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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

The Honorable Brooks P. Goldsmith, Circuit Court Judge
2000-CP-36-0051

STEPHEN ANDREW BECKHAM,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR *WRIT* OF *CERTIORARI*

2011-204368

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II. Did the PCR Court err by not applying the *Remmer*[1] presumption of prejudice? Beckham presented evidence of repeated and substantial external contacts and invasions of privacy of the sequestered jurors who sat in judgment during his capital murder trial (PCR Grounds A through G)?

III. Did the PCR Court err by not concluding that Beckham established prejudice? Beckham presented evidence of repeated and substantial external contacts and invasions of privacy of the sequestered jurors who sat in judgment during his capital murder trial (PCR Grounds A through G)?

IV. Did the PCR Court err by allowing the State to question the jurors concerning their verdict, in violation of Rule 606(b), SCRE, about whether the external contacts and invasions of privacy affected their deliberations?

V. Did the PCR Court err by denying Beckham's motion for summary judgment when the undisputed evidence showed that juror John Grimes failed to properly disclose that, while he sat on Beckham's capital murder trial, he was licensed by SLED as an armed security guard with the power to arrest, and, therefore, disqualified as a juror pursuant to S.C. Code Ann. §14-7-820 (PCR Grounds I)?

VI. After a full hearing on the merits, did the PCR Court err by denying Beckham's motion for summary judgment when the undisputed evidence showed that juror John Grimes failed to disclose that, while he sat on Beckham's capital murder trial, he was licensed by SLED as an armed security guard and, therefore, disqualified as a juror pursuant to S.C. Code Ann. §14-7-820 (PCR Grounds I)?

VII. Did the PCR Court err by not granting Beckham a new PCR hearing or even by simply reopening the record of the pending PCR so that Beckham could conduct additional discovery and present evidence about the SLED Jury Sequestration Manual, when the State possessed the manual during Beckham's PCR hearing and willfully failed to disclose it during pre-trial discovery or during the hearing and post-hearing *de bene esse* depositions, in violation of the Rules of Civil Procedure?

VIII. Did the PCR Court err by not applying a cumulative error analysis?

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[1] *Remmer v. U.S.*, 347 U.S. 227 (1954) ("*Remmer* I") and *Remmer v. U.S.*, 350 U.S. 377 (1956) ("*Remmer* II").

STATEMENT OF THE CASE

The State arrested the petitioner, Stephen Beckham, on July 15, 1995 for the death of his wife, Victoria Lander. On January 15, 1996, the Newberry County Grand Jury indicted him for murder, kidnapping, and conspiracy.

The State tried Beckham before the Honorable Henry Floyd and a jury. The State sought the death penalty. Jury selection began on September 16, 1996 in Oconee County, SC. The guilt or innocence phase of the trial was held from September 19 through October 1, 1996. The State adduced evidence that Beckham killed his estranged wife, with the assistance of a bouncer from a Myrtle Beach strip club, over a child custody dispute arising from a pending divorce action and due to significant debt. The State showed that Beckham frequented Smuggler's Show Girls ("Smuggler's'"), which is a strip club in Myrtle Beach. The State introduced evidence it claimed proved that Beckham had cocaine and video poker habits, both of which could be easily satisfied at Smuggler's.

Through phone records and testimony of many SLED agents and witnesses associated with Smuggler's, the State presented evidence that it claimed showed that Beckham enlisted Smuggler's bouncer Richard Anderson to help kill his wife. Anderson testified that Beckham hired him to kill his wife and get rid of her body in such a way as to make it appear that she died in a car crash. The evidence showed that Anderson, in Beckham's presence according to Anderson, actually killed the victim with a large pipe wrench and that Anderson drove the victim's vehicle to a road in Little Mountain, SC. Once there, Anderson attempted to send the victim's car off the cliff side of the road to affect the staging of a car accident. Anderson's effort failed, however, and the car ended up against the inside of the road, instead of going over the cliff edge. To establish motive, the State submitted evidence of a life insurance policy on the

victim, for which Beckham was the beneficiary, and tax liens filed in excess of $60,000 against Beckham. Additionally, the State adduced evidence that Beckham and the victim were embroiled in a divorce action, battling over which of the two parents would be primary custodian of the couple's three children. *State v. Beckham*, 334 S.C. 302, 513 S.E.2d 606 (1999).

Beckham denied that he killed the victim and, through testimony of alibi witnesses, demonstrated that he could not have killed her. Beckham showed Richard Anderson was telling the truth about killing the victim, but Anderson was lying about who was with him and Anderson's accomplice was actually an owner of Smuggler's, Michael Beatty, Jr., not Beckham. Anderson's motives for killing the victim were his own, and were not at the urging of Beckham. Under the now largely defunct third-party guilt rule, the trial court barred Beckham's counsel from introducing evidence, testimonial and physical, that he was not involved in the murder. Beckham otherwise strove to discredit the many witnesses of unsavory character, primarily strippers, bartenders, and jailhouse snitches, with impeachment evidence or evidence that these witnesses were threatened by law enforcement, and to show that law enforcement witnesses were biased against him for various reasons. *Id.*

The jury returned a verdict of guilty on all three counts. The sentencing phase of the trial began on October 4, 1996, and the jury recommended a sentence of life imprisonment for murder. Judge Floyd sentenced Beckham to life imprisonment as to murder, 30 years as to kidnapping, and 5 years as to criminal conspiracy. Beckham appealed. This Court affirmed the convictions on February 22, 1999. *State v. Beckham*, 334 S.C. 302, 513 S.E.2d 606 (1999).

Beckham filed an application for post-conviction relief on February 15, 2000. The Honorable Brooks P. Goldsmith, presiding by special order of this Court, convened an evidentiary hearing September 28-30, 2010, on Beckham's third amended PCR application. The

parties conducted depositions de *benne esse* of the Honorable Henry Floyd on October 28, 2010, former Eighth Judicial Circuit Solicitor W. Townes Jones, IV, on October 29, 2010, and attorney Jack Swerling on November 11, 2010.

Beckham presented evidence of external contacts and invasions of privacy of the sequestered jurors who sat in judgment during his capital murder trial (PCR Grounds A through G). On two separate occasions, one male juror's motel room was broken into and his belongings disrupted. SLED investigated the first break-in without ever informing the trial judge. The forelady of the jury investigated the second break-in and never reported her findings to Judge Floyd. On yet another occasion, someone broke into a female juror's motel room and stole a pair of her underwear and other under-garments. On yet another occasion, an intoxicated male entered the motel room occupied by one of the female jurors. SLED forcibly removed the intruder but never reported the incident to the trial court.

The impermissible contacts occurred when the jurors were away from the motel. While the jurors were eating breakfast one morning, someone penetrated the SLED guard and shouted "hung jury" at the jurors. SLED took the perpetrator into custody. SLED's report of the incident to the trial judge so sanitized the actual event, that Judge Floyd had no ideal whatsoever of the true events, by under-reported the number of jurors hearing the comment and failing to disclose that the perpetrator had been apprehended and hustled into a SLED car, all within hearing and sight of several jurors.

After completion of the PCR hearing and *de bene esse* depositions, Beckham uncovered evidence that, at the time of is trial, SLED had a jury sequestration manual. In addition to uncovering the existence of the manual, Beckham also uncovered evidence that the Attorney Generals Office possessed this manual during the PCR hearing and depositions but did not

disclose it to Beckham. This SLED manual is evidence of SLED both not following its own procedures and failing to maintain the records necessary for the courts to properly investigate the improper juror contacts. Beckham moved, twice, to re-open the record. The PCR Court denied these motions.

In addition, Beckham uncovered evidence that one of the jurors, John Grimes, was a licensed, armed security guard with arrest powers during the time he sat as a juror (PCR Ground I). Licensed security guards are not qualified to sit as jurors in South Carolina.

On September 7, 2011, Judge Goldsmith issued an order vacating the sentence for kidnapping and denying all other post-conviction relief claims (hereinafter "Order Denying PCR"). App. 3447. Beckham moved for a new trial and asked the PCR Court to reconsider pursuant to Rule 59(e), SCRCP. App. 3515. Judge Goldsmith denied those motions. App. 3554.

Beckham timely filed a notice of appeal. App. 3558. This petition for writ of *certiorari* to review the order of the PCR Court follows.

REASON WHY THE WRIT SHOULD BE GRANTED

I. Beckham presented evidence of external contacts and invasions of privacy of the sequestered jurors who sat in judgment during his capital murder trial (PCR Grounds A through G). The PCR Court erred as a matter of law by not applying the "implied bias" doctrine.

II. Beckham presented evidence of external contacts and invasions of privacy of the sequestered jurors who sat in judgment during his capital murder trial (PCR Grounds A through G). The PCR Court erred as a matter of law by not applying the *Remmer* presumption of prejudice.

III. Beckham presented evidence of external contacts and invasions of privacy of the sequestered jurors who sat in judgment during his capital murder trial (PCR Grounds A through G). The PCR Court erred by not concluding that Beckham established prejudice.

Introduction.

It just goes to show you: no matter how revered and dedicated a criminal defendant's trial counsel are, no matter how forthcoming and upright a prosecutor is before and during trial, and no matter how highly vigilant and esteemed the presiding judge is, a trial can go irretrievably wrong when third-parties directly and indirectly violate the jury, and other officers of the Court disregard their orders and the law. Beckham was represented by two of the most experienced, capable, and sought after members of the South Carolina Bar. After extensive review during the pendency of this matter, Beckham found *zero* improprieties by the Solicitor who prosecuted this case at trial. The jurist who presided over Beckham's trial is so highly regarded that he has since been elevated to the Federal District Court and the Fourth Circuit Court of Appeals on nomination of presidents of the United States from both political parties and with the advice and consent of the United States Senate. Yet, even the best defense counsel cannot effectively and zealously advocate on behalf of their client, the best prosecutor cannot effectively seek justice, and the best judge cannot protect a trial from fundamental constitutional fracture at its foundation, when significant injustice after significant injustice is so thoroughly and intentionally concealed from trial counsel, the prosecutor, and the trial judge.

The degree and breadth of the juror and jury misconduct that occurred during Beckham's trial is not only unprecedented in this state, it is unprecedented in this entire country. There is no reported case anywhere in which courts were presented a case where third-party contact permeated a jury such as the case this Court now has before it. It was open-season on jurors and their motel rooms. From the first day of trial and throughout the entire innocence phase, members of Beckham's jury suffered assault after assault at the hotel where they were sequestered. While all this turmoil and these home invasion-like attacks were happening over

and over again outside the courtroom, the jurors were listening to some of the most salacious testimony told by some of the most violent and scary people, strippers and drug dealers, all of whom were promiscuously and morally bankrupt.

The SLED team in charge of the jurors' safety went rogue on the trial court. They falsely reported accounts of problems to or intentionally concealed them from the trial court altogether. Jurors had such little faith in SLED's ability or desire to protect them that the jurors started taking matters into their own hands.

Try as they might to sweep it all under the rug, the truth has now been revealed. Beckham has no way now of knowing all of what the SLED sequestration team said to the jurors, and the SLED team made sure that the trial court and the parties would not find out the truth in time for the trial court and the parties to inquire. However, the truth is that all of these state action failures, breaches, and faults deprived Stephen Beckham's of his constitutional guarantees to a fair and unbiased tribunal and a full and fair trial, all in violation of the Fifth, Sixth , and Fourteenth Amendments, Due Process of Law, and of rights guaranteed by South Carolina law, as to all questions presented.

A. Relevant Facts from Trial Record.

SLED presence permeated all aspects of the trial and the evidence. Captain Charlie Webber[2] maintained a high profile role in the case and trial. Capt. Webber's name is mentioned no fewer than 25 times.[3] While many of these occurrences are without the presence of the jury, many of them delineate just how closely Capt. Webber was associated and involved with the

[2] Captain Webber passed away in January of 2003.

[3] The Supplemental Appendix consists of the trial record on appeal ("Supp. App."). Supp. App. 168, 218, 876, 1113, 1136, 1456, 1461, 1569, 1943, 1944, 1946, 1948, 2257, 2326, 2860, 3593, 3615, 5435, 1137, 5730.

jury. The jury was first introduced to or made aware of Capt. Webber at the very beginning of jury selection, when the judge asked the venire-members to disclose whether or not any of them knew him. Supp. App. 168. He organized and supervised the transport of the jury from Oconee to Newberry County after the jury was selected. Well into the innocence phase of the trial, Capt. Webber organized and supervised the jury's trip to and viewing of the purported "crime scene." Supp. App. 2257, 2326. His presence was prominent and consistent. It was plainly evident to the jurors early on that Capt. Webber was not only in charge of the SLED agents who were in charge of them, the jurors, but that he also played a role in the underlying investigation. *Id.*

Other SLED Agents testified or had their roles in the investigation identified during testimony:

- David Warren Black, testified at length, over 150 pages worth, about the crime scene and SLED's investigation, generally, as well as his specific areas of expertise. Supp. App. 1543.

- Agent Black testified that he called two other SLED agents to assist him at the scene, who he referred to as Special Agent John Christie and Special Agent Wade Fleming. Supp. App. 1545. Agent Jolley was also at the scene. Supp. App. 1586. Agent Black gave detailed testimony about what he and his fellow agents did after they arrived at the crime scene where the victim was located, including testimony about demonstrative evidence, such as photographs. Supp. App. 1546-1566.

- Agent Black testified about other SLED Agents who were also involved with the case along the way. SLED Capt. Webber also went to the site to where the victim's vehicle was towed for processing, as did SLED Major Danny Gilliam. Capt. Webber and Gilliam are not two SLED agents who come out to just any murder scene. Supp. App. 1569.

- Agent Black also testified about SLED Agents Barron and Skraba, who were the forensic scientists who processed the evidence concerning serological and DNA testing. Supp. App. 1568.

- Agent Black testified that he and other SLED agents were responsible for processing the Beckham's home and yard in search of evidence, to which the Beckham consented. Supp. App. 1571-75.

- SLED Agents even attended the autopsy to process substances on the body and collect additional evidence before it was further disturbed by the autopsy process. Supp. App. 1581.

- Agent Black testified that, in June 1995, a year later, SLED Agents McCraw, Fleming, Gilliam, and Stephens notified him that they had located another vehicle for processing in the case.

- SLED Agent Christie is said to have been the person who double-checked Agent Black's fingerprint comparisons. Supp. App. 1749.

- Several SLED Agents testified to narrow issues. SLED agent Nancy Skraba testified concerning her forensic work on the case, having been qualified as an expert in the field of serology. Supp. App. 1761-91.

- SLED Agent Wade Fleming testified about reexamination of fingerprints that had been wrongly assessed by Agent Black (Supp. App. 3524-68), as did SLED Agent Jim Springs. Supp. App. 3571-2610.

SLED Agent Spike McCraw's participation in the case was so interwoven with the sorted and tawdry parade of Smuggler's witnesses that one of the Smuggler's strippers referred to Agent McGraw by the endearing nickname "Spike Dog." His testimony about his work on the case is extensive as his involvement with the preparation of the Smuggler's murderous Mr. Anderson and the rest of the drug dealers, drug users and lap dancers.

Richard Anderson testified extensively about killing the victim, other acts of violence, and occasions that he lied to authorities. His 200+ pages of testimony are littered with such matters. Time after time during his testimony, Anderson invoked the names of SLED agents he worked with, many of whom he referred to familiarly by first names, though the state and Anderson took pains to make sure the jury knew Anderson was referring to SLED agents in his testimony. Supp. App. 1958-2056.

Bert Shawn Gehm had been a DJ at Smuggler's Show Girls since at least 1986. He had known Anderson since he became a bouncer at the strip club. Supp. App. 2693-96. Gehm claimed Beckham was a "regular customer" in 1990 and 1991. Gehm said he and Beckham were

friends only by virtue of Beckham frequenting the strip club. In 1994, Gehm claims, for the first time, that he saw Beckham outside of the club and that he wanted Gehm to make contact with another Smuggler's patron, "Slick Rick." Supp. App. 2699. On another occasion Beckham mentioned a "King Richard," which was an alias for confessed murderer Richard Anderson. Supp. App. 2696, 2699, and 2702. Anderson was a large, intimidating force, and he was violent and would eject rowdy customers by throwing them head first through the door. Supp. App. 2736-40. All the Smugglers employees are "one big happy family." Supp. App. 2745. Many different SLED agents and other police officers interviewed Gehm on numerous occasions. Supp. App. 2713.

Stripper Tammy McKinney has bounced from strip club to strip club throughout her life. Supp. App. 2792-93. McKinney indicated that while she recognized Beckham, she had had no professional dealings with him and had not spoken with him at the club. Supp. App. 2794. McKinney testified about living with Richard Anderson, the man who murdered the victim, from March of 1990 and through early summer of 1994 [sic]. Supp. App. 2794. She worked as a dancer and stripper at Smuggler's all that time. *Id.* After she read a news article about victim's murder a day or two after it happened, she asked her boyfriend, Anderson, if he killed the victim. Supp. App. 2925. McKinney knew Anderson left Illinois, where he had worked before landing at Smuggler's, because he killed a patron by throwing him out of a club head first through the glass door. Supp. App. 2813. She knew that Richard Anderson murdered Victoria Beckham within two days of him having done it.

McKinney's interaction with SLED is particularly troubling. She arrived in SC for Beckham's trial on September 18, 1996. McKinney testified that "Spike Dog" arranged for her and Anderson, who she still loved and considered her boyfriend, to have a "contact visit" at the

jail a few days before her testimony. Supp. App. 2809-10. She repeatedly referred to her interactions with "Spike Dog." Supp. App. 2711, 2809, 2810, and 2834. "Spike Dog," of course, is SLED Special Agent Spike McCraw. He testified shortly after McKinney. Supp. App. 2834. SLED threatened to charge McKinney with accessory after the fact of murder if she did not cooperate. Supp. App. 2816.

Sole Juror Incident on the Record.

On September 26, 1996, Judge Floyd reminded the jurors, "[I]f anything is said to you by anyone, . . . please report that to the agent immediately *so we can deal with that on the spot."* Judge Floyd understood "there was one little minor incident" where someone approached a juror at Bill & Fran's Restaurant and said "hung jury." In the future, he wanted "that information immediately *so that we can deal with that.*" Supp. App. 3365-66 (emphasis added).[4]

Later in the day, outside the presence of the jurors, Judge Floyd revisited the incident. He understood, "The comment this morning was made at Bill and Fran's by somebody who walked by one of the jurors who is Ms. Edna Capps, I believe, who is the alternate." Based on the report of SLED Agent Linda Marsh, the judge understood, "none of the other jurors actually heard the remark. . . . *Because she did not immediately report that, we were not able to apprehend that person to find out anymore."* Supp. App. 3508-09 (emphasis added). After a private attorney/client conference, Harpootlian informed the trial court that Beckham "*would appreciate any tightening of access to the jury that could be had by SLED guard.*" Supp. App. 3509-10 (emphasis added). Judge Floyd agreed, *"I will instruct them to tighten up."* Harpootlian observed, "*Yes, he is just concerned* that we not . . . He likes this jury and we'd like to proceed with this jury if at all possible." Supp. App. 3510 (emphasis added).

[4]In his deposition, Judge Floyd acknowledged he never specifically asked whether any other jurors heard the "hung jury comment." App. 2539.

As will be demonstrated in Subsection I(B) of this petition, *infra*, at the time he was consulting his lawyers and this exchange occurred on the record, neither Beckham nor Judge Floyd was aware of the true nature of this incident. Additionally, neither *Beckham nor Judge Floyd was aware that this incident had been preceded by other* undisclosed breaches of security and invasions of privacy. App. 2649; 2051-52, 2500-01.

B. Evidence Presented during PCR Hearing.

1) Beckham's trial was "very high profile."

Beckham's trial "was a very high profile case . . . probably second only to Susan Smith, because of [Beckham's father being the Episcopal] Bishop and the Senator" who is the victim's father. The "trial was on national TV for three weeks." Judge Floyd "told the lawyers. . . . [w]e're going to try this case by the book." App. 2499, 2521.

2) Judge Floyd Endeavored to Protect the Jury from Outsider Contact.

Judge Floyd decided to sequester the Oconee County jurors who would sit in judgment of Beckham during the trial in Newberry County. "[T]he town [of Newberry] was . . . kind of divided over the matter, and ***we didn't want them running into people*** supporting Mr. Beckham or people supporting the Lander Family." Judge Floyd wanted "every precaution [to be] taken to keep [the jurors] away from somebody who might say something about . . . I'm for Beckham or I'm for Lander." The people in the Newberry community had formed opinions about which side of the case they identified with more. App. 2468-71 (emphasis added).

3) Judge Floyd Ordered that Sequestration Team be from the Low Country.

Judge Floyd wanted a sequestration team ***not connected to the investigation.*** At the time of Beckham's trial, SLED was divided into four regions. Newberry County was in the Piedmont region. A memorandum dated July 5, 1996 from SLED Capt. Webber to SLED Lt. L.C. Knight

documented, "[D]ue to many of the agents in the Piedmont region being involved in the investigation, ... Judge Henry Floyd . . . has requested a team of agents from the Low country to handle the sequestration of this jury.[5] App. 2219.

Judge Floyd ordered that "the jurors in this case shall be sequestered and shall thereafter be kept in the custody of the South Carolina Law Enforcement Division for the duration of the trial." The order required SLED "*shall provide for adequate security for the jury.*" App. 2220 (emphasis added). The Clerk of Court would select the motel, but once the jury was selected, "then SLED would make arrangements ***to secure*** the place." The purpose of "adequate security" was "to make sure that there is no outside contact with the jurors . . . that would affect the outcome of the case." According to Judge Floyd, SLED's "job was to make sure that nobody said anything or did anything that would affect the outcome." App. 2475-78.

4) Judge Floyd Ordered no Unauthorized Contact by Outsiders with Jury.

Judge Floyd's ordered SLED to maintain a record "of agents' assignments to shifts and duty stations," "Jurors' quarters," the "person's entering the area of the jurors' quarters," and "telephone calls to and from the jurors' quarters." The SLED personnel "shall make certain that no member of the jury has unauthorized contact with any outside person." App. 2222. Judge Floyd testified that a record of people authorized to be in the area of the jurors' quarters would be helpful, because if an incident occurred, then those people might be witnesses. App. 2479-80.

According to Judge Floyd, "Captain Charlie Webber was head of the [sequestration] team." Judge Floyd's "understanding with Charlie [Webber] was that he would respond to [the

[5] According to Judge Floyd, a distrust of law enforcement by some of the people connected to the case also factored into the decision to get sequestration team members from outside the Piedmont Region. "[T]he Beckham family hated the [Newberry] sheriff's office. The Lander family was a little bit suspicious of SLED, ... so I specifically requested agents from out of the area. App. 2484-85.

Court] and the team would respond to [Webber] so that he knew everything that was going on." Judge Floyd wanted to know about "[a]nything that would affect the outcome of the trial." App. 2480-82.

5) SLED failed to inform Judge Floyd of numerous intrusive, unauthorized outsider contacts.

The PCR hearing revealed that Capt. Webber and SLED did not inform Judge Floyd of multiple incidents that affected the outcome of the trial.

After the first day of trial, Juror Jack Galbreath returned to his motel room and discovered his suitcase "had been gone into." He normally keeps his clothing folded but they were "scatted throughout the suitcase." Galbreath immediately reported the incident to SLED Agent James Barry and asked Barry if any of the agents had searched his room while the jurors were in court. Other jurors knew Galbreath was upset. James Cooprider "was standing . . . next to the SLED agent that [Galbreath] was telling what happened" and "overheard" Galbreath telling the agent about someone going through his suitcase. Cooprider testified Galbreath was upset and his voice was raised. App. 2093-97. Juror McGuffin testified that she was aware of Galbreath's report of his belongings being tampered with. She recalled Galbreath "telling the other jurors that someone had messed with his things." App. 1601-02. She knew through Galbreath's voice that he was "upset" while he was telling the others what had happened. App. 1602; *see also* App. 3468, 3475-76 (Order denying PCR).

Agent Barry instructed Agent Mears to take a statement from Galbreath regarding the incident. App. 2234-35 (Applicant's Exhibit 11). Galbreath observed Barry calling someone and "was told" it was Judge Floyd. Mears' report documented that Agent Barry informed Capt. Webber of the intrusion, Capt. Webber ordered Agent Natalie Talbert to investigate the intrusion at the hotel, and Agent Talbert arrived at the hotel at precisely 19:08. App. 1685-86, 2235.

Agent Mears turned the report over to Agent Barry and took no further action. App. 1685. SLED never reported this incident to Judge Floyd. App. 2493-94. Galbreath testified that upon the agent's arrival at the hotel, "[s]he just looked at [his] suitcase and then asked [him] to open it up and just kind of questioned [him] about the stuff in the suitcase." App. 1546-47. She did not take photographs or look for fingerprints. App.1547. After spending approximately between 30 and 45 minutes in Galbreath's room, Agent Talbert left. Galbreath also testified that he did not believe that Agent Talbert took the situation seriously enough. App. 1547; *see also* app. 3468-72 (Order denying PCR).

Sequestration agents never informed Judge Floyd about the incident, that Capt. Webber called Agent Talbert to investigate this incident, or that Agent Talbert entered Galbreath's room and talked with him there. Judge Floyd was not aware Agent Talbert worked in the Piedmont Region, the very Region he did not want to have contact with the jurors. App. 2493, 2504; *see* also app. 3472-74 (Order denying PCR).

Galbreath testified that his suitcase was gone through a second time. About a week after the first incident, Galbreath returned to his room to see that his suitcase was not locked the same way he left it and this time his belongings were more messed up than the first time. App. 1548-49. After the second incident, Galbreath went to the forelady of the jury and made it clear to her that if his suitcase was rifled through again. He made clear that he would leave the jury because he "wasn't going to stand for it." App. 1548. When asked why he did not report this second incident to SLED, he responded, "[b]ecause I felt like they didn't take it serious the first time." App. 1548; *see also* app. 3469 (Order denying PCR).

Alice Lamar was selected by Judge Floyd to be the forelady of the jury that sat in judgment of Beckham. She recalls Galbreath came to her after "his bags had been searched."

She testified, "He came to me, said that he knew that his bag had been disturbed and it was not exactly how he had left it." After Galbreath told her about the search, Lamar thinks she "told one of the SLED agents." App. 1567-71. Lamar conducted her own investigation of the incident. She "asked the other jurors if there had been anything that they had noticed." Lamar specifically asked the jurors, "[H]ave you noticed or have you had any problems, anything about your luggage or anything of that sort or anything disturbed in your possessions." Lamar began this investigation "within a few hours of learning" about Galbreath's complaint. She would have completed her investigation by the next day. Lamar interviewed the jurors individually, "maybe one or two at the time," but "it wasn't in one group." She probably would have reported the results of her investigation to SLED." App. 1572-75; s*ee also* app. 3475, 3499-3500 (Order denying PCR).

A similar incident, involving juror Edna Capps, who was in her 60s, took place on September 22, 1996 but was not reported until the next morning. An intruder entered her motel room without permission and stole a pair of her panties, a camisole, and other under garments. App. 2236; *see also* app. 3483-87 *(*Order denying PCR). The parties were unable to locate Juror Capps prior to the PCR hearing, however, other witnesses did testify about the incident.

Juror Galbreath, whose privacy was invaded on two occasions, recalled hearing that another juror had his or her hotel room entered and there were some items missing from the suitcase, but he did not recall who told him about the incident. He did not know if anyone investigated it. App. 1548-49; *see also* app. 3481 (Order denying PCR).

When asked what he recalled about the incident, Agent Rudloff stated, "It was brought to my attention that a juror, a female juror, had had a problem with apparently *somebody going in her room and rummaging through her clothes and I went and took a report on that.*" App. 1733.

After turning the report over to his team leader, Agent Barry, Agent Rudloff was not asked to conduct any further investigation or take any further action regarding the incident. App. 1734-35. He assumed Agent Barry took the report "up the chain of command." App. 1734. Agent Bobby Jenkins[6] presumed that Agent Barry would have reported the incident to Captain Webber. The nature of the allegations, alone, that there was a breach of security, was sufficient to lead him to make that presumption. App. 1795-96. SLED, however, did not inform Judge Floyd of this incident. App. 2498; s*ee also* app. 3481-83 (Order denying PCR).

SLED did not truthfully report the Bill & Fran's Restaurant "hung jury" comment to Judge Floyd. App. 3485-91 (order denying PCR). Juror Chris Conley[7] described the incident. Contrary to what the record shows SLED reported to Judge Floyd, Conley heard the comment and witnessed SLED's response. Conley recalled "somebody said something . . . like he's guilty. . . . The instant it was said ... Bobby [Jenkins] . . . escorted the gentleman out" of the restaurant. App. 1615. Conley knew the statement involved Beckham and his trial. App. 1616. Conley testified the SLED agents "pounced on him" ... "just grabbed him [the commenter] and led him out of the restaurant." According to Conley, Agent Jenkins and "maybe one or two others" were involved in apprehending the culprit. App. 1615-18; *see also* App. 3486-87 (Order denying PCR).

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[6] Agent Jenkins took over as team leader for Agent Barry at 10:00am on September 23, 1996, right around the time the Capps incident was reported. Jenkins testified he was not asked by Captain Webber to perform any investigation of the incident and received no instructions on handling the incident. Those tasks would have been Agent Barry's responsibility because he was the team leader at the time the incident was reported. App. 1796.

[7] At the time of Beckham's trial, Conley's son had just been born. He "was concerned for my wife." He was "nervous" and a little intimidated about the jury selection process. He knew the sequestration process "couldn't be the usual," understood "there was a reason for that," and felt "it made it bigger somehow." The presence of the SLED agents added to the bigness. Conley testified, "[I]t is a powerful thing." App. 1613-15.

Juror Galbreath also witnessed this incident. He recalled, "A gentleman made a comment about a hung jury and they removed him from the restaurant and put him in the SLED car." App. 1550. Galbreath, added that the jurors were told the man was brought to the courthouse and went in front of the judge. App. 1550-51; *see also* app. 3486 (Order denying PCR). Juror Brandy Reid Crocker[8] did not hear the comment but "remember[s] that someone said something to the effect of hung jury and we all had to go back out" of the restaurant. App. 1825. Crocker also "heard some of the other jurors speaking about it." App. 1826-29. While Juror McGuffin also did not actually witness the incident at Bill & Fran's, she testified that she heard about it outside the restaurant from another juror. App. 1606, 1608. Likewise, the forelady, Alice Lamar, did not witness the incident but was aware of it when it happened. She recalled, in graphic fashion, "We were being escorted out of the restaurant, we had all finished eating and we were going back to the courthouse and a young man hollered . . . hung jury, hung jury." According to Juror Lamar, the SLED agents "practically hung him from the wall." The SLED agents apprehended the person, questioned him, and investigated the incident. App. 1576-79; s*ee also* app. 3478 (Order denying PCR). Only at the evidentiary hearing did Lamar deny actually seeing or hearing the event, and *she* invoked the concept of hearsay regarding her deposition testimony.

SLED Agent Linda Marsh, a thirty-seven year (and counting) veteran of SLED, was part of the juror sequestration team. Marsh's incident report and report to Judge Floyd minimized this incident. Marsh's written report dated September 26, 1996 at 9:15 a.m. claims that Edna Capps heard the comment in the restaurant but had "not told any of the SLED Agents about the comment" until she was in the van on the way to the courthouse. Marsh's report also claimed none of the other jurors in the van "had heard the comment." App. 3487-88.

[8] Juror Brandy Reid married after Beckham's trial.

Judge Floyd did not recall anything about this incident other than what appears in the record. He was under the false impression that Ms. Capps was the only person who heard the comment. Judge Floyd would have wanted the person making the comment apprehended "to know who he was and what his interest in the case is." He pointed out, "[I]t could have been somebody that had some various reasons to make that comment." Without talking to that person, Judge Floyd testified he would not be able to answer that question. If other jurors heard the comment, then Judge Floyd would want to know their response to the comment. Judge Floyd pointed out, "but the information relayed to me was that nobody heard it except her." Judge Floyd was relying on the SLED agents to be truthful, complete, and accurate. App. 2485-89; *see also* app. 3489-91 (Order denying PCR).

In response to Beckham's request through Harpootlian to "tighten" access to the jury, Judge Floyd was "sure I told Captain Webber to tighten down the hatches." Supp. App. 3509 and App. 2502.

Another incident occurred at the motel. Juror John Grimes witnessed an incident where SLED forcibly removed an unwelcomed, intoxicated motel guest from one of the female juror's room. He described a man "had been drinking" who "went up the stairs and one of the ladies up there had her door open, he walked in her room, asked her if she wanted a drink." When "another lady came out and yelled to the agents," SLED "ran up there" and "physically removed" the intruder. App. 1516-17, 1527-30. Lamar knew about this incident. She recalled, "[A] man came into one of the jurors' rooms and that he was apparently intoxicated and that the juror . . . went outside and called one of the SLED agents . . . and [the invader] was hustled out of there." App. 1579-80. SLED did not inform Judge Floyd about this incident. App. 2503; *see also* app. 3494-96 (Order denying PCR).

As shown, with the exception of the "hung jury" comment at Bill & Fran's Restaurant, which was the mildest by far of all improper contacts the jurors suffered, SLED did not report any of these incidents to Judge Floyd. The failure of SLED to disclose this information to the trial court meant the information could not be disclosed to Beckham or his lawyers, thereby depriving Beckham an opportunity to investigate the misconduct at the time (PCR Ground G).[9]

If Judge Floyd had been aware of the undisclosed incidents, he testified he would have placed it on the record. App. 2500-02. Lead prosecutor Townes Jones affirmed the judge's position by describing Judge Floyd as being "on top of everything." He went on to say "he was extremely alert and interested, timely, very involved in the process of the trial." App. 2599. Judge Floyd further testified he would have expected Swerling and Harpootlian to bring it to his attention if they had any information about any of the undisclosed incidents. App. 2500-02. That Judge Floyd was unaware of the incidents is evidence that Swerling and Harpootlian, likewise, were unaware of the incidents. As discussed in Section II (B)(7), the information SLED did report to the trial judge about the "hung jury" comment was incomplete, inaccurate, and misleading.

Even though Judge Floyd had been kept in the dark about these incidents, he believes the fact that Swerling and Harpootlian did not call his attention to these incidents confirms Beckham and his trial counsel were also unaware of these events. He testified:

> Dick and Jack are not shy, you know. If they thought something was – they has some specific information or that kind of stuff, then I'm sure they would let me know about it.

App. 2501-02.

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[9] The PCR Court considered Ground G as part of the cumulative error analysis. Order Denying PCR. App. 3503-06. Ground G, however, is a separate ground for relief in the Third Amended PCR Application. App. 476.

During his deposition, Jack Swerling was asked to review each incident report at issue in Beckham's post-conviction relief application and discuss the events, if he could recall knowing about them at the time of Beckham's trial. He was first asked to review the Mears report[10] on the first break-in of Juror Galbreath's room, and when asked if he was aware of that incident prior to the post-conviction proceedings, he replied "[t]o the best of my knowledge, no." App. 2649. To the best of his recollection, he was not aware Juror Galbreath suffered a second break-in either. App. 2651. Further, Mr. Swerling did not have any recollection of a break-in involving Juror Capps' room or of an intoxicated male attempting to enter a female juror's hotel room. App. 2660, 2662.

Swerling went on to testify that these events would have been important pieces of information to know, saying "if there's anything – I would want to know whatever is happening." He reiterated his position by stating "I'm the kind of person who'd want to know whatever is going on." App. 2661-62.

The prosecution team was not aware of these incidents. Solicitor Jones testified that he was not informed of any of the incident during the trial of Beckham's case. App. App. 2601-03. Betty Strom testified that she had no knowledge of the incident until the discovery deposition for Beckham's post-conviction relief action. App. 540-541. Likewise, Coulter[11] and McMahon[12] did not recall the incidents. App. 2008-09, 2159-60.

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[10] The packet of incident reports from the SLED sequestration file is Exhibit 1 --App. 2643-- for purposes of Mr. Swerling's deposition, and Exhibit 11 --App. 2231--from the PCR hearing.

[11] Coulter vaguely remembered the "hung jury" comment incident. App. 1988-89.

[12] Knox McMahon served as an Assistant Solicitor in the Fifth and Eleventh Judicial Circuits for a combined twenty years and was in private practice for three years. He is currently a Circuit Court Judge for the Eleventh Judicial Circuit. App. 2124-25, 2131-32. Judge McMahon did not recall the "hung jury" comment incident, and reviewing pages 3365-66 and

Judge Floyd confirmed no one called them to his attention. He would have discussed them on the record. App. 2483. When Judge Floyd "told Captain Webber to tighten down the hatches" (App. 2502), no one in the courtroom, other than the SLED agents, knew about any of the prior incidents. The damage had been done.

C. Argument.

This Court must view these impermissible external contacts and invasions of privacy from the jurors' perspective *at the time the contacts and invasions occurred.*

After being selected for Beckham's jury, Juror Galbreath was taken from his home in Oconee County and required to stay in a motel, just off the interstate in Newberry. SLED was supposed to protect him. After the first day of trial, Galbreath returned to his room to find his belongings rummaged through. He immediately asked the sequestration team leader, SLED Agent Jim Barry, whether SLED had searched his belongings. SLED led Galbreath to believe, falsely, that Judge Floyd was notified. SLED Agent Natalie Talbert, who was not a member of the sequestration team, came to the motel to investigate. Based on his observations of Talbert's investigation, more appropriately described as a lack of investigation, Galbreath concluded SLED did not take the incident seriously. Rather than feeling secure, Galbreath suffered through a second invasion of privacy where his belongings were searched and rummaged through a second time. Galbreath, having no faith in SLED's response to the first intrusion, complained to the forelady, Alice Lamar. At the time, Juror Galbreath was so upset about the intrusions, that he

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3508-10 of the record did not refresh his memory. App. 2129-30, 2138. Judge McMahon agreed it is necessary for the trial judge to know about an incident involving the jurors before the court can evaluate the severity, investigate it, and take appropriate action which could include excusing the juror or declaring a mistrial. Accordingly, he would want to know about the issue "in any case" it arose. App. 2136-38, 2140.

seriously contemplated leaving Beckham's jury, midtrial. Juror Galbreath was aware at least one other juror, Edna Capps, had her belongings rummaged through and intimately personal items stolen. App. 1549-50.

The security breaches and invasions of privacy continued throughout the trial. At breakfast one morning at Bill & Fran's Restaurant, someone breached SLED security and suggested the trial should end in a "hung jury." Much worse still, a drunk hotel guest was able to penetrate the SLED perimeter and assault one of the female jurors in her hotel room.

At the same time these security breaches and invasions of privacy were occurring, Galbreath and the other jurors sat in the courtroom listening to testimony from violent killers, shady drug dealers, and sketchy stripers from Smugglers. The prosecution paraded SLED agents across the witness stand to present the prosecution's case against Beckham. Witnesses invoked the name of Captain Webber and other SLED investigators to lend credibility to the morally bankrupt witnesses from Smugglers. Galbreath and the other jurors learned SLED even has to power to arrange a conjugal visit between Richard Anderson, a confessed killer, and Tammy McKinney, his transient stripper girlfriend. Supp. App. 2809-10.

Galbreath had to have been under an extraordinary amount of pressure as he listened to this testimony, deliberated, and cast his vote.

In addition to the insurmountable pressure placed on Galbreath, the other jurors were also under a great amount of stress just knowing something unusual was occurring. Many of the jurors were present when Galbreath learned his room had been entered and his suitcase rummaged through. Other jurors knew Galbreath was very upset about the incident. Through her investigation, Lamar placed all the jurors she interrogated about it on notice that something had happened in Juror Galbreath's hotel room, though most of them already knew about the first

intrusion, and that it could happen to their rooms and belongings. Indeed, it happened to Ms. Capps. Plus, drunks could penetrate the SLED guard and intrude in their rooms.

At best, Galbreath and the other jurors must have been confused about the person who made the hung jury comment at Bill & Fran's Restaurant. They saw SLED apprehend the suspect and were told he went in front of the judge. Yet, in what must have appeared to be casting blame on the jurors themselves, Judge Floyd admonished the jurors to report such contacts so that they could be dealt with immediately. In reality, however, the jurors knew that their reports to SLED were not taken seriously and corrective action was missing.

Relevant Legal Standard and Analysis.

Beckham's constitutional rights to a fair trial, and an impartial and unmolested jury, guaranteed by the Fifth, Sixth Amendment, and the due process and equal protection clauses of the Fourteenth Amendment, were violated to the nth degree by state actions. (Questions I, II, III and IV.)

Beckham posits two legal presumptions this Court must consider: the "implied bias" doctrine and the *Remmer* (*Remmer v. U.S.*, 347 U.S. 227 (1954)) presumption of prejudice. Applicant's Brief in Response to State's Memorandum in Support of Denial of Post-Conviction Relief, pp. 5-17.

1. "Implied Bias" Doctrine (Question I).

In *Hunley v. Godinez*, 975 F.2d 316 (7th Cir. 1992),[13] the federal courts cured an injustice that is strikingly similar to what happened to the jurors in Beckham's trial. In *habeas corpus* review of an Illinois state court conviction, the Seventh Circuit applied the "implied bias"

[13] The Order Denying PCR completely ignores *Hunley v. Godinez*. *E.g.* Order Denying PCR, pp. 15-20 (identifying "Relevant Legal Authority").

doctrine. The jurors in *Hunley* were sequestered overnight during deliberations because they were unable to reach a verdict. That night,

> while the jurors were asleep, a burglar made an unforced entry into two of the jurors' rooms with a pass key and snatched several small, easily concealed items. The next morning, the four juror victims, including the foreman, were separately interviewed by the police at the hotel. The police asked the rest of the jurors to check their valuables. All twelve jurors discussed the burglary among themselves and knew which jurors had been burglarized.

Id. 975 F.2d at 317.

Unlike Beckham's trial, the burglaries were disclosed to defense counsel. Over counsel's objection, the trial judge required the jurors to continue deliberations and the previously deadlocked jurors quickly returned a guilty verdict. "Defense counsel moved for a mistrial, arguing that the burglary biased the jury against Hunley." *Id.* The trial judge conducted an *in camera* hearing and questioned the jurors. The trial judge denied the motion for a new trial. In the trial judge's opinion, "the strong evidence of Hunley's guilt decreased the likelihood that the burglary caused the jurors to return a guilty verdict." *Id.* 975 F.2d at 318.

In *Hunley*, the Seventh Circuit observed, "*courts have presumed bias in cases where the prospective juror has been the victim of a crime or has experienced a situation similar to the one at issue in the trial.*" *Id.* 975 F.2d at 319 (emphasis added). "Because of the very unusual circumstances of Hunley's case," the Court held the "implied bias" doctrine applicable. The Court reasoned:

> The limited and unique circumstances of this case justify application of the presumption of bias. The combination of the following facts, as noted by the district court, constitutes an "extreme situation": (1) the jury was burglarized during deliberations and while sequestered; (2) the striking similarity between the jury burglary and the prosecution's theory of the case placed the jurors directly in the victim's situation before she was murdered; (3) this was a close case anyway since Hunley's first trial ended in jury deadlock; (4) before the burglary, the jury stood 8 to 4 in favor of conviction, however after the burglary, the four holdout jurors, two of whom were victims, quickly changed their votes to guilty; (5)

> before final deliberations resumed, all twelve jurors were notified of the burglary and expressed concern over the incident. In short, the combination of all these factors warrants a presumption of bias.

Id. 975 F.2d at 320.

Although the *Hunley* Court considered the facts of that case "limited and unique circumstances," those facts are uncannily similar facts and circumstances of Beckham's trial. The unauthorized entries into the juror's rooms were crimes against the jurors.[14] Indeed, what happened in Beckham's trial is just as shocking as the "limited and unique circumstances" of *Hunley*. Just as the Seventh Circuit found those extreme circumstances justified applying the "implied bias" doctrine, this Court should find what happened to Galbreath, Capps, and the other jurors to be extreme. The following factors in this case justify this Court applying the "implied bias" doctrine:

1) Beckham's trial was on national television as one of the highest profile cases in the state's history, second only to Susan Smith's trial;

2) The first unauthorized entry into Galbreath's motel room occurred on the first day of trial and was followed by a second unauthorized entry into his motel room and the unauthorized entry into Ms. Capps motel room;

3) Both Galbreath and Capps were concerned enough about the intrusions to report them to SLED;

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[14] ***The absence of forced entry, moreover, would only enforce Galbreath's belief about SLED's responsibility, as SLED would have the capability to accomplish the intrusion without evidence of forced entry.*** The State has emphasized throughout the course of this case that there were no signs of forced entry to either Juror Galbreath or Juror Capps' rooms, as if that matters. In South Carolina, burglary requires entry without permission. If a person commits a crime, such as larceny, during a permissive entry, the permission was violated. Forced entry is not required. S.C. Code §16-11-311 through §16-11-313; *State v. Kornahrens*, 290 S.C. 281, 350 S.E.2d 180 (1986) ("The crime of burglary no longer requires proof of a breaking."); and *State v. Cross*, 323 S.C. 41, 448 S.E.2d 569 (Ct. App. 1994) ("First degree burglary requires the entry of a dwelling without consent with the intent to commit a crime therein, as well as the existence of an aggravating circumstance."). In addition to being punishable by contempt of court, intimidating a juror is a felony in this state and qualifies as the crime the intruder may have intended to commit therein, as required by the burglary statutes. S.C. Code §16-9-340. The clothing stolen from Ms. Capps' motel room was also a larceny. S.C. Code §16-13-30.

4) In addition to the unauthorized entries into these rooms, there were repeated breaches of security; and

5) The prosecution's case was based heavily on the testimony of SLED witnesses and witnesses associated with Smugglers. The prosecution repeatedly bolstered the testimony of the morally bankrupt witnesses because of their association with the SLED witnesses.

For these reasons, this Court should apply the "implied bias" doctrine. Under the "implied bias" doctrine, no additional inquiry into prejudice is required. The Court should order a new trial. Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, the Court should grant *certiorari* to consider this question.

2. Remmer presumption of prejudice (Question II).

If this Court decides not to apply the "implied bias" doctrine, then this Court should apply the *Remmer* presumption of prejudice.[15] The PCR Court declined to apply the *Remmer* presumption of prejudice, App. 3436-38, and failed to address *Remmer* when discussing the individual PCR grounds for relief. App. 3477-80, 3483-85, 3491-94, 3496-99, 3400-02.

Much like the case at bar, *Remmer* involved extremely serious allegations of juror intimidation. In *Remmer I*, following a conviction for federal income tax evasion, Remmer "learned for the first time that during the trial a person unnamed had communicated with a certain juror, who afterwards became the jury foreman, and remarked to him that he could profit by bringing in a verdict favorable to the petitioner." *Remmer*, 447 U.S. at 228. The trial judge and prosecuting attorneys were aware of the incident, and the Federal Bureau of Investigation (FBI) investigated. "The F.B.I. report was considered by the judge and prosecutors alone, and they apparently concluded that the statement to the juror was made in jest, and nothing further

[15] *Remmer v. U.S.*, 347 U.S. 227 (1954) and *Remmer v. U.S.*, 350 U.S. 377 (1956).

was done or said about the matter." *Id.* Remmer and his lawyers "first learned of the matter by reading of it in the newspapers after the verdict." *Id.* The trial court denied Remmer's motion for a new trial, and the Court of Appeals affirmed. The United States Supreme Court held:

> In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

Id. 347 U.S. at 229 (citing *Mattox v. United States*, 146 U.S. 140, 148-150, 13 S.Ct. 50, 52-53, 36 L.Ed. 917 (1892); *Wheaton v. United States*, 133 F.2d 522, 527 (8th Cir. 1943). The Court further observed:

> The sending of an F.B.I. agent in the midst of a trial to investigate a juror as to his conduct is bound to impress the juror and is very apt to do so unduly. A juror must feel free to exercise his functions without the F.B.I. or anyone else looking over his shoulder. The integrity of jury proceedings must not be jeopardized by unauthorized invasions.

Id. The Supreme Court remanded "the case to the District Court with directions to hold a hearing to determine whether the incident complained of was harmful to the petitioner, and if after hearing it is found to have been harmful, to grant a new trial." *Id.* 347 U.S. at 230.

Because the District Court failed to address the issue properly following remand, the Supreme Court had to resolve the matter in *Remmer II.* The District Court had only considered the impact of the FBI investigation and concluded "the purpose of the F.B.I. investigation was not to examine [the juror's] conduct, but rather to determine whether [the outside influence] had committed an offense." *Remmer*, 350 U.S. at 378-79. The Supreme Court held the District Court improperly limited the scope of the inquiry and pointed out:

> It was our intention that the entire picture should be explored and the incident complained of and to be examined included [third party's] communication with the juror and the impact thereof upon him then, immediately thereafter, and during the trial, taken together with the fact that the F.B.I. was investigating a circumstance involving the juror and the fact that the juror never knew all during the balance of the trial what the outcome of that investigation was.

Id. 350 U.S. at 379 (emphasis added). The evidence developed indicated the juror had been under "terrific pressure" during the trial. *Id.* 350 U.S. at 381. The Supreme Court concluded, "this evidence, covering the total picture, reveals such a state of facts that neither [the juror] nor anyone else could say that he was not affected in his freedom of action as a juror." *Id.* The Supreme Court concluded:

> As he sat on the jury for the remainder of the long trial and as he cast his ballot, [the juror] was never aware of the Government's interpretation of the events to which he, however unwillingly, had become a party. He had been subjected to extraneous influences to which no juror should be subjected, for it is the law's objective to guard jealously the sanctity of the jury's right to operate as freely as possible from outside unauthorized intrusions purposefully made.

Id. 350 U.S. at 381-82. The Supreme Court reversed and ordered Remmer a new trial.

"[T]he appropriate inquiry is whether the unauthorized conduct or contact is potentially prejudicial, not whether the parties alleged to have tampered with the jury did so intentionally." *U.S. v. Rutherford*, 371 F.3d 634, 641-42 (9th Cir. 2004).

This Court was called upon only once to apply *Remmer*, and the Court ordered a new trial to remedy a situation of juror intimidation. In *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003), the day after the jurors recommended a death sentence, "defense counsel learned improper contact may have been made with a member of the jury pool." *Id.* 354 S.C. at 392, 581 S.E.2d at 157. A defense investigation and evidentiary hearing established members of law enforcement directly contacted family members of death qualified jurors to investigate the jurors' views on capital punishment. "During the trial, the jurors were aware police investigators

had contacted their family members." *Id.* 354 S.C. at 396, 581 S.E.2d at 161. This Court held Bryant's "right to a fair trial by a panel of impartial and indifferent jurors was compromised by the State's action." *Id.* 354 S.C. at 395, 581 S.E.2d at 160. The Court concluded:

> We find the questioning of jurors' family members by Horry County Police detectives in a case in which the victim was a Horry County Police Department Officer was, at minimum, *an attempt to influence the jury. Under the circumstances, the questioning could have been perceived as an attempt to intimidate jurors.* Given the nature of the case, the timing of the inquiries, and the questions which were asked, we conclude the jury investigation produced a jury which was not fair and impartial and, therefore, appellant's Sixth and Fourteenth Amendment rights were violated.

Id. 354 S.C. at 396-397, 581 S.E.2d at 161 (internal citations omitted) (emphasis added).

In *Bryant*, although this Court did not expressly discuss the *Remmer* presumption, the Court applied it. The State admitted the prosecution investigated the jurors through their friends and family, and it did not contact any juror personally. The possibility "the questioning *could have been perceived* as an attempt to intimidate jurors" was sufficient to warrant a new trial. *Bryant*, 354 S.C. at 396-397, 581 S.E.2d at 161. In addition to *Remmer I*, the Court in *Bryant* followed *State v. Cameron,* 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993) (*certiorari* denied Nov. 2, 1993). In response to the juror forelady's question about the legal effect of a recommendation of mercy, a bailiff responded, "This is a fair Judge." *Id.* 311 S.C. at 206, 428 S.E.2d at 11. The Court reasoned:

> In this case, [t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, *a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict.*

Id. 311 S.C. at 208, 428 S.E.2d at 12 (internal citations and quotations omitted) (emphasis added).[16] Accordingly, a new trial was required unless the state could overcome a presumption of prejudice.

This Court, therefore, should apply the *Remmer* presumption of prejudice in Beckham's PCR.[17] As discussed in the introduction to Subsection I(C), *supra*, this Court should view the entire picture from the perspective of the jurors. Juror Galbreath believes to this day that his room was searched by SLED not once, but twice. Despite being upset about the invasion of his privacy, he witnessed SLED's failure to treat his complaints seriously. He was aware someone stole Juror Capps' clothing, including her underwear. He also knew that SLED did not keep a secure perimeter around the jurors. The State's present attempts to explain away what happened to Galbreath are not persuasive and fail to rebut the presumption of prejudice. More importantly, these recently conceived explanations were not communicated to Galbreath while he sat on Beckham's jury. Galbreath believes, and continues to believe, that SLED was looking over his shoulder. These invasions of privacy, coupled with SLED's failure to provide adequate security,

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[16] The Fourth Circuit, likewise, has "applied *Remmer* in the federal *habeas* context." *Fullwood v. Lee*, 290 F.3d 663, 678 (4th Cir. 2002) (reversing District Court and remanding for an evidentiary hearing and holding "the government bearing "the burden of demonstrating the absence of prejudice."); *Stockton v. Com. of Va.*, 852 F.2d 740, 743-44 (4th Cir. 1988) ("The right to an impartial jury belongs to the defendant, however; thus a rebuttable presumption of prejudice attaches to the impermissible communication."); *Fullwood v. Lee*, 290 F.3d 663, 678 (4th Cir. 2002) (reversing District Court and remanding for an evidentiary hearing).

[17] Even prior to the hearing, Beckham established that an unauthorized contact took place that drew into question the integrity of the verdict. The Honorable Wyatt T. Saunders, Jr. issued a protective order governing how the matter would be investigated. At the May 20, 2010 status conference, the parties discussed with this Court the guidelines to be followed to prepare for a hearing into these allegations. Respondent acknowledged "the sensitive nature of the underlying facts and the items stolen." App. 293-94. In fact, the state has never contended the Court should not conduct a hearing on this matter. By consenting to the hearings, respondent also consented to the presumption of prejudice and the burden of proof.

could be perceived by Galbreath as attempts to influence him. No one can say that Galbreath was not affected in his freedom of action as a juror.

Likewise, no one can say that these external contacts and invasions of privacy did not affect the freedom of action of the other jurors. During the course of the trial, many jurors were aware of what happened to Galbreath, that he was upset about it, that it also happened to Ms. Capps, and that sanctity of the jury sequestration was repeatedly breached. The jurors must have wondered: Is SLED looking over our shoulders? How could SLED apprehend a suspect at Bill & Fran's Restaurant, but the trial judge admonish us, the jurors, for not reporting the incident? Are we safe?

The State failed to rebut this presumption by merely speculating about alternative explanations and offering inadmissible testimony. *See also* Section IV, *infra*. Because the lower court's findings and conclusions of law are erroneous according to the record in this case and state and federal law, the Court should grant *certiorari* to consider this question.

3) Beckham established actual prejudice (Question III).

The PCR Court "decline[d] to presume prejudice" and concluded Beckham failed to prove actual prejudice. App. 3400-01. Any conclusion that Beckham failed to prove prejudice is so contrary to the record that it is an abuse of discretion. As discussed throughout this petition, Galbreath believed his privacy was invaded and his personal belongings searched by SLED. Other jurors were aware of what happened to Galbreath, and they were aware it happened also happened to Capps. Outsiders penetrated the SLED perimeter where the jurors ate and slept. Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, the Court should grant *certiorari* to consider this question.

IV. The PCR Court erred by allowing the State to questions the jurors, in violation of Rule 606(b), SCRE, about whether the external contacts and invasions of privacy affected their deliberations. (Question IV).

During the PCR hearing, Mr. Beckham consistently objected to the State's asking whether the jurors were able to render their verdict based on the evidence presented inside the courtroom. *E.g.* App. 1534-36, 1562, 1594-95, 1605, 1620, 1826, 1834-35. The State relied heavily on the jurors' answers to this question. App. 2793, 2797, 2798, 2804, 2808, 2809, 2812, 2814, 2817, 2823, 2825, 2826, 2829, 2846, 2853. The PCR Court overruled Mr. Beckham's objections and considered this testimony. *E.g.* App. 2793, 2798, 2799, 2800, 2803, 2804, 2806, 2808, 2809, 2810, 2816, 2818, 2820, 2821. (Order Denying PCR). This was error.

Courts have long recognized the tricky nature of analyzing jurors' bias. *See Smith v. Phillips*, 455 U.S. 209, 221-2 (1982) (O'Connor, J., concurring) (recognizing that jurors may be incapable of acknowledging their own bias); *Crawford v. United States*, 212 U.S. 183, 196 (1909) ("Bias or prejudice is . . . an elusive condition of the mind . . . and it might exist in the mind of one . . . who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence"); *United States v. Burr*, 25 F. Cas. 49, 50 (D.Va.1807) (a person under the influence of personal prejudice "is presumed to have a bias on his mind which will prevent an impartial decision of the case, according to the testimony" for such person may declare that "notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him").

Rule 606(b), SCRE provides:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, *except* that a juror may testify on the question whether extraneous prejudicial

> information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

(Emphasis added). Consideration of the language appearing before and after the word "except" is critical. Before providing for the exception, Rule 606(b) prohibits consideration of any effect on the "juror's mind or emotions" or the "juror's mental process." The exception then authorizes consideration of juror testimony about impermissible external influence. *See Shumpert v. State,* 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008) ("Rule 606 thus draws a distinction between evidence of external influences on the jury's deliberations and comments of jurors occurring during deliberations."). South Carolina has acknowledged an additional exception allowing the court to consider juror testimony "when necessary to ensure due process, *i.e.* fundamental fairness." *State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). Neither exception allows consideration of the external or internal influence on the "juror's mind or emotions" or the "juror's mental process."

The Fourth Circuit's analysis of Rule 606(b), FRE, which is substantially similar to Rule 606, SCRE, is instructive. The Fourth Circuit will not consider the jurors' testimony concerning the impact of the outside influence on the juror's deliberation. Returning to the Fourth Circuit's procedures for a *Remmer* hearing, the Court, following Rule 606(b), FRE, explained:

> The rules of evidence make it difficult for either party to offer direct proof of the impact that an improper contact may have had on the deliberations of the jury. The right to an impartial jury belongs to the defendant, however; thus a rebuttable presumption of prejudice attaches to the impermissible communication. While juror testimony concerning the effect of the outside communication on the minds of the jurors is inadmissible, the state may rebut the presumption of prejudice through whatever circumstantial evidence is available, including juror testimony on the facts and circumstances surrounding the extraneous communication.

Stockton, 852 F.2d at 743-44 (internal citations omitted).

In *Fullwood, supra*, Judge Traxler further explained:

> In order to protect the finality and integrity of verdicts and to guard against the harassment of jurors, a party seeking to invalidate a verdict may not rely upon evidence of a juror's mental process in connection with the verdict. The Federal Rules of Evidence impose strict limits on the type of juror testimony that may be used to invalidate a verdict. Rule 606(b) is grounded in the common-law rule against admission of jury testimony to impeach a verdict. It prohibits a juror from testifying as to the effect of anything upon that or any other juror's mind or emotions as influencing the juror ... or concerning the juror's mental processes in connection therewith. A juror may testify, however, as to whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Thus, juror testimony concerning the *effect* of the outside communication on the minds of the jurors is inadmissible.

Fullwood, 290 F.3d at 679-680 (emphasis original) (internal citations and quotations omitted).

This approach is further evident in *Remmer* and *Bryant*. In *Remmer II*, the Supreme Court of the United States, considered the juror's testimony about the incident. The Court, however, does not report whether the juror still believed he could decide the case based on the evidence presented in the courtroom. Rather, the Court held "this evidence, covering the total picture, reveals such a state of facts that neither [the juror] nor anyone else could say that he was not affected in his freedom of action as a juror." *Remmer*, 350 U.S. at 381.

This Court applied this same approach in *Bryant*. In fact, the State argued in *Bryant*, "All the jurors clearly testified that they based their decision only on the evidence presented, and to a man or woman adamantly stated they were not affected by knowledge of any contacts." State's Brief in *Bryant* 18. (citations to record on appeal in *Bryant* omitted).[18] Rather than accepting this argument, this Court held the possibility "the questioning **could have** been perceived as an attempt to intimidate jurors" was sufficient to warrant a new trial. *Bryant*, 354 S.C. at 396-397,

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[18]This Court may take judicial notice of other judicial proceedings. Rule 201, SCRE. *See also* State's Brief in *Bryant* 25 ("[A]ll the jurors testified that they based their decision solely on the evidence, and all the jurors who were aware of any contact were adamant it had not influence upon them.").

581 S.E.2d at 161. This Court in *Bryant*, did not even include in the opinion any reference to the jurors' testimony about the effect of the outside influence on their deliberations. Reliance on such testimony, therefore, has been rejected.

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, the Court should grant *certiorari* to consider this question.

V. The PCR Court err by denying Beckham's motion for summary judgment when the undisputed evidence showed that juror John Grimes failed to properly disclose that, while he sat on Beckham's capital murder trial, he was licensed by SLED as an armed security guard and, therefore, disqualified as a juror pursuant to S.C. Code Ann. §14-7-820, as a matter of law (Question V).

VI. After a full hearing on the merits, the PCR Court err by denying Beckham's motion for summary judgment when the undisputed evidence showed that juror John Grimes failed to properly disclose that, while he sat on Beckham's capital murder trial, he was licensed by SLED as an armed security guard and, therefore, disqualified as a juror pursuant to S.C. Code Ann. §14-7-820, as a matter of law (Question VI).

After conducting discovery, the undisputed evidence demonstrated the juror John Grimes, during Beckham's trial, was licensed by SLED as a security guard with the same powers as a deputy sheriff.

A. Relevant Facts from Trial Record.

During jury qualification, Judge Floyd had the Clerk of Court place the potential jurors under oath. Supp. App. 4. Judge Floyd asked if "any member of the jury panel [is] a commissioned law enforcement officer, that is, you have the power to make an arrest? If so, please stand." No one responded. Supp. App. 24.

Judge Floyd later asked whether "any member of the jury panel has a member of their immediate family employed by the South Carolina Law Enforcement Division, commonly known as SLED? If so, please stand." At this point, potential juror John Grimes stated he has "a

SLED card for a private security officer of property of Duke Power." Judge Floyd understood this meant Grimes had "the right to carry a pistol." Supp. App. 170. There was no additional inquiry at this point, but the subject came up again during Grimes' individual juror *voir dire*. Grimes disclosed "hav[ing] the power to make arrests." There was no further inquiry by either Judge Floyd or counsel. Supp. App. 1075-76.

Grimes was selected as a juror for Beckham's trial and participated in the verdict.

B. Evidence discovered during PCR discovery process and Beckham's motion for summary judgment.

In his deposition, Grimes testified he is "licensed by SLED to protect the property." The license "says that I have the *powers of a deputy sheriff* for the laws of arrest to protect the property" (emphasis added). He further testified he has held the rank of "Security Officer III" for "28 years," including at the time of Beckham's trial. App. 657-59.[19]

Because of Grimes' disclosures in his deposition, Beckham subpoenaed records from SLED to determine Grimes' law enforcement status. Not only did SLED oppose answering this subpoena, Executive Director Reginald I. Lloyd represented the agency at a hearing on the Motion to Quash. This Court directed SLED to provide information responsive to this portion of Beckham's subpoena. App. 437-38. In accordance with this Court's order, SLED produced an affidavit, dated September 23, 2010, from Lt. Ben Moore, who is the Supervisory Special Agent of SLED's Regulatory Unit, which affirms "John Grimes, RO014340, was registered as an armed security guard from July13, 1981 through present date." App. 2206.

Based on Grimes' deposition testimony and Moore's affidavit, Beckham moved for summary judgment. App. 628-33. Prior to commencement of the evidentiary hearing on

[19] Excerpts of Grimes' deposition are attachments to Applicant's motion for Summary Judgment.

September 26, 2010, the Court heard this motion. App. 1482-95. The Court denied the motion. By written motion dated October 8, 2010, Beckham requested the Court to reconsider this ruling. App. 2445. By written order dated December 1, 2010, the Court denied this motion. App. 2717; *see also* app. 3395-96 (Order Denying PCR).

C. Evidence Presented during PCR Evidentiary Hearing.

Grimes confirmed he has been employed as a "security officer" at Duke Energy for 32 years at the Oconee Nuclear Power Plant in Oconee County, which is one of the largest facilities in the country. Grimes initially testified, "I just have to be registered with South Carolina Law Enforcement Division to carry a firearm." At the time of Beckham's trial, Grimes "was carrying a SLED card." To comply with his SLED license, Grimes has to carry a "SLED card." He produced his card, and a copy was introduced into the record. The backside of Grimes' card plainly states he "shall have the **authority and arrest power given to sheriff's deputies to arrest a person . . .** on the property on which the officer is employed" (emphasis added). App. 1510-15, 1530, 1537-38, 2238-41.

SLED Lt. Ben Moore oversees "the security guard registrations." He testified licensed security guards "have the authority and arrest powers of deputy sheriff on the property they are hired to protect." If he arrested someone on Duke Power property, then Grimes would be considered the arresting officer when the person is prosecuted. Moore acknowledged state law provides that if someone resists Grimes effort to arrest them, then the person can be charged with resisting arrest. App. 2065-66, 2068,2082-86, 2090-91. Moore identified a copy of his affidavit (Applicant's Ex. 1) and reconfirmed "John R. Grimes, 1434, was registered as an armed security guard from July 13, 1981, until present," including at the time of Beckham's trial. App. 2083.

Moore, likewise, confirmed Applicant's Ex. 2 "is a copy of the registration for an armed security permit through" SLED. App. 2079, 2081-84.

Judge Floyd ultimately had the responsibility for determining whether jurors are qualified to serve. Regarding the law enforcement officer exclusion, Judge Floyd testified, "[T]he public policy reason for it would be that they would be more likely to side with the state, and so they are excluded in that regard." Accordingly, if any potential juror has the power to make an arrest, Judge Floyd would expect them to respond to the question he asked of all the jurors during the jury qualification process at Beckham's trial, whether "any member of the jury panel [is] a commissioned law enforcement officer, that is, you have the power to make an arrest? If so, please stand." Supp. App. 24. When Grimes disclosed he had a SLED card on page 170 of the trial transcript, Judge Floyd understood Grimes was telling the Court he had the right to carry a pistol. Judge Floyd further agreed there was nothing in Grimes' response indicating he had arrest powers. Judge Floyd also acknowledged there was nothing in Grimes' responses that informed the court Grimes had the authority of a deputy sheriff. App. 2507-2514.

D. Argument.

The PCR Court declined to rule on this issue, finding instead that "this claim is not cognizable in an action for post-conviction relief" and should have been raised prior to "the juror being impaneled." App. 3506-07 (Order Denying PCR). As seen, this claim could not have been raised during the trial because Grimes was not truthful about his status equivalent to a Deputy Sheriff. As outlined below, Grimes presence on Beckham's jury violated the state constitution and created a bias in favor of the State.

"Each juror must be a resident of this State and have such other qualifications as the General Assembly may prescribe." S.C. Const. Art. V, §22. The General Assembly has

prescribed, "No clerk or deputy clerk of the court, constable, **sheriff**, probate judge, county commissioner, magistrate or other county officer, or any person employed within the walls of any courthouse is eligible as a juryman in any civil or criminal case." S.C. Code §14-7-820 (emphasis added). This juror disqualification existed in South Carolina long before Beckham's trial and has been interpreted as excluding deputy sheriffs from serving as jurors. *State v. Johnson*, 123 S.C. 50, 115 S.E. 748 (1923). South Carolina "has adopted a functional rather than a rigid formalistic approach in interpreting and applying the provisions of this statute." *State v. Cooper*, 291 S.C. 332, 353 S.E.2d 441 (1986) (holding a "highway patrolmen are functionally equivalent to deputy sheriffs") *overruled on other grounds State v. Torrence*, 406 S.E.2d 315, 328, 305 S.C. 45, 69 (1991).

Grimes disclosed for the first time in his deposition that he has the powers of a deputy sheriff. As discussed above, this information was further explored at the PCR hearing. The fact that Grimes describes himself as having the powers of a deputy sheriff, standing alone, does not determine the issue. Grimes' job function rather than his "subjective view of his employment" determines whether he is qualified. *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000) *overruled on other grounds Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009). A review of the statute setting forth Grimes' powers as a security officer establishes he is both the functional and legal equivalent of a deputy sheriff. S.C. Code §40-18-110 grants a licensed security guard "the **authority and arrest power given to sheriff's deputies** . . . . on the property on which he is employed" (emphasis added). *See also State v. Brant,* 278 S.C. 188, 293 S.E.2d 703 (1982) ("a security guard licensed by the State Law Enforcement Division stands in the shoes of the sheriff for purposes of arrest while he is on the property he is hired to protect and is, therefore, clearly a 'law enforcement officer'"). *See Easley v. Cartee*, 309 S.C. 420, 422, 424 S.E.2d 491,

492 (1992) ("licensed security officers may prosecute misdemeanor cases in magistrate's or municipal court."); *In re Richland County Magistrate's Court*, 389 S.C. 408, 413, 699 S.E.2d 161,164 (2010) (reaffirmed the authority of license security guards to prosecute in summary courts) (citing *State v. Messervy*, 258 S.C. 110, 187 S.E.2d 524 (1972) and *State v. Bridgers*, 329 S.C. 11, 495 S.E.2d 196 (1997)). *See also Thompson v. McCoy*, 425 F.Supp. 407, 409 (D.S.C. 1976). See *Chiles v. Crooks*, 708 F.Supp. 127 (D.S.C. 1989) (licensed security guards acting on the property of their employer are considered acting "under color of state law" for purposes of lawsuits brought pursuant to 42 U.S.C. §1983).

As a licensed security officer, Grimes is a law enforcement officer. As a law enforcement officer, Grimes was not qualified to serve as a juror. As Judge Floyd testified, this exclusion is because someone with this background "would be more likely to side with the state."

This Court should reverse the PCR Court's denial of Beckham's summary motion. In the alternative, this Court should reverse the PCR Court's order denying post-conviction relief. Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, the Court should grant *certiorari* to consider this question.

VII. The PCR Court err by not granting Beckham a new trial so that he could conduct additional discovery and present about the SLED Jury Sequestration Manual, when the State possessed the manual during Beckham's PCR hearing and willfully failed to disclose it during pre-trial discovery in violation of the Rules of Civil Procedure.

Following the PCR evidentiary hearing, Mr. Beckham's counsel discovered a copy of the SLED Jury Sequestration Manual, Second Edition, February 2000. On January 10, 2011, counsel proffered this document and moved for the PCR Court to order SLED to produce a copy of the SLED Jury Sequestration Manual, First Edition, February 1996, and to reopen the record. App. 3114-48.

The State initially opposed this motion on February 11, 2011. App. 3160. By letter dated February 16, 2011, Mr. Beckham requested SLED produce a copy of this document pursuant to the South Carolina Freedom of Information Act (FOIA). By letter dated February 22, 2011, SLED acknowledged receipt of the FOIA request. The next day, February 23, 2011, the Attorney General's Office provided a supplemental return to the motion to proffer, produce, and reopen the record. The State attached documents provided to it by the Honorable Henry Floyd ***prior to*** the evidentiary hearing but that the State had failed to produced in response to Mr. Beckham's repeated and detailed discovery requests. App. 3167-97. This stunning revelation began a period of communication between the parties. App. 3203-87.

While the parties were still in the process of conferring, the Court denied Mr. Beckham's motion on March 22, 2011. App. 3198. Mr. Beckham moved to reconsider. In the appendix to the motion to reconsider, Mr. Beckham attached the documents produced by the State during the conferring period, as well as the documents relevant to his initial FOIA request. The PCR Court subsequently denied the motion the reconsider. App. 3332-73.

SLED finally responded to the FOIA request on June 27, 2011. On July 22, 2011, Mr. Beckham produced the 1996 document, moved for a second time to reopen the record, and moved to recuse the Attorney General's Office from the case. App. 3332-73. The document produced by SLED is different than the document produced by the Attorney General. The State opposed this motion on August 5, 2011. App. 3374-82. The Court convened a hearing on the motion on August 16, 2011. App. 3565-___*. The PCR Court denied this second motion. App. ___*. *AWAITING TRANSCRIPTION

The SLED jury sequestration manual is significant evidence that should have been disclosed in response to Mr. Beckham's interrogatories and request for production of documents.

See Rules 33 and 34, SCRCP. The communications between the parties revealed that Judge Floyd provided this manual to the State at the same time the State would have been preparing its responses to these discovery requests.

The whole time the State complained about Beckham's efforts to seek the truth, the State was withholding material information and pushing the Court for a rush to justice before it was discovered. As demonstrated, Beckham twice moved the PCR Court to reopen the record so that he could inquire into information intentionally withheld by the State in order to gain an advantage in this case. ***The document produced by SLED is different from the document produced by the Attorney General's Office.*** In the "Instructional Information as to Recommended Procedure," the document produced by SLED contains the following language:

> Agents on this detail must not have been involved with the case or appear as witnesses. Agents assigned to this detail shall be referred to as "court security so as not to draw an inference in the event SLED employees take the witness stand.

App. 3332. This language does not appear in the document produced by the Attorney General. *Id.* In its response to Mr. Beckham's post-hearing brief, the State argued:

> It is not uncommon for SLED to be involved with an underlying criminal investigation and also be responsible for the security details pertaining to the jury, the courthouse, and the defendant. Captain Webber's role throughout the Applicant's trial, as it relates to the [sic] either the investigation and or the overall security of the trial including the jurors, is of absolutely no significance whatsoever, particularly where the record is void of any evidence whatsoever tending to establish the contrary.

App. 3045. While it might not be uncommon for SLED to serve both functions, ***the SLED procedures in place at the time of Mr. Beckham's trial were supposed to prevent the jurors from knowing that SLED was responsible for both.*** As pointed out in prior sections, SLED's presence permeated all aspects of the trial and the evidence. Captain Webber had a prominent

role in the trial. Multiple SLED agents testified. The prosecution's primary witnesses against Mr. Beckham frequently invoked the names of SLED investigators to borrow their credibility.

If SLED had followed its own procedures, then the jurors who judged Beckham never would have known they were being guarded by SLED agents. *If SLED had followed its own procedures*, then Juror Galbreath would not have had any reason to believe SLED agents had entered his hotel room without his permission and searched his belongings.

Contrary to the State's argument, there is enormous significance to Captain Webber being in charge of both the investigation and the juror's security. Even under normal circumstances, SLED procedures existing at the time of Mr. Beckham's trial, recognized jurors could draw an adverse inference from knowing their protection was provided by the same police agency offering testimony against the accused. The jury sequestration during Mr. Beckham's trial was far from normal.

Additionally, *under the SLED procedures existing at the time of Mr. Beckham's trial*, the lead agent for the sequestration teams is supposed to be neutral and not meet with counsel for either side. Rather than selecting a neutral agent, SLED placed Captain Charlie Webber in charge of Mr. Beckham's sequestered jurors. Captain Webber had a conflict-in-interest in overseeing both the investigation and sequestered jurors. Because Captain Webber was in charge of the investigation, he had direct and ongoing contact with the Solicitors Office. App. 2895-96, 2915-19, This contact continued during trial and included a picnic with the prosecutors at Lake Hartwell during jury selection. App. 1994. This arrangement was a serious breach of the written protocol existing at the time of Mr. Beckham's trial.

SLED protocol existing at the time of Mr. Beckham's trial, furthermore, contained forms to document the courtroom security provided by SLED. App. 3206-08. The manual provided by

SLED confirms the existence of these forms and the policy requiring them to be maintained in the jury sequestration file. These include the juror's hotel room assignments and the courtroom security plan. Mr. Beckham has been prejudiced by not having access to the forms. The State's contention is that Captain Webber was "responsible for the security details pertaining to the jury, the courthouse, and the defendant." App. 3045.

This Court "bears the ultimate responsibility for maintaining judicial integrity and high standards of professional conduct among the members of the bar, and for protecting and defending the constitutional rights of the accused." *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). *See State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001) ("prosecutors . . . are ministers of justice and not mere advocates. Their special responsibility carries with it specific obligations to see the defendant is accorded procedural justice.). *See also State v. Lawton*, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009) (new trial required because defendant was prejudiced by State's failure to make pretrial disclosure of the letter).

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, the Court should grant *certiorari* to consider all questions presented. In the alternative, this Court should order a new PCR hearing based on the State's discovery violation in order for Beckham to present the SLED Juror Sequestration Manual and re-question Judge Floyd, Ms. Knox, and the SLED juror sequestration agents about the SLED policies existing at the time of Beckham's trial.

VIII. The PCR Court err by not applying a cumulative error analysis.

Any one of these improper contacts with the jurors is sufficient to order a new trial. If this Court concludes these incidents, standing alone, are insufficient to order a new trial, then this Court must apply a cumulative error analysis because the incidents taken together also combined

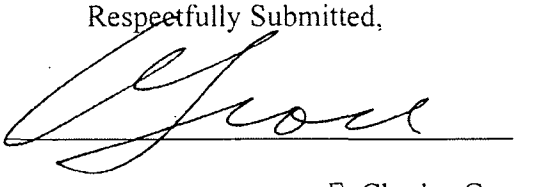
to deny Beckham a fair trial. *Kyles v. Whitley*, 514 U.S 419, 436 (1995) (the prejudice must be "considered collectively, not item-by-item"); *Williams v. Taylor*, 529 U.S. 362, 399 (2000) (considered "the entire post-conviction record...as a whole"); *State v. Johnson,* 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (citations omitted) ("cumulative error doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial"); and *State v. Blurton*, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000) (cumulative effect of prosecutor's closing argument when coupled with improper exclusion of evidence warranted reversal).

Just as the Court must consider the cumulative effect of the improper juror contacts, the Court must also consider the cumulative effect of the improper juror contacts with SLED's failure to disclose that information to Beckham, his counsel, and the trial judge. Additionally, the court must consider the cumulative effect of Grimes' improper jury service along with all the other error. All these claims taken together establish Beckham did not have a fair and impartial jury guaranteed by the United States and South Carolina Constitutions. His trial was broken almost from its start.

Conclusion

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, the Court should grant *certiorari* to consider all questions presented. In the alternative, this Court should order a new PCR hearing based on the State's discovery violation.

Respectfully Submitted,

By 

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January 10, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Newberry County

The Honorable Brooks P. Goldsmith, Circuit Court Judge
2000-CP-36-0051

STEPHEN ANDREW BECKHAM,

PETITIONER,

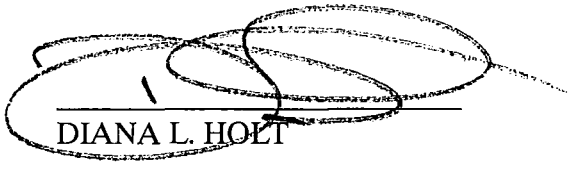
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Certificate of Service

The undersigned attorney hereby certifies that a copy of the Petition for Writ of Certiorari, with the Appendix and the Supplemental Appendix, was delivered to Respondent's counsel by first class mail, postage prepaid, addressed to counsel of record, Salley Elliott, Post Office Box 11549, Columbia, South Carolina 29211.



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January 10, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JAN 10 2013

S.C. Supreme Court

Appeal from Newberry County

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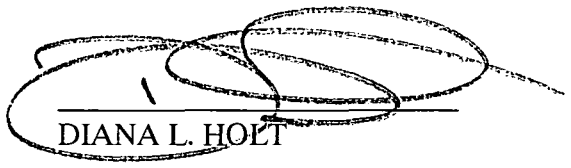

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January 10, 2013

Hand-Delivery
The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
P.O. Box 11330
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Re: *Stephen Andrew Beckham v. State, 2000-CP*-36-00051

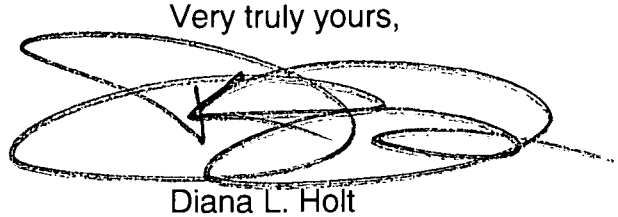
Dear Mr. Shearouse:

Enclosed please find the original and six copies of petitioner's motion to exceed 25 page limit on the petition for writ of *certiorari*, by consent, with certificate of service. Please also find the original and six copies of the petition for writ of *certiorari,* the appendices, and certificate of service.

I alert you to the fact that we discovered two weeks ago that one transcript had not been ordered. Appellate Defense has since ordered if for us. Rather than wait for it to come in before filing our petition today, we conferred with Ms. Elliott who agreed with us filing today with out it, as long as we consented to delaying starting her time in which to file the return until the missing transcript is delivered. We consent to that, if it suits the Court, of course.

With highest personal regards, I remain

Very truly yours,



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