Re: The State v. Heirberone H. Foster
Appellate Case No. 2019-000892

Dear Sirs, S.C. Court of Appeals, I really do hope all is well with you all and your families as we all fight this pandemic. I am aware my then attorney Dudek filed his brief that in his opinion, the appeal/his appeal is without legal merit "sufficient to warrant a new trial." Although, pursuant to Anders Vs. California 386 U.S. 738, 87 S.Ct. 1396 (1967), He did briefed an arguable legal issue which arose during the trial. In which this arguable legal issue upon my own research, "extensive research" (West Law library/via Internet/ Defense of Persons and Property Act/Castle Doctrine/Stand Your Ground and S.C. Code of Laws) hopefully and in my opinion should warrant merit....

So not only do I commend Chief Appellate Defense Attorney Dudek on his work in his brief, but I Heirberone H. Foster #353381 do respectfully submit pro se the enclosed pages as in thru · in addition with his brief, My brief, concerns, hopefully arguable legal issues with merits that did arise during the course of the trial for you alls careful consideration, and I ask for you alls, yes, you all's compassion in memory of my son/Heirberone Will Foster, my entire family, myself and to all who were/are affected by our losses, because of this tragedy.

Being this appeal is based on the laws of the U.S. Constitution, rights violated and one of a family's worst losses that could be imagined, the loss of a Dad and a son in an instant. I do ask you all to know that though I may cite cases and laws in this appeal, by no means am I suggesting or implying even having the knowledge of an attorney or am I implying I was or am perfect. Nor am I implying my son Will was a terrible person, because the same way and more I know now, is the same way I knew then of our love for each other, even with it's imperfections. As in the courts and it's administrations with it's imperfections or error of laws.

I implore you with all the humility and sincerity I have to very very carefully review and consider every one of my discussions, arguements, issues or errors of law basing each one on the laws and the intentions of them, but please, do not leave your hearts out, because this entire case/ordeal is about real human beings with hearts. And please give latitude to mispellings, languages, but I do believe if this covid-19 would not have shut access to the law library down I would have been a little better versed. Basically, handicapping myself again. Plus not having the financial means to hire an independant attorney. I say that because though my son Will is the main victum. We all are the victims. Not one of us wanted a trial and it's on record, but we all talk to each other praticallly everyday. And now we are trusting still in true justice to prevail. Not being I murdered my own son. 2

LEGAL MAIL

Re; Speedy Trial Rights Violation

Upon my research in relations to many siting of cases (State Vs. Hunsberger, State Vs Edwards, State Vs Black, Barker Vs. Wingo, Barker Vs. Wingo etc)... being aware there are many factors that must be weighed in the court considering a Speedy Trial Right Violation. In our case missing fact/key withesses, one; Ronita Cotton moved to California (trans page 190 lines 19-22). Two; State nor defense not being able to serve subpenoa on fact/key witness Vernon Blanding after court/judge ordered that whatever provision there is if he/Vernon Blanding refuses to appear have him arrested and being him in, but for now to keep the trial moving (trans pages 561, lines 6-25 and page 562 lines 1-15). Then after Blanding made allegations over the phone to solicitors office, as in what was said by solicitor, to the effect of defendant/myself allegedly stating to him of intentionally murdering victim, my own son. And court still allowed the admission of his statement only. Three; the memory lapse of about thirty-two times states witness Troy Flood either couldnt remember or just didn't know what transpired on the day in question. Nor at one time or another could LeAnne Cotton, Savanah Smith, or Haley Foster remember. Forth; The length of delay being three (3) years. The reason for the delay, being inexscusable, especially with the over whelming demand for affordable or reasonable bond revisitation and or trial requests, speedy at that. The next eight (8) pages are just some letters in my all out (3) efforts to have this right afforded to me...

LEGAL MAIL

108

sent 6/4/17

Both Side 4-5

Attention; Mr. Walter Whitmeyer;

I have spoken to you of several occasions concerning your irresponsible manner. In which you are handling my cases. Must I remind you sir I am charged with the murder of my own son. I have repeatedly asked you to keep me abriefed on the status of my cases. Which you have not. I have repeatedly asked you to get me in court for a bond hearing. In which you stated back in December 2016 that you would get me in court January 2017. To no avail. You have allowed judge after judge to go by. I had to write the clerk of court to get the status of my case. In where you did file motion for bond February 24 2017. That was four months ago. (I do feel there is time alloted for the solitor to schedule one said hearing and if ~~is~~ not there should be a certain amount of time in which solicitor should answer.) Then I found out thru no assitance of yours that cases who's time frame which mine falls under. Should be turned over to the C TAP for scheduling or dismissal. My cases has passed the 180 day tracking period. Must I go any further? Yes., you also stated that you were going to file for a speedy trial on my DV case. Yet to no avail. You also stated you were going to file for funding to have the firearm examined. You have also yet to get me a full discovery, Toxicology reports, picture etc... To no avail. You have yet to give me a copy of investigators final report or his findings. Patience on my part should never be in question, but you are bordering ~~lining~~ lineing incompetence. When it comes to my case. Why?

over

I have recently sent a letter to Judge Keesley. I have a letter written out CJAP Griffith and one for the Attorney generals office. Either you can explain to me what is the status of my cases or I will have no choice but to seek ~~ass~~ assistance elsewhere. I did not murder my son and you do know this to be a fact. The grief was almost unbearable, but now it's time for me to go home. I do expect to see you real soon. I am also very disappointed in you lack to respond to any of my mothers calls. Very disappointed. Ms Gayle gets 100% for her efforts. 6/5/17

Thank You

Zulma -

Copy

There for on that alone it would be reasonable to assume that there is or should be a time frame regarding a time for

2 of 8

sent 6/5/17 1 of 3 (6)

Chief Judge of Administrative Purposes/Staff

Regards; The STATE vs. Heirberone Heave Foster #27793 pd-26

Cases # 2016A3210200790-200790/"No Indictments"/Murder/poss. Firm.

#2015A3210201908/"No Indictment" Domestic Viol. 1st.

To whom it may concern; C.J.A.P./Honorable Judge Eugene C. Griffith, Jr., Dear sirs my reason for getting you alls attention today is of great ~~important~~ importance regarding the above cases. I (Heirberone H. Foster) am currently being detained here at L.C.D.C. on said charges in excess 420 days on or about. Being denied bond Aug. 24, 2016 in regards to my own sons death and weapons viol. I am a current resident of S.C. all of fifty-five years. Married with three children less one. With no serious felonies on my record. No ties outside S.C. nor have I ever physically hurt anyone.

I have repeatedly requested to my court appointed attorney (Mr Watter Whitmeyer) file a motion regarding bail. As of late obtaining documentation (Clerk of Court) stating bail hearing motion have been filed. Dated filed Feb, 24, 2017, As of June 6, 2017 no hearing as of yet. Cases being pass the one-hundred eighty day track period. (Murder/Weapon Viol.) in excess two hundred some odd days. Criminal Domestic Viol 1st in excess three hundred ninety days pass.

Judge Griffith sir, I am reaching out to you on the advisement again of Honorable Judge William Keesley. (Document enclosed) As you can see Judge Keesley stated in memorandum that if I wasn't brought before the court "promptly" for me to contact you all. In which I do feel I have been patient being date of memorandum "Oct 23, 2016" and now it being June 2017. Is there anyway in which you all could assist me in aquiring an affordable and reasonable bond or at the least leading me in the right direction to obtain one. Seeing I have been detain in excess of thirteen months. Espeically being "not guilty" of any crimes... You alls kindness will be dully appreciated to the fullest. Thank You Sirs,

Neil [redacted]

6/6/17

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(Both sides) (1) 8-9

Heirberone H. Foster
PD-14,277913

Information regarding Bond request

Date: 12/31/17
To: [redacted]
RE: State vs. Heirberone Heava Foster
Case #'s: 2016A3210200790/2016GS3203024 (Murder)
2016A3210200791/2016GS3203340 (Poss. Firearm During Viol. Crime)
2016A3210200792/2016GS3203023 (Poss. Firearm by Viol. Felon)

I do not wish to take up much of your time. As you are familiar this/these cases are well, well beyond the 180 day track record. Still yet to be on your judicial docket and does it seem to be getting there anytime soon. Regardless, the "State" has yet to try or dispose of case #2015A3210201408 (Domestic Viol. First Degree) Case having no merit at all! Which also has been in limbo since October, 2015. (Also my wife and I have requested time and time again to at minimum have the no-contact order lifted from the very beginning of DV 1st charge). Thru the Public Defender Thomas Sheely. With no success, but assistant solicitor Ms. Rhonda Patterson insist on using at past bond hearings in an effort to prevent bond from being set for three other "charges". Although, still to set trial date or dispose of DV 1st or other case charge. I have been here at (LCDC) for about six hundred ten days. I have been accused of being a danger to my community. Which I truely love. By two esteemed Judges. both also sited I was a flight risk after living here in Lexington County for fifty-six years. (All my over 1.f.e)

(5)

Mom

Hello my precious mom. Just decided to thank you again for the "sacrifices", the many many sacrifices you have made in your life for me. Well (if) January and I'm released from this place (if it be God's will). I'm hoping I get enough back pay from disability to pay your land tax, house taxes. Because every year all I hear is, "I got to pay my taxes". Well maybe this year I can help and then I don't have to hear that ☺.

Make sure to ask the lawyer when am I going up for bond for sure. Is he sure I will get one. Why haven't they came to me with an offer. Why haven't they dropped the CDV. It's been 2 years. I'm not waiting I'm writing the judge Sunday night. And I'm writing Attorney General Joe Wilson. I'm tired of this

Love You

12/3/17

over

this is the letter I sent to judge tonight.

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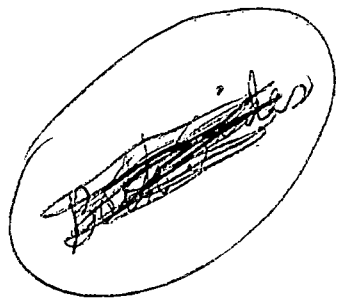
(10)



Cathy Foster
Full Name of Party Filing Document
208 Oak Glen Rd.
Mailing Address (Street or Post Office Box)
Gaston S.C, 29053
City, State and Zip Code
(803) 238-2954
Telephone

IN THE DISTRICT COURT FOR THE 11th JUDICIAL DISTRICT
FOR THE STATE OF [redacted], IN AND FOR THE COUNTY OF Lexington

STATE OF [redacted], S. South Carolina
Plaintiff, South Carolina
vs.
Heirbrane H. Foster,
Defendant.

Case No. 15-020630
Warrant # 2015A3210201908

REQUEST TO MODIFY OR DISMISS
NO CONTACT ORDER
I.C.R. 46.2(b)

1. ☑ I am a person protected by a no-contact order in this case.

   ☐ I am the parent or guardian of a person protected by a No Contact Order in this case.

2. I ask that the No Contact Order issued against the defendant in this case be:

   ☑ Terminated because: I "Cathy Foster" Tried to tell the officer that my husband Heirbrane H. Foster Nevere hite me with a chair, or was I afriad of him.

   ☑ Changed because: I Never called 911, my daughter did because she was upset with him.

The changes I want are: My husband to be able to come home, we have been married for 23 year's and he has Never hite me.

(11)

VOLUNTARY STATEMENT OF VICTIM OR WITNESS

REFERENCE: STATE OF SOUTH CAROLINA v. Heirberone Foster
CHARGE (S): DV 1st Degree
WARRANT #'S: 2015A3210201908
OFFENSE DATE: 10/24/15

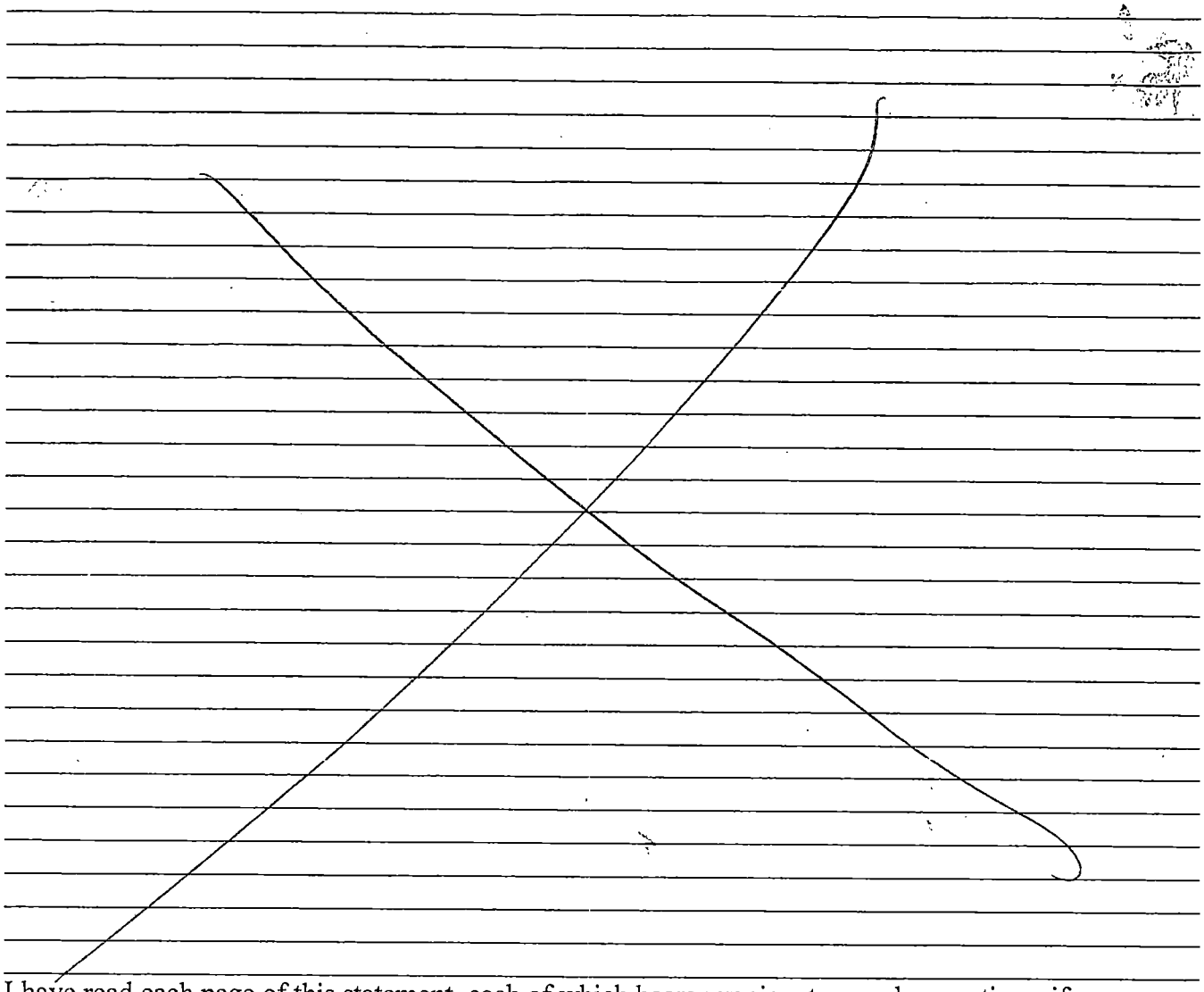
I, Cathy Foster, VOLUNTEER THE FOLLOWING INFORMATION OF MY OWN FREE WILL TO THE LEXINGTON COUNTY PUBLIC DEFENDER'S OFFICE.

I AM 48 YEARS OLD. MY TELEPHONE NUMBER IS 794 8701
I RESIDE AT 208 Oak Glenn Rd Gaston SC 29053

Well me and my husband did NOT get into NO fight he did NOT hit me with NO chair and I did not told the police office that and I did NOT told them that I did NOT want him to be arrested at C.A. and I went up there to sign some papers to get the drop the NO-Contact paper drop to.

2 of 2

(Both sides)



I have read each page of this statement, each of which bears my signature and corrections, if any, bearing my initials and I certify that the facts contained herein are true and correct.

03/18/16 not to be

Cathey Foster
Signature of Person Giving Voluntary Statement

SWORN to before me this 18th
day of March, 2016

Notary Public for South Carolina

My Commission Expires: 4/18/17

Ht. Mr. Shealy

(12)

This portion of the Victim Impact Statement requests information about the effects the crime. Please consider the following questions and ***respond only to those that apply to you and to this case.*** You may use additional paper for your answers if needed. We encourage your input.

**Did you suffer any physical injuries?** NO **Did these injuries cause any permanent or long-term disabilities or disfigurements? Please describe:**

**Have you noticed any change in your lifestyle since this happened? (This may include personal habits, close relationships, the amount of tension and nervousness, or your ability to work.) Please describe:** Since my husband has no been in the home my lights have been cut off.

**Please describe how this crime has affected you financially?**

There was no crime

**Have you received any mental health counseling as a result of this crime?** NO **If not, are you interested in receiving counseling?**

**Please use this space for additional comments you may have:**

my husband shouldnt have Never been arrested

Thank you for taking time to complete and return this form. This will help your voice to be heard by the criminal justice system. Please sign and return.

Cathy Foster
Signature of victim or representative

03/16/16
Date

***With your signature, you submit that the above statements are true.***

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Sent 11/27/18 (13)

Attn: Ms. Zmroczek 11/26/18 Heirbrane H. Foster

"2nd Status Request"

Hello ma'am, how are you all? I do hope this letter finds you all well at the busiest time of the year, besides the normal hustling and bustling of your day to day activities that your career so demands of you all. I am also fully aware that "quality" and "quickness" does not always go hand in hand, but as of December 10, 2018 I will have been here "thirty-three months and five days total. Including thirty-five days and bond money I posted for a C.D.V. 1st I in no way committed. In speaking of I have needs of and plan on being fully compensated for, to be discussed at a later date, not to mention, but mention this murder charge also.

However, myself knowing full well that your schedule was extremly "over filled" at the time of retaining you all's services did and does not reduce the urgency as mentioned from the on start of this case moving as in my relief/ release, be it bond or dismisal, immediately! Tho I am also aware of what county I reside in, fully should by no means lesson the truth or the laws there self.

Ms. Zmroczek, I have never been one as in to constantly go over and over the same things or better yet, at this time my dire need for communication to be maintained via, U.S. postal service, Email, telephone, face to face (thru my mom), something. I do recall you telling myself that within two weeks you would have myself back in court, besides the Dec. 10, 2018 trial date, which we see is not happening. So again, seeing this being my second letter of inquiring concerning bond hearing or whats the plan? Contacting myself is not hard. I'm here all the time ☺. Don't you just love me, because I do love you all and you too Ms. Mattie....

Have beautiful days. Your Client Heirbrane Foster

Being by letters sent repeatedly to my then attorneys, para-legals and the different Chief Judges of Administrative Purposes (Keesley, Griffith, and Addy). Would or would not this type of assertion of my constitutional right to due process surely be very strong evidential weight that my speedy trial right having been deprived?! Also to go as far as Violation of Seperation of powers given the length of time the solicitor had in the scheduling of hearings and trial (K.C. Langford Vs. State).

My oppression being so severe during this three (3) year delay caused such mental issues as in depression, Anxiety issues, by just the accusation of murdering my own son. Then to mention that literally, I could be found "guilty" of murdering my own son. To this very day this affects myself, even affects myself defending myself. So of course these issues "skew" the fairness of the entire system. And are requesting you all address this violation...

I then argue on the judicial procedures in "Prosecutorial Misconduct" by the prosecution repeatedly "vouching in all out attempts to persuade the jury in the credibility of it's lay witnesses testimonies, once on page 707 line 20, twice on page 708 lines 4-5 and the "third" time on trans page 715 line 18-20. Whom at the time of the trial two of the prosecutions main witnesses (LeAnne Cottin and Troy Flood) had pending felony charges. LeAnne Trafficking (M.D.A. estacy), plus - and Troy had Burglary, plus (U.S. Vs. Henry) 545 F.3d 367, 379 (6th Cir. 2008) prosecutions statements that witnesses state-

ments/testimonies "being highly credible"; "Improper" Douglas Vs. Workman 560 F.3d 1156, 1179 (10th Cir. 2009) prosecutions statement that government witnesses had nothing to hide witnesses testimony was the truth. "This Improper Vouching is a reversable conviction" Just as in our case....

Also to draw focus on another improper statement made by "prosecution to jury (trans page 744 line 24) as in Directing them "Don't send him back out another door". In which defense counsel did object to, preserve it, and even move for mistrial based on this remark. So with this type of conduct allowed we question again the courts "Abuse of Discretion" and would or would not this type conduct fall under Prosecutorial Misconduct??

Just to be sure in covering myself through this process. I question/argue the "validity" of whether or not when or if as in this case the defendant/myself chooses not to testify. Does defense counsel by rules of court/judical procedures get closing argument "without" state giving response or lengthy response to defense's close (trans page 740 thru 745)? The significance of this question would go to the importance of having the last word and how impactful we know that having the last word is. Especially pertaining to when it's addressing a jury...

Then to moving on to question if the court knows it's "law" to do seperate verdict forms whether the state requires it or not. Why wouldn't the court follow the law and what impact did or would it have on the jury (trans page 747 lines 16-21)?

I also ask you sirs, to look if you deem necessary further into our issue of "sleeping juror/jurors". I did receive your response of this being an issue for P.C.R. and with All due respect I must cross my T's and dot my I's to the best of my ability and for this reason alone I must bring the issue up again. And ask you to include it in my appeal...

It would seem very relevant that if the "court saw it" necessary to stop the trial (trans page 521 lines 13-18) during the state's expert witness's testimony of "Crime Scene Investigater Keith Sprinkle in relations to the blood splatters (drops) of scene, the firearm and ammunition. Then it would seem this to be a matter of significance to the appellate court. Even if the defense counsel didn't raise the error, preserve it at trial or sentencing, The appellate court still may grant relief, for "Plain Error" (U.S. Vs. Olano) 507 U.S. 725, 731 (1993). "Plain Error" review does provide court of appeals limited power to correct errors that were not timely raised at court.

In referring to #46 Georgetown Law Journal Ann. Rev. Criminal Procedures (2017). Violation of Sixth (6) Amendment right to a trial by "competant and unimpaired jury" Smith Vs. Phillips 455 U.S. 209, 217, 102 "S. Ct." 940, 946, 71 L. Ed. 2d. 78 (1982). Verdict must be set aside due to sleeping incompetence. * Which was brought to the courts attention by the trial judge in our case (trans page 521 lines 13-18).

(6)

This being "gross debilitating misconduct". This "denigrates the precious right to a competant jury. (Jordan Vs. Mass) 225 U.S. 167, 176. 32 "S. Ct." 651, 652, 56 L. Ed. 1038 (1912). A juror being asleep or dozing off seriously prejudices the defendant for a fair trial by competant and impartial jurors. Any and All deliberations, comments, or opinions made from this/these jurors severely affects the integrity of All the jurors, especially when their "honest" decision making process is a must.

"Disqualification of a juror has always been viewed as an occurrence in which there is "manifest necessity in declaring a mistrial". U.S. Vs. Walden (C.A. 4 S.C. (1971) 448 F. 2d. 925, on rehearing 458 F. 2d. 36, on remand 464 F. 2d 1015.

We are aware we bear the burden of showing this "Plain Error". In which our case the court "itself" made this error clearly known on record. Besides at the on start giving the jury specific instructions that they must be very attentive thru the entire trial (trans page 304 line 18). Then the court goes on to thank the jury for being an exemplary group, Stating they were "always" attentive (trans page 778 lines 16-18). "Contrary" to earlier having to stop trial at a crucial time for juror or jurors "sleeping error" (trans page 521 lines 13-18).

Also in citing U.S. vs. Batista 684 F. 3d. 333, 340. In relations, failure to object to sleeping juror/jurors.

To conclude the arguement of "Plain Error" of sleeping juror or jurors substantially affected the defendants rights by him or her making any ~~just~~ judgements, deliberating on, commenting on, or even to give a verdict without having "full" Knowledge of testimony of states expert witness in relations to the firearm, blood evidence, or ammunition, plus who knows what other pertinant information of evidence he missed or how long they were asleep. His lack, prejudice not only the defendant to a fair trial, but also his lack and any participation prejudiced other jurors in their fair, honest decision's requirment necessary.

"Abuse of Descretion",

Arguing of defenses "motioning" for a Directed Verdict" on the charge of murder and the possession of a weapon during the commission of a violent crime (trans. page 594 lines 11-25, page 595 lines 1-25, and page 596 line 1-3). "Asserting the "lack" of substantial evidence regarding malice." Especially pertaining to the contradictions in the testimonies of the "lay witnesses" LeAnne, Haley and Troy being "grossly" inconsistent, [redacted] by there own testimonies of standing side by side at the time of the firearm discharging, [redacted] even of that being inconsistent. One * discrepency in the "testimonial evidence" is [redacted] where LeAnne on multiple occassions testifies of defendant before shooting, [redacted] victum stated "Didn't I tell you to stop fucking with me.

And to mention the unreliability of lay witness Troy Flood's entire testimony, being one(1) of maybe three(3) answers Troy seemed to remember out of about one hundred fifty(150) questions from both the state and defense counsel. He some how remembers "allegedly" the defendant when he/defendant came outside he heard him say, "didn't I tell you to stop fucking with me" (trans page 501 line 20-21), "but" when victums sister (Haley Foster) is questioned not once, but three(3) times by the state (Ms Patterson) of when her dad/defendant came outside with the gun. Did she hear him say anything? She (Haley says he didn't say anything (trans page 226 line 1). She was asked again page 226 line 2-3 and her response was to "Shake head", no. Then later she/the state/Ms. Patterson ask Haley again for the "third" time. Did she hear her dad say anything when he came out of the house and again Haley's reply was "no, ma'am" (trans. page 342 lines 19-21). Even in my/defendants own testimony during Stand Your Ground eligibility hearing when questioned by the State/Ms. Patterson as to did I tell victum (Will) not to fuck with me? I/defendant replied (explained to her that I was saying that to him all day but not in the threatening manner she was implying. Stop fucking with me means stop. (trans page 137 lines 14-25), leave me alone. She also ask myself/defendant again, "[redacted] isn't it true I said this while I had the gun in my hand? My response being "No" (Page 138 lines 2-4).

So by the courts claim of theres an abundance of evidence of malice by the defendant going into "his" house and "allegedly" staying three (3) to five (5) minutes as according to "lay witnesses" LeAnne Cotton and Troy Flood (whom both having self serving motives). Well, when analyzing these two entire testimonies does surely bring up some serious questions in their reliability and to question the Abuse of descretion on the courts part by using the fact of the defendant going into "his" house and arming himself with a shot-gun. That he had to take from under a cover (sheet). "Surely" can't be used as an abundance of evidence of the malice the court says theres an abundance of (trans. page 596 line 10-11).

Especially when theres "overwhelming" evidence of "why" defendant found it "necessary" to even arm himself. And again "Especially" when theres over whelming, abundance of evidence, clearly of defendant being chased by victum with an three (3) foot Aluminum level and a five (5) foot two (2) by four (4) with threatenings to kill him. Just [redacted] seconds before defendant entered his home to arm his self. Then for the court to state this and deny the requested Directed Verdict at that particular moment during the trial when all the witnesses nor evidence had not been presented. "Even that theres an abundance of evidence the defendant fired the gun." When the only clear evidence that had been shown/proven at that time was that the firearm did discharge while in the defendants possession.

Questioning the courts abuse of descretion in the denial of the directed Verdict further interpreting Malice by an alledged statement that had not been proven. (19)

Especially by the "testimonial evidence" of the lay witnesses testimonies of LeAnne and Troy's stating defendant said, "Didn't I tell you to stop fucking with me and fired the gun". Even this statement had not been proven. Surely "malice", for sure not to be based on the inconsistent testimonies of these two, besides comparing them to the other lay witnesses testimonies. And the testimony of the defendant which the court/judge did have privy to.

* Going on to argue Abuse of Discretion in the courts viewing in regards to these inconsistent testimonial evidences of the lay witnesses. Even to question the courts viewing (264 page, line 10-15) in stating, "In its (the courts view) view, the evidence does not prove that he (victim) was under the roof", but we ask the appellate court to "not only" review the digital images (pictures) submitted into evidence pertaining to victims blood trail, as in it's area of it's starting and end points, but also the testimony of the "States own expert witness Keith Sprinkle regarding the victim being on the concrete under the carporch and his blood analysis (trans page 551 10-25, 552 and 553 lines 1-21).

* And the inconsistent testimonies in reference to victim being under carport. LeAnne Cotton testifies of victim being on the edge of it (trans page 201 lines 1-2) then (trans page 202 line 17-18) victim did not go on carport, but testifies to Troy Flood being under carport and says it twice (trans page 457 lines 11-25). Troy testifies of Will (victim) standing close to him at the time he was shot (trans page 490 line 18-21), but

And then the victums own sister (Haley Foster) testifies to it twice when the state asks her, "where were you all at"? She/Haley answers, "We got under the car porch" (trans page 225 line 10). Then she goes on to even state who the We were, she is referring to on line 20-21 by stating, "me (Haley), LeAnne and Will, when we got under the carport." So according to the blood evidence testimony of states expert witness Keith Sprinkle and the victums own sister we seriously implore the appellate court to review in regards to the "abuse of discretion" in it's rulings on whether the victum was on the edge of the car porch, on the concrete, under the car porch, or on the dirt, but still Trespassing while committing unlawful acts. By these evidential facts we do argue to the contradictions of the courts viewing and rulings by these testimonies.

Also in questioning whether a "Directed Verdict" or at minimum "Verdicts to be set aside" as motioned by defense counsel (trans page 779 lines 8-16), In arguing the courts discretion. We question the amount of time jury took on deliberating the numerous of charges along with going over the evidence. "Especially" the number of contradictions and inconsistencies in the testimonial evidence giving by the lay witnesses and others also. To even ask a jury to deliberate on with so many inconsistencies and to the number of them would be to hand the appellate court the entire transcript, but here is listed a few more.

* Being they all were standing so close. LeAnne testifies on (trans page 200 line 18-19 and on page 447 lines 3-4) not hearing the gun rack, "but" Haley contradicts LeAnne by testifying to hearing the gun rack (trans page 226 line 6-7). (10)

LEGAL MAIL

* When the state asked LeAnne Cotton, "had Will/victum been drinking"? She answered, "No, not yet (trans page 191 lines 15-16). Then again she stated three (3) times "Will had not been drinking at "All" on this day" (trans page 208 lines 11-16). Even after being told Will's ~~blood~~ alcohol level according to his autopsy was .20. LeAnne still comes back (trans page 467 lines 17-18) and denies Will's drinking this day.

* LeAnne testifies to defendant being in home before victum being shot starting off by it being two (2) minutes and goes up to five (5) minutes. Savanah Smith says adamantly of this time line not even being three (3) minutes (trans page 356 lines 16-17). Haley Foster victums sister testifies to it being five (5) or fifteen (15) minutes, but she doesn't recall (trans page 342 lines 13-16).

* LeAnne "Adamantly" testifies to sitting with victum for a good thirty (30) minutes before ambulance, response team, or even police showed up (trans page 447 lines 20-24). Savanah Smith when asked by the state, did you have to wait "a while" before police showed up? She responded "yeah, I remember. (trans page 358 lines 24-25), but "major crimes investigator Daniel Schirra testifies of being on scene within one minute, even giving commands over car P.A. system (trans, page 369 line 14-16). And a second time he says he was on the scene "within one minute" (trans page 393 lines 2-5).

* She also (LeAnne) testifies of never taking ~~anything~~ anything from Will or Haley or touching them (trans, page 459-460 L,1-4), nor seeing Haley take anything from Will, but"...

but Haley again totally contradicts LeAnne testimony on numerous occasions of events that transpired this day and this being no different. Haley testifies of LeAnne "taking the level out of her hand after when she (Haley) took the level out of Wills hands And then Haley goes on to adamantly say, "she just Know LeAnne took the level out of her hand again" (trans page 336 lines 1-6).

* LeAnne repeatedly testifies to her and victum/Will only had a few words about the girls being in her yard and it only being an arguement, because she shut it down (trans page 191 lines 5-25). Later when she was questioned and showed an image of the playing cards being in array under her garage. She stated, "they may have gotten blown over or something. Then ultimately admits to her and Will getting into a fight when she returned from the grocery store over these same girls. Then in her very next statement contradicts herself again and says they got into an arguement (trans page 464 - 465 line 4-8). And even Haley testifies to LeAnne and Will getting into it, Haleys own words twice "LeAnne and Will get into an Altercation" (trans page 325 lines 13-21).

* LeAnne testifies twice to before defendant goes into home. He puts his arms around his wife/Cathy and walks into their home (trans page 199 line 15-17 and page 479 lines 3-5), but states lay witness Savanah Smith testifies on Six (6) occassions of defendant running into his home (trans pages 356 + 366).

(25)

LEGAL MAIL

* Then in LeAnne's testimony we argue the courts discretion in her statements of the victim being struck in the chest on the weight of LeAnne testifying adamantly of the victim, "not even getting to turn around to ~~react~~ react fully to him, saying victim turned, but he wasn't fully turned and he shot him" (trans page 446 line 23-25), And when asked by defense counsel to demonstrate and show how he had it turned all the way around as you/LeAnne said. During her demonstration LeAnne changed her testimony from the victim ~~did~~ did not get to fully turn around to he barely got a chance to turn around to he was on a pivot (trans page 473 line 13-25).

So of course we argue and bring to the front of our aguements the Abuse of Discretion due to the numerous inconsistencies and contradictions not just by this/these lay witnesses testimonial evidence, but by it not corresponding with the material/physical evidence, for example a person being not fully turned facing a firearm, but being struck front center of chest by that firearm. Bringing the question of Abuse of Discretion ~~base~~ the court's basing any rulings, viewings or opinions on not only just these inconsistencies or contradictions mentioned but the many many more not mentioned. And not setting aside this verdict ~~made~~ of course based on this we argue the courts Abuse of Discretion strenuously. . . . .

On record the courts decision was to determine whether myself/defendant qualifies to whether or not statute § 16-11-440 (A) or (C) applies to this case. South Carolina Code Ann 16-11-440(A) (2015) provides the assumption of Sub. Sec (A) would "not" apply ... If the victim has an "equal" right to be in the dwelling or residence ... Jones 416 S.C. 292 (citing Curry 406 S.C. 370) (State Vs. Jones 416 S.C. 28 (2016) & (State Vs. Curry) 406 S.C. 364 (2013) .... but Trespass Notice defendant/myself had placed on victim being active "negates" victims equal right to be where he was at, this being on record which I will get into more later. ...

South Carolina Code Ann § 16-11-440(C) (2015) provide a person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be (by the court conceding to the bond restriction and admittance to myself/defendant having the right to be where I/defendant was (Plus other witnesses) Transcript page 273 lines 1-16), but not limited to his place of business has no duty to retreat and has the right to Stand His Ground and meet force with force including deadly force, if "he that person" reasonably believes (Not what others who the danger is Not aimed at believes) it is necessary to prevent death or great bodily injury to himself or another person or prevent the commission of a violent crime as defined in section § 16-1-60 .... And

I/defendant even testified in this hearing (trans. Pages 65 thru 149) of my love for (Will) my son and of how I tried to protect him all his life, however whenever he drank alcohol as in this day (May 10, 2016) he was a different person, unusually aggressive, and I testified of past assaults my son committed on my self. Threats of killing me/defendant, choking me, spitting on me, pistol whipped me and even stabbed me. Also testifying of victums violent tendencies even assaulting his sister (Haley), his brother (Bradley) and witnessing on multiple occassions of him and his girlfriend (LeAnne Cotton) assaulting each other.

In mentioning his girlfriend LeAnne Cotton. I did have not only victum on active Trespass Notice, but LeAnne also. Due to ~~their these~~ regular acts of violence. Not only to each other, but ~~their~~ their acts usually ended up at our/my house. So in order to avoid somebody getting seriously hurt. I did what I believed to be the right thing and followed the proper protocol. I placed them both on Trespass Notice (Trans page 90, line 6-8).

This arguement/issue of the active Trespass Notice Violation and the victums criminal actions following this unlawful act itself was put before the court on record in this hearing on two (2) seperate occassions. And in drawing attention to the importance of this violation we do believe it's value should have brought out a different favorable outcome in the eligibility for "Immunity"....

(7)

On the second time during this Immunity Eligibility hearing this active Trespass Notice Violation was brought to the attention of the court (transpage 278, line 2-11)... As being one of the defenses "Biggest" issues, that the defendant did have the victum on Trespass Notice... So the question again is Did the court Abuse it's discretion apertaining to this issue of the victums Violation of the Trespass Notice and his clear intentions by serious threats of committing serious bodily harm and or even death with multiple weapons on defendant and would this violation and unlawful acts of violence give the defendant the right to arm himself and/or meet force with force? Along with the unintentional/accidental discharging of the firearm or not. ~~With~~ Would the violation and actions of victum entitle the defendant to Immunity seeing victum is now to be considered an "Intruder" by his own actions. Thus qualifying defendant for Defense of Persons and Property Act Law under Subsection (A-1).....

Also in the courts ruling that the defendant was not entitled to immunity citing, "Shannon Scott Vs. State" stating it being a completely different scenario, but in questioning ruling (transpage 273 Lines 23-25) in where court states, "there was a vehicle chase and at the end of that chase one person went to his residence (same as defendants case, defendant was being chased, Scott was also forced to arm himself and "react" to threat), and the person chasing the girls in Scotts case stopped and started shooting at Scott at his residence,

(as in this case defendant being chased with multiple weapons and verbal threats of killing him, out of his own home, around the back yard, front yard, two (2) houses up the street and back to his home). In Scott's case he returned fire and killed "unintentionally" a innocent person riding in a different vehicle. The court ruled Scott was entitled to the "Protection of Persons and Property act, because Scott was acting in Self-Defense, so the law applied. So we appellant do humbly ask the appellate court to review this ruling in relations to Scotts case and not as should or could have defendant or Scott have called police or did something different, but in the light of both were in the act of Self-Defense, difference being defendants claim was to scare his son/victum by arming his self, never ever to murder his own son. "State Vs. Burris" 334 S.C. 256, 262, 513 S.E. 2d. 104, 108, (1999) A person can be acting lawful. Even if he is unlawful in poss. of a weapon. If he was entitled to arm himself at the time of the shooting. And as in/on record (trans pages 256, lines 18-25 and page 259 line 1-10) where defense cites several cases, State Vs. Brayboy, State Vs. Gibson, and State Vs. Mekler where they speak of a person can be operating in self-defense and "still" have an accidental discharge. And in State Vs. Gibson (2010) in where the Supreme Court goes into a very detailed explanation specifically pointing out the difference between being "armed in self-defense and acting in self-defense", they cite also State Vs. hight and State Vs. Burris ... having a firearm does'nt negate acting in self-defense when using it in strictly Self-defense.....

In questioning "Abuse of Descretion" regarding (trans page 273, line 1-25) where the court conceded (3) three times on the bond issue not being an unlawful activity and admitted (2) twice the defendant was attacked, in a place he had the right to be (trans page 273, lines 3-14). Would not by the court conceding and admitting to these issues qualify defendant/myself to "Immunity" under South Carolina Code Ann § 16-11-440(C) (2015)? This providing a person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be but not limited to his place of buisness has no duty to retreat and has the right to Stand His Ground.... Also by this courts conceding and admittance (273 trans page, lines 9-12) We "Strongly" question courts abuse of descretion in it's interpretations by stating, "There's a lot of evidence from --- from others and it (the court) thinks it's probably 50/50 split on this about whether "both" of them were engaged in an unlawful activity as to one or the other." Even after just conceding to the defendant and the bond issue not being an unlawful activity and the defendant was attacked in a place he had a right to be. Thus (trans page 273, lines 14-17) court states the law states he/defendant has the right to Stand his Ground. Then said he changed his ground. By moving into his house..., but we question this into "his" house, would not this still be the defendants property or his ground ??

In court citing State Vs. Shannon Scott being a completely different scenario, but in comparison to Scotts case. "The defendants" only "changings of ground was a forced changing of "grounds". As in Scott some girls were being chased and shot at. This causing ~~being~~ a forced changing of Scott's ground. The "perponderance" of the evidence not just by the defendants testimony, but also by numerous witnesses even States witnesses (LeAnne Cotton, Savanah Smith) testified of defendant being chased with weapons by victim. Clealy out of the fear of being killed or seriously injured by these weapons. The defendant chose to "flee" repeatedly. By testimony of Haley Foster and Cathy Foster contradicting courts statement of defendant moving into house and changing his ground (trans page 273, Line 15-17). Well these witnesses testified to victum came to defendants home (where he/defendant had a right to be) and started with defendant. Daughter (Haley) even testified of defendant was "lying on couch" when victum came to defendants home and started with him. Did the wording from the legislature intend for (Scott) to Stand Still (His) in one spot (Ground) and not react to getting shot at or move into his home and defend his home and family? Even more "Did or Would the legislature mean for defendant myself to (Stand) Still (my) in one spot (Ground) and wait until I get seriously injured or even killed or change my ground and move into my home and arm myself? (Even if the danger is my own son. Whom I LOVED from birth).

We/defendant ask for the review of court even considering as in giving a substantial amount of weight for eligibility to immunity based on victums sister(Haley) and girlfriend's(trans.page 274, Lines 18-25) statements in where "they" were standing around joking and again "they" considered it to be over. When they both on multiple occassions they testified of where they both deemed it necessary to have to wrestle multiple weapons from victum. And of course "they" weren't even the ones being threatened. Plus to argue the conflicting statement between these two really must be brought up... as "abuse of descretion". (Details to come).

Here again we ask for the appellate court to review and respond based on the imminent danger the defendant Believed (he) was in and/or based on the actions of the victum. "Would an oridinary person believe they were in?"... And whether South Carolina Code Ann. §§ 16-11-440(A) applies in the presumption of reasonable fear, Subsection (A) citing; "State Vs. Jones" 416 S.C. 301, 786 S.E. 2d. 141 (S.C. 2016)... Not what two (2) ~~the test~~ ~~mem~~ very conflicting testimonies of witnesses standing around laughing and joking believed the danger was. Especially, when the victums threats were not directed toward either of them...

(This question(arguement) of whether the court abused it's discretion by not affording the defendant every right of Due Process in relations to Judicial Procedural Process extended by the court as in "every" other Defense of Persons and Property Hearing and/or Trial).

"Written Order Issue"

Transcipt page 265, Lines 20-25, the court admits (states) "not having the benefit of "time" to do a written order. Although, in the courts remembrance of "All" Defense of Persons and Property Act "hearings" the court has done, the court has had "in advance" of trial a sufficiant ~~time~~ period of "time" that it could do a written order and set forth specific findings of facts and conclusions of law, "but" due to the tremendous media attention on another murder case, involving the death of five(5) children that is going on at this same time it has "necessitated" even more restraint on resources, because there are sections of the courthouse that are cordoned off (Trans. page 266, Line 10-12), but the court said that to say (again) it did make every effort to try to have this so that the court "could" do a written order (the court's admittance here of the importance of having this written order and having it done before "any" hearing or trial), but then "again" goes on to state, "not having the benefit of time to prepare one." Now the court having to rule from the bench (transcript page 267, lines 1-3). In which it sounds like the court is saying it's going to have to make rulings (administer justice by the seat of it's pants)....

We also argue the courts abuse of descretion by it's repeated questioning of The Defense of Persons and Property Act Law in stating, "the courts have issues in interpreting what the legislature intended or what was meant" (trans. page, 267 lines 4-10), this being the first time. Then immediately questioning again by stating, "that it does not appear to the court that this case presents itself as one which the act was intended" (trans page 267, lines 19-23), this being the second time. Ultimately, the court openly admits by stating, "It does not know what the legislature intended and the troubling language is an unlawful and forceable act has occurred" (trans page 270, lines 19-22), this being the third time the court questions this law and the legislatures intent. (Trespassing and threatening to kill someone with multiple weapons is an unlawful and forceable act).

So in South Carolina Code of laws Article "6" Protection of Persons and Property Act, § 16-11-420 stating in it's notes of decisions #1 In general, Immunity finding Pursuant to provision in Persons and Property Act providing, that a person who is attacked (which the court conceded to myself/defendant was attacked twice in trans page 273 - lines 3-14) in another place where he has a right to be, including but not limited to his place of busness could have been made even if homicide was, defendants residence, (Also stating the General Assembly's "INTENT" being, was to provide protection of Act. . . . .

to persons within their own home facing not only unwelcomed intruders but also attackers, "Including" those who were initially invited into home and later placed homeowner in reasonable fear of death or great bodily injury) State vs. Douglas (S.C. App. 2014) 411 S.C. 307, 768 S.E. 232 homicide ☞ 770

So we/defendant strongly argue the courts denial of the defendants eligibility under this Act. Especially, when the court questions the Intent of the Act itself.

Then as record states the defendant deemed it necessary to place not only his own son(victum) but his sons girlfriend(he/she) also on Trespass Notice due to unlawful acts and violent threats done pryor to....

Thus, his son/victum being in violation of Trespass Notice with multiple weapons, verbal threats of killing defendant(Dad) chasing him out of his own home, to the back yard, to the front yard, two houses up the street and back. Along with multiple witnesses two (2) of them being victums immediate family members (mother and his sister) in their all out efforts to take these weapons from him to stop him. While he/victum, the trespassor repeatedly stating he's not going to stop.

We argue and put forth the question. Are these clearly unlawful and forceable acts which "has occurred" by a peson whom "did not" have the right to be there... So along with these acts and the testimony of victums girlfriend multiple times of victum living with her at time of incident...(see trans. page 205 lines 18-20 and page 214 line 20-24).

This is "the contradiction" we strongly question, as in the courts view of defendant not establishing by the greater weight of the evidence that the victim was not a resident of 208 oak glenn at the time in question.

Then we ask the appellate court to review, ask or answer the question of "how could the victim even be considered by the trial court a resident, knowing the defendant had placed an active trespass notice on the victim and his girlfriend. Which was placed due to pryor threatenings and attacks victim made on defendant (trans page 271 lines 8-22). In addition to this question would or would not this negate any rights of a questioning the victim being a lawful resident, And would or would not with this factual evidence given apply as in Subsection A(2), the presumption of fear of death or great bodily injury as to an unlawful act or acts that has occured other than the trespass violation, but also the criminal threatening, acts with multiple weapons to kill or cause serious bodily injury. That were gathered and placed in admittance on record along with testimonies from multiple witnesses, even victims own family members.

Thus to cite "verbatim", the General Assemby's Intent, being to provide protection of this act to persons within their own home not only unwelcomed intruders trespassers, but also after. Including those who were initially invited, but then later placed homeowner in reasonable fear of death or great bodily injury. Being Would any ordinary person being chased out of their own home and threatened to be killed or seriously hurt with a level and a five(5) foot 2X4 believe theres reason to fear the possibility of harm or even death?! State V. Douglas (SC. App 2014).

Sirs, in every effort in striving to conclude this appeal in an all out way in attempting to reach you all as in the laws of the U.S. Constitution and their rights being afforded to myself. I do appeal to you all as in being just a sixty (60) year old imperfect man, though still a man. A human being and most of all a proud citizen of this U.S. of A. Proud because in growing up I watched everyone of my uncles and my dad. They each had a family, owned their own bulsnesses, and owned their own land along with their own homes. As did I, because these were not only my dreams. I knew that if I worked hard these dreams could become reality. Maybe not in that order, but I also learned that men with these same dreams made laws to protect and insure that men like myself could dream & and have the rights to "live," in peace with these rights guaranteed to them. Even when that right is threatened by a family member (Son), trespasser or stranger, these rights and their process still must be administered. Not just to myself, but to all mankind, and I seriously believe, live, and accept them and their punishments with all my heart.

I do not have the privilege to all the laws or can I cite all the cases that provides this guarantee, but I do believe this was the or one of the fore fathers intentions in drawing up the laws. And nor do I have the financial ability access to afford a private attorney, but I do pray my ignorance of law or financial lack hinders you all in no way from rendering the fairness needed in administering all the legal justice that I should have been afforded at the on start of this judicial process. This family of the United States and this case being so personal. I lay myself and this family on the mercy of you all that you would go the extra mile in your decisions.

Thank You so much.. Blair H. Foster

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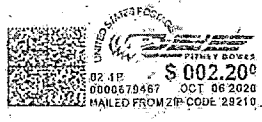


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