STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO GEORGETOWN COUNTY
Court of Common Pleas
George C. James, Circuit Court Judge

Appellate Case No. 2017-000280

Vladimir Pantovich,

Respondent,

v.

State of South Carolina,

Petitioner.

BRIEF OF PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
S.C. Bar No. 101260
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the PCR court err as a matter of law by finding appellate counsel was ineffective for failing to raise and argue the trial court's refusal to issue a jury instruction on good character during the trial of Pantovich, who readily admitted to killing the victim and was arrested while transporting the victim's badly-beaten and unrecognizable body in the trunk of his car to an out-of-state location for disposal before it could be found by authorities?

STATEMENT OF THE CASE

Vladimir Pantovich ("Pantovich") is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Pantovich was indicted at the April 2006 term of the Georgetown County Grand Jury for murder (2006-GS-22-00126). Stuart M. Axelrod, Esq. and Walter Christopher Castro, Esq. represented Pantovich at trial. Robert B. "Bo" Bryan, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 4, 2008, Pantovich proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Pantovich guilty of the lesser-included offense of voluntary manslaughter on February 8, 2008. Judge Culbertson sentenced Pantovich to imprisonment for a term of 18 years.

Pantovich filed a timely notice of appeal and a direct appeal was perfected by Joseph L. Savitz, III, Esq., filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Pantovich's appeal by unpublished opinion. State v. Pantovich, Op. No. 2011-UP-275 (S.C. Ct. App. filed June 8, 2011). The Remittitur was issued on June 28, 2011.

Pantovich filed his application for post-conviction relief on June 22, 2012 (2012-CP-22-00635). He alleged the following grounds for relief in his application:

1. "[Ineffective] Assistance of Counsel (Trial & Appellate)"
    a. "Counsel failed to use adversarial skills 6th Amendment Right"
2. "No Expert Testimony to rebut State's Expert (Fundamental Fairness)"
    a. "Counsel failed to provide Expert witness to testify ([Von Dohlen])(Rule 702)"
3. "Violations of both U.S. & State Constitutions (due Process & Equal Protection)"

The State made its return on September 25, 2012, and an evidentiary hearing into the matter was convened on March 21, 2014, before the Honorable George C. James. Pantovich was present at the hearing and represented by Tristan Shaffer, Esq. Joshua L. Thomas, Esq., of the South

Carolina Attorney General's Office, represented the State. At the hearing, Pantovich amended his allegations to proceed only on an allegation of ineffective assistance of appellate counsel for failure to raise the issue of the trial court's denial of a requested "good character of the defendant" charge. (Appx. 635-36). By written order dated May 16, 2014, and filed June 16, 2014, Judge James denied and dismissed the application.

Pantovich filed a timely notice of appeal and a petition for writ of certiorari was filed by Laura R. Baer, Esq. on Applicant's behalf, who raised the following issue:

> Whether the PCR Court erred in (1) requiring Petitioner to show an irregularity in the Court's Anders review procedure in order to establish the prejudice prong of ineffective assistance of appellate counsel, and (2) ruling that Petitioner was not prejudiced by appellate counsel's filing of an Anders brief rather than a merits brief on a preserved issue, the failure to give a good character instruction, that would likely have been successful on appeal if fully briefed?

The State filed its Return on May 26, 2015. On August 26, 2015, the Supreme Court of South Carolina granted the petition by memorandum opinion, dispensed with further briefing, reversed the denial of PCR, and remanded for further proceedings. Pantovich v. State, Op. No. 2015-MO-052 (S.C. Sup. Ct. filed Aug. 26, 2015). The Remittitur was issued on September 11, 2015.

On remand, a second evidentiary hearing was convened on May 4, 2016, again before Judge James. Tristan Shaffer, Esq., again represented Pantovich at the hearing. Jessica Kinard, Esq., of the South Carolina Attorney General's Office, represented the State. No additional testimony was taken at the hearing, but both parties offered arguments. By written order dated January 8, 2017, and filed January 12, 2017, Judge James granted the application for post-conviction relief.

The State timely filed a notice of appeal. The State filed its Petition for Writ of Certiorari on October 5, 2017. Respondent filed its Return on February 20, 2018. The Court granted certiorari by Order filed June 18, 2018, and directed further briefing. This brief follows.

STATEMENT OF THE FACTS

a. Report, arrest, and investigation

At 10:10 PM on March 7, 2006, Vladimir Pantovich called his son, Marco Pantovich ("Marco"), and confessed to killing his girlfriend Sheila McPherson. (Appx. 178, ll. 2-3). Pantovich explained to Marco that McPherson appeared after a four-day absence, that an argument ensued, and that when Pantovich tried to call the police she disconnected the phone and started swinging a fire poker at him. (Appx. 178-79). Pantovich grabbed a baseball bat and struck McPherson, killing her. (Appx. 179, ll. 1-2). Marco, concerned Pantovich may kill himself or otherwise do something unwise in a bad state of mind, counseled his father "don't do nothing stupid." (Appx. 182, ll. 9-25). Marco was also concerned Pantovich would next come to North Carolina, where Marco resided with his wife and children. (Appx. 182-83). After concluding the conversation with his father, Marco called his mother, spoke to his wife, and then called law enforcement. (Appx. 186, ll. 3-19). Marco reported the killing, and provided identifying information for locating his father, including addresses, phone numbers, and a description of Pantovich's light blue Mercury Grand Marquis. (Appx. 183-86; Appx. 204-05). Marco told law enforcement Pantovich was *en route* to the North Carolina home with McPherson's body packed in the trunk of the Mercury. (Appx. 209-10).

Horry County law enforcement contacted Pantovich at the phone number provided, who lied and reported that everything was fine. (Appx. 477-78). Law enforcement issued a BOLO and set up a surveillance perimeter along the road to Marco's home. (Appx. 210-11). Sure enough, Pantovich drove by in the light blue Mercury, and law enforcement executed a felony vehicle stop. (Appx. 212-15). North Carolina deputies arrested Pantovich and detained him. (Appx. 215-20). Unprompted, Pantovich said to a deputy "[t]ell my son he did the right thing."

(Appx. 220-21). Four minutes later, Pantovich admitted "I just lost it, man." (Appx. 221, l. 25). After backup arrived, the deputies searched the Mercury and found McPherson's body, wrapped in a garbage bag and a blanket, with the murder weapon—the bloodstained aluminum baseball bat—at her feet. (Appx. 223, ll. 7-14; Appx. 236-39; Appx. 242, ll. 22-24). The deputies also recovered a metal ashtray with reddish stains. (Appx. 312, ll. 21-24). The blood on the bat and the ashtray conclusively matched to McPherson. (Appx. 326-27).

An hour or two later, local media engaged Pantovich while he was being escorted to a bond hearing. (Appx. 225-26). Responding to reporters' questions, Pantovich stated "I can't take it no more[,]" and explained McPherson was under the influence of drugs. (Appx. 226-27). One reporter asserted "She had you locked up," to which Pantovich replied, "Many times." (Appx. 227, ll. 3-6).

Pantovich was inspected for injuries after his arrest. (Appx. 260-63). Pantovich had a scratch in the middle of his left forearm, another scratch on the back of his right arm, and a nick on his left, middle finger cuticle. (Appx. 262-63). Pantovich was photographed in his underpants, and no other injuries were observed. A subsequent search of Pantovich's residence found a specks of McPherson's blood scattered about and a rolled up, heavily bloodstained rug. (Appx. 269-70; Appx. 277, ll. 2-20; Appx. 279-80; Appx. 292-97; Appx. 327-28; Appx. 330-31).

Law enforcement also retrieved a broken fire poker from the house. (Appx. 282-84). Nothing else was found broken, smashed, or out of place in the crime scene. (Appx. 298, ll. 2-4). No blood was detected on the broken fire poker. (Appx. 329, ll. 3-9). A partial DNA profile was constructed from skin cells on the poker, which *excluded* both Pantovich and McPherson as contributors. (Appx. 329-30).

Upon autopsy, McPherson's cause of death was determined to be "[e]xtensive blunt force trauma of the head and thorax." (Appx. 339, ll. 8-13). McPherson was struck several times in the head, the chest, and the back, resulting in underlying hemorrhage and "liquification of the soft tissues beneath those blows[,]" broken ribs, and a lacerated spleen (Appx. 340-41). Hemorrhage into the McPherson's back was estimated to be about half a liter of blood. (Appx. 362-63). McPherson suffered four blows to the back of her upper right arm. (Appx. 347, ll. 6-9). Lacerations cut through McPherson's scalp and both ears, indicating no less than three blunt blows to the head. (Appx. 347-48). Toxicology revealed the presence of anti-schizophrenia medication, an anti-depressant, methadone, cough suppressant, a decongestant, a metabolite of cocaine, a low level of THC, and alcohol to the tune of .01 percent. (Appx. 376-78; Appx. 384-89).

b. Pantovich's version of events at trial

Pantovich testified at trial. Pantovich described an intermittent relationship that culminated in his moving in with McPherson in February 2004. (Appx. 419-20). Pantovich did not take kindly to McPherson's friends coming and going from the house after he moved in, and so he "started chasing her friends away." (Appx. 420, ll. 4-19). At one point, Pantovich confronted a man by the name of "Derrick" and warned him there would be a fight if Pantovich found him *at McPherson's house*, and communicated the same to the man's wife. (Appx. 421, ll. 5-11). McPherson was upset by Pantovich's actions, responded verbally, and occasionally would slap Pantovich and/or spit in his face. (Appx. 420-21). Pantovich offered that McPherson was nice looking when he first met her, but when he saw her again a few years later, she looked bad and had "gained 20 years on her at least."[1] (Appx. 422-23). When asked if he'd retaliated

[1] McPherson was around 50 years old at the time of her death.

physically during past altercations with McPherson, Pantovich testified he "walked away most times, go in the bedroom or go across the street to neighbors, next-door-neighbors." (Appx. 423-24). Pantovich later asserted he "never lay hand on Sheila, never lay hand on Sheila." (Appx. 428, ll. 12-14).[2] Pantovich moved out in April 2005 and rented a house of his own, briefly interrupting his relationship with McPherson. (Appx. 424-25). McPherson thereafter moved in with Pantovich in September 2005, on Pantovich's conditions that "she don't come and go as she pleased. I didn't want her friends around, the one that she was partying with." (Appx. 426, ll. 7-10). Pantovich claimed McPherson suffered from mood changes, and had a "pill for everything[.]" (Appx. 426, ll. 16-25). Pantovich described how McPherson would come and go, sometimes acerbically. (Appx. 427-33).

Pantovich testified that on March 7, 2006, he arrived home from work and was surprised to find McPherson laying on the couch. (Appx. 433-34). Pantovich told McPherson he did not want her in the house anymore, to which McPherson reportedly replied she would move out soon. (Appx. 434, ll. 5-8). McPherson produced a cellophane wrapper of marijuana and Pantovich told her not to smoke in the house. (Appx. 424, ll. 15-18). Pantovich asserted he tried to call the police, but was unsuccessful because "she unplugged it somehow." (Appx. 434, ll. 22-25). Pantovich testified he "was sitting in a reclining chair right there by the fireplace eating, eating my, my lunch, my dinner[,]" arguing with McPherson, when she picked up the fireplace poker and poked a hole in the wooden dinner tray. (Appx. 435, ll. 3-14). Pantovich then recalled he got up from his chair, went to the kitchen, placed his tray by the fridge in its usual spot, and that thereafter McPherson "went after [him] three different, two different times[.]" (Appx. 436, ll. 1-22). Pantovich testified he retreated to the door to the garage, but could retreat

[2] On cross-examination, the State attempted to return to this point, only to earn a swift objection from counsel Axelrod, which was sustained. (Appx. 451-52).

no further, and was frightened as McPherson's face "was getting redder and redder." (Appx. 437, ll. 4-25). McPherson swung the poker, Pantovich "blocked with one hand[,]" and with the other he grabbed one of two baseball bats and struck her with it. (Appx. 438, ll. 1-9). "The next thing [he remembered] she was laying on the ground and I was hitting her." (Appx. 438, ll. 9-10). Pantovich attested himself to be six feet, two inches tall and weighed around 190-195 pounds at the time of the killing. (Appx. 451, ll. 9-14).[3] Pantovich described his work as construction—tile work and wallpaper. (Appx. 451, ll. 15-21).

On cross-examination, Pantovich denied pushing McPherson down and striking her during an incident on May 4, 2004, and equivocated as to whether McPherson smoked crack. (Appx. 452-53). Pantovich identified the broken fire poker in evidence was the one allegedly used by McPherson in the attack and that it was already broken at the time of the attack. (Appx. 455-56). Asked if the fire poker was how he got the scratches on his arm, Pantovich demurred that he did not know how he got the scratches. (Appx. 456, ll. 11-15). Pantovich testified he avoided being struck by the poker. (Appx. 459, ll. 10-19). Pantovich offered McPherson perhaps somehow lost her balance and fell before he hit her on the floor, and could not remember hitting McPherson the first time. (Appx. 463, ll. 8-25). Pantovich conceded nothing was preventing him from leaving once McPherson fell. (Appx. 465, ll. 1-3).

After the beating, Pantovich sat in a chair for a number of minutes, McPherson dead on the ground, and then began to panic. (Appx. 468-69). Pantovich then described tying McPherson's body in rope because he was still afraid of her, then wrapped her in a comforter to prevent blood from getting all over the trunk. (Appx. 470-71). Pantovich bagged McPherson's head so he "didn't have to look at her face." (Appx. 471, ll. 2-3). Pantovich fled towards his

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[3] For comparison, McPherson was five foot, three inches tall and weighed about 125 pounds. (Appx. 300, l. 19).

son's home with McPherson and the bat in his trunk, with a mind to get rid of both. (Appx. 473-74). Pantovich *admitted to lying* to law enforcement when they called in order to buy time to escape. (Appx. 477-78). Pantovich claimed he put the fire poker back in its stand, but could not recall why he did so. (Appx. 478-79). When the State offered Pantovich the possibility that he plugged the phone back in, Pantovich agreed that he did so in order to call Marco. (Appx. 481-82).

c. Testimony as to character and propensity for violence

Multiple witnesses offered observations as to the propensity of both Pantovich and McPherson to be violent. Marco offered that "everyone's capable of violence" and obliquely affirmed that his father had demonstrated his capability for violence in the past. (Appx. 192-93). Andy Seifert testified Pantovich had been a good friend of her husband and that she had never seen Pantovich act violent, but recalled an incident of McPherson screaming and throwing things at him from the porch. (Appx. 494-97). Christine McCune, Pantovich's friend and bartender, spoke glowingly of him, and recalled an incident of McPherson verbally abusing Pantovich at the bar during a bike week. (Appx. 507-10). Maureen Moans, a friend of Pantovich and self-styled McPherson's confidant, described Pantovich as a "good guy" and recalled an incident of McPherson "running Walt off and throwing things out there at him." (Appx. 511-14). Moans described Pantovich as "gentle giant[,]" and that McPherson never confided any abuse to her. (Appx. 515, ll. 16-25). Debbie Chrisman, who dated Pantovich for about two years after her husband passed, described him as kind and caring, and recalled receiving harassing phone calls from McPherson. (Appx. 517-21). Tammy Eschman, Pantovich's former neighbor, testified he had a "heart of gold[,]" and that McPherson would throw things at him. (Appx. 524-26). Eschman recalled once incident where McPherson picked up a two-by-four and knocked

Pantovich out of his lawn chair with it. (Appx. 528-29). Eschman didn't call 911. (Appx. 530, ll. 13-24).

In its reply case, the State offered Nanettte Ouimette, the mother of Pantovich's two children. Ouimette testified Pantovich had only visited his children in Connecticut once in the preceding 13 years, and had been visited by them in Myrtle Beach twice in the same period. (Appx. 538, ll. 13-24). Ouimette rejected the characterization of Pantovich as gentle, but instead testified "he was verbally abusive and on several occasions he hit [her] with an open hand, never a fist." (Appx. 539, ll. 9-15). In one instance Pantovich woke Ouimette from sleep only to abuse and strike her in the presence of their six month old child. (Appx. 539-40). On another occasion, Pantovich got physical with Ouimette and would not permit her to leave, demanding to search her purse for drugs; she had to bite him to escape his grasp. (Appx. 540-41). He took a baseball bat to the windshield and rear window of her car and followed her through town. (Appx. 543-44). On a third occasion, Pantovich came home from work drunk, slapped Ouimette around, and informed her he was going to purchase a gun. (Appx. 541, ll. 6-12). Ouimette packed her things and left him the following day, with Marco's assistance, interpreting the statement as a threat. (Appx. 541-43). A displeased Pantovich "called almost every day" afterward, threatening to blow up Ouimette's camper, burn down her brother-in-law's house, and that he would come up and hurt somebody, but he did not follow through on the threats. (Appx. 542-43). Ouimette attested that Pantovich usually had a weapon in his vehicles, either a baseball bat or a gun. (Appx. 544-45).

d. Opening and Closing Arguments

In opening the case, the State made no mention of character or reputation, but emphasized the savagery of the beating and summarized the evidence it intended to present in its

case in chief. (Appx. 168-71). Trial Counsel emphasized the jury's duty of impartiality, of fairness, and then provided that Pantovich didn't want McPherson in his home anymore and that she was loaded on drugs. (Appx. 171-75). Trial Counsel did not telegraph much about character witnesses, but fleetingly offered: "You're going to hear testimony she came at Walt swinging [the fire poker] at him and you're going to hear Walt, Walt the man has been battered before." (Appx. 174, ll. 3-5).

The State briefly closed on the law, noting in part that there was no insanity at issue in the case. (Appx. 554-57). Trial Counsel argued McPherson "was a walking drug cocktail that day." (Appx. 560, ll. 22-23). Trial Counsel primarily focused on emphasizing Pantovich's admissions of guilt as evidence of his truthfulness, but did note the character witnesses presented throughout closing. First, Trial Counsel contrasted his witnesses with Oumette:

> We brought up witnesses to say what a nice guy he was. They bring up somebody, Nanette, the old girlfriend, and I asked her, I said, "Well, you know, wasn't Walt upset when you were having a relationship with his son, Marco?" She said no. They could have brought back Marco to disprove that. He was here. He testified. They didn't because they know, they know that's what happened.

(Appx. 561, ll. 12-18). Trial Counsel also referred to Eschman's testimony that Pantovich loved McPherson. (Appx. 563, ll. 14-16). Trial Counsel emphasized Moans' assertion of being McPherson's confidant and followed through the others:

> Maureen said that Sheila told her that Walt never abused her. That's important. That's important. The woman he's living with, the woman that is dead now told Maureen, "He never hurt me." Maureen called him a gentle giant. Debbie, a former girlfriend, said she was never afraid of him. We go from self-serving to plausible to believable, and at the same time, conversely, the more believable it becomes, the reasonable doubt will increase. You do not have an easy choice here. We weren't there. Did Walt's story make sense to you? If it did, then you have doubt. If it did not make sense to you, you have no doubt.

(Appx. 564, ll. 14-24). Notably, Trial Counsel invited the jury at length to "look through Walt's eyes, not our eyes." (Appx. 568, ll. 7-20).

The State emphasized the brutality of the beating, and zeroed in on Pantovich's testimony that McPherson never hit him and that she must have lost her balance to end up on the floor before he beat her to death. (Appx. 569-71). The State also addressed the character witnesses, but turned their observations against Pantovich, and relied upon Ouimette's testimony to make the flip stick:

> The defense's case is they bring some people in, a couple of Mr. Pantovich's friends from 2004 to say everything nasty they can say about her, which is she threw stuff at him a couple of times. He said she spit on him. Well, that is not what the tormenter, what the aggressor in a relationship does. That is what the tormented does. That is what the hopeless, helpless frustrated victim does. After Walt's done doing whatever he does to her inside, she chases him out of the house throwing stuff at him, five foot three, well, she abused that man sitting over there. Now, if you believe that, you bring back a verdict of not guilty.
>
> . . .
>
> The gentle giant, that's what the defense wants you to believe, the gentle giant. Well, maybe in public, maybe with the bartender down at Iron Heads or the Lighthouse or wherever they came from, but not what is – not what the mother of his kids said. She said he beat her until she had enough beatings and then left. She went back. She got beat some more. She had enough of that and then she left, and when she left the second time she left in a hurry while he was not home with the aid of his son, and all Mr. Axelrod has for that is to imply that there was some illicit affair going on with Marco and Nanette Ouimette[.]

(Appx. 571-72; 573-74).

e. Jury Charge

During the charge conference, trial counsel submitted three potential charges: a good character charge, a self-defense charge, and a reputation for violence charge. (Appx. 550-51). The State did not object to the general use of a good character charge, but objected to the

particular charge submitted by Axelrod. (Appx. 551, ll. 12-25). Axelrod replied the proposed charge was pulled from State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982). (Appx. 552, ll. 1-4). After reviewing the charges, Judge Culbertson denied all three of the charge requests, determining that his prepared charge adequately covered everything. (Appx. 552, ll. 5-13). The requested charges were admitted as court's exhibits for the purposes of record preservation. (Appx. 552, ll. 7-23; Appx. 666).[4]

The trial court instructed the jury to consider only the competent evidence before it, the testimony given from the witness stand, any statements made part of the record, and any stipulations of the attorneys. (Appx. 586, ll. 6-12). The trial court charged on direct and circumstantial evidence, and admonished the jury to "weigh all of the evidence in this case and after weighing all of the evidence if you are not convinced of the guilt of the Defendant beyond a reasonable doubt you must find the Defendant not guilty." (Appx. 587-88). The trial court charged the jury on the law of murder and of voluntary manslaughter. (Appx. 590-93). Portions of this charge provided that the jury could consider Pantovich's "mental and physical state and the circumstances and relationships between the parties" and "the Defendant's education and background" (Appx. 592-93). The charge provided that "[t]he sudden heat of passion must be the type that would make an ordinary person unable to coolly reflect on his actions and would produce an uncontrollable impulse to do violence." (Appx. 592, ll. 2-5). Still further the trial court instructed the jury that "[t]he provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, regardless of how vulgar or insulting, are not enough to be legal provocation." (Appx. 592, ll. 7-10).

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[4] For argumentative purposes, the charge at issue is not reproduced here, but can be found in the argument below or at the cited 666.

The trial court also charged the jury on self-defense. (Appx. 593-97). The trial court included as part of its self-defense charge a "battered person" charge. (Appx. 595, ll. 12-24). The trial court further provided that "[e]vidence of prior difficulties between the Defendant and the victim may be construed in deciding whether a threat existed, whether the Defendant had a reason to believe a threat existed and how serious that threat was." (Appx. 596, ll. 1-5). Still further, the trial court instructed that:

> The reputation of the victim as a violent person may be considered in deciding whether there was a need for force, whether the Defendant had reason to believe there was a need for force and whether deadly force was reasonably necessary. Prior instances of violence by the victim may be considered in deciding whether the Defendant actually believed he was in imminent danger or death or serious bodily injury or was actually in imminent danger.

(Appx. 596, ll. 8-15). The trial court also instructed the intoxication of the victim could be considered. (Appx. 596, ll. 16-17).

The jury only asked about whether there was any duty to leave the premises if the residence was that of both the victim and the defendant—the trial court simply replied "no." (Appx. 601, ll. 19-24). The jury began its deliberations at 4:20 P.M. and broke for the evening at 6:47 P.M. (Appx. 601, l. 2; Appx. 605, l. 11). The jury resumed deliberations the following morning at 10:08 A.M. and reached a verdict to convict Pantovich of voluntary manslaughter at around 12:27 P.M. (Appx. 606, ll. 18-19; Appx. 607, l. 10).

Appellate counsel did not testify at either evidentiary hearing. PCR counsel explained:

> I was going to attempt to call him by phone and have him testify over the phone, Your Honor. After thinking about it and speaking with Mr. Savitz, I mean, he's either going to say one of two things, either he didn't think it was preserved, or that basically he missed the issue. So I don't think it will really add anything. There is no strategy that he could have added.

(Appx. 638-39). The State took the position that the denied jury charges were preserved for appeal. (Appx. 639-40).

STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Id.; Smalls v. State, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018).

ARGUMENT

THE PCR COURT ERRED AS A MATTER OF LAW IN FINDING APPELLATE COUNSEL INEFFECTIVE FOR FILING AN ANDERS BRIEF BECAUSE THERE IS NO REASONABLE PROBABILITY HE WOULD HAVE PREVAILED ON APPEALING THE ISSUE OF THE "GOOD CHARACTER" CHARGE WHERE THE CHARGE CONSTITUTES AN UNCONSTITUTIONAL JUDICIAL COMMENT OF THE FACTS, WHERE THERE IS NO QUESTION PANTOVICH KILLED MCPHERSON, WHERE THE JURY CHARGE AS A WHOLE PROPERLY INSTRUCTED THE JURORS ON THE SCOPE OF HOW THEY MIGHT CONSDIER EVIDENCE FOR CHARACTER AND REPUTATION, AND WHERE THE VERDICT REFLECTS THE JURY PROPERLY CONSIDERED ALL EVIDENCE SUBMITTED TO THEM

This Court should vacate and reverse the PCR court's grant of post-conviction relief, and thereafter direct an order denying post-conviction relief, because Pantovich cannot satisfy his burden of showing prejudice from Appellate Counsel's failure to raise the issue of Pantovich's proposed "Good Character" charge where (1) the charge constitutes an unconstitutional judicial remark on the facts in dispute in violation of Article V, Section 21 of the South Carolina Constitution; and (2) there is no factual dispute that Pantovich killed McPherson, such that his "good character" is only potentially relevant to his argument of self-defense, the instructions for which cover the same ground.

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Tisdale v. State, 357 S.C.

474, 476. 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754 (1983) ("For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . . .")).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon neglecting to file a merits brief, Applicant must show that (1) appellate counsel unreasonably failed to discover non-frivolous issues and file a merits brief raising them, and (2) a reasonable probability that, but for his counsel's unreasonable failure to file a merits brief, he would have prevailed on his appeal. Smith v. Robbins, 528 U.S. 259, 285 (2000). Applicant must show that a reasonably competent attorney would have found one nonfrivolous issue warranting a merits brief, and that the issue identified would have won on appeal. Id. at 288.

a. Had Appellate Counsel raised the denial of the "good character" charge on direct appeal, he would have lost, as the charge constitutes an unconstitutional judicial statement on the facts much in the same vein as the jury instruction rejected in Stukes.

The scope and content of jury instructions in the courts of this state are governed by both caselaw and by the state constitution. "The law to be charged to the jury is determined by the evidence presented at trial." State v. Harrison, 343 S.C. 165, 172, 539 S.E.2d 71, 74 (Ct. App. 2000) (citing State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). "A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." Id. "A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence." Id. (citations omitted).

However, "[j]udges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. Art. V, § 21. Nonetheless, in 1982 the Supreme Court ruled that:

> Where requested and there is evidence of good character, a defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant.

State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335 (1982) (citing State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947)). The Court in Lyles, upon which Green mistakenly relied, noted that the issue raised on appeal was not preserved for review where trial counsel had failed to request the charge, and as such did not reach the merits of the request. Lyles, 210 S.C. at 92, 41 S.E.2d at 627. Since Green, the obvious observation made in Lyles, that a defendant can put in evidence of his good character, has been transformed into the requirement of an instruction that character evidence, alone, may be adequate to acquit. See, e.g. Harrison, 343 S.C. at 172, 539 S.E.2d at 74 (identifying the history leading to Green and identifying it as "the general rule"); State v. Lee-Grigg, 387 S.C. 310, 316-17, 692 S.E.2d 895, 898 (2010).

More recently, the Court has cast a severe and critical eye upon those instructions and arguments which may intrude impermissibly upon the rightful province and discretion of the jury. "Simply because certain facts may be considered by the jury as evidence of guilt in a given case where the circumstances warrant, it does not follow that future juries should be charged that these facts are probative of guilt." State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013). "For example, it is well-settled that while evidence that a criminal defendant evaded arrest or absconded from the jurisdiction may be admissible as evidence of guilt, and may be argued to the jury as such, it is improper to charge the jury on this evidentiary inference because such a charge places 'undue emphasis' on that piece of circumstantial evidence." Id. (citing

State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980)). The Court, following this reasoning, struck down the use of the "strong evidence" instruction in drug cases. Id., 401 S.C. at 329, 737 S.E.2d at 484.

The Court similarly struck down a "non-corroboration" charge in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). "Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct verdict." Id., 416 S.C. at 498, 787 S.E.2d at 482 (citing State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). "Regardless of whether the charge is a correct statement of the law, instructions which confuse or mislead the jury are erroneous." Id.; see also State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006) ("Some principles of law, however, are not to be charged to a jury.") (Pleicones, J., dissenting); State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 (2009) ("It is axiomatic that some matters appropriate for jury argument are not proper for charging. 'Do jurors need the court's permission to infer something? The answer is, of course not.'") (citation omitted). The Court, confronted with the validity of a jury instruction on the substance of S.C. Code Ann. § 16-3-657 ("The testimony of the victim need not be corroborated in" certain criminal sexual conduct prosecutions), overturned its prior precedents and found the instruction constituted an unconstitutional judicial comment on the facts:

> We are persuaded by the dissent in Rayfield and conclude this charge is confusing and violative of the constitutional provision prohibiting courts from commenting to the jury on the facts of a case. Accordingly, it is not within the province of the court to express an opinion to the jury on its view of the facts. By addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak. Moreover, it is inescapable that this charge confused the jury. Specifying this qualification applies to one witness creates the inference the same is not true for the others.

Stukes, 416 S.C. at 499, 787 S.E.2d at 483. As such, though the charge in Stukes was an accurate statement of statutory law, it was cast down as confusing, misleading, and unconstitutional.

The reasoning in Stukes applies with equal weight to the particular "good character" charge requested by Pantovich at trial. The charge requested by Pantovich, set parallel with the charge at issue in Stukes, reads as follows:

> An accused, when charged with a crime, has the right of proving his general good character. He may introduce evidence of his good character which is inconsistent with the crime charged against him.
>
> Evidence of the general good character of the accused is for the purpose of showing the improbability that the defendant would have committed the crime charged. The good character of the accused is like all other evidence in the case and is entitled to such effect and weight as you, the jury, may determine.
>
> *Good character evidence alone may create a reasonable doubt as to the commission of the crime charged.* Thus, under some circumstances, a person might be entitled to a verdict of not guilty when his good reputation is taken into consideration even though a verdict of guilty might be authorized without the evidence of good character.

(Appx. 666) (emphasis added).

> *The testimony of a victim in a criminal sexual conduct prosecution need not be corroborated by other testimony or evidence.* Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.
>
> In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of . . . the testimony of the witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or you may reject the testimony of a witness in its entirety.
>
> You may consider whether any witness has exhibited to you an interest, bias, prejudice, or other motives in this case. You may also consider the appearance and manner of a witness while on the stand.

Stukes, 416 S.C. at 502, 787 S.E.2d at 484 (emphasis added).

The charge proposed is even worse than the charge at issue in Stukes. Both are confusing and both run afoul of the constitutional prohibition against judicial comment on the facts insofar as both single out particular instances of testimony and evidence, raise them above all other evidence introduced at trial, and instruct the jury that this evidence alone may be relied upon to reach a verdict. The qualification creates the inference the same is not true for other evidence, as Stukes rightly observed. But the proposed charge isn't even accurate—good character evidence alone could only provide to acquit against overwhelming evidence of guilt in the context of jury nullification, which we've never and should never instruct.

The potential for confusion and harm may well be of even greater gravity in the context of this "good character" charge than it was in the context of the "no corroboration needed" charge. The charge in Stukes empowered a jury to listen and believe victims of rape, which overwhelmingly occurs in isolation, far from the prying eyes of those who might intervene. The Stukes charge addressed cases for which there may be no physical evidence that can be possibly collected, as victims grapple with the mental harm inflicted: the shame of their weakness, the isolation of being ostracized, and terror of confronting the perpetrator who stripped them of their security and bodily sovereignty in the most horribly intimate of ways. The "good character" charge goes a step yet further, and very specifically declares to the jury that they may set aside all physical evidence, all victim testimony, all witness testimony, and all circumstantial evidence and instead acquit the very same rapist, or in this case killer, on the basis of a parade of persons willing to testify that he's "a gentle giant." Our present national strife and concordant cultural movements obviate the need for any imagination as to how such an instruction might be exponentially impactful in the context of more politically powerful or socially connected defendants charged with violent crimes.

Though the greater mass of caselaw considers confusing or inferentially weighted instructions as they may inure against a defendant, the underlying principle of judicial deference to the jury as the finder of fact is one that swings both ways. "The trial judge must refrain from *all* comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused or as to controverted facts." State v. Smith, 288 S.C. 329, 331, 342 S.E.2d 600, 601 (1986) (emphasis added); see also State v. Deas, 202 S.C. 9, 14, 23 S.E.2d 820, 822 (1943) ("Of course, under our Constitution and practice the jury are the sole judges of the facts in criminal trials and it is error for the Judge to communicate his views of them to the jury."); State v. Pruitt, 187 S.C. 58, 196 S.E. 371, 373 (1938) ("[I]t is generally held that in the course of the trial of a criminal case, the trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused, or as to the controverted facts, for the jury are the sole judge of the facts and the credibility of the witnesses, and the Constitution expressly prohibits the judge from charging them as to the facts."). A jury need not be instructed to consider certain specific evidence where it is properly admitted to them, and where they are properly instructed on the consideration of the evidence as a whole, but rather it may be safely assumed that they will properly use their discretion in consideration of all evidence admitted unless otherwise instructed to limit certain evidence's use. Cf. Michelson v. United States, 335 U.S. 469, 474 n. 5 (1948) ("[E]vidence of good character is to be used like any other, once it gets before the jury, and the less they are told about the grounds for its admission, or what they shall do with it, the more likely they are to use it sensibly."); Wannamaker v. Traywick, 136 S.C. 21, 134 S.E. 234 (1926) ("Jurors are presumed to do their duty, and there is a presumption that they

have regarded their oaths.").[5] Explicit instruction that the jury may consider character evidence in particular, let alone that it alone may give doubt adequate to acquit, only muddies the jury's understanding. Michelson at 474 n. 5 ("The subject seems to gather mist which discussion serves only to thicken, and which we can scarcely hope to dissipate by anything further we can add."); see also Ludy v. State, 784 N.E.2d 459, 461 (Ind. 2003) ("Instructions that unnecessarily emphasize one particular evidentiary fact, witness, or phase of the case have long been disapproved.").

1. This issue and argument is preserved for appeal.

Pantovich offers in passing that the fundamental meritlessness of his proposed appellate issue is not preserved for appeal. "Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it." Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998). The PCR court explicitly ruled that a "good character" charge must be given where such evidence is introduced and relied upon Green, Lee-Grigg, Harrison, and Lyles, all explored above. (Appx. 820). The PCR court ruled that "[a]bsent a jury instruction on good character, it is reasonable to conclude that the jury was not aware that it could consider the Applicant's good character in determining whether the State had disproven that the Applicant acted in self-defense." (Appx. 821). The *entire* issue before the Court is the fundamental validity of the issue Pantovich proposes Appellate Counsel should have raised, as was his burden to prove, which he cannot do as a matter of law. The Return to the Petition for Writ of Certiorari can do nothing but

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[5] This is not to suggest that the jury would give weight to all of the evidence, or rely upon all of the evidence in reaching a verdict, but only that they'll fulfill their oath to look at all of it. Indeed, they're instructed to pay attention to and review everything. (Appx. 164, ll. 5-8, 22-25; Appx. 165, ll. 9-11; Appx. 166-67; Appx. 587-88). In particular, the trial judge instructed "it is your duty to pay close attention to the witnesses, to observe the witnesses, to listen to the witnesses." (Appx. 167, ll. 11-13).

argue the validity of Green, Harrison, and Lee-Grigg as the basis for prejudice. Assuming *ad arguendo* that the issue is somehow not preserved, sustaining Pantovich's grant of relief would return him to square one to again face trial and then either (1) again not get the jury instruction of his desire because it is unconstitutional for the reasons above stated, or (2) get an unconstitutional jury charge.[6] This Court cannot reasonably remand for a new trial a case where the trial judge was correct, and the trial attorneys for both sides did nothing wrong.

b. Even if the "good character" charge is deemed constitutional, or that the issue of its constitutionality is not preserved, the jury instructions as a whole were correct because there is no dispute that Pantovich killed the victim, such that the only appropriate circumstances under which they could consider Pantovich's character, reputation, and propensity for violence, were through the lenses of malice and self-defense.

Additionally, the jury instructions were correct and valid as a whole despite refusal of the "good character" charge and subsequent failure of Appellate Counsel to raise it on appeal because there is no question Pantovich *brutally* killed the victim and endeavored to mislead law enforcement and cover up his crime, such that the only lens through which his character could be relevant would be through determining the applicability of self-defense, and through determining whether he was guilty of murder or manslaughter, and the instructions for each question encompassed the same ideas.

"In reviewing jury charges for error, this Court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial." State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013) (citing State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011)). "A jury charge is correct if, when read as a whole, the charge adequately covers the

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[6] Additionally, as a practical matter, it is a realistic possibility the Court will render a holding on this very issue and argument by way of another case pending before the Court before the present matter is taken up for consideration and resolved. See State v. Campbell, App. Case No. 2016-002190 (Brief of Respondent filed October 12, 2017). The outcome of that case may prove dispositive here.

law." Id. "A jury charge that is substantially correct and covers the law does not require reversal." Id.

The jury charge, as a whole, properly conveyed to the jury the types of evidence, the jury's liberty to judge the credibility of the witnesses, the necessity of determining criminal intent, the necessity of determining whether Pantovich committed the act with malice or instead was legally provoked such that an ordinary person would be compelled to an uncontrollable impulse of violence, and each of the elements of self-defense. In each context, the jury instructions as a whole provided for where and how the jury might consider the character, reputation, and propensity to violence of both Pantovich and McPherson.

Notwithstanding the unconstitutionality of a "good character" charge as argued above, because there is no factual dispute that Pantovich killed McPherson, the "good character" charge requested at trial would not have been appropriate. In cases where the appellate courts have reversed a trial judge's decision to not charge on the defendant's character, there was a factual question as to whether the defendant committed the acts that formed the basis for the criminal charge. In Harrison, 343 S.C. at 167, 539 S.E.2d at 72, the defendant was convicted of simple possession of cocaine. His defense to that charge was that he was not in possession of the cocaine. Id., 343 S.C. at 174, 539 S.E.2d at 75. In Lee-Grigg, 387 S.C. at 314, 692 S.E.2d at 897, the defendant was convicted of forgery. There, her defense was that she was authorized to seek reimbursements for expenses related to her role as a director of an abused women's shelter. Id., 387 S.C. at 314-15, 692 S.E.2d at 897. In each of those cases, there was a question as to whether each defendant had engaged in the conduct that formed the *corpus delicti* of their crime.

Here, there is no question Pantovich beat McPherson to death with a baseball bat. Pantovich admits to that. His only defenses to the charge of murder were either self-defense or

that a lesser-included was more appropriate. Because the jury was thoroughly and accurately charged on the law around those defenses, the jury instructions as a whole adequately covered the law, and the trial judge was correct in his ruling on the request: "I think the charges I've got adequately covers everything." (Appx. 552, ll. 5-6). Accordingly, the PCR court erred as a matter of law in ruling Pantovich would have prevailed on appeal had Appellate Counsel raised the issue of the denial of the "good character" charge.

c. Any error by Appellate Counsel in failing to raise the refusal of the "good character" charge is harmless because the jury considered Pantovich's character, couldn't have reasonably found him to have "good character," and because additional instruction on character evidence would have equally drawn attention to damning evidence of his bad character.

Even if the "good character" charge remains constitutional, and even if the jury instructions are lacking in its absence, such that Appellate Counsel was deficient in failing to raise the issue, any error is harmless because there was no chance the jury could have concluded his "good character," and because any fair instruction on the subject would have only drawn equal attention to the damning character evidence introduced in the State's reply case.

"Errors, including erroneous jury instructions, are subject to harmless error analysis." State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting Belcher, 385 S.C. at 611, 685 S.E.2d at 809); Green, 278 S.C. at 240, 294 S.E.2d at 335 (applying harmless error analysis to the refusal of a "good character" charge). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" Middleton, 407 S.C. at 317, 755 S.E.2d at 435 (quoting State v. Kerr, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218, (Ct. App. 1998)). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to

the verdict rendered." Id. "Thus, whether or not the error was harmless is a fact-intensive inquiry." Id. (citing State v. Jefferies, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994)).

There is no chance the absence of the instruction contributed to the verdict. Pantovich was guilty of some degree of homicide, as undeniably proven through the facts previously summarized: the controlling, cloistering relationship between Pantovich and McPherson; the savage beating and internal liquidation of McPherson; Pantovich's attempted deception of law enforcement; the unceremonious bundling and bagging of McPherson's dead body; and Pantovich's attempt to flee the State with his dead victim in the trunk with the murder weapon. Pantovich himself on multiple occasions confessed his loss of control, and testified to the same at trial—he could not remember the first swing, only battering McPherson to a bloody pulp as she lay helpless on the ground. No act on Pantovich's part reflects "good character" or that he acted in self-defense—he killed McPherson and did what he could to try and get away with it.

Furthermore, there is no evidence the jury failed to consider any of the evidence presented to them. Both attorneys drew the attention of the jury to the testimony of the various character witnesses, and the State assertively worked to convert their testimony to the benefit of the prosecution. That the jury convicted Pantovich of voluntary manslaughter, as opposed to the murder for which he was indicted, reflects that to some extent they accepted his testimony and that of his character witnesses. The jury found Pantovich did not kill McPherson with malice, but lost control upon heated provocation. That finding necessitates the jury putting some credibility in the defense's case, as the State's evidence showed no meaningful injuries to Pantovich, and an absence of touch DNA on the fire poker supposedly brandished by McPherson.

Neither the PCR court's order, nor the Return to the Petition for Writ of Certiorari, show what, if anything, the absence of the "good character" charge contributed to the outcome at trial; instead both wrongfully assume the jury just ignored the character evidence submitted to them, contrary to law and basic, common sense. The law does not presume the jury is deaf, dumb, and blind lest the learned judge pry open their eyes and awake their senses. Cf. Belcher, 385 S.C. at 612, n. 9, 685 S.E.2d at 810 ("It is axiomatic that some matters appropriate for jury argument are not proper for charging. 'Do jurors need the court's permission to infer something? The answer is, of course not.'") (citation omitted).

Finally, the error is harmless because any additional charge on character evidence would have inevitably drawn additional attention to the absolutely damning evidence of bad character by Ouimette. Further encouragement by the judge to consider the parade of barflies who spoke so highly of Pantovich would have forced the jury to also consider Ouimette's tales of abuse and violence at the hands of Pantovich. As such, the best result Pantovich could have hoped for from additional instruction on his character would have been a wash.

CONCLUSION

For the foregoing reasons, this Court should reverse the PCR court's finding that appellate counsel was ineffective for failing to raise the issue of the trial court's refusal of the "good character" charge, vacate the grant of post-conviction relief, and enter an order denying Pantovich's application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
S.C. Bar No. 101260
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

17 Oct., 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Georgetown County
Court of Common Pleas

The Honorable George C. James, Post-Conviction Relief Judge

Appellate Case No. 2017-000280

STATE OF SOUTH CAROLINA,

Petitioner,

v.

VLADIMIR PANTOVICH,

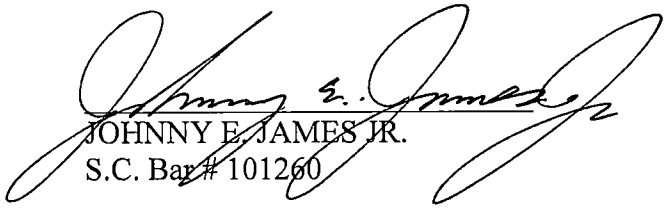
Respondent.

CERTIFICATE OF SERVICE

I, Johnny E. James Jr., certify that I have today served the within Petitioner **Brief of Petitioner** upon Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
1330 Lady Street, Suite 401
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served. This 17th day of October, 2018.



JOHNNY E. JAMES JR.
S.C. Bar # 101260

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

ALAN WILSON
ATTORNEY GENERAL

October 17, 2018

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: **Vladimir Pantovich v. State of South Carolina**
Appellate Case No. 2017-000280
Lower Court Case 2012-CP-22-0635

Dear Mr. Shearouse:

Attached are the original and fifteen (15) copies of the **Brief of Petitioner** in the above referenced case for filing in your office. Also, per Rule 243(j) included are thirteen (13) additional copies of the Appendix.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General
SC Bar #101260

JEJ/mm

cc: David Alexander, Esquire
Trisha Allen, Director - Victim Advocacy Division (without enclosure)