES R. BARBER, THE 1ST DAY OF

14. APRIL, 2014, FOR PHONE NUMBER 803-979-2894. IS THAT -- ~~WAS~~

15. THAT YOUR MOTHER'S PHONE?

16. MR. MARTINEZ: YES, SIR.

17. THE COURT: AND THE FINAL PARAGRAPH OF THIS ORDER

18. IS: IT IS ORDERED THAT THE APPLICATION -- THAT THE ORDER

19. AND THE APPLICATION BE SEALED UNTIL OTHERWISE ORDERED BY

20. THE COURT. I NOTICE THIS ORDER THERE'S NOT A CLERK'S SEAL.

21. THERE'S NOT A CLOCK-IN STAMP.

22. THE OFFICER: NO, YOUR HONOR. THAT IS THE ORDER

23. THAT WE'RE TRYING TO LOCATE THAT WAS ON FILE WITH THE

24. CLERK'S OFFICE. I NOTICED THAT EARLIER. I HAVE A COPY OF

25. THAT AVAILABLE. BUT THE ORDER WAS THE MOST IMPORTANT.

1. THE COURT: SO THE CLERK'S OFFICE FILED BY

2. SC-42-03361.

3. THE OFFICER: YES, YOUR HONOR.

4. THE COURT: SO THIS IS A COPY.

5. THE OFFICER: THAT'S CORRECT, YOUR HONOR.

6. THE COURT: ALL RIGHT. WELL, I AM ORDERING THAT

7. THIS -- I'M NOT HAVING TO UNSEAL THIS BECAUSE THIS COPY IS

8. NOT SEALED, BUT IT IS JUDGE BARBER'S ORDER CONSISTANT WITH

9. 17-29-30(B)2 AND BOTH THE STATE AND THE DEFENSE MAY HAVE A

10. COPY OF THAT ORDER.

11. IF YOU WOULD PLEASE CONTINUE TO LOOK FOR THE

12. FILED COPY SO THAT WE HAVE BOTH THE ORDER AND THE

13. APPLICATION.

14. THE OFFICER: YES, SIR.

ALL OF WHICH MR. BERUBE CONTRADICTS AND WAS ALLOWED TO
CONTRADICT IN LATER TESTIMONY TWICE ON THE STAND. R. 702,

11.10 - R. 709, 11.6; R. 1294, 11.20 - R. 1299, 11.6 BUT KNEW

THAT THE ORDER HAD TO BE FILED WITH CLERK OF COURTS

OFFICE AND THAT HE IS THE ONLY PERSON AT SLED WITH THIS

COURT ORDER. R. 1298, 11.9 - 17. NOTHING IS ON COURT RECORD

AND NOTHING WAS LOCATED AFTER A SEARCH BY FOUR CLERKS

IN THE CLERK OF COURTS OFFICE AND SLED WAS CALLED BY ~~THEIR~~

THEIR OFFICE AND THEY DO NOT HAVE NOTHING PERTAINING TO

THE SAID FILED COURT ORDER UNDER SEAL AT SLED ~~RECORD~~

NEITHER, AS TESTIFIED BY THE CLERK, GAIL BROADNAX, FROM

~~THE COURT ORDER~~ CLERK OF COURTS OFFICE BECAUSE THERE IS NOTHING FILED, NOTHING FILED UNDER SEAL, NOR RECEIVED PERTAINING TO SAID FILED COURT ORDER, NO COURT ORDER, NO APPLICATION, NO AFFIDAVIT, NOTHING. WHICH ACCORDING TO STATUTE STATED BY THE JUDGE HIMSELF, THE SOLICITORS STATED IT WAS FILED UNDER SEAL IN THAT COURTHOUSE, MR. BERUBE ~~RED~~ TOLD THE JUDGE IT WAS FILED WITH THE CLERK OF COURTS OFFICE AND AS THE JUDGE READ FROM THE "COPY" OF THE COURT ORDER IT WAS TO BE "FILED UNDER SEAL." R. 35, 11.11-23; R. 718, 11.7 - R. 720, 11.17; R. 1306, 11.9 - R. 1314, 11.23. NOTHING MORE WAS FOUND NOR ABLE TO PROVIDE ANYTHING OF SAID COURT ORDER USED TO LOCATE MARTINEZ'S CELL PHONE AND ARREST HIM. YET, THE JUDGE STATED THAT "THE ORIGINAL WOULD BE FILED WITH THE CLERK OF COURTS OFFICE - THOSE ARE FILED WITH THE CLERK'S OFFICE." R. 591, 11.16 - R. 592, 11.19. THEN IN HIS RULING FOR THE MOTION TO SAID COURT ORDER HE CONTRADICTS HIMSELF WHO QUOTED STATUTE OF ORDER BEING FILED UNDER SEAL AND HE HIMSELF ASKED FOR THE ORIGINAL COURT ~~COR~~ ORDER, APPLICATION AND AFFIDAVIT WHICH THERE IS NO RECORD OF BESIDES THE "COPY," ONLY A COPY OF SAID "FILED" COURT ORDER, NOTHING FILED UNDER SEAL AND NO AFFIDAVIT TO SHOW PROBABLE CAUSE TO GET A JUDGE'S APPROVAL FOR ISSUANCE OF COURT ORDER, NO APPLICATION OR ANY ORIGINAL THAT WAS CLOKED-IN BY THE CLERK OF COURTS OFFICE TO BE ON COURT RECORD DENIED MARTINEZ'S 4TH AMENDMENT, ILLEGAL SEARCH AND SEIZURE MOTION AGAINST STATUTE HE HIMSELF QUOTED AND STATED IN COURT BECAUSE HE KNEW THE LAW AS STATED BY HIMSELF, BY STATING NOTHING BEING ON COURT RECORD WITH THE CLERK OF COURTS OFFICE AS THE STATUTE CLEARLY STATES AND HE HIMSELF STATED, AS BEING "MINISTERIAL ISSUES TRANSPORTING THE ORDER FROM SLED TO THE CLERK." R. 728, 11.12 - R. 729, 11.10. MARTINEZ FILED A MOTION FOR A MISTRIAL FOR THE JUDGE ABUSING HIS DISCRETION ~~AGAINST~~ AGAINST LAW AND CAUSING HIM UNDOE AND UNFAIR PREJUDICE BY ALLOWING ~~OLD~~ CRIMES COMMITTED BY SLED THAT LED TO ILLEGALLY OBTAINED EVIDENCE THAT VIOLATED MARTINEZ'S RIGHTS AND CAUSED HIM AN UNFAIR TRIAL. R. 729, 11.13 - R. 743, 11.2.

MARTINEZ WAS LOCATED SITTING IN A MINIVAN WITH HIS MOTHER AT HIS BROTHER'S HOUSE IN THE EARLY MORNING HOURS OF APRIL 2, 2014. HE WAS ARRESTED AND UNBERKNOWING TO WHERE HE WAS BEING TAKEN TO, WAS NOT NOTIFIED NOR REQUESTED TO GO SPEAK WITH ANYONE, WAS TAKEN TO THE FOREST ACRES POLICE DEPARTMENT. R. 1092, 11.5 - R. 1094, 11.16. ~~APPROX~~ MARTINEZ WAIVED HIS RIGHTS NOT KNOWING WHY HE WAS UNDER ARREST AND BECAUSE HE WAS TOLD HE WOULD RECEIVE HELP WITH GETTING MEDICAL ATTENTION TO HAVE MICROCHIPS REMOVED FROM HIS HEAD BECAUSE OF WHAT FOREST ACRES POLICE, CHARLES MORRISON AND ~~R~~ RUSSELL SHUMARD PROMISED TO GET THE SOLICITOR'S OFFICE AND COURT STAFF TO GET HIM THE REQUESTED MEDICAL ATTENTION. ALL THREE OFFICERS, TWO DIFFERENT AGENCIES, FOREST ACRES AND CITY OF COLUMBIA POLICE, DURING COMPLETE INTERVIEW TOLD CONTRADICTIVE DIFFERENT VERSIONS OF INTERVIEW, EACH DIFFERENT TIME THEY TESTIFIED. R. 830, 11.4 - R. 833, 11.10; R. 324, 11.11 - R. 335, 11.4; R. 881, 11.21 - R. 898, 11.13. MARTINEZ GAVE A PROMISED INDIVIDUAL STATEMENT THAT OFFICER SHUMARD WROTE FOR HIM. R. 1094, 11.14 - R. 1100, 11.15; R. 1103, 11.22 - R. 1112, 11.4. MR. MARTINEZ WROTE IN HIS STATEMENT THAT HE WANTED TO RESOLVE THESE ISSUES AND PROVE THAT HE ~~WAS NOT~~ HAS BEEN STATING TO POLICE AND MENTAL HEALTH THAT HE HAS BEEN TELLING THEM THE TRUTH ABOUT BEING, ILLEGALLY MICROCHIPPED BY THE UTAH POLICE AT THE END OF THE STATEMENT. R. 840, 11.19 - R. 841, 11.15.

INVESTIGATOR COLIN D. BAILEY WITH THE ~~CARD~~ CITY OF COLUMBIA POLICE WAS PRESENT DURING MARTINEZ'S STATEMENT. INVESTIGATOR BAILEY AT THE END OF FOREST ACRES INTERVIEW THE CONDUCTED A SEPARATE INTERVIEW FOR A SEPARATE DIFFERENT CASE, MS. TUCKERS, WITHOUT ADVISING MARTINEZ HE HAS RIGHTS AND COULD EXERCISE THEM IF HE SO CHOOSE TOO. R. 1103, 11.22 - R. 1112, 11.4; R. 285, 11.15 - R. 305, 11.5. MARTINEZ DENIED THE ALLEGATIONS AND STATED HE KNOWS THE TUCKERS AND STATED MS. TUCKER WILLINGLY WENT WITH HIM AND HAD SEX WITH HIM CONSENTUALLY AND DENIED ANY RAPE, A BURGLARY, KIDNAPPING, OR DIDN'T REMEMBER AND KNEW NOTHING ABOUT ANY OF THE ALLEGATIONS IN HIS STATEMENT TO COLIN D. BAILEY. R. 1121, 11.14 - R. 1124, 11.22.

MARTINEZ WHO REPRESENTED HIMSELF AT TRIAL, MADE SEVERAL PRETRIAL AND INCOURT MOTIONS ~~AND~~ THAT THE JUDGE DENIED RENDERED MARTINEZ UNDUPE AND UNFAIR PREJUDICE BY HIS RIGHTS BEING VIOLATED AND ALLOWED HIGHLY PREJUDICIAL ILLEGALLY OBTAINED EVIDENCE

TO BE USED TO DENY MARTINEZ HIS RIGHTS TO DUE PROCESS, ILLEGAL SEARCH AND SEIZURE, SUGGESTIVE PHOTO LINEUP AND IDENTIFICATIONS IN AND OUT OF COURT TO BE ALLOWED AND BECOMING A "PRIME SUSPECT" BECAUSE OF ANOTHER UNRELATED ALLEGATION BY KEVIN ISENTHWARD FROM RICHLAND COUNTY SHERIFF'S DEPARTMENT, ALL WHICH DENIED MARTINEZ'S RIGHT TO A FAIR TRIAL, WHICH ARE ISSUES THAT ARE BEING ARGUED BY MARTINEZ'S APPELLANT PRO SE BRIEF. THE JUDGE DENIED MARTINEZ'S MOTION FOR A CONTINUANCE. MARTINEZ WAS NOT ABLE TO PREPARE A DEFENSE BECAUSE HIS STANDING COUNSEL FAILED TO OBTAIN AN INVESTIGATOR TO INVESTIGATE THE STATES EVIDENCE AND CONTEST IT WITH EVIDENCE. NO JEWELRY EXPERT WAS OBTAINED AND MARTINEZ NEED TO INVESTIGATE DNA EVIDENCE FROM HIS DNA EXPERT, DR. CHARLOTTE J. WORD, PROVIDED TO HIM THE DAY OF TRIAL, WHO FOUND ANOTHER DNA PROFILE PRESENT ON MS. HURSHMAN'S VAGINA FROM SOMEONE WHO WAS NOT TESTED, WHICH IS MATERIAL EVIDENCE AND THE DENIAL OF THE CONTINUANCE DENIED MARTINEZ THE ABILITY TO PROVIDE DNA EVIDENCE OF ANOTHER PERSON ON THE VICTIM'S VAGINA THAT IS NOT HIS. R. 20, 11.11 - R. 28, 11.17; R. 986, 11.13 - R. 987, 11.6; R. 1181, 11.3 - 21; R. 1450, 11.12 - R. 1476, 11.10. THE JUDGE DENIED MARTINEZ'S MOTION FOR A TAINT HEARING BECAUSE OF HIS HURSHMAN'S FABRICATED AND PERJURED TESTIMONY THAT THE STATE KNEW ABOUT, DID NOT CORRECT AND ENCOURAGED. R. 52, 11.24 - R. 58, 11.6. THE JUDGE RULED FOLLOWING A JACKSON V. DENNO HEARING THAT MARTINEZ'S STATEMENT CONCERNING THE HURSHMAN CASE WAS ADMISSIBLE WHEN THIS EVIDENCE IS THE RESULT OF ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE AND AN ILLEGAL SEARCH AND SEIZURE OCCURED BECAUSE THEY DID NOT HAVE PROPER LEGAL AUTHORIZATION TO USE THE PEN TRAP AND TRACE DEVICE USED TO LOCATE AND ARREST MARTINEZ, ACCORDING TO STATUTE, BECAUSE NOTHING WAS ON COURT RECORD, FILED UNDER SEAL IN THE CLERK OF COURTS OFFICE. NOR DID SLED HAVE NOTHING TO PERTAINING TO SAID "FILED" COURT ORDER. R. 718, 11.7 - R. 721, 11.5. MR. BERUBE TESTIFIED TO "ONLY" OBTAINING A GPS LOCATOR FROM PHONE COMPANY, YET FORESTACRES POLICE RUSSEL SHUMARD HAD OTHER ~~DOB~~ CALLER AND PHONE USAGE FROM

"03/29", A DAY PRIOR TO "48 HOUR EXIGENT CIRCUMSTANCES" ACCORDING TO STATUTE, THAT WAS OBTAINED BY FUGITIVE TASK FORCE OFFICER, WARREN Cavanaugh, WHO RECEIVED THE INFORMATION RELAYED TO HIM BY SLED. R. 711, 11.8 - R. 712, 11.15; R. 1280, 11.7 - R. 1288, 11.7 WHICH GOES AGAINST ONLY "OBTAINING GPS LOCATOR AND THE "48 HOUR EXIGENT CIRCUMSTANCES." THE STATEMENT WAS GIVEN UNVOLUNTARY ~~AND~~ ACCORDING TO CASE LAW WHERE VOLUNTARY SIGNING OF WAIVER IS ENDED WHEN CIRCUMSTANCES EXISTS WHICH ESTABLISH THAT MARTINEZ'S WILL WAS OVERBORNE AND HIS CAPACITY FOR SELF-DETERMINATION CRITICALLY IMPAIRED. R. 296, 11.12 - R. 311, 11.1. THE JUDGE ALSO RULED FOLLOWING ANOTHER JACKSON V DENNO HEARING WHERE HE ALLOWED THE STATEMENT OF INVESTIGATOR COLID D. BAILEY FROM CITY OF COLUMBIA, MS. TUCKER'S CASE, STATEMENT MARTINEZ DENIED THE ALLEGATIONS AND WAS NOT ADVISED OF HIS MIRANDA RIGHTS FOR SEPARATE DIFFERENT ALLEGATIONS FROM DIFFERENT POLICE AGENCY. R. 287, 11.19 - R. 289, 11.13; R. 1113, 11.10 - R. 1120, 11.14; R. 332, 11.2 - R. 333, 11.11. THE JUDGE ALSO RULED FOLLOWING A NEIL V BIGGERS HEARING THAT THE OUT OF COURT AND IN COURT IDENTIFICATION BY MS. HURSHMAN WERE ADMISSIBLE WITH NO EVIDENCE OR TESTIMONY TO SUPPORT CLAIMS OF MS. HURSHMAN CLAIMED THE FIRST DAY OF PREVIOUS TRIAL, TWO AND A HALF YEARS LATER, WITH A FABRICATED STORY THAT DAYS AFTER INCIDENT HER HUSBAND RECEIVED A NAME FROM LAW ENFORCEMENT AND SHE DID A GOOGLE SEARCH AND FOUND PICTURES OF MARTINEZ ON HIS FACEBOOK PAGE WHICH WERE CLEARER THAN THE PHOTO LINEUP. SHE THEN NOTIFIED ONLY HER HUSBAND, NOT ANY AUTHORITIES OF THIS POSITIVE IDENTIFICATION WHEN HER AND HER HUSBAND HAD NUMEROUS OPPORTUNITIES TO NOTIFY NUMEROUS DIFFERENT POLICE, SEXUAL TRAUMA THERAPISTS, VICTIMS ADVOCATES AND SOLICITORS AT COURT DURING HEARINGS. NEITHER HER NOR HER HUSBAND NOTIFIED NO ONE OF THE FACEBOOK IDENTIFICATION. THE ONLY PERSON MS. HURSHMAN NOTIFIED WAS HER HUSBAND, WHO NEVER TESTIFIED. THE JUDGE ALLOWED THE FACEBOOK AND IN COURT IDENTIFICATION. R. 236, 11.5-17; R. 241, 11.9 - R. 244, 11.24; R. 390, 11.1 - R. 396, 11.23. MS. HURSHMAN WAS ALSO AT A BOND HEARING FOR THE UNRELATED ALLEGATIONS ~~AND~~ CASE WITH MS. TUCKER ABOUT A MONTH AFTER ARREST AND STATED SOME UNKNOWN CALLER CALLED AND NOTIFIED HER ABOUT THE UNRELATED CASES BOND

HEARING WHICH SHE ATTENDED. WHICH IS PREJUDICIAL BECAUSE THE IDENTIFICATION MUST BE FREE OF AND INDEPENDANT OF ANY LATER SUGGESTION BY ATTENDING AN UNRELATED ALLEGED INCIDENT THAT ONLY CAUSED MARTINEZ UNFAIR PREJUDICE WITH MULTIPLE SIMILAR ALLEGED ALLEGATIONS TO IMPROPERLY BOLSTER IDENTIFICATION. R. 236, 11.18 - R. 247, 11.20. THE JUDGE ALSO ALLOWED IDENTIFICATIONS FROM CHARUSA MCKRAE, WHO DID NOT KNOW THE DIFFERENCE BETWEEN ~~SUN~~ SUNRISE OR STILL DARK OUTSIDE AND ASHLEY CULPEPPER WHO STATED THEY SEEN MARTINEZ IN THE AREA YET GAVE THE SAME IDENTIFYING CHARACTERISTICS AS SKETCH AND DETAILS TO MEDIA WHICH DO NOT ~~BE~~ DESCRIBE MARTINEZ, NOR COULD EITHER EYE WITNESS IDENTIFY ANY NECK TATTOO SPELLING OR PROPERLY DESCRIBE MARTINEZ WHILE LOOKING AT HIM IN COURT AND WERE BIASED WITNESSES DUE TO PREVIOUS TRIAL. R. 137, 11.7 - R. 141, 11.22; R. 620, 11.5 - R. 630, 11.21; R. 696, 11.6 - R. 697, 11.17. THE JUDGE STATED HE ~~OR~~ RULED TO MS. TUCKER'S NEIL V. BIGGERS HEARING, WHEN THERE WAS NO NEIL V. BIGGERS HEARING FOR MS. TUCKER'S IDENTIFICATION. MS. TUCKER TESTIFIED THAT MARTINEZ IS THE ONLY PERSON IN THE PHOTO LINEUP WITH A EYEBROW TATTOO WHICH IS HIGHLY SUGGESTIVE AND UNFAIRLY PREJUDICIAL. R. 392, 11.1-13; R. 929, 11.16-24. MARTINEZ OBJECTED TO IN COURT AND PHOTO LINEUP IDENTIFICATION BY MS. TUCKER. R. 909, 11.6 - R. 911, 11.8.

IN ANOTHER PRETRIAL MOTION, ~~THE~~ MARTINEZ MOVED TO SUPPRESS A PRIOR BAD ACT THAT IS ONLY ALLEGATIONS AND NOT SUBJECT OF A CONVICTION AND HIGHLY PREJUDICIAL OF MS. TUCKER'S SIMILAR ALLEGATIONS PURSUANT TO STATE V. WILE, SUPRA. THE STATE ARGUED THAT THE CASES WERE VERY SIMILAR AND MET THE COMMON SCHEME OR PLAN EXCEPTION. R. 410, 11.24 - R. 415, 11.12. MARTINEZ ARGUED AGAINST THE TUCKER CASE BEING ADMITTED BECAUSE THERE IS NO EVIDENCE OF AN EXACT DATE, NO CLEAR AND CONVINCING EVIDENCE, ONLY THE PERJURED TESTIMONY OF MS. TUCKER, AND THE TUCKER CASE WAS ONLY ALLEGATIONS AND NOT SUBJECT TO A CONVICTION AND THE STATE WOULD NOT PROCEED TO TRIAL (BECAUSE OF NUMEROUS FAST AND SPEEDY TRIAL MOTIONS AND MOTIONS TO DISMISS THE TUCKER

INDICTMENTS) AND ONLY WANTED TO USE THE TUCKER CASE TO CAUSE UNLAWFUL AND UNFAIR PREJUDICE IN THE MS. HURSHMAN TRIAL. MARTINEZ ARGUED THAT THERE IS NO "LOGICAL CONNECTION" NOR NO EVIDENCE LINKING OR CONNECTING THESE CASES TOGETHER IN NO WAY. R. 415, 11.13 - R. 418, 11.8.

THE JUDGE RULED THAT THE CASES WERE "CLEARLY INTERTWINED TO THE EXTENT THAT THE IDENTIFICATION AND COMMON SCHEME OR PLAN COULD NOT BE EXTRACTED ONE FROM THE OTHER." AND STATED THIS BECAUSE HE STATED "THE REAL CRUXES OF THE SIMILARITY BETWEEN MS. TUCKER'S INCIDENT AND MS. HURSHMAN'S IS THAT OF THE SKETCH BY MS. HURSHMAN SPURS MS. TUCKER TO REPORT THE CASE ALTHOUGH SHE KNEW IN A BROAD SENSE OF THAT TERM KNEW THE PERPETRATOR AS SHE TESTIFIED IN THE CONVERSATION WITH HER FATHER AFTER THE EVENT, BUT WITHIN THE NARROW TIME FRAME OF WHEN SHE SAW THAT SKETCH, SHE REPORTED TO POLICE." WHICH IS NO LOGICAL NOR ANY KIND OF CONNECTION BETWEEN THE CASES BECAUSE ACCORDING TO MS. TUCKER AND THE JUDGE STATES FROM HER TESTIMONY THAT MS. TUCKER KNEW WHO THE PERPETRATOR WAS BEFORE A SKETCH AND EVEN WITH A SKETCH, IT DOES NOT CONNECT NOR INTERTWINE THESE SEPARATE ALLEGED INCIDENTS TOGETHER. THE JUDGE RULED THAT THE EVIDENCE, MS. TUCKER'S TESTIMONY ALONE, DID MEET THE STANDARD OF CLEAR AND CONVINCING UNDER 404(b). AND HE RULED THAT THE PROBATIVE VALUE WAS NOT OUTWEIGHED BY THE DANGERS OF UNFAIR PREJUDICE. R. 420, 11.1-8.

MS. TUCKER DID TESTIFY DURING TRIAL AND GAVE DIFFERENT TESTIMONY THAN PREVIOUS TESTIMONY AND CONTRADICTED HER OWN STATEMENT AND WAS ALLOWED TO IDENTIFY MARTINEZ IN COURT AND IN A PHOTO LINEUP THAT VIOLATED MARTINEZ'S DUE PROCESS BY HIM BEING THE ONLY PERSON IN THE LINEUP WITH A EYEBROW TATTOO THAT MS. TUCKER STATED THE SUSPECT HAD. MARTINEZ OBJECTED TO THE IN COURT AND PHOTO LINEUP IDENTIFICATION. THERE WAS NO NEIL V. BIGGERS HEARING FOR MS. TUCKER'S IDENTIFICATION OF MARTINEZ YET THE JUDGE STATED HE RULED FOR MS. TUCKER'S IDENTIFICATION. R. 899, 11.14-~~18~~, R. 933, 11.22; R. 390, 11.1-13; R. 909, 11.6 - R. 911, 11.8.

NO FINGERPRINTS WERE COLLECTED. R. 873, 11.11-19. NO DNA FROM MS. TUCKER CASE. R. 976, 11.4-~~18~~ R. 980, 11.1.

THERE WAS NO MATCH ON DNA EVIDENCE FROM MS. HURSHMAN'S CELL PHONE TO MARTINEZ AS STATED BY RACHEL GRANT WHO IS THE DNA ANALYSIS, R. 966, 11.22 - R. 969, 11.2. AS STATED BY DR. CHARLOTTE J. WORD, DEFENSE DNA EXPERT, R. 1173, 11.24 - R. 1179, 11.18, AND AS STATED BY GREY AMICK, RICHLAND COUNTY SHERIFF'S OFFICE DNA LAB DIRECTOR, RACHEL

GRANTS BOSS, STATED THERE IS NO MATCH BUT MARTINEZ'S ALLELE'S ARE PRESENT AND HE COULD NOT BE EXCLUDED. R. 1418, 11.24 - R. 1419, 11.20. ALL THREE DNA EXPERTS TESTIFIED TO THE CELL PHONE COVER DNA BEING A "COMPLEX MIXTURE AND THE EXACT NUMBER OF CONTRIBUTORS IS UNKNOWN YET NEEDED FOR AN ACCURATE TRUE ALLELE PROBABILITY RESULT. R. 981, 11.17 - R. 984, 11.2; R. 1174, 11.14 - R. 1179, 11.19; R. 1425, 11.13 - R. 1446, 11.9.

MARTINEZ FILED TO HAVE THE DNA RETESTED BECAUSE OF ~~DOO~~ DISCREPANCIES AND THE STATE DOING ANOTHER TEST AFTER RECEIVING DR. CHARLOTTE J. WORDS OPINION AS WELL AS BECAUSE DNA EXPERT DR. WORD FOUND ANOTHER DNA PRESENT ON MS. HURSHMAN'S LABIA MAJORA, VAGINA AREA WHERE SHE TESTIFIED TO BEING FORCEFULLY TOUCHED BY ATTACKER NOT CONSISTANT WITH NO ONE TESTED DNA PROFILE. R. 461, 11.17 - R. 20; R. 1181, 11.3-21; R. 1238, 11.12 - R. 1241, 11.11; R. 1771, 11.20 - R. 1772, 11.20.

MARTINEZ AFTER TRIAL OBTAINED AN APPLICATION FROM THE SOUTH CAROLINA SUPREME COURT AND FILED THE APPLICATION FOR ~~FO~~ FORENSIC DNA TESTING, CASE NUMBER 2014-GS-400-4849-50, ON MARCH 17, 2017 WITH THE RICHLAND COUNTY JUDICIAL CENTER, CLERK OF COURTS OFFICE, WHICH IS STILL PENDING. MARTINEZ, AFTER TRIAL LEARNED ABOUT OTHER EVIDENCE PERTAINING TO HIS DNA AND THE HURSHMAN FAMILIES THAT HE STATES IN HIS APPLICATION THAT IS MATERIAL. THE SAME DNA FOUND ON MS. HURSHMAN'S LABIA MAJORA THAT IS TOO WEAK FOR MATCH PURPOSES BY DNA EXPERT AND ANALYZER. R. 986, 11.13 - R. 987, 11.19. LOCUS D2S1338 THERE IS A 12 ON THE MONS PUBIS AS WELL AS THE LABIA MAJORA. AT LOCUS ~~D5S~~ D5S818 THERE IS A 19 ALLELE ON THE MONS PUBIS AS WELL AS THE LABIA MAJORA. WHICH MEANS SOMEONE ELSE DNA PROFILE, OTHER THAN ANYONE TESTED DNA IS PRESENT IN (2) TWO SEPARATE LOCATIONS OF MS. HURSHMAN'S VAGINA AREA. ALSO, MARTINEZ SHARES 17 OUT OF 39 ALLELES WITH THE HUSBAND ROBERT HURSHMAN, WHICH MAKES THEM SCIENTIFICALLY RELATED AND MARTINEZ SHARES 11 OUT OF 39 ALLELES WITH MS. HURSHMAN. MARTINEZ HAS 40 ALLELES AND THESE ALLELE SHARES WERE USED IN THE TRUE ALLELE PROBABILITY TEST AND THE STATE WAS ABLE TO STATE MARTINEZ'S PROFILE IS PRESENT AND IT CAUSED HIM UNFAIR PREJUDICE. R. 1223, 11.8 - R. 1229, 11.4. ALL OF THIS WAS UNKNOWN TO MARTINEZ AT TIME OF TRIAL YET HIS APPLICATION FOR FORENSIC DNA TESTING IS FILED AND PENDING TO GET AN UNBIASED ~~OPINION~~ REPORT.

MARTINEZ'S DEFENSE WAS THAT HE DID NOT COMMIT THE

ALLEGATIONS. R. 1564, 11.7-9. MARTINEZ ARGUED THE ADMISSIBILITY OF HIS INVOLUNTARY STATEMENTS FROM BOTH CASES BECAUSE OF THE 4TH AMENDMENT ILLEGAL SEARCH AND SEIZURE AND ANYTHING OBTAINED AFTER THE ILLEGAL ACTIONS OF SLED AND LAW ENFORCEMENT IS INADMISSIBLE IN THE COURT OF LAW. R. 721, 11.11 - R. 730, 11.6. MARTINEZ ARGUED THAT HE HAS MICROCHIP IMPLANTED INTO HIS HEAD AND HE WANTED MEDICAL ATTENTION TO REMOVE THEM WHICH THE THREE OFFICERS WERE AWARE OF BECAUSE OF WHAT WAS STATED TO THEM BY OTHER LAW ENFORCEMENT, HEIDI JACKSON, HOLLY WAGNER AND KEVIN ISENHARDT ALL FROM RICHLAND COUNTY SHERIFF'S DEPARTMENT, R. 260, 11.6 - R. 261, 11.6; R. 1152, 11.6-23; R. 342, 11.17 - R. 343, 11.25; R. 344, 11.19 - R. 347, 11.25; ~~R. 1556, 11.14 - R. 1562, 11.19; R. 1250, 11.15 - R. 1252, 11.3; R. 1256, 11.13 - R. 1258, 11.24.~~ ^{BEFORE} ~~THE~~ INTERROGATION HE WAS TOLD BY FOREST ACRES POLICE THAT THEY WOULD ASSIST HIM IN GETTING MEDICAL ATTENTION TO GET THEM REMOVED FROM THE SOLICITOR'S OFFICE AND COURT STAFF, WHICH IS WHY MARTINEZ STATED BY BELIEVING THAT HE WAS GOING TO GET MEDICAL ATTENTION TO REMOVE THE MICROCHIPS FROM HIS HEAD AND BE ABLE TO ~~RE~~ RESOLVE ISSUES AND SHOW THAT HE HAS BEEN TELLING THE TRUTH ABOUT BEING MICROCHIPPED BY UTAH POLICE. R. 1094, 11.14 - R. 1100, 11.15; R. 840, 11.19 - R. 841, 11.15. MARTINEZ ARGUED THAT HIS WILL WAS OVERBORN BY THE CIRCUMSTANCES OF POLICE AUTHORITIES AND FEAR OF POLICE WHO HE BELIEVES WANT TO KILL HIM BY THE SAID MICRO CHIP IMPLANTS AND PROMISES OF GETTING MEDICAL ATTENTION TO REMOVE MICRO CHIPS WHICH IS ALL DIRECTLY RELATED TO AND HAS A DIRECT BEARING ON THE CIRCUMSTANCES EXISTING WHICH ESTABLISHES HIS WILL WAS OVERBORN AND HIS CAPACITY FOR SELF-DETERMINATION CRITICALLY IMPAIRED. WHICH WAS STATED BY INVESTIGATOR BAILEY THAT IT TOOK THREE OFFICERS TO KEEP MARTINEZ ON TOPIC BECAUSE HE ONLY WANTED TO TALK ABOUT HIS ISSUES WITH BEING MICROCHIPPED BY UTAH POLICE. R. 1021, 11.3 - R. 1024, 11.9.

ON ~~SEPTEMBER~~ AUGUST 12, 2015 MARTINEZ HAD A MENTAL EVALUATION FOR CRIMINAL RESPONSIBILITY BY THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, DR. ROZANNA TROSS. MARTINEZ WROTE A COMPLAINT CONCERNING THE FINDINGS AND WANTED TO DISPUTE THEM BECAUSE THE FINDINGS ARE NOT ACCURATE BECAUSE MS. TROSS DID NOT HAVE ALL THE MEDICAL RECORDS TO HAVE AN ACCURATE DIAGNOSIS AND SHE MISSTATES RECORDS AND WHAT MARTINEZ STATED TO HER. MORE IMPORTANTLY, HER FINDINGS FOR MARTINEZ BEING CRIMINALLY RESPONSIBLE ARE NOT CORRECT. SHE CLAIMS THAT BECAUSE OF "THE ROOT OF POISONOUS TREE," FIRST FALSE ACCUSATIONS THAT WERE NO CHARGES FILED, NO ARREST, TILL AFTER MS. HURSHMAN'S INCIDENT ~~AND~~ AFTER HIS ARREST, "THE FRUIT OF THE POISONOUS

TREE." DR TROSS STATES IN HER FINDINGS MARTINEZ'S KNOWLEDGE, AWARENESS AND/OR APPRECIATION BY AVOIDING HIS MOTHER'S HOUSE TO AVOID BEING ARRESTED FOR CHARGES FROM THE FIRST ~~PAGE~~ OF 3 SEPARATE ALLEGATIONS WHICH IS FALSE. THERE WERE NO CHARGES TO AVOID ARREST. MARTINEZ COOPERATED WITH LAW-ENFORCEMENT BY GOING TO POLICE STATIONS TO GIVE A STATEMENT AND THEN A UET-DETECTOR TEST THAT MS. TROSS HAD IN THE POLICE REPORTS PROVIDED FROM DISCOVERY MATERIAL THAT STATES NO CHARGES WERE FILED UNTIL AFTER, AFTER THE ^{MS. TUCKER AND} MS. HURSHMAN ARREST WHICH CAUSED UNFAIR PREJUDICE BY DR. TROSS FINDINGS BASED OFF OF OTHER ALLEGATIONS THAT HE IS NOT ON TRIAL FOR AND HE STATED THIS AND OBJECTED TO DR. TROSS ~~BE~~ PREJUDICIAL TESTIMONY. R.1344, 11.4 - R.1357, 11.15.

IN SEPTEMBER 2016, MARTINEZ HAD A MENTAL EVALUATION FOR COMPETENCY TO STAND TRIAL. HIS THEN ATTORNEY WHOM WAS INEFFECTIVE, RETAINED AN EXPERT WHO IS A FORMER CO-WORKER AT THE DEPARTMENT OF MENTAL HEALTH TO STATES EXPERT, DR. ROZANNA TROSS AND CAUSED MARTINEZ UNFAIR PREJUDICE BY NOT OBTAINING FAVORABLE EXPERT TESTIMONY ~~WHICH~~ COMPETENCY EVALUATOR, COLBI SUTTON, FOUND MARTINEZ WAS COMPETENT TO STAND TRIAL.

DR. JOSE CHAVEZ TESTIFIED THAT HE WAS TREATING MARTINEZ AT THE ALVIN S. GLENN DETENTION CENTER. HIS DIAGNOSIS WAS THAT MARTINEZ HAD A DELUSIONAL DISORDER WHICH WAS A MENTAL ILLNESS CHARACTERIZED AS PSYCHOSIS. HE SAID THAT MARTINEZ HAD A FIXED DELUSION THAT THE GOVERNMENT HAD INSTALLED MICRO CHIPS IN HIS BRAIN. R.1260, 11.1 - R.1262, 11.24.

MARTINEZ TESTIFIED TO STATE FACTS ON RECORD, CONTRADICT, CORRECT, ARGUE AND TO CLARIFY THE STATES MISREPRESENTATIONS OF FACTS. R.1550, 11.1 - R.1607, 11.22.

THE JURY FOUND MARTINEZ GUILTY OF ALL CHARGES AS INDICTED R.1768.

ARGUMENTS

THE TRIAL COURT ERRED IN DENYING THE DEFENSE A CONTINUANCE TO CALL FORTH MATERIAL EVIDENCE AND WITNESSES IN HIS DEFENSE PURSUANT TO THE SOUTH CAROLINA STATE CONSTITUTION; ARTICLE 1, SECTION 3, DUE PROCESS AND EQUAL PROTECTION OF LAWS; ARTICLE 1, SECTION 14, WITNESSES AND DEFENSE; ARTICLE 1, SECTION 15, CRUEL AND UNUSUAL PUNISHMENT; THE UNITED STATES CONSTITUTION; 5TH AND 14TH AMENDMENT, DUE PROCESS AND A FAIR TRIAL; 6TH AMENDMENT, CALL FORTH EVIDENCE AND WITNESSES FOR A DEFENSE; 8TH AMENDMENT, MITIGATING EVIDENCE, CRUEL AND UNUSUAL PUNISHMENT. WHERE APPELLANT WAS CAUSED UNFAIR PREJUDICE BY NOT BEING ABLE TO CALL FORTH EVIDENCE TO PRESENT A DEFENSE AND DISAITE THE STATES EVIDENCE.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S DENIAL OF A CONTINUANCE TO CALL FORTH EVIDENCE TO PRESENT AN ADEQUATE DEFENSE. APPELLANT HAD FUNDING FOR A JEWELRY EXPERT AND AN INVESTIGATOR TO AID IN HIS DEFENSE YET HE HAD TO DEPEND ON HIS STANDBY COUNSEL TO RETAIN THE EXPERTS WHICH HE FAILED TO DO. APPELLANT RECEIVED THE DAY OF TRIAL FROM HIS DNA EXPERT, DR. CHARLOTTE J. WORD, FROM THE DNA REPORTS FROM THE STATE'S EXPERTS, THERE IS SOMEONE NOT TESTED, DNA PRESENT ON MS. HURSHMAN'S VAGINA AND THAT THE STATES REPORTS DID NOT GIVE ACCURATE FINDINGS AND ARE NOT CONSISTANT WITH THEIR OWN REPORTS. APPELLANT PROVIDED PREVIOUS TO TRIAL TO THE ~~PROBABLE~~ TRIAL JUDGE EVIDENCE OF MITIGATING EVIDENCE AND MOTIONED FOR FUNDING TO OBTAIN A NEUROLOGIST TO INVESTIGATE MASSES INSIDE OF APPELLANTS HEAD THAT APPELLANT PROVIDED A PREVIOUS CAT SCAN OF HIS HEAD. THE TRIAL JUDGE TOOK IT UNDER ADUISEMENT BUT NEVER RULED ON IT. HE STATED HE TOLD APPELLANT'S STANDBY COUNSEL WHO NEVER NOTIFIED APPELLANT.

THE SOUTH CAROLINA STATE CONSTITUTION PROVIDES:

ARTICLE 1, SECTION 3, DUE PROCESS AND EQUAL PROTECTION OF LAWS;
ARTICLE 1, SECTION 14, CALL FORTH WITNESSES AND PRESENT A DEFENSE;
ARTICLE 1, SECTION 15, CRUEL AND UNUSUAL PUNISHMENT.

THE UNITED STATES CONSTITUTION PROVIDES:

5TH AMENDMENT, DUE PROCESS OF LAWS;
6TH AMENDMENT, CALL FORTH EVIDENCE AND WITNESSES FOR A DEFENSE;
8TH AMENDMENT, MITIGATING EVIDENCE, CRUEL AND UNUSUAL PUNISHMENT;
14TH AMENDMENT, DUE PROCESS AND RIGHT TO A FAIR TRIAL.

APPELLANT WAS NOT ABLE TO PRESENT AN ADEQUATE DEFENSE AND TO HAVE THE REMAINING DNA RETESTED FOR A CLEARER AND UNBIASED OPINION. WHERE AFTER TRIAL APPELLANT FOUND OTHER EVIDENCE THAT IS MATERIAL. THERE IS THE SAME DNA PRESENT IN TWO DIFFERENT AREAS OF MS. HURSHMAN'S VAGINA FROM SOMEONE NOT TESTED AND APPELLANT SHARES NUMOROUS ALLELE SHARES WITH BOTH HUSBAND, ROBERT HURSHMAN AND VICTIM, BRIANA HURSHMAN, THAT WERE USED IN THE PROBABILITY TEST WHICH MAKES IT APPEAR THAT APPELLANTS DNA PROFILE IS PRESENT WHEN

THEY ARE ALLEGE SHARES WITH THE HURSHMAN'S, WHERE APPELLANT WAS DENIED HIS GUARANTEED CONSTITUTIONAL RIGHTS THAT CAUSED HIM UNFAIR PREJUDICE AND WAS ABLE TO PRESENT AN ADEQUATE DEFENSE AND WAS WRONGFULLY CONVICTED.

THE TRIAL COURT ERRED IN ADMITTING EVIDENCE THAT APPELLANT WAS "THE PRIME SUSPECT" AT 6 OR 7 O'CLOCK THE SAME DAY" OF TRIAL INCIDENT SOLELY BECAUSE A RICHLAND COUNTY SHERIFF'S OFFICER, KEVIN ISENHOWER, GAVE FOREST ACRES POLICE INVESTIGATOR RUSSELL SHUMARD APPELLANT'S NAME BECAUSE OF "THE ROOT OF THE POISONOUS TREE" IN WHICH APPELLANT WAS A SUSPECT BUT NO CHARGES COULD BE FILED, TILL AFTER THE TRIAL INCIDENT, "THE FRUIT OF THE POISONOUS TREE", MARTINEZ WAS PLACED IN AN UNDULY SUGGESTIVE PHOTO LINEUP, ARRESTED AND CHARGED WITH NO EVIDENCE, ONLY BECAUSE OF "THE ROOT" AND A NECK TATTOO. YET, DO NOT FIT DESCRIPTION GIVEN BY THE VICTIMS, NOR IDENTIFIED BY THE VICTIMS IN AN UNDULY SUGGESTIVE PHOTO LINEUP HE WAS IN BECAUSE OF WHAT THE OFFICER STATED PURSUANT TO RULE 404, SCRE, AND STATE V. JONES, 343 S.C. 562, 575 S.E. 2d 813 (2001), WHERE APPELLANT MARTINEZ'S CHARACTER IS IMPROPERLY CALLED INTO QUESTION BY BEING NAMED "THE PRIME SUSPECT" SOLELY BECAUSE OF WHAT AN OFFICER STATED BECAUSE OF A SIMILAR ALLEGATION, NO CHARGES WERE FILED, TILL AFTER TRIAL INCIDENT "THE FRUIT", THAT "THE ROOT" CAUSED APPELLANT TO BE WRONGFULLY NAMED "THE PRIME SUSPECT" AND THEN APPELLANT HAS SIMILAR ALLEGATIONS WITH NO EVIDENCE TO SUPPORT ANY OF THE CLAIMS AND IT CAUSED APPELLANT PREJUDICE THAT DENIED HIS RIGHT TO A FAIR TRIAL.

APPELLANT WAS CAUSED UNFAIR PREJUDICE BY THE TRIAL COURT'S ADMISSION FROM FOREST ACRES POLICE INVESTIGATOR RUSSEL SHUMARD THAT HE RECEIVED A CALL FROM KEVIN ISENHOWER, FROM RICHLAND COUNTY SHERIFF'S OFFICE WHO SEEN A LAW ENFORCEMENT BULLETIN WITH A SKETCH OF A SUSPECT AT "6 OR 7 O'CLOCK THE SAME DAY" OF TRIAL INCIDENT AND GAVE HIM APPELLANT'S NAME AND FROM THAT HE BECAME "THE PRIME SUSPECT." OFFICER KEVIN ISENHOWER TESTIFIED TO THE SAME AND STATED IT WAS BECAUSE APPELLANT WAS A SUSPECT IN ANOTHER SIMILAR ALLEGATION WHICH CALLS APPELLANT'S CHARACTER IMPROPERLY INTO QUESTION.

RULE 404, SCRE, PROVIDES:

EVIDENCE OF A PERSON'S CHARACTER OR A TRAIT OF CHARACTER IS NOT ADMISSIBLE FOR PURPOSE OF PROVING ACTION IN CONFORMITY THEREWITH ON A PARTICULAR OCCASION.

IN STATE V. JONES, 343 S.C. 562, 575 S.E. 2d 813 (2001) THE SUPREME COURT HELD THAT IN A PROSECUTION FOR MURDER, FIRST DEGREE BURGLARY, ARMED ROBBERY AND CRIMINAL CONSPIRACY, VICTIM'S STEPSON ~~TESTIFIED~~ STATEMENT THAT HE TOLD POLICE THAT JONES MIGHT HAVE HAD A GRUDGE AGAINST VICTIM WAS INADMISSIBLE IDENTIFICATION OF JONES AS THE SUSPECT OF THE CRIMINAL INVESTIGATION.

"EVIDENCE THAT POLICE BEGAN AN INVESTIGATION BECAUSE

OF REPORTS OF CRIMINAL ACTIVITY [IS] ADMISSIBLE ..., IDENTIFICATION OF AN INDIVIDUAL AS THE SUSPECT OF A CRIMINAL INVESTIGATION, BASED UPON SPECULATION AND EFFECTIVELY CALLING INTO QUESTION THAT INDIVIDUALS CHARACTER IS NOT. "

IN GERMAN V. STATE, 325 S.C. 25, 478 S.E.2d 687 (1996) THE COURT REVERSED A CONVICTION WHERE THERE WAS REFERENCES TO A POLICE OFFICER RECEIVING TIPS THAT THE DEFENDANT WAS SELLING CRACK COCAINE. THEY HELD THESE REFERENCES WERE IMPROPER COMMENTS ON THE DEFENDANT'S CHARACTER, AND DISTINGUISHED STATE V. BROWN, 317 S.C. 55, 451 S.E.2d 888 (1994). EVIDENCE THAT POLICE BEGAN AN INVESTIGATION BECAUSE OF REPORTS OF CRIMINAL ACTIVITY IS ADMISSIBLE UNDER STATE V. BROWN, SUPRA. HOWEVER, IDENTIFICATION OF AN INDIVIDUAL AS THE SUSPECT OF A CRIMINAL INVESTIGATION, BASED ON SPECULATION AND EFFECTIVELY CALLING INTO QUESTION THAT INDIVIDUALS CHARACTER, IS NOT. GERMAN V. STATE, SUPRA.

THE ADMISSION OF THIS EVIDENCE CAUSED APPELLANT UNFAIR PREJUDICE BY HIS RIGHTS BEING VIOLATED AND BEING DEEMED "THE PRIME SUSPECT" SOLELY BECAUSE OF OTHER ALLEGATIONS, "THE ROOT OF THE POISONOUS TREE", BY POLICE OFFICER, KEVIN ISENHARD, STATING TO LEAD INVESTIGATOR OF TRIAL INCIDENT, FROM FOREST ACRES POLICE, RUSSEL SHUMARD, APPELLANT'S NAME WITH NO EVIDENCE, ONLY SPECULATION. BOTH OFFICERS TESTIFIED ON TRIAL RECORD TO APPELLANT BEING "THE PRIME SUSPECT" AT "6 OR 7 O'CLOCK THE SAME DAY" OF TRIAL INCIDENT ONLY BECAUSE OF KEVIN ISENHARD IMPROPERLY CALLING INTO QUESTION APPELLANT'S CHARACTER BECAUSE OF THE "ROOT", WHICH WERE ALLEGATIONS THAT NO CHARGES COULD BE FILED ON BECAUSE OF NO PROBABLE CAUSE. THE PREJUDICIAL EFFECT WAS A VIOLATION TO APPELLANT'S RIGHTS THAT CAUSED HIM TO BE ARRESTED AND CHARGED WITH CRIMINAL CHARGES HE SHOULD NOT OF BEEN. WHICH DENIED HIM HIS RIGHT TO A FAIR TRIAL. DUE PROCESS AND EQUAL PROTECTION OF LAWS.

THE TRIAL COURT ERRED IN ADMITTING EVIDENCE FROM RICHLAND COUNTY SHERIFF'S OFFICER, KEVIN ISENHARD, THAT HE SEEN APPELLANT AT THE POLICE STATION PRIOR TO TRIAL INCIDENT ~~BE~~ PURSUANT TO RULE 404, SCRE, WHERE OFFICER IMPROPERLY CALLED INTO QUESTION APPELLANT'S MARTINEZ'S CHARACTER AND CAUSED UNFAIR PREJUDICE TO HIS CHARACTER BEFORE THE JURY.

THE APPELLANT WAS CAUSED UNFAIR PREJUDICE BY THE TRIAL COURT'S ADMISSION FROM POLICE OFFICER, KEVIN ISENHARD, TO THE JURY THAT HE SEEN APPELLANT AT THE POLICE STATION PRIOR TO TRIAL INCIDENT AND LEFT THE JURY TO IMPROPERLY SPECULATE CONCERNING APPELLANT'S CHARACTER AS TO WHY HE WAS AT THE POLICE STATION.

RULE 404, SCRE, PROVIDES:
EVIDENCE OF A PERSONS CHARACTER OR TRAIT OF CHARACTER IS

NOT ADMISSIBLE FOR PURPOSE OF PROVING ACTION IN
CONFORMITY THEREWITH ON A PARTICULAR OCCATION.

THE ADMISSION OF THIS EVIDENCE CAUSED APPELLANT UNFAIR
PREJUDICE THAT VIOLATED HIS RIGHTS WHICH DENIED HIM HIS RIGHT TO
A FAIR TRIAL, DUE PROCESS AND EQUAL PROTECTION OF LAWS.

THE TRIAL COURT ERRED IN ADMITTING EVIDENCE GATHERED FROM AN
ILLEGAL SEARCH AND SEIZURE PURSUANT TO THE SOUTH CAROLINA STATE
CONSTITUTION, ARTICLE I, SECTION 10, SEARCHES AND SEIZURES; AND
THE UNITED STATES CONSTITUTION, 4TH AMENDMENT, SEARCH AND
SEIZURES; SOUTH CAROLINA STATUTES, 17-29-20, 17-29-30, 17-29-40
AND 17-30-140; AS WELL AS STATE AND FEDERAL RULES FOR FILING
DOCUMENTS UNDER SEAL. WHERE SPECIAL AGENT FROM SLED, MARK R.
BERUBE, KNEW AND TESTIFIED THAT THE COURT ORDER HE STATED HE
OBTAINED A JUDGE'S SIGNATURE AUTHORIZING THE INSTALLATION OF A
PEN REGISTER, TRAP AND TRACE DEVICE TO BE PLACED ON APPELLANT'S
MOTHER'S PHONE THAT HE POSSESSED AT ALL TIMES, WAS SEALED WITH AN
APPLICATION AND AFFIDAVIT WAS "FILED", "FILED UNDER SEAL" ACCORDING
TO STATUTE THAT IS CLEARLY STATED IN THE "COPY" OF THE SAID "FILED"
COURT ORDER WITH THE CLERK OF COURTS OFFICE. PURSUANT TO LOCAL
CRIMINAL RULES FOR THE UNITED STATES DISTRICT COURT, DISTRICT OF
SOUTH CAROLINA, 49.01: FILING DOCUMENTS UNDER SEAL; (WHICH IS
FEDERAL AND THE SAME RULES FOR STATE CRIMINAL, CIVIL AND
ADMINISTRATIVE LAW COURT), UPCHURCH V. UPCHURCH, 367 S.C. 16, 24,
629 S.E.2d 643, 646 (2006). "AN ORDER WASN'T VALID UNTIL IT WAS
SIGNED BY THE JUDGE AND FILED WITH THE CLERK OF COURTS OFFICE;"
BOWMAN V RICHMOND MEMORIAL HOSPITAL, 335 S.C. 88, 91, 515 S.E.2d
259, 260 (Ct. App. 1999) (CITATIONS OMITTED); "EVEN A SIGNED BUT
UNFILED ORDER IS STILL ~~EN~~ UNENFORCEABLE. THAT IS BECAUSE THE
ORDER DOES NOT BECOME VALID UNTIL IT IS ACTUALLY FILED WITH THE
CLERK'S OFFICE." WHERE THERE IS NO RECORD OF "CASE NUMBER FC-14-0336"
FOR A COURT ORDER AUTHORIZING INSTALLATION OF A PEN REGISTER, TRAP AND
TRACE DEVICE, NO APPLICATION OR NO AFFIDAVIT, NO MOTION TO SEAL OR
NOTHING ON COURT RECORDS WITH THE CLERK OF COURTS OFFICE, NOR WITH
SLED. WHICH MAKES IT ILLEGAL AND USED ILLEGALLY ACCORDING TO LAW AND IT
CAUSED APPELLANT UNFAIR PREJUDICE BECAUSE OF "THE ~~ROOT~~ FRUIT OF THE
POISONOUS TREE" AND ALL THE EVIDENCE GATHERED AFTER AND FROM THESE
ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE, IS INADMISSIBLE IN THE
COURT OF LAW AND CAN NOT BE USED AGAINST THE APPELLANT WHICH
CAUSED UNFAIR PREJUDICE AND DENIED HIS GUARANTEED RIGHT TO A FAIR
TRIAL AND EQUAL PROTECTION OF THE LAWS.

APPELLANT WAS CAUSED UNFAIR PREJUDICE BY THE TRIAL COURT'S ADMISSION
OF EVIDENCE OBTAINED BY ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE
BY NOT HAVING A "FILED" COURT ORDER AUTHORIZING A GPS LOCATOR ON
APPELLANT'S MOTHER'S PHONE HE POSSESSED TO LOCATE AND ARREST APPELLANT
FOR CHARGES HE WAS A SUSPECT IN SOLELY BECAUSE OF OTHER ALLEGATIONS,
"THE ROOT OF THE POISONOUS TREE" AND DEEMED "THE PRIME SUSPECT" FOR

TRIAL INCIDENT. SPECIAL AGENT FROM SLED, MARK R. BERUBE TESTIFIED AT TRIAL TO "ONLY OBTAINING A GPS LOCATOR" FROM PHONE COMPANY WHICH COULD BE DONE 48 HOURS DUE TO "EXIGENT CIRCUMSTANCES." YET FOREST ACKES INVESTIGATOR RUSSELL SHUMARD RELIEVED PHONE USAGE, TIME, LOCATION AND CALLER INFORMATION FROM "3/29", (THERE ARE THIRTY ONE DAYS IN THE MONTH OF MARCH WHERE APRIL 1, 2014 IS WHEN SAID COURT "FILED" COURT ORDER WAS SUPPOSEDLY OBTAINED), FROM FUGITIVE TASK FORCE, WARREN CAVANAUGH, WHO WAS RELAYING INFORMATION HE OBTAINED FROM SLED TO FOREST ACKES WHICH CLEARLY CONTRADICTS EVIDENCE OF ONLY ~~OBTAINING~~ A GPS LOCATOR AND 48 HOURS PRIOR TO OBTAINING A COURT ORDER. THE SAID "COPY" OF "FILED", "FILED UNDER SEAL" COURT ORDER STATES "T-MOBILE INC" IS THE SAID PHONE COMPANY FOR PHONE NUMBER "803 979 2894", YET EVIDENCE STATES IT'S A "GOVERNMENT VERIZON WIRELESS" PHONE. APPELLANT'S MOTHER RELIEVED GOVERNMENT FINANCIAL ASSISTANCE AND WAS ELIGIBLE FOR A "FREE OBAMA PHONE" THAT PROVIDED FREE PHONE SERVICE. WHERE "T-MOBILE INC. ~~PROVIDES~~" IS NOT THE PHONE SERVICE PROVIDER BECAUSE THEY DO NOT GIVE FREE PHONES NOR FREE SERVICE, ONLY A DISCOUNT FOR THOSE WHO ~~RECEIVED~~ RELIEVED FINANCIAL GOVERNMENT ASSISTANCE FROM THEIR BILL, SO THEY ~~COULD~~ COULD NOT AUTHORIZE NOTHING TO BE INSTALLED ON A PHONE THAT THEY DO NOT PROVIDE SERVICE FOR.

THE UNITED STATES CONSTITUTION, 4TH AMENDMENT AND THE SOUTH CAROLINA STATE CONSTITUTION, ARTICLE I, SECTION 10, PROVIDES:
THE RIGHT OF THE PEOPLE TO BE SEURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES AND UNREASONABLE INVASIONS OF PRIVACY SHALL NOT BE VIOLATED, NO WARRANTS SHALL ISSUE BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, THE PERSON OR THING TO BE SEIZED, AND THE INFORMATION TO BE OBTAINED.

THE CODE OF LAWS OF SOUTH CAROLINA 17-29-20 (A) PROVIDES:
EXCEPT AS PROVIDED IN THIS SECTION, NO PERSON MAY INSTALL OR USE A PEN REGISTER OR A TRAP AND TRACE DEVICE WITHOUT FIRST OBTAINING A COURT ORDER UNDER SECTION 17-29-40.

THE CODE OF LAWS OF SOUTH CAROLINA 17-29-30 PROVIDES:
CERTAIN OFFICIALS MAY MAKE APPLICATION FOR ORDER AUTHORIZING OR APPROVING INSTALLATION AND USE OF PEN REGISTER OR TRAP AND TRACE DEVICE.

THE CODE OF LAWS OF SOUTH CAROLINA 17-29-40 PROVIDES:
(A) UPON AN APPLICATION MADE UNDER SECTION 17-29-30, THE SHALL ENTER AN EX PARTE ORDER AUTHORIZING THE INSTALLATION AND USE OF A PEN REGISTER OR A TRAP AND TRACE DEVICE WITHIN THAT POLICAL SUBDIVISION, OR WITHIN THE STATE IF THE APPLICANT IS THE ATTORNEY FOR THE STATE OR A LAW ENFORCEMENT OFFICER THEREOF, IF THE COURT FINDS THAT THE

ATTORNEY OR THE LAW ENFORCEMENT OFFICER OF THIS STATE OR A POLITICAL SUBDIVISION THEREOF HAS CERTIFIED TO THE COURT THAT THE INFORMATION LIKELY TO BE OBTAINED BY THE INSTALLATION AND USE IS RELEVANT TO AN ONGOING CRIMINAL INVESTIGATION, AND THAT THE PROBABLE CAUSE REQUIRED BY SECTION 17-29-30(B)(2) EXISTS.

(D)(1) THE ORDER BE SEALED UNTIL OTHERWISE ORDERED BY THE COURT.

THE CODE OF LAWS OF SOUTH CAROLINA 17-30-140 PROVIDES:
(C) UPON APPLICATION MADE AS PROVIDED UNDER SUBSECTION (B), THE COURT, UPON FINDING THAT THE CERTIFICATION AND STATEMENTS REQUIRED BY SUBSECTION (B) HAVE BEEN MADE IN THE APPLICATION AND PROBABLE CAUSE EXISTS, MUST ENTER AN EX PARTE ORDER AUTHORIZING THE INSTALLATION AND USE OF A MOBILE TRACKING DEVICE. THE ORDER MAY AUTHORIZE THE USE OF THE DEVICE WITHIN THE JURISDICTION OF THE COURT AND OUTSIDE THAT JURISDICTION BUT WITHIN THE STATE OF SOUTH CAROLINA IF THE DEVICE IS INSTALLED WITHIN THE JURISDICTION OF THE COURT.

LOCAL CRIMINAL RULES FOR THE UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA PROVIDES:

FILING 49.01: FILING DOCUMENTS UNDER SEAL.

THE FOLLOWING PROCEDURES ARE MANDATORY AND APPLY TO ANY REQUEST TO FILE DOCUMENTS UNDER SEAL. FAILURE TO FOLLOW THE PROCEDURES SET FORTH BELOW SHALL RESULT IN SUMMARY DENIAL OF ANY REQUEST OR ATTEMPT TO SEAL FILED DOCUMENTS. NOTHING IN THIS RULE LIMITS THE ABILITY OF THE PARTIES, BY AGREEMENT OR ORDER, TO RESTRICT ACCESS TO DOCUMENTS THAT ARE NOT FILED WITH THE COURT.

(A) PRE-AUTHORIZED FILING UNDER SEAL.

(1) IF A GOVERNING RULE, STATUTE, OR ORDER PROVIDES FOR FILING DOCUMENTS UNDER SEAL, THE PARTY FILING SUCH DOCUMENTS SHALL ~~PROVE~~ DESIGNATE IN THE CAPTION THAT THE DOCUMENTS IS TO BE FILED UNDER SEAL AND SHALL IDENTIFY THE RULE, STATUTE, OR ORDER THAT AUTHORIZES THE FILING UNDER SEAL.² IF THE PARTY IS RELYING ON AN ORDER NOT ENTERED IN THE CASE AT ISSUE, A COPY OF THAT ORDER SHALL BE ATTACHED.

(2) EX PARTE APPLICATIONS FOR SUBPOENAS UNDER FED. R. CRIM. P. 17(b) ARE SUBJECT TO THE AUTOMATIC SEALING PROVISIONS UNDER THE PROCEDURES OF THE PROCEEDING PARAGRAPH.

(B) IN ALL OTHER CASES, COUNSEL SHALL FOLLOW THE RULES SET OUT BELOW:

(1) A PARTY SEEKING TO FILE DOCUMENTS UNDER SEAL SHALL FILE AND SERVE A "MOTION TO SEAL" ACCOMPANIED BY A MEMORANDUM AND THE ATTACHMENTS SET FORTH BELOW IN SUBPARAGRAPHS (2)

AND (3). THE MEMORANDUM SHALL (a) IDENTIFY, WITH SPECIFICITY, THE DOCUMENTS OR PORTIONS THEREOF FOR WHICH SEALING IS REQUESTED; (b) STATE THE REASONS WHY SEALING IS NECESSARY; (c) EXPLAIN (FOR EACH DOCUMENT OR GROUP OF DOCUMENTS) WHY LESS DRASTIC ALTERNATIVES TO SEALING WILL NOT AFFORD ADEQUATE PROTECTION; AND (d) ADDRESS THE FACTORS GOVERNING SEALING OF DOCUMENTS REFLECTED IN CONTROLLING CASE LAW. E.g., ASHCROFT V. IQBAL, 218 F.3d 288, 302 (4TH CIR. 2000); IN RE KNIGHT PUBL'G CO., 743 F.2d 231, 235 (4TH CIR. 1984). (2) THE MOTION SHALL BE ACCOMPANIED BY (a) A NON-CONFIDENTIAL DESCRIPTION INDEX OF DOCUMENTS AT ISSUE AND (b) COUNSEL'S CERTIFICATION OF COMPLIANCE WITH THIS RULE. (3) A SEPARATELY SEALED ATTACHMENT (LABELED "CONFIDENTIAL INFORMATION TO BE SUBMITTED TO COURT IN CONNECTION WITH MOTION TO SEAL" SHALL BE SUBMITTED WITH THE MOTION. THE SEALED ATTACHMENT SHALL CONTAIN THE DOCUMENTS AT ISSUE FOR THE COURT'S IN CAMERA REVIEW AND SHALL NOT BE FILED. THE COURT'S DOCKET SHALL REFLECT THAT THE MOTION AND MEMORANDUM WERE FILED AND WERE SUPPORTED BY A SEALED ATTACHMENT SUBMITTED FOR IN CAMERA REVIEW. (4) THE CLERK OF COURT SHALL PROVIDE PUBLIC NOTICE OF THE MOTION TO SEAL IN A MANNER DIRECTED BY THE COURT. ABSENT DIRECTION TO THE CONTRARY, THIS MAY BE ACCOMPLISHED BY DOCKETING THE MOTION TO SEAL IN A MANNER THAT DISCLOSES ITS NATURE AS A MOTION TO SEAL.

¹ A NUMBER OF CRIMINAL RULES AND STATUTES REQUIRE OR AUTHORIZE FILING UNDER SEAL. THESE INCLUDE BUT ARE NOT LIMITED TO (1) FED. R. CRIM. P. 6 (e) (CONCERNING MATERIAL RELATING TO GRAND JURY PROCEEDINGS OR INVESTIGATIONS); (2) 18 U.S.C. § 2510 ET SEQ. (DEALING WITH COURT APPROVED ELECTRONIC SURVEILLANCE); (3) 18 U.S.C. APP. 3 §§ 1-16 (CLASSIFIED INFORMATION PROCEDURES ACT, OR "CIPA"); (4) 50 U.S.C. § 1801 ET SEQ. (FOREIGN INTELLIGENCE SURVEILLANCE ACT, OR "FISA").

IN UPCHURCH V. UPCHURCH, 367 S.C. 16, 24, 624 S.E.2d 643, 646 (2006), AN ORDER WASN'T VALID UNTIL IT WAS SIGNED BY THE JUDGE AND FILED WITH THE CLERK OF COURT'S OFFICE.

IN BOWMAN V. RICHLAND MEMORIAL HOSPITAL, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) (CITATIONS OMITTED), EVEN A SIGNED BUT UNFILED ORDER IS STILL UNENFORCEABLE. THAT IS BECAUSE THE ORDER DOES NOT BECOME VALID UNTIL IT IS ACTUALLY FILED WITH THE CLERK'S OFFICE.

IN ARCHER V. LONG, 46 S.C. 292, 24 S.E. 83 (1896), A PAPER IS SAID TO BE FILED WHEN IT IS DELIVERED TO THE PROPER OFFICER, AND BY HIM

RECEIVED TO BE KEPT ON FILE. QUOTING GENOBLES V WEST, 23 S.C. 160, THE CIRCUIT JUDGE WELLS SAYS: 'A JUDGEMENT IS THE FINAL DETERMINATION OF THE RIGHTS OF THE PARTIES IN AN ACTION. WHILE THE WRITTEN INSTRUMENT PURPORTING TO BE THE JUDGEMENT IN A CASE REMAINS IN THE POSSESSION OF THE JUDGE WHO IS TO PRONOUNCE IT, IT IS OF NO EFFECT, AND LIKE A DEED NOT DELIVERED. THE MOMENT, HOWEVER, IT IS FILED BY THE CLERK OF COURT, IT BECOMES THE JUDGEMENT OF THE COURT, AND FIXES THE RIGHTS OF THE PARTIES. THE RECORDING OF THE JUDGEMENT OR ORDER IS ONLY TO GIVE NOTICE AND SECURE THE SAFETY OF THE RECORD OF THE SOLEMN ACTS OF THE COURTS. THIS SEEMS TO BE THE PRINCIPLE ON WHICH THE CASE OF CLARK V MELTON, 19 S.C. 498, IS FOUNDED.' THE REASON FOR THE STRICT COMPLIANCE WITH THE LAW IS FOR THE PRESERVATION AND PUBLIC INSPECTION OF THE RECORDS, WHICH WOULD BE TO A GREAT EXTENT BE PREVENTED IF A PAPER SHOULD BE REGARDED AS A RECORD IN THE CASE UNTIL IT HAS BEEN DELIVERED TO THE PROPER OFFICER FOR FILING."

IN FOX V UNION BUFFALO MILLS, 226 S.C. 561, 86 S.E. 2d 253 (1955), WHEN A STATUTE REQUIRES THE FILING OF A PAPER OR DOCUMENT, IT IS FILED WHEN DELIVERED TO AND RECEIVED BY THE PROPER OFFICER.

IN STATE V. PLATH, 277 S.C. 126, 284 S.E. 2d 221 (S.C. 1981), "THE FRUIT OF THE POISONOUS TREE" ~~DOCTRINE~~ DOCTRINE HOLDS THAT WHERE EVIDENCE WOULD NOT OF HAVE COME TO LIGHT BUT FOR THE ILLEGAL ACTIONS OF THE POLICE, AND THE EVIDENCE HAS BEEN OBTAINED BY THE EXPLOITATION OF THAT ILLEGALITY, THE EVIDENCE MUST BE EXCLUDED. SEE WONG SUN V UNITED STATES, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed 441 (1963).

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF EVIDENCE OBTAINED ILLEGALLY BY THE ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE IN PLACING A GPS LOCATOR ON HIS MOTHER'S PHONE THAT HE POSSESSED AND USED TO LOCATE AND ARREST HIM. WHERE APPELLANT ARGUED IN TRIAL AND IN THIS BRIEF THAT HIS STATEMENT WAS INVOLUNTARY AND "THE FRUIT OF THE POISONOUS TREE", WHICH IS BEING DEEMED "THE PRIME SUSPECT" BECAUSE OF UNRELATED ALLEGATIONS, "THE ROOT OF THE POISONOUS TREE" WHICH CAUSED ALL OF "THE FRUIT" MENTIONED THROUGHOUT THIS BRIEF. THE TRIAL JUDGE HIMSELF QUOTED STATUTE AND ASKED SLED SPECIAL AGENT, MARK R. BERUBE, FOR THE REQUIRED APPLICATION AND AFFIDAVIT FOR THE AUTHORIZATION OF THE SAID "FILED", "FILED UNDER SEAL" COURT ORDER TO INSTALL AND USE A PEN REGISTER, TRAP AND TRACE DEVICE ON APPELLANT'S MOTHER'S PHONE HE POSSESSED. MR. BERUBE STATED DIRECTLY TO THE JUDGE THAT THE COURT ORDER HE SUBMITTED DID HAVE AN APPLICATION AND AFFIDAVIT THAT WAS "FILED" WITH THE CLERK OF COURT'S OFFICE. YET, NOTHING IS ON COURT RECORD WITH THE CLERK OF COURT'S OFFICE, NOR WITH SLED NEITHER PERTAINING TO SAID "FILED", "FILED UNDER SEAL" COURT ORDER AND IT IS ILLEGAL TO INSTALL OR USE A PEN REGISTER, TRAP AND TRACE DEVICE WITHOUT A COURT ORDER PURSUANT TO STATUTES LISTED. STATUTES STATES AND THE "COPY" OF SAID "FILED" COURT ORDER CLEARLY STATES THAT IT MUST BE "FILED UNDER SEAL" AND AN EX PARTE ORDER MUST BE ENTERED. ENTRY OF THE COURT ORDER OCCURS WHEN THE CLERK OF COURT FILES THE ORDER AND NOTHING WAS ENTERED TO BE ON RECORD,

NOR NOTHING RECEIVED SEALED TO FILE, NOTHING. SLED DOES NOT EVEN POSSES NO RECORD OR NOTHING PERTAINING TO THIS COURT ORDER "FC-14-03361." THEREFORE, IT IS ILLEGAL AND THE EVIDENCE OBTAINED FROM THE ILLEGAL ACTIONS IS INADMISSIBLE AND CAN NOT BE USED AGAINST APPELLANT WHICH CAUSED UNFAIR PREJUDICE AND VIOLATED LAWS THAT VIOLATED APPELLANT'S GUARANTEED RIGHTS.

THE TRIAL COURT ERRED IN ADMITTING AN UNCONVICTED PRIOR BAD ACT ALLEGATIONS PURSUANT TO RULE 404, SCRE, AND STATE V. LYLE, 125 S.C. 406, 118 S.E. 803 (1923). WHERE THERE WAS NO CLEAR AND CONVINCING EVIDENCE, NOT SUBJECT TO A CONVICTION AND ONLY ALLEGATIONS. WHERE APPELLANT MARTINEZ ALLEGEDLY COMMITTED SIMILAR CRIMES OF CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND KIDNAPPING SOME TIME BEFORE THE TRIAL INCIDENT WHERE HE WAS ON TRIAL FOR SEVERAL OFFENSES THAT INCLUDED CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND KIDNAPPING WHICH WAS PREJUDICIAL TO APPELLANT BECAUSE THERE IS NO CLEAR AND CONVINCING EVIDENCE, NOR CONVICTION, NO LOGICAL CONNECTION OR EVIDENCE CONNECTING THE SEPARATE ALLEGATIONS AND THE PROBATIVE VALUE WAS OUTWEIGHED BY THE PREJUDICIAL EFFECT.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF THE ALLEGED INCIDENT OF CSC FIRST DEGREE AND KIDNAPPING OF MS. TUCKER WHICH OCCURRED SOME TIME BEFORE THE TRIAL INCIDENT WHICH IS NOT SUBJECT TO A CONVICTION, NO NECESSARY LOGICAL CONNECTION, NO LOGICAL RELEVANCE OR NO EVIDENCE CONNECTING THE TWO SEPARATE INCIDENTS, NO CLEAR AND CONVINCING EVIDENCE, NOR IS THERE ANY RELATIONSHIP BETWEEN THE TWO SEPARATE ALLEGED INCIDENTS. ONLY THE CONTRADICTED, UNRELIABLE PERJURED TESTIMONY OF MS. TUCKER WHICH WAS ONLY IMPROPERLY ADMITTED TO CAUSE APPELLANT UNFAIR PREJUDICE AND TO BOLSTER THE HURSHMAN TRIAL INCIDENT.

RULE 404(b), SCRE, PROVIDES:

EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS IS NOT ADMISSIBLE TO PROVE CHARACTER OF A PERSON IN ORDER TO SHOW ACTION IN CONFORMITY THEREWITH. IT MAY HOWEVER BE ADMISSIBLE TO SHOW MOTIVE, IDENTITY, THE EXISTANCE OF A COMMON SCHEME OR PLAN, THE ABSENCE OF MISTAKE OR ACCIDENT, OR INTENT.

IN STATE V. LYLE, 101, THE SUPREME COURT HELD THAT IN A PROSECUTION FOR UTTERING A FORGED CHECK, EVIDENCE OF EXTRANEOUS OFFENSE WHICH WERE INADMISSIBLE AS BEARING ON THE IDENTITY OF THE ACCUSED OR FOR THE PURPOSE OF SHOWING A CRIMINAL INTENT, HELD INADMISSIBLE FOR THE PURPOSE OF SHOWING A PLAN OR SYSTEM PURSUANT TO WHICH THE OFFENSE CHARGED HAD BEEN COMMITTED AS A PART OF A ~~CONTINUOUS~~ CONTINUOUS TRANSACTION.

LYLE WAS CHARGED WITH CASHING SEVERAL FRAUDULENT CHECKS AT SEVERAL BANKS. IDENTIFICATION WAS THE MAIN ISSUE. THE COURT HELD

THAT AS TO IDENTITY, THERE WAS NO OBVIOUS CONNECTION BETWEEN THE GEORGIA CRIMES AND THE OFFENSE CHARGED IN THE AIKEN CASE FOR WHICH WLE WAS ON TRIAL. THE COURT ALSO HELD THAT AS TO COMMON SCHEME OR PLAN, THE OTHER OFFENSES WERE NOT AN ESSENTIAL INGREDIENT OF THE CRIME CHARGED, AND THAT IT WAS IMMATERIAL WHETHER SUCH CRIMES WERE COMMITTED AS A PART OF A COMMON SCHEME OR PLAN. THERE MUST BE A LOGICAL CONNECTION BETWEEN THE CRIME CHARGED AND THE OTHER CRIMINAL ACTS FOR EVIDENCE OF THE PRIOR BAD ACTS TO BE ADMISSIBLE UNDER THE WLE EXCEPTION.

IN STATE V. WILSON, 274 S.C. 635, 266 S.E.2d 426 (1980), "THE 'COMMON SCHEME OR PLAN' EXCEPTION REQUIRES MORE THAN MERELY COMMISSION OF TWO SIMILAR CRIMES BY THE SAME PERSON. THERE MUST BE SOME CONNECTION BETWEEN THE CRIMES. IF THERE IS ANY DOUBT AS TO THE CONNECTION BETWEEN THE ACTS, THE EVIDENCE SHOULD NOT BE ADMITTED."

IN STATE V. GORE, 283 S.C. 118, 322 S.E.2d 12 (1984) AND IN STATE V. SMITH, 279 S.C. 440, 308 S.E. 2d 794 (1983), ~~WHERE THE PRIOR ACTS ARE EVIDENCE OF OTHER CRIMES OR BAD ACTS MUST BE CLEAR AND CONVINCING~~ ~~THE ACTS ARE NOT SUBJECT TO CONVICTION OR ACCUSATIONS~~. THE SUPREME COURT ~~HEARD~~ HAS RECOGNIZED THE DANGER OF PREJUDICE WHERE THE PRIOR BAD ACTS ARE NOT SUBJECT TO CONVICTION AND HAS LIMITED THE STATE'S USE OF THIS EVIDENCE.

IN STATE V. SMITH, 300 S.C. 216, 387 S.E.2d 245 (1989), IN A CRIMINAL CASE, EVIDENCE OF OTHER CRIMES OR BAD ACTS MUST BE CLEAR AND CONVINCING, IF THE ACTS ARE NOT SUBJECT OF A CONVICTION.

IN STATE V. MOULTRIE, 316 S.C. 547, 554, 451 S.E.2d 34, 39 (Ct. App. 1994), CLEAR AND CONVINCING EVIDENCE OF PRIOR CRIMES OR BAD ACTS THAT IS LOGICALLY RELEVANT IS ... ADMISSIBLE TO PROVE ... A COMMON SCHEME OR PLAN THAT EMBRACES SEVERAL PREVIOUS CRIMES SO CLOSELY RELATED TO EACH OTHER THAT PROOF OF ONE TENDS TO ESTABLISH THE OTHER.

IN STATE V. TUTTON, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003), "WE INTERPRET THESE CASES TO SUGGEST THAT COMMON SCHEME OR PLAN EVIDENCE IN CRIMINAL SEXUAL CONDUCT CASES WILL BE ADMITTED ON A GENERALIZED BASIS ONLY WHERE THERE IS A PATTERN OF CONTINUOUS ILICIT CONDUCT. SEX CRIMES MAY BE UNIQUE IN THIS RESPECT BECAUSE THEY COMMONLY INVOLVE THE SAME VICTIMS ENGAGED IN REPEATED INCIDENTS UNDER VERY SIMILAR CIRCUMSTANCES" AND "THE PURPOSE OF ADMITTING EVIDENCE OF OTHER INSTANCES OF SEXUAL MISCONDUCT UNDER THE COMMON SCHEME OR PLAN EXCEPTION IS TO BOLSTER THE PROBABILITY THAT THE CHARGED ACTS OCCURRED."

IN STATE V. TIMMONS, 327 S.C. 48, 488 S.E.2d 323 (1997), "THE CONNECTION BETWEEN THE PRIOR BAD ACT AND THE CRIME MUST BE MORE THAN JUST A GENERAL SIMILARITY." "A COMMON SCHEME OR PLAN CONCERNS MORE THAN THE COMMISSION OF TWO SIMILAR CRIMES;

SOME CONNECTION BETWEEN THE CRIMES IS NECESSARY."

IN STATE V JOHNSON, 293 S.C. 321, 360 S.E. 2d 317 (1987), EVIDENCE OF PRIOR CRIMINAL ACTS WHICH ARE INDEPENDENT AND UNCONNECTED TO THE CRIME FOR WHICH AN ACCUSED IS ON TRIAL IS INADMISSIBLE FOR PURPOSE OF PROVING THAT THE ACCUSED POSSESSES A CRIMINAL CHARACTER OR HAS A PROPENSITY TO COMMIT THE CRIME WITH WHICH HE IS CHARGED.

THE ADMISSION OF THE ALLEGED UNCONVICTED PRIOR INCIDENT OF CSC FIRST DEGREE AND KIDNAPPING OF MS. TUCKER WAS FAR MORE PREJUDICIAL TO APPELLANT THAN IT WAS PROBATIVE. THERE IS NO EVIDENCE ON THE TUCKER CASE ASIDE FROM MS. TUCKER'S INCONSISTANT PERJURED TESTIMONY. APPELLANT DENIED THE ALLEGATIONS AND ALWAYS STATED THAT HE WAS LET INTO THE HOUSE BECAUSE HE KNOWS MS. TUCKER AND HER FATHER, THAT A WITNESS WATCHED THEM LEAVE THE HOUSE AND THAT THE SEX WAS CONSENTUAL, WHICH IS NO CRIME. THE STATE ONLY INTENDED TO USE THE TUCKER ALLEGATIONS TO CAUSE UNFAIR PREJUDICE TO APPELLANT AT THE TRIAL FOR MS. HURSHMAN, BECAUSE APPELLANT FILED NUMEROUS FAST AND SPEEDY TRIAL MOTIONS AND MOTIONS TO DISMISS THE TUCKER INDICTMENTS BECAUSE OF LACK OF EVIDENCE JUST SO THE STATE COULD NOT USE IT TO CAUSE UNFAIR PREJUDICE AT THE HURSHMAN TRIAL THAT THE STATE MAUCIOUSLY IGNORED. YET, SHORTLY AFTER TRIAL, DISMISSED THE TUCKER CASE. THERE IS NO CLEAR AND CONVINCING EVIDENCE AT ALL. YET ALONE ANY LOGICAL CONNECTION OR CONNECTING EVIDENCE TO THE TWO SEPARATE ALLEGATIONS. THERE IS NO EVIDENCE OF AN EXACT DATE AND MS. TUCKER CONTRADICTED HERSELF, HER STATEMENT TO POLICE, AND HER PREVIOUS TESTIMONY TO SHE KNEW WHO APPELLANT WAS AFTER SHE RETURNED TO HER FATHER'S HOME AND NOTIFIED HER GIRLFRIEND AND FATHER. MS. TUCKER STATED THAT ONCE SHE RETURNED TO HER FATHER'S HOUSE SHE ASKED HIM WHAT F.'S BROTHERS NAME WAS AND WAS 99 PERCENT SURE IT WAS HIM." SO THIS NULLIFIES THE CONNECTION, THE TRIAL JUDGE RULED WAS THE CONNECTION, BEING THE SKETCH BECAUSE SHE DID NOT NEED NO SKETCH BECAUSE SHE ALREADY KNEW APPELLANT AND WHO HE WAS AND GAVE AN ACCURATE DESCRIPTION OF HIM IN HER STATEMENT. YET ORIGINALLY STATED TO POLICE IT WAS AN "UNKNOWN" MALE. THE STATE ONLY SOUGHT TO CAUSE APPELLANT UNFAIR PREJUDICE BY ONLY NEEDING TO MENTION TO THE JURY A SIMILAR UNRELATED ALLEGATION THAT ~~HAD~~ WAS DAMAGING TO APPELLANT WHICH THERE IS NO LOGICAL CONNECTION, NOR LOGICAL RELATIONSHIP TO THE TRIAL INCIDENT AND ONLY USED TO MAKE APPELLANT SEEM AND APPEAR GUILTY OF SIMILAR ALLEGATIONS AND PROPENSITY OF APPELLANT'S CHARACTER TO IMPROPERLY BOLSTER THE TRIAL INCIDENT, WHERE THE ALLEGATIONS CUMULATED TO CREATE AND CAUSE UNFAIR PREJUDICE AGAINST THE APPELLANT WHO HAD TO EXPLAIN CIRCUMSTANCES SURROUNDING THESE FALSE ALLEGATIONS AND ~~WAS~~ ~~CONSIDERED~~ ~~CONSIDERED~~ ~~CONSIDERED~~ TIPPED THE SCALE WHICH DENIED HIS RIGHT TO A FAIR TRIAL.

THE TRIAL COURT ERRED IN ADMITTING ~~PHOTO~~ PHOTO EVIDENCE OF BRIONA HURSHMAN'S VAGINA PURSUANT TO RULE 403, SCRE, WHERE THIS EVIDENCE SHOULD OF BEEN EXCLUDED BECAUSE ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE. WHERE THE PHOTO WAS ONLY SHOWN TO UNFAIRLY SERVE TO AROUSE THE SYMPATHY OR PREJUDICE OF THE JURY.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF A PHOTO OF MS. HURSHMAN'S VAGINA WHERE THERE IS NO EVIDENCE THAT PROVES APPELLANT IS THE PERSON WHO CAUSED THE INJURY.

RULE 403, SCRE, PROVIDES:

ALTHOUGH RELEVANT, EVIDENCE MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS ~~SUBSTANTIALLY~~ SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, OR MISLEADING THE JURY, OR BY CONSIDERATIONS OF UNDUE DELAY, WASTE OF TIME, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE.

THE ADMISSION OF THE PHOTO OF MS. HURSHMAN'S VAGINA WAS FAR MORE PREJUDICIAL TO APPELLANT THAN IT WAS PROBATIVE. THE STATE ONLY USED THE PHOTO TO INFLAME THE JURY AGAINST APPELLANT WHEN THERE IS SOMEONE ELSE'S DNA PROFILE ON MS. HURSHMAN'S VAGINA IN TWO DIFFERENT AREAS, THE LABIA MAJORA AND THE MONS PUBIS, WHERE THE PREJUDICIAL EFFECT WAS MORE UNFAIR THE PROBATIVE VALUE.

THE TRIAL COURT ERRED IN ADMITTING EVIDENCE FROM A MENTAL EVALUATION FOR CRIMINAL RESPONSIBILITY WHERE THE FINDINGS ARE MISREPRESENTATION AGAINST FACTS AND POLICE RECORDS AND ARE BASED FROM "THE ROOT OF THE POISONOUS," FIRST OF THREE SEPARATE ALLEGED INCIDENTS, WHICH IS A SEPARATE, DIFFERENT UNCONVICTED ALLEGATION APPELLANT WAS NOT ON TRIAL FOR PURSUANT TO RULE 404, SCRE, WHERE ~~APPELLANT~~ APPELLANT WAS CAUSED UNFAIR ~~PREJUDICE~~ PREJUDICE BECAUSE OF INACCURATE ~~FINDINGS~~ FINDINGS OF APPELLANT'S CHARACTER OF BEING CRIMINALLY RESPONSIBLE WERE NOT BASED OFF OF OR FROM TRIAL INCIDENT HE WAS ON TRIAL FOR.

APPELLANT WAS UNFAIRLY PREJUDICED BY THE TRIAL COURT'S ADMISSION OF A MENTAL EVALUATION ~~FOR~~ FOR BEING DEEMED "CRIMINALLY RESPONSIBLE" WHERE THE FINDINGS ARE INACCURATE AND CONTRADICT POLICE RECORDS OF FIRST ALLEGED INCIDENT, "THE ROOT OF THE POISONOUS TREE", AND ARE BASED OFF OF AND FROM THAT OTHER ALLEGED INCIDENT WHICH IS COMPLETELY DIFFERENT THAN THE TRIAL INCIDENT.

RULE 404, SCRE, PROVIDES:

EVIDENCE OF A PERSONS CHARACTER OF A TRAIT ~~OF~~ OF CHARACTER IS NOT ADMISSIBLE FOR ~~PURPOSE~~ PURPOSE OF PROVING ACTION IN CONFORMITY THEREWITH ON A PARTICULAR

OCCASION.

(b) EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS IS NOT ~~ADMISSIBLE~~ ADMISSIBLE TO PROVE CHARACTER OF A PERSON IN ORDER TO SHOW ACTION IN CONFORMITY THEREWITH. IT MAY HOWEVER, BE ADMISSIBLE TO SHOW MOTIVE, IDENTITY, THE EXISTENCE OF A COMMON SCHEME OR PLAN, THE ABSENCE OF MISTAKE OR ACCIDENT, OR INTENT.

THE ADMISSION OF FINDINGS FROM A MENTAL EVALUATION FOR APPELLANT BEING CRIMINALLY RESPONSIBLE TO STAND TRIAL AND BE HELD ACCOUNTABLE FOR HIS "APPRECIATION" OF BEING AWARE OF CIRCUMSTANCE TO KNOW WHAT HE WAS DOING WAS PREJUDICIAL BECAUSE THE FINDINGS ARE FROM ANOTHER TOTALLY DIFFERENT ALLEGATION, "THE ROOT OF THE POISONOUS TREE," THE CAUSE AND EFFECT OF "THE POISONOUS FRUIT," WHERE EVALUATOR STATES APPELLANT KNEW WHAT HE WAS DOING BECAUSE HE DID NOT GO TO HIS MOTHER'S HOME TO AVOID ARREST. YET, THERE WAS NO PROBABLE CAUSE FOR WARRANTS IN THEM ALLEGATIONS, AS THEM RECORDS CLEARLY STATE, TILL AFTER APPELLANT WAS DEEMED "THE PRIME SUSPECT" IN TRIAL INCIDENT BECAUSE ~~THE FIRST~~ ^{OF THOSE} ALLEGATIONS, TO NEED TO HAVE AVOID ARREST FROM WARRANTS THAT DID NOT EXIST BECAUSE THE APPELLANT COOPERATED FULLY WITH LAW ENFORCEMENT, WENT TO POLICE AND GAVE A STATEMENT, WENT TO POLICE AND ASSISTED THEM AGAIN BY ~~TESTING~~ SUBMITTING TO A POLYGRAPH TEST TO FURTHER AID THE POLICE WITH FACTS TO WHERE THE LEAD INVESTIGATOR OF THOSE ALLEGATIONS STATED TO APPELLANT, NO PROBABLE CAUSE EXISTS FOR WARRANTS TO BE ISSUED FROM THE SOLICITOR'S OFFICE. THESE INACCURATE FINDINGS CAUSED APPELLANT UNFAIR PREJUDICE BECAUSE THE FINDINGS ARE NOT BASED OFF OF TRIAL INCIDENT ~~BECAUSE OF~~ TO BE DEEMED CRIMINALLY RESPONSIBLE FOR THE SPECIFIC ISSUES AND CIRCUMSTANCES SURROUNDING THE MENTAL MINDSET OF APPELLANT CONCERNING THE TRIAL ^{INCIDENT} WHERE THE PREJUDICIAL EFFECT WAS MORE DAMAGING THAN THE PROVATIVE VALUE.

THE TRIAL COURT ERRED IN ADMITTING IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT MARTINEZ BY BRIONA HURSHMAN PURSUANT TO WELLY BIGGERS, 409 U.S. 188, 93 S.Ct. 375 (1972), WHERE MS. HURSHMAN DID NOT IDENTIFY APPELLANT IN AN UNDOUBTLY SUGGESTIVE PHOTO LINEUP THAT HE SHOULD NOT OF BEEN IN PURSUANT TO "THE FRUIT OF THE POISONOUS TREE," WHERE OVER TWO AND A HALF YEARS LATER, THE FIRST DAY OF PREVIOUS TRIAL, MS. HURSHMAN FABRICATED A STORY CLAIMING THAT HER HUSBAND "DAYS AFTER" INCIDENT RECEIVED APPELLANT'S NAME FROM LAW ENFORCEMENT, SHE GOOGLED IT, AND FOUND PHOTO'S ON A FACEBOOK PAGE AND MADE A POSITIVE IDENTIFICATION. YET NEITHER HER NOR HER HUSBAND REPORTED THIS IDENTIFICATION TO NO ONE WHEN THEY BOTH HAD NUMEROUS OPPORTUNITIES TO WHEN THEY WERE WITH POLICE, SEXUAL TRAUMA THERAPISTS, VICTIMS ADVOCATES DURING COURT HEARINGS AND SOLICITOR'S. WHERE MS. HURSHMAN ONLY TOLD HER HUSBAND OF IDENTIFICATION WHO NOTIFIED NO ONE AND DID NOT TESTIFY CAUSED APPELLANT UNFAIR PREJUDICE AND DENIED HIS RIGHTS TO A FAIR TRIAL AND DUE PROCESS OF LAWS.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF MS. HURSHMAN'S IN-COURT AND OUT-OF-COURT IDENTIFICATION BECAUSE MS. HURSHMAN'S DESCRIPTION OF SUSPECT AFTER INCIDENT IS NOT CONSISTANT WITH APPELLANT OR HER LATER DESCRIPTION OF APPELLANT. THE IN-COURT AND OUT-OF-COURT IDENTIFICATION OF MS. HURSHMAN WERE THE TAILORED PRODUCT OF ANY SUCH UNLAWFUL CONFRONTATION OR WERE TO THE CONTRARY, OF INDEPENDENT ORIGIN. WHERE APPELLANT WAS TARGETED AND DEEMED "THE PRIME SUSPECT" AND UNLAWFULLY PLACED IN AN UNDUALLY SUGGESTIVE PHOTO LINEUP BECAUSE OF SIMILAR ALLEGATIONS, "THE ROOT OF THE POISONOUS TREE," WHERE APPELLANT'S CHARACTER IS IMPROPERLY CALLED INTO QUESTION AND UNDER THE CIRCUMSTANCES THAT UNFAIR AND UNLAWFULLY FOCUSED MS. HURSHMAN'S ATTENTION ON APPELLANT AS "THE PRIME SUSPECT" BY THE POLICE TO BE THE GUILTY SUSPECT. MS. HURSHMAN HAD NUMEROUS OPPORTUNITIES WITH AUTHORITIES TO NOTIFY THEM OF HER IDENTIFICATION OF APPELLANT FROM A FACEBOOK PHOTO WHICH SHE ONLY NOTIFIED HER HUSBAND AND NEITHER HER NOR HER HUSBAND NOTIFIED NO ONE WHEN THEY BOTH HAD PLENTY OF OPPORTUNITIES WHEN THEY WERE WITH MULTIPLE DIFFERENT AUTHORITIES ON NUMEROUS OCCASIONS, WHICH SHOWS SHE IS UNRELIABLE AND HER STORY IS FABRICATED AND SHE CONTRADICTED HERSELF AND HER PREVIOUS STATEMENT AND TESTIMONY WHICH THE STATE WAS AWARE OF YET ALLOWED AND ENCOURAGED.

IN NEIL V BIGGERS, 11 Id., THE SUPREME COURT OF THE UNITED STATES HELD THAT EVEN THOUGH STATION HOUSE SHOWUP MAY HAVE BEEN SUGGESTIVE AND NOTWITHSTANDING LAPSE OF SEVEN MONTHS BETWEEN CRIME AND CONFRONTATION THERE WAS NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION AND EVIDENCE CONCERNING THE OUT-OF-COURT IDENTIFICATION BY VICTIM WAS ~~IN~~ ADMISSIBLE WHERE VICTIM SPENT UP TO HALF AN HOUR WITH HER ASSAILANT, VICTIM WAS WITH ASSAILANT UNDER ADEQUATE ARTIFICIAL LIGHT IN HER HOUSE AND UNDER A FULL MOON OUTDOORS AND AT LEAST TWICE FACED HIM DIRECTLY AND INTIMATELY. VICTIM'S DESCRIPTION TO POLICE INCLUDED HER ASSAILANT'S APPROXIMATE AGE, HEIGHT, WEIGHT, COMPLEXION, SKIN TEXTURE, BUILD, AND VOICE. VICTIM HAD 'NO DOUBT' THAT DEFENDANT WAS PERSON WHO RAPE HER, AND VICTIM MADE NO PREVIOUS IDENTIFICATION AT ANY OF THE SHOWUPS, LINEUPS, OR PHOTOGRAPHIC SHOWINGS.

BIGGERS WAS CHARGED WITH RAPE IDENTIFICATION WAS THE MAIN ISSUE. THE COURT DEVELOPED A TWO-PRONG INQUIRY TO DETERMINE THE ADMISSIBILITY OF AN OUT-OF-COURT IDENTIFICATION. FIRST, A COURT MUST ASCERTAIN WHETHER THE IDENTIFICATION PROCESS WAS UNDUALLY SUGGESTIVE. THE COURT MUST NEXT DECIDE WHETHER THE OUT-OF-COURT IDENTIFICATION WAS NEVERTHELESS SO RELIABLE THAT NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION EXISTED. STATE V. MOORE, 343 S.C. 282, 540 S.E.2d 445 (2000).

IN STATE V. MOORE, 11 Id., THE SUPREME COURT HELD THE FOLLOWING FACTORS ARE TO BE CONSIDERED IN EVALUATING THE TOTALITY OF THE CIRCUMSTANCES TO DETERMINE THE LIKELIHOOD OF A MISIDENTIFICATION: (1) THE WITNESS'S OPPORTUNITY TO VIEW THE PERPETRATOR AT THE TIME OF

THE CRIME (2) THE WITNESS'S DEGREE OF ATTENTION (3) THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE CRIMINAL (4) THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION AND (5) THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION

IN STATE V. CHEESEBORO, 346 S.C. 606 526, 552 S.E.2d 300, 307-08 (2001) (CITING MANSON V. BRATHWAITE, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)). AN IN-COURT IDENTIFICATION OF AN ACCUSED IS INADMISSIBLE IF A SUGGESTIVE OUT-OF-COURT IDENTIFICATION PROCEDURE CREATED A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION.

THE ADMISSION OF MS. HURSHMAN'S IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT WAS FAR MORE PREJUDICIAL AND VIOLATED HIS DUE PROCESS OF LAW. MS. HURSHMAN SAW THE SUSPECT WHO WAS ON TOP OF HER IN A LITE ROOM FOR SOME TIME, SHE HAD A GUN POINTED AT HER AND THREATENED WITH A HAMMER IN HIS OTHER HAND AND WAS PAYING CLOSE ATTENTION. SHE ~~KNOWS~~ KNEW HIS APPROXIMATE AGE, HEIGHT, WEIGHT, COMPLEXION, BUILD, EYE COLOR, SMELL, KNEW HIS DIALECT, SEEN THE NECK TATTOO BUT COULD NOT SEE WHAT IT SPELLED OUT. SHE GAVE THE DESCRIPTION NUMEROUS TIMES, IN 911 CALL, TO LAW ENFORCEMENT, MEDICAL STAFF, A SKETCH ARTIST AND A WRITTEN STATEMENT THAT IS NOT CONSISTANT WITH APPELLANT ASIDE FROM A NECK TATTOO THAT CAN EASILY AND CLEARLY BE READ. WHERE MS. HURSHMAN STATED SHE WOULD RECOGNIZE THE SUSPECT IF SHE SEEN HIM AGAIN AND SHE DID NOT, NOR DID HER OLDEST DAUGHTER, WHO ALSO GAVE THE SAME DESCRIPTION OF THE SUSPECT AS HER MOTHER, DID NOT IDENTIFY APPELLANT OUT OF AN UNDUALLY SUGGESTIVE PHOTO LINEUP APPELLANT ~~IS~~ IS THE ONLY PERSON IN TWO DIFFERENT PHOTO LINEUPS, ONE WITH GLASSES AND ONE WITHOUT GLASSES (FROM FIRST ALLEGATION, DET INVESTIGATOR SHUMARD WAS UNCERTAIN AS TO WHICH PHOTO LINEUP HE SHOWED MS. HURSHMAN AND HER DAUGHTER BECAUSE IN PREVIOUS TRIAL THE DAUGHTER STATED IT WAS ONE "WITHOUT GLASSES" WHICH IS EVEN MORE SUGGESTIVE BECAUSE OF NECK TATTOO ON APPELLANT'S NECK BEING CLEARLY SEEN AND OTHER FIVE PEOPLE'S NECKS ARE CLEAR). APPELLANT IS THE ONLY PERSON IN BOTH PHOTO LINEUPS WITH A TATTOO ON HIS NECK AND ABOVE HIS EYEBROW AND WAS UNLAWFULLY PLACED IN SOLELY BECAUSE OF WHERE OTHER LAW ENFORCEMENT IMPROPERLY CALLED INTO QUESTION HIS CHARACTER BECAUSE OF SIMILAR ALLEGATIONS THAT NO ARREST COULD BE MADE BECAUSE OF NO PROBABLE CAUSE, WHICH IS "THE FRUIT OF THE POISONOUS TREE" BECAUSE HE SHOULD NOT OF BEEN PLACED IN THE UNDUALLY SUGGESTIVE PHOTO LINEUP EXCEPT FOR HIS CHARACTER IMPROPERLY BEING CALLED INTO QUESTION BY LAW ENFORCEMENT BECAUSE OF UNRELATED SIMILAR ALLEGATIONS NO CHARGES COULD BE FILED. THE PREJUDICIAL EFFECT WAS A VIOLATION TO APPELLANT'S DUE PROCESS AND DENIED HIM A FAIR TRIAL.

THE TRIAL COURT ERRED IN ADMITTING IN-COURT AND OUT-OF-COURT (FACEBOOK PHOTO) IDENTIFICATION OF APPELLANT MARTINEZ BY BRIONA HURSHMAN PURSUANT TO NEIL V. BIGGERS, 409 U.S. 188, 93 S. Ct. 375 (1972) WHERE MS. HURSHMAN WAS CALLED BY SOME "UNKNOWN" CALLER WHO NOTIFIED HER ABOUT AN UNRELATED SIMILAR CASE, MS. TUCKER'S, BOND HEARING WHICH SHE ATTENDED. MS. HURSHMAN DID NOT IDENTIFY MARTINEZ TO LAW ENFORCEMENT, NOR AUTHORITIES, THEN OVER TWO AND A HALF YEARS LATER WITH A FABRICATED FACEBOOK PHOTO, MORE CLEARER THAN THE PHOTO LINEUP, IDENTIFICATION OF APPELLANT, WHERE THE IDENTIFICATION WAS TAINTED BY THE CIRCUMSTANCES SURROUNDING THE BOND HEARING FOR AN UNRELATED SIMILAR ALLEGATION THAT CAUSED APPELLANT UNFAIR PREJUDICE THAT DENIED HIM HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAWS.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF MS. HURSHMAN'S IN-COURT AND OUT-OF-COURT IDENTIFICATION BECAUSE MS. HURSHMAN ATTENDED A BOND HEARING FOR A SIMILAR UNRELATED ALLEGATION THAT WAS USED TO PREJUDICE THE APPELLANT WHERE THE STATE SOUGHT TO CUMULATE AND BOLSTER APPELLANT'S IDENTITY TO MS. HURSHMAN, WHERE UNDER THE CIRCUMSTANCES WHICH UNFAIRLY FOCUSED HER ATTENTION ON APPELLANT AS THE SUSPECT BELIEVED TO BE THE GUILTY PERSON OF MULTIPLE SIMILAR ALLEGATIONS.

IN NEIL V. BIGGERS, 409 U.S. 188, 93 S. Ct. 375 (1972), THE SUPREME COURT OF THE UNITED STATES HELD THAT EVEN THOUGH STATION HOUSE SHOWUP MAY HAVE BEEN SUGGESTIVE, AND NOTWITHSTANDING LAPSE OF SEVEN MONTHS BETWEEN CRIME AND CONFRONTATION, THERE WAS NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION AND ~~EXCESSIVE~~ EVIDENCE CONCERNING THE OUT-OF-COURT IDENTIFICATION BY VICTIM WAS ADMISSIBLE, WHERE VICTIM SPENT UP TO HALF AN HOUR WITH HER ASSAILANT, VICTIM WAS WITH ASSAILANT UNDER ADEQUATE ARTIFICIAL LIGHT IN HER HOUSE AND UNDER A FULL MOON OUTDOORS AND AT LEAST TWICE FACED HIM DIRECTLY AND INTIMATELY, VICTIM'S DESCRIPTION TO POLICE INCLUDED HER ASSAILANT'S APPROXIMATE AGE, HEIGHT, WEIGHT, COMPLEXION, SKIN TEXTURE, BUILD, AND VOICE, VICTIM HAD 'NO DOUBT' THAT DEFENDANT WAS PERSON WHO Raped HER, AND VICTIM MADE NO PREVIOUS IDENTIFICATION AT ANY OF THE SHOWUPS, LINEUPS, OR PHOTOGRAPHIC SHOWINGS.

BIGGERS WAS CHARGED WITH RAPE. IDENTIFICATION WAS THE MAIN ISSUE. THE COURT DEVELOPED A TWO-PRONG INQUIRY TO DETERMINE THE ADMISSIBILITY OF AN OUT-OF-COURT IDENTIFICATION. FIRST, A COURT MUST ASCERTAIN WHETHER THE IDENTIFICATION PROCESS WAS UNDUALLY SUGGESTIVE. THE COURT MUST NEXT DECIDE WHETHER THE OUT-OF-COURT IDENTIFICATION WAS NEVERTHELESS SO RELIABLE THAT NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION EXISTED. STATE V. MOORE, 343 S.C. 282, 540 S.E.2d 445 (2000).

IN STATE V. MOORE, 343 S.C. 282, 540 S.E.2d 445 (2000), THE SUPREME COURT HELD THE FOLLOWING FACTORS ARE TO BE CONSIDERED IN EVALUATING THE TOTALITY OF THE CIRCUMSTANCES TO DETERMINE THE LIKELIHOOD OF A MISIDENTIFICATION: (1) THE WITNESS'S OPPORTUNITY TO VIEW THE PERPETRATOR AT THE TIME OF

THE CRIME (2) THE WITNESS'S DEGREE OF ATTENTION (3) THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE CRIMINAL (4) THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION AND (5) THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION.

IN STATE V. SIMMONS, 308 S.C. 80, 417 S.E. 2d 92 (1992). THE SUPREME COURT HELD THAT THE IDENTIFICATION MUST BE FREE OF AND INDEPENDANT OF ANY LATER SUGGESTION THAT SIMMONS WAS THE PERSON WHO SOLD HIM THE CRACK. THE IDENTIFICATION MAY BE SO TAIANTED BY THE CIRCUMSTANCES SURROUNDING THE BOND HEARING AS TO REQUIRE THAT IT BE SUPPRESSED.

~~THE~~ IN STATE V. CHEESEBORD, 346 S.C. 526, 540, 552 S.E. 2d 300, 307-08 (2001) (CITING MANSON V BRATHWAITE, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed. 2d 140 (1977)). AN IN-COURT IDENTIFICATION OF AN ACCUSED IS INADMISSIBLE IF A SUGGESTIVE OUT-OF-COURT IDENTIFICATION PROCEDURE CREATED A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION.

THE ADMISSION OF MS. HURSHMAN'S IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT WAS FAR MORE PREJUDICIAL AND VIOLATED HIS DUE PROCESS OF LAW. MS. HURSHMAN SAW THE SUSPECT VERY WELL AND GAVE THE SAME DESCRIPTION NUMOROUS TIMES TO NUMOROUS AUTHORITIES WHERE APPELLANT WAS "THE PRIME SUSPECT" SOLELY BECAUSE HIS CHARACTER WAS IMPROPERLY CALLED INTO QUESTION BY POLICE BECAUSE OF "THE ROOT OF THE POISONOUS TREE" AND UNLAWFULLY PLACED IN AN UNLAWY SUGGESTIVE PHOTO LINEUP BEING THE ONLY PERSON WITH A TATTOO ON HIS NECK AND ABOVE HIS EYEBROW WHICH IS UNFAIR. YET, MS. HURSHMAN NOR HER OLDEST DAUGHTER IDENTIFIED APPELLANT IN THE PHOTO LINEUP. WHERE MS. HURSHMAN'S FABRICATED CLAIM OF "DAYS AFTER" TRIAL INCIDENT SHE IDENTIFIES APPELLANT FROM A FACEBOOK PHOTO AND ONLY NOTIFIES HER HUSBAND, WHICH NEITHER OF THEM REPORTS TO ANYONE YET HAD NUMOROUS OPPORTUNITIES TO NOTIFY MULTIPLE DIFFERENT AUTHORITIES AT NUMOROUS DIFFERENT PLACES. WHERE TO FURTHER BOLSTER AND CREATE AND CAUSE UNFAIR PREJUDICE TO APPELLANT SOME "UNKNOWN" CALLER NOTIFIES MS. HURSHMAN OF A BOND HEARING FOR APPELLANT WHICH IS FOR A SEPARATE ALLEGATION THAN HERS WHICH SHE ATTENDS WITH VICTIMS ADVOCATES ABOUT A MONTH AFTER ARREST. WHERE STILL NO ONE IS NOTIFIED OF HER IDENTIFICATION OF APPELLANT FROM A FACEBOOK PHOTO FROM HER NOR HER HUSBAND. THE APPELLANT WAS UNFAIRLY PREJUDICED BY THE CIRCUMSTANCES SURROUNDING THE CONFRONTATION AT AN UNRELATED ALLEGATION'S BOND HEARING FOR SIMILAR ALLEGATIONS CAUSED MS. HURSHMAN'S ATTENTION ON APPELLANT AS THE SUSPECT WHO WAS ARRESTED AND CHARGED IN HER INCIDENT AND ALSO A SUSPECT IN OTHER SIMILAR ALLEGATIONS BY THE POLICE TO BE THE ~~PRIME~~ GUILTY SUSPECT AND THE PREJUDICIAL EFFECT WAS A VIOLATION TO APPELLANT'S GUARANTEED RIGHTS WHICH DENIED HIM HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS.

THE TRIAL COURT ERRED IN ADMITTING IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT MARTINEZ BY ASHLEY CULPEPPER AND

CHARUSA MCKRAE PURSUANT TO NEIL V BIGGERS, 409 U.S. 188, 93 S.Ct. 375 (1972). WHERE APPELLANT WAS SUBJECTED TO AN UNDUPLY SUGGESTIVE PHOTO LINEUP HE SHOULD NOT OF BEEN IN BECAUSE HE WAS "THE PRIME SUSPECT" ONLY BECAUSE LAW ENFORCEMENT, KEVIN ISENHOWER, CALLED INTO QUESTION THE CHARACTER OF APPELLANT ONLY BECAUSE HE WAS ACCUSED OF SIMILAR ALLEGATIONS, "THE ROOT," WHERE THERE WAS NO PROBABLE CAUSE FOR AN ARREST, WHERE APPELLANTS CHARACTER WAS CALLED INTO QUESTION, PLACED IN A UNDUPLY SUGGESTIVE PHOTO LINEUP, "THE FRUIT OF THE POISONOUS TREE," AND CAUSED APPELLANT UNFAIR PREJUDICE WHERE BOTH WITNESSES COULD NOT ACCURATELY DESCRIBE APPELLANT IN-COURT, NOR IN THEIR STATEMENTS, NOR DESCRIBE ANY TATTOO LETTERING ON THE NECK OF ALLEGED PERSON, THEY CLAIM TO OF SEEN WHICH DENIED APPELLANTS RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAWS.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT BY ASHLEY CULPEPPER AND CHARUSA MCKRAE. WHERE APPELLANT WAS SUBJECTED TO AN UNDUPLY SUGGESTIVE PHOTO LINEUP HE SHOULD NOT OF BEEN IN BECAUSE HE WAS "THE PRIME SUSPECT" ONLY BECAUSE LAW ENFORCEMENT, KEVIN ISENHOWER, CALLED INTO QUESTION IMPROPERLY THE CHARACTER OF APPELLANT BECAUSE OF SIMILAR ALLEGATIONS, "THE ROOT OF THE POISONOUS TREE."

IN NEIL V BIGGERS, *id.*; THE SUPREME COURT OF THE UNITED STATES HELD THAT EVEN THOUGH STATION HOUSE SHOWUP MAY ~~NOT~~ HAVE BEEN SUGGESTIVE, AND NOTWITHSTANDING LAPSE OF SEVEN MONTHS BETWEEN CRIME AND CONFRONTATION, THERE WAS NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION AND EVIDENCE CONCERNING THE OUT-OF-COURT IDENTIFICATION BY VICTIM WAS ADMISSIBLE, WHERE VICTIM SPENT UP TO HALF AN HOUR WITH HER ASSAILANT, VICTIM WAS WITH ASSAILANT UNDER ADEQUATE ARTIFICIAL LIGHT IN HER HOUSE AND UNDER A FULL MOON OUTDOORS AND AT LEAST TWICE FACED HIM DIRECTLY AND INTIMATELY, VICTIM'S DESCRIPTION TO POLICE INCLUDED HER ASSAILANT'S APPROXIMATE AGE, HEIGHT, WEIGHT, COMPLEXION, SKIN TEXTURE, BUILD, AND VOICE, VICTIM HAD 'NO DOUBT' THAT DEFENDANT WAS PERSON WHO RAPED HER, AND VICTIM MADE NO PREVIOUS IDENTIFICATION AT ANY OF THE SHOWUPS, LINEUPS, OR PHOTOGRAPHIC SHOWINGS.

BIGGERS WAS CHARGED WITH RAPE. IDENTIFICATION WAS THE MAIN ISSUE. THE COURT DEVELOPED A TWO-PHASE INQUIRY TO DETERMINE THE ADMISSIBILITY OF AN OUT-OF-COURT IDENTIFICATION. FIRST, A COURT MUST ~~ASSE~~ ASCERTAIN WHETHER THE IDENTIFICATION PROCESS WAS UNDUPLY SUGGESTIVE. THE COURT MUST NEXT DECIDE WHETHER THE OUT-OF-COURT IDENTIFICATION WAS NEVERTHELESS SO RELIABLE THAT NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION EXISTED. STATE V MOORE, 343 S.C. 282, 540 S.E.2d 445 (2000).

IN STATE V. MOORE, *id.*, THE SUPREME COURT HELD THE FOLLOWING FACTORS ARE TO BE CONSIDERED IN EVALUATING THE TOTALITY OF THE

CIRCUMSTANCES TO DETERMINE THE LIKELIHOOD OF MISIDENTIFICATION:

(1) THE WITNESS'S OPPORTUNITY TO VIEW THE PERPETRATOR AT THE TIME OF THE CRIME (2) THE WITNESS'S DEGREE OF ATTENTION (3) THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION OF THE CRIMINAL (4) THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION AND (5) THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION.

IN STATE V. CHEESEBORD, 346 S.C. 526, 540, 552 S.E.2d 300, 307-08 (2001) (CITING MANSON V. BRATHWAITE, 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977)). AN IN-COURT IDENTIFICATION OF AN ACCUSED IS INADMISSIBLE IF A SUGGESTIVE OUT-OF-COURT IDENTIFICATION PROCEDURE CREATED A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION.

IN STATE V. FORD, 278 S.C. 384, 386, 296 S.E.2d 866, 867 (1982). THE ATTENTION OF A MERE PASSERBY IS LIKELY TO BE LESS ACUTE THAN THAT OF A VICTIM.

THE ADMISSION OF ASHLEY CULPEPPER AND CHARLISA MCRAE'S IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT WAS MORE PREJUDICIAL AND VIOLATED HIS DUE PROCESS OF LAW. BOTH EYE WITNESSES GAVE THE SAME DESCRIPTION FROM THE SKETCH TO THE MEDIA WHICH DOES NOT FIT THE APPELLANT. MS. CULPEPPER DID NOT KNOW THE DIFFERENCE BETWEEN A TANK TOP ("WIFE-BEATER") AND A WAVY BLUE T-SHIRT SHE CLAIMS IN HER STATEMENT SHE SAW THE SUSPECT WEARING. SHE ALSO COULD NOT GIVE AN ACCURATE DESCRIPTION OF THE APPELLANT WHILE LOOKING AT HIM IN COURT DURING HER TESTIMONY NOR WAS SHE ABLE TO IDENTIFY NOR READ WHAT WAS ON THE NECK OF PERSON SHE CLAIMS TO OF SEEN. MS. MCRAE DID NOT KNOW THE DIFFERENCE BETWEEN THE SUN BEING UP OR IF IT WAS STILL DARK OUTSIDE WHEN SHE SUPPOSEDLY ~~SEEN~~ SEEN THE SUSPECT. SHE ALSO COULD NOT DESCRIBE THE APPELLANT IN COURT DURING HER ~~TESTIMONY~~ TESTIMONY, NOR WAS SHE ABLE TO READ WHAT WAS ON THE PERSON SHE CLAIMS TO OF SEEN NECK. SHE FURTHER PROVES HER UNRELIABILITY BY STATING SHE TOLD THE TWO POLICE OFFICERS WHO SHOWED HER THE PHOTO LINEUP THAT OTHER PEOPLE WERE ALSO AT THE BUS STOP WHERE SHE ALLEGEDLY WITNESSED THE SUSPECT ENTERING THE HOUSING AREA WHICH BOTH OFFICERS DENIED HER STATING THIS TO THEM. WHERE BOTH WITNESSES WERE UNRELIABLE AND CLEARLY SHOWN THEIR BIASNESS TOWARDS APPELLANT. WHERE APPELLANT WAS PLACED IN AN UNDUALLY SUGGESTIVE PHOTO LINEUP BY BEING THE ONLY PERSON WITH TATTOOS IN WHICH HE SHOULD OF NEVER BEEN IN BUT FOR HIS CHARACTER IMPROPERLY BEING CALLED INTO QUESTION BECAUSE OF SIMILAR ALLEGATIONS THAT ARE "THE ROOT OF THE POISONOUS TREE," BY LAW ENFORCEMENT WHICH IN TURN PRODUCED ALL OF THIS ILLEGAL "FRUIT" AND UNDER THE CIRCUMSTANCES WHICH UNFAIRLY FOCUSED THESE WITNESSES' ATTENTION ON APPELLANT AND CAUSED IRREPARABLE MISIDENTIFICATION. THE PREJUDICIAL EFFECT WAS A VIOLATION TO APPELLANT'S DUE PROCESS AND CAUSED HIM TO BE ARRESTED AND INDICTED

ON CRIMINAL CHARGES HE SHOULD NOT OF BEEN WHICH DENIED HIM A FAIR TRIAL.

THE TRIAL COURT ERRED IN ADMITTING EVIDENCE OF IN-COURT AND OUT-OF-COURT FROM AN UNDULY SUGGESTIVE PHOTO LINEUP IDENTIFICATION OF APPELLANT BY FLEXIA TUCKER PURSUANT TO NEIL V. BIGGERS, 409 U.S. 188, 93 S.Ct. 375 (1972). WHERE THERE WAS NO IN-CAMERA NEIL V BIGGERS HEARING WHERE MS. TUCKER DID NOT TESTIFY TO HER IDENTIFICATION OF APPELLANT IN-COURT AND IN AN UNDULY SUGGESTIVE PHOTO LINEUP WHERE APPELLANT IS THE ONLY PERSON IN THE LINEUP WITH A TATTOO ABOVE HIS EYEBROW WHICH WAS AN IDENTIFYING FACTOR MS. TUCKER STATED IN HER DESCRIPTION OF THE ^{UNKNOWN} SUSPECT TO HER FATHER, GIRLFRIEND AND TO LAW ENFORCEMENT. WHERE APPELLANT WAS CAUSED UNFAIR PREJUDICE THAT DENIED HIM HIS GUARANTEED RIGHT TO A FAIR TRIAL UNDER THE 14TH AMENDMENT, DUE PROCESS CLAUSE AND ARTICLE I, SECTION 3 OF THE SOUTH CAROLINA STATE CONSTITUTION.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT BY FLEXIA TUCKER WHERE THERE WAS NO IN-CAMERA NEIL V. BIGGERS HEARING TO DETERMINE THE RELIABILITY OF MS. TUCKER'S IDENTIFICATION YET TRIAL JUDGE STATED HE RULED ON THE ADMISSIBILITY OF MS. TUCKER'S IDENTIFICATION OF APPELLANT.

IN NEIL V. BIGGERS, Id., THE SUPREME COURT OF THE UNITED STATES HELD THAT EVEN THOUGH STATION HOUSE SHOWUP MAY HAVE BEEN SUGGESTIVE, AND NOTWITHSTANDING LAPSE OF SEVEN MONTHS BETWEEN CRIME AND CONFRONTATION, THERE WAS NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION AND EVIDENCE CONCERNING THE OUT-OF-COURT IDENTIFICATION BY VICTIM WAS ADMISSIBLE, WHERE VICTIM SPENT UP TO HALF AN HOUR WITH HER ASSAILANT, VICTIM WAS WITH ASSAILANT UNDER ADEQUATE ARTIFICIAL LIGHT IN HER HOUSE AND UNDER A FULL MOON OUTDOORS AND AT LEAST TWICE FACED HIM DIRECTLY, AND INTIMATELY, VICTIM'S DESCRIPTION TO POLICE INCLUDED HER ASSAILANT'S APPROXIMATE AGE, HEIGHT, WEIGHT, COMPLEXION, SKIN TEXTURE, BUILD, AND VOICE, VICTIM HAD 'NO DOUBT' THAT DEFENDANT WAS PERSON WHO RAPED HER, AND VICTIM MADE NO PREVIOUS IDENTIFICATION AT ANY OF THE SHOWUPS, LINEUPS, OR PHOTOGRAPHIC SHOWINGS.

BIGGERS WAS CHARGED WITH RAPE. IDENTIFICATION WAS THE MAIN ISSUE THE COURT DEVELOPED A TWO-PRONG INQUIRY TO DETERMINE THE ADMISSIBILITY OF AN OUT-OF-COURT IDENTIFICATION. FIRST, A COURT MUST ASCERTAIN WHETHER THE IDENTIFICATION PROCESS WAS UNDULY SUGGESTIVE. THE COURT MUST NEXT DECIDE WHETHER THE OUT-OF-COURT IDENTIFICATION WAS NEVERTHELESS SO RELIABLE THAT NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION EXISTED. STATE V. MOORE, 343 S.C. 282, 540 S.E.2d 445 (2000).

IN STATE V PATTERSON, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999), ONLY AFTER A DETERMINATION AS TO THE RELIABILITY OF A WITNESS' IDENTIFICATION HAS BEEN MADE BY THE TRIAL COURT MAY THE WITNESS

TESTIFY BEFORE THE JURY.

IN STATE V CASH, 257 S.C. 249, 185 S.E.2d 525 (1971), THE SUPREME COURT ADOPTED A PER SE RULE REQUIRING THE COURT TO HOLD AN IN CAMERA HEARING WHEN THE STATE OFFERS WITNESSES WHOSE TESTIMONY IDENTIFIES THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME AND THE DEFENDANT CHALLENGES THE IN-COURT IDENTIFICATION AS BEING TAINTED BY A ~~PRE~~ PREVIOUS ILLEGAL IDENTIFICATION.

THE ADMISSION OF MS. TUCKER'S IN-COURT AND OUT-OF-COURT IDENTIFICATION OF APPELLANT WAS UNFAIRLY PREJUDICIAL AND UNLAWFUL, WHERE MS. TUCKER KNEW APPELLANT FROM HIM BEING AT HER FATHER'S HOUSE. MS. TUCKER STATED THAT AFTER ~~WAS~~ ALLEGED INCIDENT, AFTER SHE RETURNED HOME, SHE NOTIFIED HER FATHER, THEN TEXT AND CALLED HER GIRLFRIEND THEN AFTER WENT AND ASKED HER FATHER IF HIS FRIEND E'S BROTHER HAD A TATTOO ABOVE HIS EYEBROW AND KNEW THAT HIS NAME IS "NATE" AND SHE WAS "NINETY NINE PERCENT SURE" IT WAS HIM. WHICH IS NEW TESTIMONY THAT IS A CONTRADICTION TO HER STATEMENT TO POLICE AFTER REPORTING ALLEGED INCIDENT AND PREVIOUS TESTIMONY DURING PREVIOUS TRIAL. WHERE MS. TUCKER ACURATLY DESCRIBED APPELLANT AND HIS HUMOROUS TATTOO'S. IN THE UNDUW SUGGESTIVE PHOTO LINEUP APPELLANT WAS PLACED IN UNLAWFULLY BECAUSE OF "THE ROOT OF THE POISONOUS TREE," SIMILAR ALLEGATIONS, WHERE APPELLANT WAS THE ONLY PERSON WITH ANY TATTOO'S ESPECIALLY ABOVE HIS EYEBROW AND THAT WAS AN IDENTIFYING FACTOR MS. TUCKER DESCRIBED. THEN AFTER SHOWN THE UNDUW SUGGESTIVE PHOTO LINEUP SHE THEN RELATED APPELLANT'S NAME AND HIM COMING TO HER FATHER'S HOUSE WITH HIS BROTHER E WHICH IS EVIDENCE OF MS. TUCKER'S UNRELIABILITY AND THAT THE PHOTO LINEUP AND THAT THE PHOTO LINEUP WAS UNDUW SUGGESTIVE AND CAUSED APPELLANT UNFAIR PREJUDICE THAT DENIED HIS GUARANTEED RIGHTS TO A FAIR TRIAL AND DUE PROCESS OF LAWS.

THE TRIAL COURT ERRED IN ADMITTING APPELLANT'S INVOLUNTARY, PROMISE INDUCED STATEMENT TO FOREST ACRES POLICE FOR TRIAL INCIDENT PURSUANT TO JACKSON V DENNO, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 2d 908 (1964). WHERE APPELLANT WAS TAKEN TO FOREST ACRES POLICE DEPARTMENT, HANDCUFFED AND SHACKLED, WITHOUT HIS CONSENT OR KNOWLEDGE AND WAS COERCED BY POLICE DECEPTION TO SIGN A WAIVER OF RIGHTS NOT KNOWING WHY HE WAS UNDER ARREST AND WAS PROMISED MEDICAL ATTENTION, WHICH HE HAD BEEN SEEKING TO REMOVE MICROCHIP IMPLANTS FROM HIS HEAD WHICH ALL THREE POLICE WERE AWARE OF FROM OTHER POLICE OFFICERS AND HE BELIEVED HE WOULD BE ABLE TO "RESOLVE" HIS ISSUES AND BE ABLE TO PROVE TO POLICE THAT HE WAS INFACT MICROCHIPPED BY UTAH POLICE TO SHOW THAT HE HAD BEEN TELLING THE TRUTH. WHERE "CIRCUMSTANCES EXISTS WHICH ESTABLISH THAT HIS WILL HAS BEEN OVERBORNE AND HIS CAPACITY FOR SELF-DETERMINATION CRITICALLY IMPAIRED," BECAUSE IT TOOK THREE POLICE OFFICERS TO KEEP HIM ON

TOPIC BECAUSE HE ONLY WANTED TO TALK ABOUT HIS PROBLEMS WITH BEING MICROCHIPPED BY UTAH POLICE. WHERE THIS EVIDENCE WAS GATHERED ILLEGALLY AFTER ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE AND THEIR ILLEGAL ARREST WHICH IS ARGUED IN THIS BRIEF, AND ~~THIS~~ IS "THE FRUIT OF THE POISONOUS TREE" AND ANY AND ALL EVIDENCE GATHERED ILLEGALLY AND THEREFORE ILLEGAL AND INADMISSIBLE IN THE COURT OF LAW AND CAN NOT BE USED AGAINST APPELLANT, WHICH CAUSED HIM UNFAIR PREJUDICE THAT DENIED HIM HIS GUARANTEED RIGHTS TO A FAIR TRIAL IN THE DUE PROCESS OF LAWS.

APPELLANT WAS PREJUDICED BY THE TRIAL COURT'S ADMISSION OF HIS INVOLUNTARY STATEMENT TO FOREST ACRES POLICE FOR TRIAL INCIDENT. WHERE FOREST ACRES POLICE INVESTIGATOR RUSSELL SHUMARD, TWO DAYS PRIOR TO ARREST, ASKED FUGITIVE TASK FORCE OFFICER, WARREN CAVANAUGH, TO NOTIFY HIM DAY OR NIGHT, IT DID NOT MATTER WHEN ARREST WAS MADE SO IF THEY HAD TO SEND A CAR TO GET APPELLANT TO BRING HIM TO FOREST ACRES POLICE DEPARTMENT, (WHICH IS NOT A JAIL). WHEN APPELLANT WAS ILLEGALLY ARRESTED HE WAS NOT AWARE OF WHERE HE WAS GOING AND DID NOT AGREE NOR DESIRE TO SPEAK WITH POLICE, YET, WAS TAKEN TO FOREST ACRES POLICE DEPARTMENT WHERE THREE PLAIN CLOTHED POLICE OFFICERS WERE IN A SMALL CONFERENCE ROOM. THE OFFICERS STATED THEY WERE NOTIFIED ABOUT APPELLANT'S MENTAL HEALTH ISSUES FROM OTHER POLICE OFFICERS. PRIOR TO SIGNING A WAIVER, THAT WAS ALREADY FILLED OUT WITH INFORMATION APPELLANT DID NOT GIVE THEM BECAUSE THE OFFICERS WERE CONFIDENT THEY WOULD GET THE WAIVER AND ~~AND~~ HAD IT ALREADY FILLED OUT, APPELLANT WAS PROMISED CIGARETTES THAT WAS BOUGHT FOR HIM AND HELP TO GET MEDICAL ATTENTION HE HAD BEEN SEEKING TO REMOVE IMPLANTED MICROCHIPS IN HIS HEAD AND WAS NOT NOTIFIED AS TO WHY HE WAS ARRESTED OR NOTHING, ESPECIALLY WHY POLICE WOULD OR HE WOULD NEED TO HAVE TO SPEAK TO POLICE ABOUT ANYTHING. THERE WAS ONLY ONE POLICE REPORT OF INTERROGATION FROM CITY OF COLUMBIA POLICE DEPARTMENT, INVESTIGATOR COLIN D. BAILEY, WHO STATED IN HIS REPORT:

"ALTHOUGH ALL THREE INVESTIGATORS TRIED TO KEEP MARTINEZ ON TOPIC, MARTINEZ SPENT MOST OF THE TIME TALKING ABOUT HIS PROBLEMS, INCLUDING WHERE HE FELT THE POLICE IN UTAH HAD IMPLANTED A TRACKING COMMUNICATION DEVICE IN HIS HEAD NEAR HIS EAR; AND THE POLICE WERE TELLING HIM TO DO THINGS, COMMIT CRIMES. MARTINEZ HAD A VISIBLE INJURY NEAR HIS EAR ON HIS HEAD HE SAID HE TRIED TO CUT OUT THE DEVICE BUT WAS UNSUCCESSFUL..." WHERE ALL THREE OFFICERS PRESENT DURING INTERROGATION EACH GAVE CONTRADICTING, MISLEADING AND UNRELIABLE TESTIMONY TO ONE ANOTHER, THEIR OWNSELVES, THEIR OWN REPORTS, THE FACTS AND THEIR PREVIOUS TESTIMONY.

IN JACKSON V DENNO, *Id.*, THE UNITED STATES SUPREME COURT HELD THE PROCESS FOR DETERMINING WHETHER A STATEMENT IS VOLUNTARY, AND THUS ADMISSIBLE, IS BIFURCATED; IT INVOLVES DETERMINATION BY

BOTH THE JUDGE AND THE JURY. FIRST THE JUDGE MUST CONDUCT AN EVIDENTIARY HEARING, OUTSIDE THE PRESENCE OF THE JURY. WHERE THE STATE MUST SHOW THE STATEMENT WAS VOLUNTARY MADE BY A PREPONDERANCE OF THE EVIDENCE. THE COURT INDICATED "THAT A DEFENDANT IN A CRIMINAL CASE IS DEPRIVED OF DUE PROCESS OF LAW IF HIS CONVICTION IS FOUNDED, IN WHOLE OR IN PART, UPON AN INVOLUNTARY CONFESSION, WITHOUT REGARD FOR THE TRUTH OR FALSITY OF THE CONFESSION."

IN STATE V. GILIAN, 360 S.C. 433, 458, 602 S.E. 2d 62, 76 (Ct. App. 2004), THE TEST OF VOLUNTARINESS IS "WHETHER A DEFENDANT'S WILL WAS OVERBORNE BY THE CIRCUMSTANCES SURROUNDING THE GIVEN STATEMENT". THE DUE PROCESS TEST TAKES INTO CONSIDERATION "THE TOTALITY OF ALL THE SURROUNDING CIRCUMSTANCES - BOTH THE CHARACTERISTICS OF THE ACCUSED AND THE DETAILS OF THE INTERROGATION."

IN STATE V. ROLHESTER, 301 S.C. 196, 200, 391 S.E. 2d 244, 249 (1990), SOUTH CAROLINA LAW PROVIDES THAT A VOLUNTARY WAIVER OF MIRANDA RIGHTS ONLY CONTINUES UNTIL ONE REVOKES THE WAIVER OR "CIRCUMSTANCES EXIST WHICH ESTABLISH THAT HIS WILL HAS BEEN OVERBORNE AND HIS CAPACITY FOR SELF-DETERMINATION CRITICALLY IMPAIRED." AND "THE CONFESSION MAY NOT BE 'EXTRACTED BY ANY SORT OF THREATS OR VIOLENCE, [OR] OBTAINED BY ANY DIRECT OR IMPLIED PROMISES, HOWEVER SLIGHT, [OR] BY THE EXTORTION OF IMPROPER INFLUENCE.'" (CITING HUTTO V. ROSS, 429 U.S. 28, 30, 97 S.Ct. 202, 203, 50 L.Ed. 2d 194, 197 (1976)).

THE ADMISSION OF APPELLANT'S STATEMENT TO FOREST ACRES WAS PREJUDICIAL AND UNLAWFULLY RULED ADMISSIBLE BECAUSE OF INITIAL WAIVER THAT WERE WAIVED UNAWARE OF WHY HE WAS WAIVING HIS RIGHTS AND WAS PROMISED MEDICAL ATTENTION THAT HE HAD BEEN SEEKING FROM LAW ENFORCEMENT ON NUMEROUS OCCASIONS, BEFORE SIGNING THE WAIVER AND WHERE EVIDENCE FROM POLICE SHOWED APPELLANT'S WILL WAS OVERBORNE AND IT TOOK THREE OFFICERS TO KEEP HIM ON TOPIC BECAUSE HE ONLY WANTED TO TALK ABOUT HIS ISSUES WITH BEING MICROCHIPPED IN HIS HEAD BY POLICE. WHICH IS DIRECTLY RELATED TO THE CIRCUMSTANCES SURROUNDING APPELLANT'S ISSUES, WHICH THE THREE OFFICERS KNEW OF AND WERE WELL AWARE OF PRIOR TO INTERROGATION FROM THREE POLICE OFFICERS. FURTHERMORE, APPELLANT STATES AT THE END OF THE STATEMENT HOW HE BELIEVED HE WOULD BE ABLE TO "RESOLVE" HIS ISSUES AND BE ABLE TO SHOW THE POLICE THAT HE ASKED HELP FROM THAT HE ~~WAS~~ WAS TELLING THE TRUTH ABOUT BEING MICROCHIPPED BY UTAH POLICE. WHICH IS EVIDENT APPELLANT BELIEVED HE WOULD RECEIVE PROMISED MEDICAL ATTENTION TO REMOVE THE MICROCHIPS INSIDE OF HIS HEAD TO HAVE THE PROOF TO BE ABLE TO SHOW THAT HE WAS IN FACT TELLING THEM THE TRUTH ABOUT BEING ILLEGALLY MICROCHIPPED BY UTAH POLICE. THE THREE OFFICERS TESTIMONY IS CONTRADICTIONARY TO ONE ANOTHERS AND

INVESTIGATOR BAILEY'S REPORT OF INTERROGATION THAT THEY ALL ATTEMPTED TO MINIMIZE YET SHOWED THEIR CONTRADICTIONS, INCONSISTENCIES AND UNRELIABILITY AND ONCE PRESENTED WITH HIS REPORT, THEY HAD TO CHANGE THEIR ACCOUNTS OF THE INTERROGATION YET STILL DENIED APPELLANT ONLY WANTED TO DISCUSS HIS PROBLEMS TO MISREPRESENT THE FACTS AND CAUSE UNFAIR PREJUDICE TO APPELLANT BY MAKING IT APPEAR AS IF HE VOLUNTARILY GAVE THE STATEMENT ANXIOUSLY AND WILLINGLY ~~WHEREAS~~ ALTHOUGH HIS WILL WAS NOT OVERBORN, YET THEIR TESTIMONY SHOWS THE CONTRADICTIONS AND THEIR OWN INCONSISTENCIES OF EVENTS - ALL OF WHICH CAUSED APPELLANT UNFAIR PREJUDICE AND DENIED HIM HIS GUARANTEED RIGHTS TO A FAIR TRIAL AND DUE PROCESS OF LAWS. WHERE THIS EVIDENCE WAS OBTAINED ILLEGALLY FROM THE ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE AND IS "THE FRUIT OF THE POISONOUS TREE," AND ILLEGAL AND CAN NOT BE USED AGAINST APPELLANT IN THE COURT OF LAW.

THE TRIAL COURT ERRED IN ADMITTING APPELLANT'S STATEMENT TO CITY OF COLUMBIA POLICE FOR TUCKER CASE PURSUANT TO JACKSON V. DENNO, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 2d 908 (1964) WHERE APPELLANT DID NOT RECEIVE WARNING OF HIS RIGHTS FOR UNRELATED, SEPARATE ALLEGATIONS FROM DIFFERENT AGENCY WHERE APPELLANT REFUSED TO GIVE A STATEMENT, YET OFFICER WROTE A STATEMENT AND APPELLANT DENIED THE ALLEGATIONS AND STATED HE WAS LET INTO THE HOUSE OF THE ~~EDWARDS~~ TUCKERS WHOM APPELLANT KNOWS, MS. TUCKER LEFT WILLINGLY, AND A WITNESS WITNESSED THEM LEAVE THE HOUSE AND THAT THE SEX WAS CONSENTUAL WHICH IS NOT A CRIME. WHERE THIS EVIDENCE WAS GATHERED ILLEGALLY AFTER ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE AND THEIR ILLEGAL ARREST WHICH IS ~~THE~~ ARGUED PREVIOUSLY IN THIS BRIEF. WHICH IS "THE FRUIT OF THE POISONOUS TREE," AND ANY AND ALL EVIDENCE GATHERED ILLEGALLY AND THEREFORE ILLEGAL AND INADMISSIBLE IN THE COURT OF LAW AND CAN NOT BE USED AGAINST APPELLANT WHICH CAUSED HIM UNFAIR PREJUDICE AND DENIED HIM HIS RIGHT TO A FAIR TRIAL ~~AND~~ ~~GUARANTEED~~ HIM IN THE DUE PROCESS OF LAWS.

APPELLANT WAS UNFAIRLY PREJUDICED BY THE TRIAL COURT'S ADMISSION OF THE INVOLUNTARY, AND WITHOUT MIRANDA WARNING OF APPELLANT'S RIGHTS TO A SEPARATE UNRELATED ALLEGATION FROM A DIFFERENT POLICE AGENCY, STATEMENT APPELLANT STATED HE DID NOT WANT TO GIVE WHERE QUESTIONING SHOULD OF CEASED AT THAT TIME. YET, INVESTIGATOR COLIN D. BAILEY WROTE A STATEMENT AND STILL MISREPRESENTED THE FACTS AND CONTRADICTED THE STATEMENT HE WROTE

IN JACKSON V. DENNO, Id., THE UNITED STATES SUPREME COURT HELD THE PROCESS FOR DETERMINING WHETHER A STATEMENT IS VOLUNTARY, AND THUS ADMISSIBLE, IS BIFURCATED; IT INVOLVES DETERMINATIONS BY BOTH THE JUDGE AND THE JURY. FIRST THE JUDGE

MUST CONDUCT AN EVIDENTIARY HEARING, OUTSIDE THE PRESENCE OF THE JURY. WHERE THE STATE MUST SHOW THE STATEMENT WAS VOLUNTARILY MADE BY THE PERPOWDERANCE OF THE EVIDENCE. THE COURT INDICATED "THAT A DEFENDANT IN A CRIMINAL CASE IS DEPRIVED OF DUE PROCESS OF LAW IF HIS CONVICTION IS FOUNDED, IN WHOLE OR IN PART, UPON AN INVOLUNTARY CONFESSION, WITHOUT REGARD FOR THE TRUTH OR FALSITY OF THE CONFESSION."

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IN MIRANDA V. ARIZONA, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), A STATEMENT OBTAINED AS A RESULT OF CUSTODIAL INTERROGATION IS INADMISSIBLE UNLESS THE SUSPECT WAS ADVISED OF AND VOLUNTARILY WAIVED HIS RIGHTS UNDER MIRANDA V ARIZONA, SUPRA, AND ONCE WARNINGS HAVE BEEN GIVEN, THE ~~SO~~ SUBSEQUENT PROCEDURE IS CLEAR. IF THE INDIVIDUAL INDICATES IN ANY MANNER, AT ANY TIME PRIOR TO OR DURING QUESTIONING, THAT HE WISHES TO REMAIN SILENT, THE INTERROGATION MUST CEASE.

THE ADMISSION OF APPELLANT'S STATEMENT TO CITY OF COLUMBIA POLICE WAS PREJUDICIAL BECAUSE APPELLANT HAD TO EXPLAIN HIMSELF AND CIRCUMSTANCES SURROUNDING THE TUCKER ALLEGATIONS. WHERE INVESTIGATOR BAILEY HIMSELF TESTIFIED THAT HIM AND HIS SEPARATE CASE WAS NOT INTRODUCED TO APPELLANT TILL AFTER FOREST ACRES POLICE ENDED THEIR QUESTIONING, EVEN WITH CONTRADICTIVE TESTIMONY STATING HE WAS INTRODUCED PRIMARILY AS "LAW ENFORCEMENT" WITH FOREST ACRES. APPELLANT WAS NOT NOTIFIED NOTHING PERTAINING TO WHO HE WAS OR WHY HE WAS THERE BY NO ONE PRIOR TO INITIAL WAIVER WITH PROMISES OF MEDICAL ATTENTION TO REMOVE MICROCHIP IMPLANTS IN HIS HEAD FROM POLICE, THAT FOREST ACRES POLICE TESTIFIED THAT THE WAIVER WAS FOR THEIR INVESTIGATION OF TRIAL INCIDENT WHICH CITY OF COLUMBIA POLICE INVESTIGATOR BAILEY HAD NOTHING TO DO WITH. AS INVESTIGATOR CHARLES MORRISON STATED THE WAIVER IS ENTITLED FOR FOREST ACRES POLICE AND

WAS FOR THEIR INVESTIGATION OF TRIAL INCIDENT AND THUS OFFENSE SPECIFIC. WHERE THE CITY OF COLUMBIA POLICE INVESTIGATOR COLIN D. BAILEY SUBMITTED INTO DISCOVERY AND ATTEMPTED TO USE THE FOREST ACRES POLICE WAIVER WHERE HE HIMSELF STATED IN HIS OWN REPORT AND TESTIFIED THAT HIM AND HIS UNRELATED ALLEGATION WAS NOT INTRODUCED TO APPELLANT TILL "AFTER" FOREST ACRES WERE DONE WITH THEIR QUESTIONING AND HE TESTIFIED THAT HE NEVER ADVISED APPELLANT OF HIS RIGHTS AND THAT APPELLANT REFUSED TO GIVE A STATEMENT. YET HE TOOK IT ON HIMSELF TO WRITE ONE ANYWAY WHICH STILL APPELLANT DENIED THE ALLEGATIONS AND STATED THAT HE KNOWS THE TUCKER'S WAS LET INTO THE HOUSE, WAS SEEN LEAVING THE HOUSE WITH MS. TUCKER WHO WAS NOT KIDNAPPED AT KNUKE POINT AND THE SEX WAS CONSENSUAL. WHERE THIS EVIDENCE WAS GATHERED ILLEGALLY, ~~REMOVED~~ "THE FRUIT OF THE POISONOUS TREE," FROM THE ILLEGAL ACTIONS OF SLED AND FUGITIVE TASK FORCE WHICH IS ILLEGALLY OBTAINED AND THEREFORE INADMISSIBLE AND CAUSED UNFAIR PREJUDICE TO APPELLANT BY HIS RIGHTS BEING VIOLATED AND DENIED HIM A FAIR TRIAL DUE PROCESS AND EQUAL PROTECTION OF LAWS.

CONCLUSION

BASED ON THE ABOVE, APPELLANT MARTINEZ'S CONVICTIONS AND SENTENCES SHOULD BE VACATED, AND HIS CASE REMANDED FOR A NEW TRIAL.

DATED: 5/24/18

Nathan D. Martinez
NATHAN D MARTINEZ #370708
PRO SE APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
HONORABLE R. KNOX MCMAHON,
CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT,

V.

NATHAN D. MARTINEZ,

APPELLANT

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MAY 29 2018

SC Court of Appeals

CERTIFICATE OF SERVICE

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APPELLANT BRIEF HAS BEEN MAILED IN THE U.S. MAIL WITH
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P.O. Box 11629
COLUMBIA, SC 29211

THIS 24TH DAY OF MAY, 2018

Nathan D. Martinez

NATHAN D. MARTINEZ 370708

PRO SE APPELLANT

BROAD RIVER CORRECTIONAL INSTITUTION

4460 BROAD RIVER ROAD

COLUMBIA, SC 29210

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THIS 24TH DAY OF May 2018.

Dalinda J. Butler

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: March 29, 2028

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 - STATEMENT OF CASE 6
 - STATEMENT OF FACTS 7-20
 - ARGUMENTS 21-46
 - CONCLUSION 47
 - 4 - DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL (1 PAGE)
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Nathan D. Martinez

NATHAN D. MARTINEZ #370708

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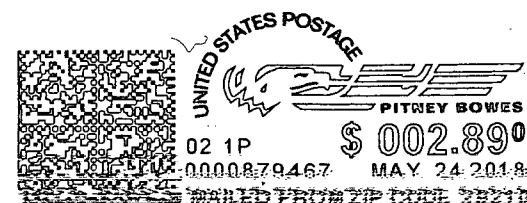
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