

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BARNWELL COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-001629

Sammie Lee Gerrick, Petitioner,

v.

State of South Carolina, Respondent.

Reply to the State's Return to the Petition for Writ of *Certiorari*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Petitioner Sammie Gerrick

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STANDARD OF REVIEW

The State's Return to Sammie Gerrick's petition for a writ of *certiorari* ("State's Return") twice seeks to excuse failures to object because of trial counsel's general strategy to avoid objections. First, regarding Issue VII pertaining to impermissible victim impact evidence, the State argues trial counsel testified "he did not object to the limited nature of this testimony because he did not want to jury to think he was trying to hide something. Second, regarding Issues IX, XI, and XII pertaining to the prosecution's closing argument, the State argues:

[Trial counsel] testified he felt objecting to the State's closing would draw negative attention and may damage his own credibility with the jury. He explained his general trial strategy is not to object where he believed the jury might interpret the objection as an attempt to hide something.

State's Return, p. 18.

Counsel's strategic decisions are relevant to the deficient performance prong of *Strickland v. Washington*, 466 U.S. 668 (1984). "If the State contends the alleged deficiency resulted from a strategic decision made at trial, counsel must articulate a valid reason for employing a certain strategy." *Freiburger v. State*, 413 S.C. 243, 247, 775 S.E.2d 391, 393 (Ct. App. 2015). *And see Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "Decisions made in ignorance of relevant, available information cannot be characterized as strategic." *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014).

A general strategy of not wanting the jurors to think trial counsel is hiding something could be used to justify any failure to object. The bench and bar would benefit from this Court's guidance about when, or if, such a generalized trial strategy can be used to excuse otherwise deficient performance. *E.g Dawkins v. State*, 346 S.C. 151, 157, 551

S.E.2d 260, 263 (2001) (“Counsel’s failure to object because he did not want to confuse or upset the jury does not constitute valid strategy.”).

Additionally, regarding the prejudice prong of *Strickland*, Mr. Gerrick’s petition for a writ of *certiorari*, at p. 5, discussed this Court’s opinion in *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) reminding that courts must analyze the specific error and clarifying the role of the purported strength of the State’s case in the analysis. Throughout his petition, Mr. Gerrick pointed out that the State’s case against Mr. Gerrick was not overwhelming. In its return, the State does not assert the prosecution case against Mr. Gerrick was overwhelming.

ARGUMENTS

I. Not moving for Judge Early to recuse himself when the prosecution planned to present evidence that Judge Early was mentioned in a “root.” Under the circumstances, Judge Early presiding over the case conveyed to the jurors the trial court’s opinion about the “root” evidence and constituted a conflict of interest.

Sammy Gerrick contends the trial judge should have recused himself for two reasons. First, the trial judge presiding over the case when his name was mentioned in the “root” conveyed to the jurors the trial court’s opinion about the “root,” which constituted an impermissible comment on the facts. S.C. Const. Art. V, § 21; *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016); *State v. Hartley*, 307 S.C. 239, 414 S.E.2d 182 (Ct. App. 1992); *State v. Dawkins*, 268 S.C. 110, 232 S.E.2d 228 (1977). The State’s Return, at p. 5, contends, “Even if, as Petitioner Asserts, Judge Early’s involvement in Petitioner’s trial somehow conveyed a personal opinion about the ‘root’ evidence to the jury, and potential prejudice was cured by the judge’s jury instruction.” State’s Return at 5. The Court of Appeals recently rejected a similar argument “find[ing] the circuit court’s jury

instruction [at the end of the trial] was insufficient to cure this error, in part because the court did not immediately instruct the jury when the error occurred.” *State v. Makins*, No. 2016-002495, 2019 WL 4180050, at *5 (S.C. Ct. App. Sept. 4, 2019). *See also State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 310 (2000); *State v. Sweet*, 342 S.C. 342, 349-50, 536 S.E.2d 91, 95 (Ct. App. 2000).

Second, Mr. Gerrick contends these circumstances constituted a conflict of interest. Regardless of favorable or unfavorable beliefs about the “root,” reasonable jurors would have concluded Judge Early declined to “help” Mr. Gerrick keep the law away or obtain his freedom. Under these circumstances, reasonable jurors could perceive the trial judge and Mr. Gerrick were in adversarial roles. Indeed, it appears the trial judge adopted the prosecution’s buried alive theory long before receiving testimony from the pathologist. *E.g.* A. 138, lines 5-19.

II. Failing to investigate and present available evidence explaining the “root.”

As a threshold matter, the State’s Return, at p. 6, cites the wrong standard of review by arguing Sammy Gerrick must demonstrate his trial counsel’s actions were “completely unreasonable.” Rather, the State must establish a valid strategic decision for trial counsel to limit his investigation. *Weik, Ingle, and Freiburger*.

The State’s Return, at pp. 5-6, concedes trial counsel interviewed Charlene Gerrick, “but he did not speak with her specifically about the ‘root,’ even though counsel knew there would be “the inevitable impression on the jury that the ‘root’ constituted evidence of guilt.” In his petition for a writ of *certiorari*, Mr. Gerrick identified several cases supporting ineffective assistance of counsel for failing to conduct and independent investigation, including interviewing witnesses about crucial evidence in the case. *Ard v.*

Catoe, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007) (*Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014) (*McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008); *Cobbs v. State*, 305 S.C. 299, 408 S.E.2d 223 (1991); *Bagwell v. State*, 410 S.C. 259, 266, 763 S.E.2d 630, 634 (Ct. App. 2014).

In *Edwards v. State*, this Court excused trial counsel's failure to interview a co-defendant when counsel observed the witness at his guilty plea hearing, had concerns about the witness' "ability to withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony," and "knew entirely consistent evidence would be presented through [the client's] statement to the police." 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011). The *Edwards* Court concluded trial counsel made a "reasonable decision" under the circumstances of that case. *Id.* Here, the State has not offered a "valid reason" for trial counsel not interviewing Charlene Gerrick about the "root."

III. Failing to object to the trial judge's opening comments and final instruction on the law, instructing the jurors to find the "true facts," including but not limited to the opening instruction, "[A]t the conclusion when you 12 acting collectively as one determine what those true facts are, then you apply those facts to the law as I give it to you and you will be in a position to render a verdict;" and the final instructions to the jurors, "It is your sole responsibility to determine what the true facts are in the case and apply those true facts to the law as I give it to you and render a verdict;" "That is your sole responsibility, your sole duty to determine what the true facts are in this case:" and "You're here to give careful consideration and deliberation of the evidence presented to you, to decide what the true facts are, and apply those facts to the law as I've given it to you."

The State's Return, at p. 7, concedes deficient performance by acknowledging trial counsel "did not identify a big distinction between an instruction telling the jurors to find the 'true facts' of just 'the facts'" and "did not believe the cited jury instructions were misleading or confusing for the jury regarding the State's burden of proof." Trial

counsel's perceptions were not correct. The State also concedes the challenged instruction in contrary to *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000).

The State never addressed numerous cases cited in Sammy Gerrick's petition for a writ of *certiorari*, to wit: *Cage v. Louisiana*, 498 U.S. 39 (1990); *In Re Winship*, 397 U.S. 358 (1970); *State v. Daniels*, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012); *State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004); *State v. Needs*, 333 S.C. 134, 151-52, 508 S.E.2d 857, 866 (1998); *State v. Raffaldt*, 318 S.C. 110, 115-16, 456 S.E.2d 390, 393 (1995); *State v. Manning*, 305 S.C. 413, 416, 409 S.E.2d 372, 374 (1991).

These instructions prejudiced Mr. Gerrick. Reasonable jurors could have concluded they had to determine the "truth," rather than applying the burden of proof. "A jury charge is no place for purposeful ambiguity." *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). *See also State v. Buckner*, 341 S.C. 241, 247, 534 S.E.2d 15, 18 (Ct. App. 2000).

IV. Failing to object to the trial judge excluding Mr. Gerrick from hearings to determine whether to retain or excuse juror numbers 9 and 23 in violation of Mr. Gerrick's constitutional right to be present during all critical stages of his jury trial.

The State's Return, at p. 9, acknowledges an accused has the right to be present at critical stages of the proceedings. The State, however, contends, "The in-chamber talks [about the continued service of the jurors] were not in and of themselves critical to the outcome of the proceedings." *Id.* This Court has stated:

Generally, a critical stage of a criminal proceeding has been reached when there is at least a reasonable possibility of prejudice to the defendant in the defense of his case. The test for determining whether a critical stage of the proceedings has been reached, as it relates to the right of counsel, is whether the particular stage either requires or offers opportunity to take a

procedural step which will have prejudicial effects in later proceedings, or whether events transpire that are likely to prejudice the ensuing trial.

State v. Williams, 263 S.C. 290, 294-95, 210 S.E.2d 298, 300 (1974). Excusing or retaining jurors meets this test. Additionally, the State never addressed the cases cited by Sammie Gerrick in his petition for a writ of *certiorari* in support of his right to be present during discussions about excusing or retaining the jurors sitting in judgement of him, to wit: *Ellis v. State*, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976); *Illinois v. Allen*, 397 U.S. 337 (1970)); *In Interest of Dwayne M.*, 287 S.C. 413, 414, 339 S.E.2d 130, 130 (1986); *State v. Taylor*, 261 S.C. 437, 442, 200 S.E.2d 387, 389 (1973). *And see United States v. Runyon*, 707 F.3d 475, 517 (4th Cir. 2013) (“district court erred in deciding to dismiss [Jury] Foreman with neither Runyon nor his lawyer present); *United States v. Rolle*, 204 F.3d 133 (4th Cir. 2000) (defendant’s absence from individual voir dire of certain prospective jurors satisfied error and plain error prongs of plain error analysis); *United States v. Camacho*, 955 F.2d 950 (4th Cir. 1992) (trial judge erred in removing juror during in camera proceeding in absence of defendant and his counsel).

The State also contends, “The relevant question on whether juror’s service prejudiced a defendant is whether there is any indication in the record that the challenged juror, or the jurors, who did serve, did so without impartiality. This argument must be rejected for two reasons. First, excluding Sammie Gerrick from matters pertaining to jurors is structural error. *See, e.g., State v. Elmore*, 279 S.C. 417, 422, 308 S.E.2d 781, 785 (1983), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (trial judge entering jury room with prosecutor and defense counsel “runs counter to the requirement that in a death case the defendant be present at all stages of trial”);

State v. James, 116 S.C. 243, 107 S.E. 907, 908 (1921) (accused had right to be present when trial judge provided additional instructions to jurors).

Second, this argument overlooks the fact that retaining Juror Number 23 was particularly prejudicial because she knew State's witness Taylor White, whose testimony the prosecution emphasized in closing argument, falsely arguing that Ms. White witnessed Mr. Gerrick take a shower, which was circumstantial evidence of concealing his guilt. A. 222-23, 722. Juror Number 23, no doubt, was influenced by her knowledge of Ms. White.¹

V. Failing to object to or make an offer to stipulate to graphic photographs of the victim's body when those photographs were so prejudicial, inflammatory, and intended to arouse sympathy, passion, and prejudice in the jurors' minds as to deny Mr. Gerrick due process.

The State contends Sammie Garrick did not establish deficient performance or prejudice regarding trial counsel's failure to object to the admissibility of the prejudicial photographs. The State, however, did not address any of the cases cited in the petition for writ of certiorari regarding the exclusion of prejudicial photographs, to wit: *State v. Torres*, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010); *State v. Kornahrens*, 290 S.C. 281, 288, 350 S.E.2d 180, 185 (1986); *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986); *State v. Waitus*, 224 S.C. 12, 27, 77 S.E.2d 256, 263 (1953); *State v. Edwards*, 194 S.C. 410, 10 S.E.2d 587, 588 (1940).

Rather, the State's Return, at p. 13, argues, "Given the status of South Carolina jurisprudence on this issue, any likelihood that Petitioner would have prevailed in preventing admission of the photographs in some other manner is substantially low." The

¹ The State's Return does not address the Solicitor's misrepresentations about Ms. White's testimony in response to Mr. Gerrick's Issue IX.

State, very likely, is referring its perception by the trial bench and bar that this Court is reluctant to find prejudice resulting from admission of crime scene and autopsy photographs despite warning the Solicitors not to overreach in this regard. *E.g. Torres*. This Court's guidance, therefore, is needed to develop appropriate protocols for admission of this type of evidence.

VI. Failing to move to exclude the testimony of Charlene Gerrick that was obtained in violation of the spousal privilege and as a result of improper witness intimidation.

The State's Return, at p. 14, contends trial counsel "did not have standing to raise the issue" of Charlene Gerrick's spousal immunity; only Ms. Gerrick "had standing." To the extent this position might be correct, trial counsel could have called this matter to the attention of the trial court and allow Ms. Gerrick to present her position. Importantly, the State never addressed the information that would have been presented at that hearing. Ms. Gerrick testified at the PCR hearing that her statement was obtained, not only in violation of her spousal privilege, but also as the result of law enforcement threatening to place the Gerricks' special needs child in foster care. A. 995-96. Trial counsel was not aware of this information because he did not interview Ms. Gerrick, meaning he could not make a strategic decision about a motion to suppress this statement. A. 1001. *See Weik, Ingle and Freiburger supra*. Threatening to place the Gerricks' special needs child into foster care rendered Ms. Gerrick's statement involuntary. *State v. Corns*, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992) (threat to arrest wife and place children in foster care rendered accused's statement involuntary).²

² The prosecutor additionally overstated Ms. Gerrick's testimony during the State's closing argument by telling the jurors she went to the murder scene with her hus-

VII. Failing to object to improper victim impact evidence that was not relevant and which were intended to arouse sympathy, passion, and prejudice in the jurors' minds.

The State's Return, at p. 15, acknowledges that victim impact evidence is reserved for sentencing but argues the challenged testimony did not constitute victim impact evidence because "the testimony provided by those witnesses was offered as probative evidence of whether Victim would have acted in a manner consistent with the version of events put forward by Petitioner throughout the investigation." This argument does not explain a purpose for introducing evidence about Tyrone Donaldson being a family man and being "Mr. Mom" to his children. Nor does it explain the prosecutor comparing the worth of Sammie Gerrick and Tyrone Donaldson during the State's closing argument. In fact, the State's Return, at p. 15, directly states Mr. Donaldson "had received a monetary settlement from his wife's wrongful death; any money he had to lend Petitioner came from honest means," (emphasis added), which had no purpose other than to compare Mr. Donaldson to Mr. Gerrick, who the prosecution portrayed as a bad person. Such comparisons are improper. *Hall v. Catoe*, 360 S.C. 353, 601 S.E.2d 335 (2004) (solicitor's comparison of defendant's life to victims' lives during closing argument was impermissible victim impact evidence). *See also* S.C. Code Ann. § 16-3-1550(F); *State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999); *State v. Hill*, 331 S.C. 94, 105, 501 S.E.2d 122, 128 (1998).

band to retrieve the white car. A. 726, line 20 – 727, line 5. In reality, Ms. Gerrick testified about going to an unspecified wooded area. A. 302-06.

VIII. Failing to object to impermissible character testimony that violated Rule 404, SCRE.

The State's Return, at p. 16, argues, "Any testimony regarding Petitioner being incarcerated before or during the crime in question is admissible as *res gestae*, such that no prejudice flows from the admissibility of its introduction be either the State or by [Trial] Counsel." This Court must reject this argument. Both the prosecutor and trial counsel introduced evidence of Mr. Gerrick's bad character. Trial counsel questioned Maurice Williams about his knowledge that Mr. Gerrick has been in a little trouble before," his not "mind[ing] bailing [Gerrick] out of jail," and being scared of Mr. Gerrick. Tr. 205, lines 8-16; 210, lines 2-16.

The prosecutor asked John Rice, a jailor, about whether Mr. Gerrick had any scratch marks on him. Mr. Rice replied, "[H]e had probably had scratches on him but that came prior to when they brought him back to jail after that escape." Tr. 216, lines 1-9. The prosecutor asked Shaneka Lakeisha DeLoach to describe Mr. Gerrick's face. She responded, "He could have been looking mean." Tr. 236, lines 20-23. The prosecutor asked Investigator Shaun E. Harley about law enforcements interview of Mr. Gerrick on August 17, 2011 after Mr. Gerrick was transported by the United States Marshalls task Force from the Charleston County Detention Center to the location of the interview. Tr. 333, lines 1-18. The prosecutor asked Chief of Police John Holston to publish Mr. Gerrick's August 17, 2011 written statement. Chief Holston began:

When I was in the Banberg County Jail I had no way of contacting so, to the fact of being sentenced to six months in jail for child support. While being sentenced I received some more charges by leaving out of the courthouse and pushing down a sheriff's officer and running through the door at the courthouse.

Tr. 269, lines 1-6.

All of this testimony implied Mr. Gerrick's guilt, was improper character evidence pursuant to Rule 404(a), SCRE, and implied Mr. Gerrick had a prior criminal record or was incarcerated for other offenses. "[E]vidence introduced for the sole purpose of implying a defendant has a prior criminal record is improper." *Deck v. Missouri*, 544 U.S. 622 (2005); *Estelle v. Williams*, 425 U.S. 501 (1976); *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 345 (1991); *State v. Tate*, 288 S.C. 104, 341 S.E.2d 380 (1986); *State v. Lawson*, 424 S.C. 51, 817 S.E.2d 509 (Ct. App. 2018).

IX. Failing to object to the prosecutor's statements in closing argument that were not supported by the evidence in the case and misstated testimony presented at trial when those statements amounted to a violation of due process.

The State's Return, at p. 17 (fn. 2), indicates its Issue IX responds to Issues IX, XI, and XII of the petition for writ of *certiorari*. Mr. Gerrick will reply in the same formant as he presented the issues in his petition.

Issue IX of the petition for a writ of *certiorari* alleged the prosecutor misstated the records regarding two witnesses. First, the prosecutor claimed Taylor White testified she witnessed Mr. Gerrick take a shower, arguing this testimony to be circumstantial evidence Mr. Gerrick was covering up the crime. The prosecutor's claim misstated Ms. White's testimony, as she expressly denied witnessing Mr. Gerrick taking a shower. The State's Return did not address this contradiction at all.

Second, the prosecutor advanced a theory of the forensic evidence that was not supported by the state's own forensic pathologist, Dr. Janice Ross. Dr. Janice Ross testified at the PCR hearing. She classified the manner of death as a homicide because the decedent was buried in a shallow, clandestine grave. Although she could rule out certain causes of death, Dr. Ross could not offer an opinion about a particular cause of death to a

reasonable degree of medical certainty. Nor could Dr. Ross offer an opinion to a reasonable degree of medical certainty about the location of death, *i.e.* whether death occurred at the location of the grave or some other place. She also could not opine to a reasonable degree of medical certainty that the cuts or scratches on Mr. Donaldson's body were defensive wounds. A. 1102-08.

X. Failing to request the trial judge allow defense counsel an opportunity to respond to the prosecutor's statements in closing argument that were not supported by the evidence in the case and misstated testimony presented at trial when those statements amounted to a violation of due process.

The State's Return, at p. 20, acknowledges *Beaty, supra*, "did not alter the practice and procedure of closing arguments in a criminal trial" in South Carolina.³ Since there was no change in the law, the State's reliance on *Teamer v. State*, 416 S.C. 171, 786 S.E.2d 109 (2016) is misplaced. Trial counsel rendered ineffective assistance of counsel for not realizing he could move to require the State to open fully, allow him to respond to the State's best arguments, and allow the state to reply to new matters raised in the response. The pre-*Beaty* practice in our state allowed this procedure.

XI. Failing to object to statements by the prosecutor during closing argument which were intended to arouse sympathy, passion, and prejudice in the jurors' minds and urged the jurors to seek justice for the victim rather than to determine whether the State met its burden of proof.

The State's Return, at p. 17 (fn. 2), indicates its Issue IX responds to Issues IX, XI, and XII of the petition for writ of *certiorari*. Mr. Gerrick will reply in the same format as he presented the issues in his petition.

³ The State's Return, at p. 20, mischaracterizes Mr. Gerrick's position as him seeking the final argument. Mr. Gerrick acknowledges the State would have the final argument because he presented evidence.

In his Issue XI, Sammie Gerrick focused on the prosecution contrasting Tyrone Donaldson's good character with Sammie Gerrick's bad character as a "classic liar" and contended these arguments were intended to arouse sympathy, passion, and prejudice in the jurors' minds and urged the jurors to seek justice for the victim rather than to determine whether the State met its burden of proof. As seen, in Issue VII above, these comparative arguments are not proper. These arguments also suggested the jurors return a guilty verdict based on their emotions, rather than the evidence in the record." *Tappeiner v. State*, 416 S.C. 239, 252, 785 S.E.2d 471, 478 (2016). *See also Brown v. State*, 383 S.C. 506, 517, 680 S.E.2d 909, 915 (2009); *Von Dohlen v. State*, 360 S.C. 598, 602 S.E.2d 738 (2004); *State v. McDaniel*, 320 S.C. 33, 462 S.E.2d 882 (Ct. App. 1995).

XII. Failing to object to inflammatory statements by the prosecutor which were intended to arouse sympathy, passion, and prejudice in the jurors' minds and were so defamatory to Mr. Gerrick that it denied him due process.

The State's Return, at p. 17 (fn. 2), indicates its Issue IX responds to Issues IX, XI, and XII of the petition for writ of *certiorari*. Mr. Gerrick will reply in the same format as he presented the issues in his petition.

In his Issue XII, Sammie Gerrick focused on the prosecutor's highly inflammatory and derogatory comments directed at Mr. Gerrick. The State's Return, at p. 17, minimizes the prosecutor's closing argument by arguing "the State referred to Petitioner as lying and concealing the truth." In reality, the Solicitor repeatedly called Mr. Gerrick a "classic liar." *E.g.* A. 205, 210, 216, 236, 269, 333, 708, 742-43, 669, 707, 712, 721-27, 734-44. Our appellate courts consistently hold such argument to be improper and reversible error. *Major v. Alverson*, 183 S.C. 123, 190 S.E. 449, 450 (1937); *State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000), *reversed on other*

grounds by *State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002). Trial counsel was unaware of this precedent and, therefore, could not have made a strategic decision to not object. A. 1039-43. *See Weik, supra*.

XIII. Failing to move to quash the indictment when it was discovered that one of the grand jurors that indicted Mr. Gerrick was also a witness in the case, which denied Mr. Gerrick's right to a fair and impartial grand jury presentment.

The State's Return, at p. 20, acknowledges trial counsel "believed that the defect in the indictment was cured when the third indictment, which was the basis of the prosecution, was issued in this case." Thus, the State acknowledges trial counsel did not recognize that the other members of the grand jury already had been tainted by the participation of a state's witness. The witness' participation in the prior deliberations constituted an improper external influence on the rest of the grand jury. *Remmer v. U.S.*, 350 U.S. 377 (1956); *Remmer v. U.S.*, 347 U.S. 227 (1954); *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003).

The State's reliance on *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) is misplaced. Although one purpose of an indictment is to place the accused on notice of the charge to defense, an indictment is more than an mere a notice document as the State is required to present testimony to the grand jury establishing probable cause. S.C. Const. Art. I, §11.

XIV. Failing to investigate, develop, and present evidence that someone other than Mr. Gerrick killed the victim.

At the PCR hearing, trial counsel testified he was aware of evidence establishing that someone other than Sammie Gerrick killed Tyrone Donaldson. Trial counsel as inef-

fective for not presenting this evidence to the jurors. *Holmes v. South Carolina*, 547 U.S. 319 (2006).

XV. Failing to federalize the objections related to the three issues briefed by appellate counsel on the direct appeal.

Trial counsel did not federalize these issues by arguing the error deprived Mr. Gerrick of his due process right to a fair trial. The failure to federalize these issues and present the federal questions to this Court denies Mr. Gerrick the right to present these in a federal *habeas corpus* petition, should that need ever arise. *See* 28 U.S.C. § 2254.

XVI. The cumulative effect of trial counsel's errors requires a new trial.

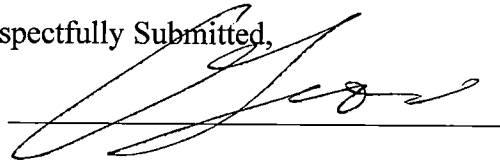
The State's Return did not respond to this issue.

CONCLUSION

For the reasons set forth in Sammie Gerrick's petition for a writ of certiorari and this reply, this Court should grant the writ and consider the issues.

Respectfully Submitted,

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC

Attorney for Sammie Gerrick

September 12, 2019.

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

SEP 16 2019

S.C. SUPREME COURT

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2018-001629

Sammie Lee Gerrick, Petitioner,

v.

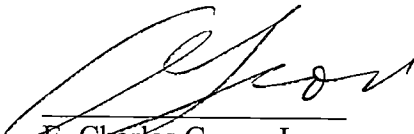
State of South Carolina, Respondent.

Certificate of Service

I certify that I have served a copy of the Reply to the State's Return to the Petition for Writ of *Certiorari* on the State of South Carolina by placing a copy in the US Mail, postage prepaid, on the date reflected below, addressed to

Janell H. Gregory, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

September 12, 2019


E. Charles Grose, Jr.
The Grose Law Firm, LLC.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.

Phone: 864-538-4466 Fax: 864-538-4405

E-mail: charles@groselawfirm.com

Web: GroseLawFirm.com

September 12, 2019

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: *Sammie Lee Gerrick v. State of South Carolina*
Appellate Case Number 2018-001629

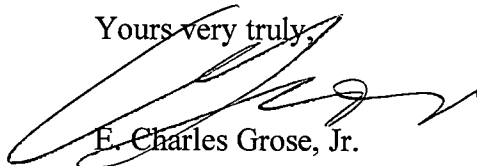
Dear Mr. Shearouse:

Enclosed please find the original and six copies of Mr. Gerrick's Reply to the State's Return to the Petition for Writ of *Certiorari*, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or if I can provide additional information.

With kindest regards, I am

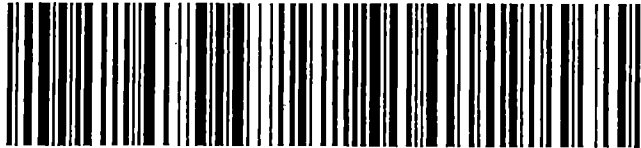
Yours very truly,



E. Charles Grose, Jr.

cc: Mr. Sammie Gerrick
Janell H. Gregory, Esquire

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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