January 27, 2019

Clerk
South Carolina Supreme Court,
P.O.B. 11330
S.C. Bld. 1231 Gervais Street,
Columbia, S.C. 29201

Re: Kennedy v. State, 2018-000877

To the Court,

Enclosed please find my Petition for a Writ of Certiorari. I intend to file a supplement to this in short order.

Thanking you for your kind consideration, I am
very truly yours,

By request of:
John F. Kennedy, 358076
Lee Correctional Institution, F-4-A-1145
990 Wisacky Highway
Bishopville, SC 29010
JFK: mm

To: Attorney General of South Carolina, P.O.B. 11549, Columbia, S.C. 29211-1549

Mark Marvin 1/30/19

Mark Marvin
135 Mills Road
Walden, N.Y. 12586

IN THE SUPREME COURT
STATE OF SOUTH CAROLINA
Certiorari to Anderson County, Hon. R. Scott Sprouse

JOHN F. KENNEDY, Petitioner

2012 GS-04-2002
2018-000877

Against

STATE OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI

DEFENDANT IS NOT GUILTY AND DID NOT HAVE A FAIR TRIAL

JOHN F. KENNEDY, Defendant-Petitioner is making this Petition for Certiorari , in that the defendant has been convicted in this state of crimes and is serving a sentence of imprisonment and that his conviction and sentence are in violation of the Constitution of the United States of America and the State of South Carolina, and the conviction and sentence are subject to collateral attack under law, and in support of this application he says:

1, He was falsely convicted of murder by a jury on December 5, 2002, before Hon. J. Cordell Maddox, with Catherine T. HUEY, Esq. Assistant Solicitor and Andrew Potter, Esq. for the defendant, and sentenced to thirty years imprisonment without parole. Appeals to the Court of Appeals and the South Carolina Supreme Court were denied. PCRA was denied April 18, 2018. Following a *Johnson* motion, he applies *pro se* to this court (order dated January 02, 2019)

2, The conviction follows indictment subsequent to the homicide of Claude Schaffer Scott following assault at his residence on March 30, 2012 reported by Kimberly King who made daily welfare checks on Mr. Scott (aka: "Schaffer") Finding the doors locked, Ms. King pounded on the door and **"I heard Schaffer say, go away. I don't want to be bothered now. Go away."** (p. 154: 22-23) Schaffer came to the door and fell backward, and was reportedly covered in blood. "He kept calling my name, telling me to call 911 and not to leave him." (???) There is no testimony that Schaffer believes his death is imminent, rather, he told Ms. King to go away, then decided he needed help, but did not express the thought of impending death. His request for help indicated he did not expect to die.

3, Ms. King identified the defendant as being by the trailer and identified him as "John F. Kennedy and he calls his self J.F.K.." (p. 157: 20) (not John)

4, She testified that Julie Moore lived at the trailer. (p. 165) She also thought that Ron and Julia might have had something to do with it. (the assault.) (p. 169:1-8) Ron Curry (p.

165:21) There was no adequate police investigation of Moore or Curry, who had beaten Schaffer up the morning that the defendant drove him to the bank to cash the check. With Schaffer in injured condition it is possible that he accidentally shed two spots of body fluid on the defendant's shorts, either from injuries, or from lung disease. Counsel advised Mr. Kennedy not to testify, a curious counsel given that Mr. Kennedy was not guilty of harming Schaffer, had no identified blood on him, and had no physical signs (e.g. injuries) of having assaulted Schaffer, and had left no evidence at the scene suggesting a role.

5, Ms. King stated that "John Kennedy" was staying in the trailer behind the house. (p. 148:3) "John was in the yard doing something to a car." (p. 151:1) Ms. Huey asks: "And you said J.F.K. was outside...." (p. 151:5) Ms. King says: "But John Kennedy came from ...." (p. 152:14) and "John Fitzgerald Kennedy calls himself J.F.K." (p. 159:18) "And whose picture did you circle (photo lineup)? A. John." (p. 160:19) "Who are you referring to? A. John Q. John? A. John Kennedy." (p. 161:7-11)

6, David Evans testified that Schaffer told him: "... John, the black guy, hit me." (p. 178:24-25) There is no testimony that Schaffer believes his death is imminent.

7, MR. POTTER objects: " Ms. King is quoted as saying, the man who did this is J.F.K. " (p. 180:21-22) This pertains to the 911 recording. Ms. Huey states: "Well, we would like to include the fact on the 0-1-1, Ms. King is saying John F. Kennedy just left the trailer...." (p. 181:4-6) Mr. Potter asks Ms. King: "Q. And when Ms. Scott said, John did it, you didn't know specifically who that person was? A. No, un-uh. (taken to mean he did not know who "John" was. (p. 186:20-22)

8, Officer Brandon Dunn testified "And I overheard him tell them that John did it. (p. 204:6-7) with no evidence that Schaffer believed he was facing impending death. At the hospital Officer McKendra Beardon noted and testified: "He had an oxygen mask on over his face. And I said, do you know who done it? And he said, Josh. And I said Josh? And he goes no, John. I had misunderstood him, but he did correct me. He said John done it." (p. 208:3-10) (Curious: The Officer's name is Dunn, and Schaffer is claimed to say: "John Dunnit" or did he say John Dunn it? Or did he say John done it (as transcribed)? If so, who is Josh? And why did the officer disbelieve it was Josh, but not disbelieve it was John? Why did not the officer say 'And I said John? or John who?' She disbelieved it was "Josh" but did not disbelieve it was "John." Or was it that the Oxygen mask made it difficult to understand? There is no evidence that Schaffer believed he is facing impending death. "And whose picture did you need to include in that photo display as a result of that? A. It was John Fitzgerald Kennedy" (p. 209:7-9)

TESTIMONY OF MEDICAL DOCTOR FORENSIC PATHOLOGIST

9, Brett Woodward, M.D. Forensic Pathologist was admitted as an expert. He testified that Mr. Scott (Schaffer) had multiple injuries including to his forearms, suggesting defensive wounds, and to his head and face with some ten cuts to his head. Skull was not fractured, but did have contusion to the brain, both right and left side (p. 229:1-8) and injury to his spine and shoulder blade. He had significant history which included coronary bypass, micro valve replacement of the aortic valve. He had developing gangrene of lower right extremity. "He had emphysema of the lungs, and his lungs were filled with edema fluid. " (p. 230) He had muscular atrophy and kidney damage. He died when his heart gave out on him. The forensic pathologist did not report on any circulation insufficiency to the brain, but with severe artery disease, one might expect that the carotid arteries were blocked leading to cognitive disorders. This lack of evidence is indicative of an incomplete autopsy and/or testimony suggesting that the witness is incompetent and his testimony should be stricken from the record on the basis that such a relevant evidentiary subject is absent.

10, Both his upper and lower jaws were broken. "His speech would have been garbled. Most of our enunciations and speaking patterns require movement of the upper and lower jaw and tongue. And obviously those movements would be painful with a fractured bone." (p. 231:6-11) "He would have been significantly dazed, much like a prizefighter who's been severely struck by another prizefighter. It might have taken -- because of his brain injuries, it would have taken longer to bring to bear the process to convey thought." (p. 234:6-10) Samples of body fluids were taken. (p. 234:23-24) Injuries were consistent with being hit by a frying pan. (p. 234) On cross-examination: "And he would have a hard time making judgments that you would make if you were in a similar environment and had been struck." (p. 237:15-17) None of the body fluids taken were reported to have been compared to the two spots on the defendant's shorts. Without a laboratory microscopic examination, there is no identification of the spots on the defendant's shorts which (Paragraph 12, Catherine Leisy, SLED scientist) testified she received "positive results" of what we are not apprised.

11, Chris Pridemore Police officer testified that there were no fingerprints recovered from a broken frying pan handle found at the scene (p. 255, 259) There was no evidence pertaining to the nature of the frying pan, whether aluminum, or cast steel, color, weight, etc?

12, Catherine Leisy, SLED scientist testified that she identified DNA on the skillet handle matching the profile of Claud Scott (Schaffer) (p. 311:9-10) the decedent. At face value

this suggests that Schaffer , using the pan with handle attached, was the last, or only one to use to pan to hit himself. Had a "John" used the handle to hit the decedent, John's DNA would have been on the handle, but was not. Ms. Leisy , using cuttings of fabric from the defendant's shorts "received a positive result ... (that) ..matches the profile of Claud Scott (decedent) " (p. 311:21-25) "What I can say to that is that in my scientific opinion, it's reasonable to believe that the DNA profile developed and the DNA left on that item belongs to Claud Scott, ... Approximately one in two hundred and fifty quadrillion." (p. 312:7-13) (According to Black's Law Dictionary, Sixth Edition, "serological test is used to determine the presence of venereal disease prior to marriage. The Merck Manual, Fifteenth edition lists some 222 chemicals in the serum including : protein, urea nitrogen, lead, sugar, calcium, ethanol, oxygen, etc.) "I performed the same presumptive serology test. Received a positive result indicating the possible presence of blood...." *possible* presence *of blood* (p. 311:6-8) "I (Ms. Leisy) performed the same presumptive serology test on (both cuttings from the defendant's shorts). I received a positive result for both items. I developed the same DNA profile from both of these cuttings and determined that it matches the DNA profile of Claud Scott," (p. 311: 17-25) **Under no circumstances does the test of the cuttings of the defendant's shorts prove that the two spots were blood. The witness does not testify what else could have caused a positive result.** Had the laboratory done a serious test, it would have been studied under the microscope for the presence of blood components such as red blood cells or white blood cells. The fact that no serious testing was done of the spots indicated that evidentiary deception is the motivation, particularly when the government's Ms. Huey positively tells the jury that the spots were blood, and deliberately deceives the jury. (see paragraph 14, below)

13, Officer Brent Simpson testified that Mr. Scott and the defendant traveled to the bank that day in Mr. Scott's car, with the defendant driving because Mr. Scott did not feel up to driving. (pp. 341-342) The expert medical pathologist testified that Mr. Scott had the aortic valve replaced. He had developing gangrene of lower right extremity. "He had emphysema of the lungs, and his lungs were filled with edema fluid. " (p. 230) He had muscular atrophy ...." According to the Merck Manual the symptoms of emphysema include: "Cough and sputum production are extremely variable. One patient may admit only to clearing my chest on awakening in the morning or after smoking the first cigarette of the day. Another may describe a severe debilitating cough. Sputum varies from a few ml. of clear viscid mucus to large bronchiectasis-like quantities of purulent material. (Merck Manual, Fifteenth edition, p. 630) Catherine Leisey the SLED scientist was not capable of, and did not attempt to identify the

exact nature of the spots on the defendant's shorts that she admitted possibly tested positive for the presumptive test. This in no way confirms that the defendant had Mr. Scott's blood on his shorts. There is a very high likelihood that Mr. Scott coughed mucus or sputum onto the defendant's shorts while they were in the car that day.

14, In her closing argument Ms. Huey told the jury that: "Finally, we have blood evidence ... (the defendant) wearing the same shorts... And those shorts, according to DNA analyst, Katherine Leisey, had Schaffer Scott's blood on it in two spots. One in two hundred and fifty quadrillion chance that it wasn't Schaffer's blood . Those were on his shorts. (sic) " (p. 392: 3-11) It is prosecutorial misconduct to tell the jury "we have blood evidence" when in fact she did not. This disinformation is highly prejudicial in that the jury would likely believe this "blood evidence" was probative.

15, Ms. Huey relies on her witnesses who testified that Mr. Scott repeatedly states that John hit him. Mr. Scott was not able to testify that John hit him (or did it, or Dunnit) Yet, no one knew the defendant as "John". Because of his notable name, he was referred to as "John F." See paragraphs: 3,5,7,8. It is inconceivable that Mr. Scott could make a reliable identification by calling the defendant a name he was not known by. Even Ms. Huey called him "J.F.K." (paragraph 5) Ms. Huey said that Mr. Scott, despite being dazed like a boxer who was severely struck by another prizefighter and having garbled speech "could still communicate". (p. 381:2) If that were the case, why would Schaffer simply call him "John" when he knew him as John F." and were there other "Johns"? or with his broken jaws and severe head injury, and an oxygen mask over his face, was he trying to say "Ron"?

CONSTITUTIONAL RIGHT TO CONFRONTATION DENIED

16, The jury charge was erroneous. "The evidence presented at trial determines the charged jury instruction. State v. Lee, 298 S.C. 362, 380 S.E.2d 834, 1989. The purpose of a jury instruction is to 'enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273, 1987. If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury. State v. Lee, Id. State v. Hewitt, 205 S.C. 207, 31 S.E.2d257, 1944. (Only) the law applicable to the case should be charged to the jury. Instructions that do not fit the facts of the case may serve only to confuse the jury. State v. Lee, Id.; State v. Fair, 209 S.C. 439, 40 S.E.2d 634, 1946; State v. Rivers, 186 S.C. 221, 196 S.E. 6, 1938. (State v. Gregory Blurton, Opinion No. 25564, December 2, 2002, S.C. S.C.)

The Court instructed the jury: "I've had to make some rulings in this case. My job is the judge of the law. You're the judge of the facts. You have to take the law as I'm giving it to you now as the law of the case. And you also have to take the rulings I made in the courtroom as the law in this case. You have to apply the law as I'm giving it to you now to the facts as you determine them to be to reach your verdict." (pp. 408:19-25 to 409:1)

17, The defendant was not permitted to "confront" his primary accuser, that being Mr. Scott, because Mr. Scott had expired, but the government witnesses made numerous references to hearsay testimony that was attributed to Mr. Scott, namely that he supposedly said that "black John did it, or hit him." This was overwhelming evidence against the defendant and the jury reached its verdict in about fifteen minutes (to jury room at 2:28 p.m. and returned with a verdict at 2:43 p.m.) (p. 432) In the charge to the jury the court states: "Now ladies and gentlemen of the jury, this Court has admitted certain evidence and statements allegedly made by the deceased victim after the injuries. I have determined that these statements should be admitted as evidence in this case. However, it is for you to determine the believability of these statements. In deciding this question, you may consider whether the Defendant (sic) was dying and whether he knew he was dying and whether the victim had lost all hope of recovering at the time the statements were made. (p. 410) In this charge, the judge is actually giving the jury the authority to decide what the law is, and how to apply the law pertaining to dying declaration after he gave the instruction that he found the dying declaration to be admissible. The United States Court held that even an expert cannot instruct the jury on the law. ((U.S. v. Offil, CA4, 2011, 666 F.3d. 168, [4] 175) "To warrant reversal, a trial judge's (jury charge) must be both erroneous and prejudicial to the defendant." (State v. Commander, 2011, 398 S.C. 254, 270) For the reasons stated, there is no justification for the Court's admission of Schaffer's dying declarations, and the court erred in instructing the jury that said dying declarations were admissible, and erred when the court allowed the jury to make their own determination on the admissibility of the dying declarations, by considering whether the decedent knew he was dying or whether he had lost all hope of recovering, to the prejudice of the defendant, and erroneously admitted into evidence, (See *Crawford* below) with no evidence whatsoever that Schaffer knew he was dying. Schaffer had actually asked for help to continue living.

18, "First justifying admission of a dying declaration because it possesses sufficient reliability to eliminate the need for cross examination is contrary to the core holding of *Crawford* (Crawford v. Washington, 541 US. 36, 124 S.Ct. 1354) 'Where testimonial statements are

involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence much less to amorphous notions of reliability ... Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because defendant is obviously guilty. That is not what the Sixth Amendment prescribes.' (Crawford at 1370-71) Even if the reliability of a testimonial statement could be assessed by a court, or by other means other than cross-examination, dying declarations are not inherently reliable, but rather suspect.

19, The government's case is based almost entirely on several statements that "John did it" attributed to Schaffer before he died. There is no evidence that Schaffer knew he was facing imminent death, or that he had a fear of lying before he faced his maker. There was no evidence that he (Schaffer) would refer to the defendant as "black John" when all, including Schaffer knew him as "John F." or as "John F. Kennedy", or "J.F.K." There was no evidence that Schaffer was sufficiently cognizant to have understood his circumstances and could make legally competent probative testimony. "To make out a dying declaration, the declaring must have spoken without hope of recovery and in the shadow of impending death. The record furnishes no proof of that indispensable condition. " (Sheppard v. United States, 2015, 290 U.S. 96, 99, 54 S.Ct. 22, 23) (See: Crawford v. Washington, 2004, 541 U.S. 36, 124 S.Ct. 1354, fn. 6) State v. Johnson, 26 S.C. 152, 1 S.E. 510, State v. Davis, 1927, 138 S.C. 532, 137 S.E. 139,) "Numerous academic authorities criticize the reliability of dying declarations for persuasive reasons. A dying declaration may not be reliable because perception, memory, comprehension, and clarity of expression are likely to be impaired in the dying person. See Charles Neeson, *The Evidence or the Event? On Judicial Proof and the Acceptability of Verdicts,* 98 Harv. L.Rev. 1357. 1374 (1985) The experience of pain could affect the trustworthiness or accuracy of the declaration. See *Dying Declarations, 46 Iowa L.Rev. 356. 376 (1961)* Moreover, the original 'guarantee' of reliability, threat of divine punishment, may simply not apply to non-religious people. [P] The reliability argument fails. It is possible that (the decedent) might have colored his dying statements to falsely incriminate Defendant, believed Defendant killed him when Defendant actually did not (he was stabbed from the rear) or was otherwise confused about who his killer might have been. Without the benefit of cross-examination, a clear *Crawford* requirement grounded under the Sixth Amendment, there is no way to know. .... [P] Inability to test (Schaffer's) statements through cross-examination is fatal to the application of the dying declaration exception to the hearsay rule in this case. " (U.S. v. Jordan, 2005 WL 513501, 66 Fed. R. Evid. Serv. 790)

20, Admission of improper evidence, which requires confrontation, such as a "dying declaration" that was not made with knowledge of impending death, is admitted as an abuse of discretion.... (U.S. v. Williams, 2011, CA4, 632 F.3d 129, 133 [3,4,5], citing Chapman v. California, 87 S.Ct. 824, 826, 386 U.S. 18, 22) and was not harmless constitutional error because there was essentially no other evidence of guilt. (Id. 133, 134 [6]) The spots on the pants, were never identified as blood, even though linked to the decedent possibly from the prior incident or from mucus or sputum, and which were erroneously argued to the jury as certain blood. "We find that this prejudice alone is enough to require that the conviction be vacated." (Id. p. 134) The error of admission the decedent's statement was "not harmless" (Chapman, Id. p. 24, 827), and qualifies as ineffective assistance of counsel, mandating reversal (Id. Fn. 8: Payne v. Arkansas, 356 U.S. 560 coerced confession; Gideon v. Wainwright, 372 U.S. 335, right to counsel; Turney, v. Ohio, 273 U.S. 510, impartial judge) as well as questionable impartiality of the trial judge who should have known that a statement lacking a knowledge of impending death was inadmissible, and that it was improper to turn such a statement with charge to evaluate it, over to the jury.)

21, The nature of the false characterization of the evidence is clearly similar to that seen in the prior case of Karen McCall in Anderson County. See:

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UNITED STATES COURT OF APPEALS
FORTH CIRCUIT OF SOUTH CAROLINA

KAREN ANN MCCALL, 284499 — 12-7790
Petitioner

Against — 011-cv-02714-CMC-PJG

CATHERINE KENDALL,
Superintendent of Leath Correctional Institution
Respondent

15, The prosecutor (MS. HUEY) repeatedly introduced "facts not in evidence". (A) There was no evidence that the pursuing police officer was shot, which the prosecutor told the jury, as the expert could not verify that the tiny metal fragment taken from his wound was unidentifiable. (N.T. p.

509, 716, 717) (B) The prosecutor incorrectly quoted a witness who said that: a good poker player could **not** know better if a person is lying than a mental health professional, by twisting it to the opposite, essentially that a poker play could better tell if a person was lying than a mental health professional. (N.T. p. 653, lines 7-13, compare to closing argument p. 725, lines: 7-8 and 15-16.) "A 'prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.' (Giglio v. U.S. 150. The failure to correct false evidence is as reprehensible as its presentation, Washington v. State, 324 S.C. 232, 478 S.E.2d 833. The PCR judge erred in concluding that the State was not obligated to correct (witness's) false testimony, and failing to hold that this violation of petitioner's due process rights required that he be granted a new trial." (Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70, 2006 S.C. LEXIS 177, page 6)

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22 The use of false evidence by **Ms. Huey** against Karen McCall also can be found in the trial of Angela Vaughn, cited as an Exhibit to this petition. Ms. Huey refers to the decedent persistently as the "victim" despite the fact that this is a jury question, to the prejudice of the defendant.

23, It is apparent that this County's prosecutors have historically applied a pattern of arguing to the jury "facts not in evidence" yet, not even facts, but fictitious evidence for which there is no rational basis in the fact finding process of the trial, and which therefore makes the evidence false, and a pattern of prosecutorial misconduct resulting in a fundamentally unfair trial. The prosecutor Catherine Huey, with a history of misconduct so tainted the trial with misconduct that a fair verdict was impossible.

TRIAL AND POST-CONVICTION COUNSEL FAILED TO CITE MISCONDUCT BY THE GOVERNMENT AS DUE PROCESS ERROR WHICH DENIED DEFENDANT A FAIR TRIAL.

24, Trial and appellate and post-conviction counsel were ineffective for failing to prevent, or effectively raise the question of the admissibility of the "dying declarations" and persistent misconduct by Ms. Huey Asst. Solicitor. There was some questioning thereof, but on appeal, the issue was omitted to the prejudice of the defendant and with no rational trial strategy as the basis. Appeal was frivolously based on questions of the identification of the defendant in a photo lineup, after he was seen on the property by a witness who knew the defendant in person (Kimberly King: paragraph 3). Counsel failed to identify or object to the violations of the defendants rights described in this petition and there can be no rational strategy that explains counsel's shortcomings which resulted in the prejudice of a miscarriage of justice as the defendant is not guilty. (Strickland v. Washington, 466 U.S. 668; Lomax v. State, 379 S.C. 93, 665 S.E.2d 164, 2008)

25, As Justice Kitridge presided over the *McCall* trial we ask that he recuse on this matter.

WHEREFORE, the government failed to meet its burden of proof, and trial and appellate counsel were ineffective under the Strickland standard. Defendant 's conviction must be reversed, and he be granted such other and further relief as is just and proper.

Affirmed as true under penalty of perjury,

John F. Kennedy, 358076
Lee Correctional Institution, F-4-A-1145
990 Wisacky Highway
Bishopville, SC 29010
Dated: January 27, 2019

J.F.K.:mm

To: South Carolina Supreme Court, S.C. Bld. 1231 Gervais Street, Columbia, S.C. 29201

I certify under the penalty of perjury that I mailed a copy of this petition to:
Attorney General of South Carolina, P.O.B. 11549, Columbia, S.C. 29211-1549

Mark Marvin
135 Mills Road
Walden, N.Y. 12586
January/February 5, 2019

IN THE SUPREME COURT
STATE OF SOUTH CAROLINA
Certiorari to Anderson County, Hon. R. Scott Sprouse

JOHN F. KENNEDY, Petitioner

Against

STATE OF SOUTH CAROLINA

2012 GS-04-2002
2018-000877

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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL DISTRICT

Angela M. Vaughn

2008-CP-04-2319

THE PROSECUTOR TAINTED THE TRIAL BY HERSELF AND HER WITNESSES PERSISTENTLY REFERRING TO THE DECEDENT AS THE "*VICTIM*" CREATING THE ATMOSPHERE THAT HE WAS MURDERED, IN VIOLATION OF THE DEFENDANT'S RIGHT TO HAVE THE JURY MAKE THIS DETERMINATION, AS OPPOSED TO THEIR POSSIBLE DETERMINATION THAT THE DEFENDANT ACTED IN SELF-DEFENSE AND THAT THE DECEDENT WAS ACTUALLY NOT A VICTIM, BUT AN ASSAILANT, THEREBY DEPRIVING THE DEFENDANT OF A JURY TRIAL.

3, The understanding of the State as articulated by **Ms. Huey** was: "The question does become whether this (shooting) was done in self-defense." (N.T. p. 238:2-3: at close of State case) At the beginning of trial Ms. Huey stated: "...(T)he Defendant is making a self-defense argument." (N.T. p. 44:3) Instead of referring to Mr. Grant as the "decedent", she adopts the strategy to refer to him as the "*victim*, " a blatant innuendo. Beginning with her first witness, Karen Elrod, Deputy Sheriff, the witness states: "And I saw the *victim* on the floor...." (N.T. p. 65:7-8) Since the State accepts this as a question of whether the defendant killed Mr. Grant in self-defense, the witness' use of the word "*victim*" constitutes a fact not in evidence. Whether the decedent is a *victim* is a jury question, and the witness violates the jury prerogative by presuming that the decedent is a *victim*. In fact the defendant has asserted that Mr. Grant was an assailant and the defendant was a victim, the gravamen of self-defense. Defense counsel did not

object to this coup. Defendant was denied a jury trial on this question in violation of her right to a jury trial under the Sixth and Fourteenth Amendments to the United States Constitution which guarantee her right to an "impartial jury."

4, Ms. Huey questions the witness: "Q Now, you briefly already mentioned where the *victim* was....As you entered the house, where was the *victim*?" (N.T. p. 66:23) Defense counsel did not object to the further use of a "fact(?) not in evidence" actually contradicting his defense strategy that Mr. Grant was not the victim but the assailant. There being no logical trial strategy in this lack of objection, and to the prejudice of the defendant, counsel must be identified as Constitutionally ineffective. (Strickland v. Washington, 466 U.S. 668) Ms. Huey continues: "Did they (EMS) take the *victim* with them?" (N.T. p. 67:7) The word "victim" always refers to Mr. Grant, and is exclusively used by the government and its witnesses.

5, Now with the witness and the Assistant Solicitor on the same page, Ms. Huey continues on with her next witness, Mark Coyle, Sheriff Investigator, "Now, did you take pictures of... where the *victim* was?" (N.T. p. 73:8-9) Still no objection from defense counsel. Coyle uses the word "*victim*" again. (p. 77:2) Ms. Huey again uses the word "*victim*" at (p. 80:19), and Coyle uses the word "*victim*" at (p. 81:7). Continuing with the Officer's testimony the word "*victim*" is used again at: (pp. 83:18; 83:19; 84:3; 84:9; 84:22; 85:8; 85:13; 88:1; 91:7; 93:19; 94:1; 94:23) alternating imprecisely between officer and Asst. Solicitor.

6, The State called **Brent Woodward, M.D**. Forensic physician who is asked by Ms. Huey: "Did you have an occasion to perform an autopsy on the *victim* in this case?" (N.T. p. 105:13-14) There is no objection from defense counsel. Ms. Huey continues to ask questions, or solicit answers that refer to the "*victim*" at: (pp. 111:21; 112:17; 112:19; 112:21; 112:23; 113:10; 114:17; 114:22; 115:4; 115:23; 117:8) There was no use of the word "*victim*" on cross-examination by either person. On Re-Direct, Ms. Huey uses the word "*victim*" at: (pp. 121:24, 121:25; 122:5; 122:9; 122:14; 122:17). The word is not used on Re-Cross.

7, Prosecution witness Sharon Davenport is asked about the "*victim*" (p. 155:19)

8, At In camera conference the Judge uses the term "The alleged *victim*": (N.T. p. 179:12) but then continues: "*victim*" (N.T. p. 179:13) like "what the heck, everyone's doing it).

9, State witness Paul Sullivan is asked about the "*victim*" (N.T. p. 16). SLED Officer Tracy Thrower refers to "the *victim*" (N.T. p. 197:14).

10, Ila Simmons, SLED Forensics person is asked about the "*victim*": (pp. 203:10; 203:11; 205:4; 206:5).

11, Laurie Shaeker, SLED Toxicity person is asked about the "*victim*" (p. 216:23).

12, Steven Derrick, SLED something answers about the "*victim*" (pp. 228:7; 228:15; 228:23; 229:3; 229:5) and curiously is asked about the "decedent" (We knew you could do it Ms. Huey; p. 230:7) then the word "victim" is used again: (pp. 231:24; 232:1; 232:2; 232:4; 232:6, 233:9).

13, Defendant is able to find fifty-three (53) times that the decedent is referred to in front of the jury as "*victim*". There may be more. Only halfway through the testimony, the Court decides that the decedent is a "victim". After 53 times, it is obvious that the jury would begin to think that Mr. Grant was the victim. This is highly prejudicial.

14, Black's Law Dictionary, Sixth edition defines "victim" as: "There person who is the object of a crime, as the victim of a robbery is the person robbed." Referring back to paragraphs 2 and 3, the defense position is that Mr. Grant was the aggressor not a victim, and that he was shot when the defendant felt threatened. Ms. Huey has skillfully inserted the word "victim" into the heart and soul of this trial and made it axiomatic that poor Mr. Grant was the victim, therefore the defendant was a murderer, when in fact, this is, in a fair trial, a jury question. Ms. Huey has effectively bullied the Court, particularly the jury into accepting that Mr. Grant was the victim, when there is no reason to deprive the jury of its responsibility to determine the facts of the case.

15, Ms. Huey closes in her argument to the jury: "Angela Vaughn is not the victim here. Ronald Grant is the victim." (N.T. p. 323:5-6) Well, after a trial that is no more than government propaganda, the jury accepts that Mr. Grant can only be the "victim" because that is all they ever heard, and defense counsel ineffectively failed to object. "A 'prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.' (Giglio v. U.S. (sic) 150. The failure to correct false evidence is as reprehensible as its presentation, Washington v. State, 324 S.C. 232, 478 S.E.2d 833.) Not only did the prosecutor invent the concept of Mr. Grant as the victim, but its witnesses were also so infected, so that that there was a unanimity of police authorities proclaiming Mr. Grant a victim, ergo the defendant "guilty" by powerful inference and taints the jury which can no longer be presumed to be impartial. (Irwin v. Dowd, 366 U.S. 717, 722, 723, 81 S.Ct. 1639, 1961; see also: My'Min v. Virginia, 500 U.S. 415, 1991)

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