

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
John J. Moore — PETITIONER  
(Your Name)

vs.

State of South Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals/SC Sup. Ct.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John J. Moore  
(Your Name)

Broad River Corr. Inst., 4460 Broad River Rd.  
(Address) Columbia, S.C. 29210

Columbia, S.C. 29210  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the State Court's determination of factual issues is or should have been presumed correct. And whether Petitioner sustained his burden of overcoming this presumption by clear and convincing evidence which outlined clearly, ineffective assistance of counsel?
2. Whether based on ineffective assistance of counsel, in violation of Petitioner's Sixth and Fourteenth Amendment rights. Could he have received any semblance of a fair trial?
3. Finally, in light of Holmes v. South Carolina, 547 U.S. 319, 324 (2006), whether the State of South Carolina institute yet another evidentiary rule during the PCR hearing, to prevent the applicant from presenting a 'complete PCR case'?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 26, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was April 15, 2016. A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14TH Amendment right to Due process and a fair PCR hearing

6th Amendment right to effective assistance of counsel

§17-27-80 Provision for submitting affidavits

S.C.R. civ. p. 71.1(e)

## STATEMENT OF THE CASE

On April 20, 2006, Petitioner was indicted in Richland County South Carolina, charged with murder and use of a firearm during the commission of a violent crime. App 948-949. On January 28, 2008, Petitioner proceeded to trial by jury, before the Honorable William P. Keesley. Petitioner was represented by Douglas S. Strickler and Gregory B. Collins, and the State was represented by John P. Meadors, Heather S. Weiss, and Joanna A. McDuffie.

In opening statements, the State alleged that early Sunday morning on October 17, 2004, Grover Derrick, his fiancée Stephanie Dover, and their two young children were driving home on I-20 around Broad River Road. A dark pickup drove up behind their car and fired shots. The truck accelerated ahead, and Derrick sped up and gave chase. When he caught up to the truck, a few more shots came from the truck's cab. Derrick continued following the truck off an exit. Derrick soon gave up chase to turn back to the interstate, at which point he realized Dover had been shot. App. 142, line 3 App. 143, line 25.

The State's star witness was Kerwyn Phillips, who testified that he was the passenger in the truck, and Petitioner was the driver. Phillips testified against Petitioner pursuant to a plea deal with federal officials to resolve unrelated charges. App. 374, line 18 App. 379, line 17. Phillips stated the two were traveling home between one and three o'clock in the morning when Petitioner signaled at a slower moving car in front of them:

[W]e was approaching Broad River Road and we rode up behind a couple. They was in a newer model car. We got behind them, kind of close behind them. [Petitioner] flicked his bright lights behind the man and I believe it made him mad because the man stuck his middle finger back at [Petitioner], or at us.

[Petitioner] flicked the light a few more times and then passed by them. And when we got on the side of him, he stuck his middle finger back and made faces at him. App. 363, lines 14-24.

Phillips then described how the car pulled off the road behind them as the truck continued down the road a good bit. "They came back like to catch us, they pulled up on us kind of fast. I was thinking it probably was the police, we done did the wrong thing, but they didn't". App. 364, lines 1-8. Phillips then told how the situation escalated:

They pulled over towards us, like "swerved towards us". [Petitioner] swerved and almost hit the wall. He ducked down. We seen the man, he put his hand like under the seat like he was digging for something. App. 364, lines 9-13 The State introduced evidence that Petitioner also believed Derrick was reaching down for a gun. App 528, lines 9-12.

Phillips said Petitioner rose back up with a gun, shot into the car, and attempted to drive away. However, the "car started picking back up on [them] like running after [them] again". Petitioner was trying to outrun the car, but the "car was running pretty strong, too". App. 364, lines 13-23. Petitioner stuck the gun out the back window of the cab and fired more shots. None struck the car, and the car "did not slow down". The chase soon reached Highway 321, and Petitioner, speeding off the interstate, barely made the turn. Petitioner ran a red light and turned down a dirt road where he almost lost control. App. 365, lines 2-23; App. 441, lines 11-21.

As part of Phillips's cooperation with law enforcement, Phillips secretly tape-recorded a phone call to Petitioner in which Phillips had Petitioner admit to firing the gun at Derrick's car. App. 379, line 24; App. 383, line 17-; App. line 386, line 3-; App. 708, lines 710-. The State played the tape for the jury. App. 384 line 10-; App. 386.

The State called Derrick to give his account of the incident. Derrick said on the afternoon of the incident, he, Dover, and their two sons were cooking out at a friend's house in Pelion, S.C.. He arrived at the cookout around 5:30 p.m., ate some steak and "had five, six beers and a margarita". He claimed Dover did not drink. App. 253, line 20--; App. 254, line 21. Shortly after leaving the cookout, Derrick drove with Dover to a convenience store and brought four packs of cigarettes. Derrick stated he got back in the driver's seat and continued across town. App. 255, lines 16--App. 256, line 12. Derrick was driving in the far right lane of the interstate when he passed the dark truck in the center lane. Dover was in the passenger seat. Derrick had his window down and was "thumping" cigarette butts out the window". App. 255, line 10--App. 256, line 12; App. 264, line 9-17. "When the truck came back on us, I started hearing gunshots". And then I proceeded, I run off the shoulder of the road and I've come back on to I-20 and tried to get behind the vehicle and run them down". App. 257, line 24--App. 258. line 3.

Derrick sped up to the truck and crossed lanes to get behind them. Right before the exit for Highway 321, more shots came from the back of the truck. App. 266, lines 11--App. 268, line 4. He followed the vehicle off the exit at Highway 321 to a dirt road when he claimed he realized for the first time Dover had been shot: "I turned around and wen--asked her for my phone and she fell over in my lap. He then turned back to the interstate and drove in the opposite direction to the previous exit for help. App. 259, line 12-21; App, 268, line 19--App. 269, line 3.

The State called Investigator Steven Faust with the Richland County Sheriff's Office to describe the incident. App. 153, line 23--App. 154 line 25. On cross-examination, trial counsel for Petitioner attempted to elicit from Investigator Faust that Derrick was linked to crystal meth: "Would you possibly learn in your in-

vestigation that he'd had some dealing with crystal meth"? Faust responded, "there was some information brought up, but I could never confirm that". He attempted to continue with the line of questioning, but the State's objection cut him off. App. 203, lines 19-24.

Trial counsel's argument in closing was almost entirely that the evidence did not establish whether Petitioner or Phillips fired the gun. App. 715, line 21---App. 728, line 25. As for self-defense, counsel merely stated; "I don't know if you'll even get to talking about those issues, voluntary manslaughter and self-defense". App. line 1-4.

At the conclusion of the trial, the jury found Petitioner guilty of the lesser-included offense of voluntary manslaughter and the use of a firearm during the commission of a violent crime. The judge sentenced Petitioner to thirty (30) years imprisonment for the manslaughter conviction and five years concurrently, for the firearm charge. App. 722, line 16--App. 773 , line 12; App. 784, line 12--App. 785, line 7.

On January 13, 2011, Petitioner filed an application for post-conviction relief, claiming ineffective assistance of counsel. App. 787, 797. The State filed a return on February 15, 2011. App. 798--App. 812. On January 6, 2012, Petitioner filed a supplemental application for post-conviction relief, alleging "trial counsel failed to adequately investigate and develop evidence to defend Petitioner's case". App. 812-819.

Petitioner's PCR claim proceeded to an evidentiary hearing on May 23, 2012, before the Honorable Casey Manning. Roland P. Alston represented Petitioner and Robert D. Corney represented the State. App. 844. PCR counsel submitted at the hearing a "Memorandum in Support of Post-Conviction Relief", arguing trial counsel was ineffective for failing to adequately investigate Derrick's intoxication through occurrence and expert witnesses and for failing to adduce evidence to support a defense of self-defense. App. 825; App. 845; App. 849, lines 13-25.

During the hearing, PCR counsel offered into evidence an affidavit documenting the behavioral and cognitive effects of alcohol, cocaine, and methamphetamine, alone and in combination. Specifically, the affidavit stated that (1) cocaine can cause bizarre behavior and violent behavior such as anger, aggressiveness, and paranoia; (2) acute meth use can cause aggressiveness, and confusion, and habitual use can cause risky, destructive, and violent behavior, including incidents of violence and aggression, by affecting the part of the brain responsible for controlling inhibition; to include a feeling of invincibility and (4) in combination, use of these substances in any combination increases the likelihood of risky or violent behavior for a number of particular reasons. App. 830-835. The State objected on grounds that the affiant was not present for cross-examination. The PCR judge sustained the objection. App. 857; lines 1-19.

More importantly, PCR counsel also introduced evidence of a statement to police on March 16, 2005, by the host of the cookout, that Derrick and Dover attended before the incident. "Mike Lankford" answered the questions from an officer as follows:

Q: Was [Derrick and Dover] at your house by your request on October 16, 2004?

A: Yes. I asked them over for a cookout...They arrived shortly before dark. Grover and I went down to the store and got some charcoal. That where I did the That's where I did the last of the meth with him.

Q; Both of you smoked some?

A: We smoked...a small sociable amount. We pulled off a side road and finished it off.

Q: How late did this party go?

A: I thought it had been around 12:30 to 1:00 a.m., but after talking with my son it could very well been closer to 11:30 p.m. It may have been earlier, I was drunk...

Q: Do you know of any other drugs that Derrick and Dover had been using?

A: I had a small amount of cocaine that [Derrick and Dover] used with me. [Derrick was always involved with cocaine...]

Q: Did [Derrick get meth from you?

A: No. I think he got it from [another female at the cookout]. It was in a plastic bag--maybe a gram..

Q: [Derrick]. [Dover] had a headache and [Derrick] decided he would drive...

App. 907-912

Finally, PCR counsel offered into evidence a report from trial counsel's investigator made on January 24, 2008. The report was based on a telephone interview with Lankford's estranged wife. According to the report, their son told his wife that Derrick and Dover left closer to eleven o'clock at night, and Derrick was "so drunk that he fell on [their] son as he was trying to go out the door". He could not have driven, he was too drunk, and could hardly walk". Their son also told Lankford's wife that "[o]ne of [Lankford's] cats was also shot at the same party and then thrown into the swimming pool to drown". App. 913-915.

Petitioner testified that the jury should have been asked to consider the role of Derrick's possible drug use in determining whether Petitioner was acting in self-defense:

SUMMARY OF PETITIONER'S POSITION FOR THIS COURT TO CONSIDER

Here, the ineffective assistance of counsel, resulting in the withholding of Derrick's drug use "on the day and time surrounding the incident". Could and would have drastically altered the State's theory from a couple coming home from a party, just joyfully riding down the road, talking about getting engaged, versus a guy "that's

high out of his mind, under the influence of alcohol, cocaine, and meth, coupled with 'why it would have been reasonable for an objective trier of fact-finders to conclude [Derrick], as opposed to the Petitioner, was the aggressor".

Petitioner's testimony also revealed that "these facts of evidence never came out at trial". Coupled with; "[Ms. Dover] was the initial driver and it wasn't until they pulled off [the interstate], that they swapped seats. This also would have show[n] intent and that aggression caused by the illicit use of mixed drugs. App. 892, line 23--App. 893, line 3. This "pull-off to the side of the road was proven by the State's star witness testimony".

On January 8, 2014, the PCR court issued an order dismissing the case. Concluding Petitioner failed to establish ineffective assistance of counsel. When in fact, "it sustained the State's objection to Petitioner's offer of proof (being the affidavit by expert) of the behavior of persons under the influence of multiple drugs". That was indicative of Derrick's aggressive behavior. App. 918-938. Specifically, the PCR court found trial counsel adequately investigated and presented the defense of self-defense, even by omitting Derrick's alcohol and drug consumption; or for that matter, even where trial counsel "failed to present expert testimony at trial of the effects of the drugs proven to be used by Derrick on the day of the incident". With the only ... alleged strategic choice to focus instead, on the theory that Petitioner was not the proven shooter and to retain the last argument to the

jury. Which would not have presented "any defense at all". Under South Carolina's notorious "HANDS OF ONE HANDS OF ALL THEORY". The PCR court also concluded Petitioner failed to show prejudice because no toxicology expert appeared to give live testimony explaining how a toxicology analysis would have benefited Petitioner's case. App. 926-928.

On January 15, 2013, Petitioner filed a motion to alter or amend the order of dismissal. App. 939-941. The State filed a return on January 17, 2013, App. 942-944. The PCR court issued an order denying the motion on April 7, 2014. App. 945-946.

The following supports reason for granting a writ of certiorari to this United States Supreme Court:

### ARGUMENT I.

1. Petitioner begins by arguing, "the record in this case does not in any way support the PCR court's finding, suggesting counsel adequately investigated and presented the defense of self-defense, because no reasonable basis supported the decision to completely abandon self-defense in order to preserve the last argument". When an expert witness relating to [Derrick's] drug use would have sufficed to alter the State's erroneous theory of the case.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. Amend. VI. Strickland v. Washington, 456 U.S. 668 (1984). AND the United States Supreme Court created a two-pronged test to establish ineffective assistance of counsel by which a PCR applicant must show. (1) that counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. ID at 687

Here, coupled with the prejudicially deficient performance of counsel. Does Petitioner also demonstrate the inadequacies and impediment created by the state during his initial PCR hearing, that is directly attributable to him not prevailing on the merits.

In otherwords, Petitioner claimed that trial counsel provided ineffective assistance of counsel for failing to adequately investigate his case as it pertained to presenting a self-defense claim. And that; "nothing could have been more important than allowing the jurors to undertake the condition and character [Derrick] displayed on the night of the incident". As a result of proven use of se-

veral illicit and illegal dangerous drugs. Especially where counsel's only excuse was; "he wanted the last argument to jurors".

At the PCR hearing, the applicant, as the moving party, presents his evidence first and has 'the burden of proving', by a preponderance of the evidence, that he is entitled to relief sought in the application. See State v. Cobbs, 408 S.E.2d 223, 225 (S.C. 1991); S.C.R. Civ. P. 71.1(e); Butler v. State, 334 S.E.2d 813, 814 (1985)

The applicant may present evidence "through affidavits", depositions, and oral testimony. S.C. Code Ann. §17-27-80 (2003); see Simpson v. Moore, 627 S.E.2d 701, 712 (S.C. 2006) Whereas, nothing in the statute gives rise that an affidavit be excluded on account of the affiant is not present to give live testimony; or, because the State cannot cross-examine the affiant's information. Rather, §17-27-80 specifically permits affidavits in lieu that "such can reduce the amount of time needed for evidentiary hearings and spare the court and potential witnesses unnecessary and inconvenient court appearances , particularly where a witness has only a minor role to play in the overall hearing".

Here, the expert's affidavit contained "common-information" of the effects of illicit, mixed drug use. An objection simply because the State could not cross-examine the affiant was improper, as was the State's objection in Holmes v. South Carolina, 547 U.S. 319, 324 (2006), clearly prevented the applicant from putting forth his required burden of proof. When in fact, under South Carolina law. Such objection "was not based on the court admitting the af-

fidavit under the guise of an abuse of discretion". See McNight v. State, 352 S.C. 635, 576 S.E.2d 168 (2003); see also §17-27-80. As a result, not only was this detrimental and prejudicial, "it denied the Petitioner under South Carolina's PCR Act. Of the one bite at the apple, required by Due Process. Supported by Aice v. State, 409 S.E.2d at 394; and Austin v. State, 409 S.E.2d 395, 396 (S.C. 1991)(In Aice v. State, the court explained that every PCR applicant is entitled to a full adjudication on the merits of the PCR application or "one bite at the apple, which includes the right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal").

Under Petitioner's ineffective assistance of counsel claims, "an attorney must at minimum, conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and allow himself enough time for reflection and preparation for trial". Sneed v. Smith, 670 F.2d 1348, 1353 (4th Cir. 1982) Since this was not done during the preparation for trial, Petitioner sought to point the deficiencies out under the PCR Act. For which "extended the right, according to statute (§17-27-80), to submit affidavits". In Holmes v. South Carolina, he was prevented from putting forth his third party defense. Which if allowed, could have shown someone else committed the crime.

Here, Petitioner sought to show by affidavit by an expert on the effects of using multiple dangerous controlled substances, [Derrick] was high out of his mind (a proven fact from the host of the cookout, and his son), thereby creating a likelihood that

[Derrick] was the aggressor; coupled with "counsel should have completed this reasonable investigation during his preparation for trial, especially in a self-defense case".

Remember, the State's star witness Phillips testified that Petitioner merely "blinked his lights to signal he was coming around [Derrick's] vehicle". [Derrick] flipped Petitioner off, and Petitioner responded in a like manner. After Petitioner had passed [Derrick's] vehicle, [Derrick's] vehicle pulled over, or hung back until a fast approaching car (who Phillips thought was the police) came upon them. Once this car "caught up to Petitioner's truck", the car attempted to 'ram' Petitioner's truck into the retaining wall at a high rate of speed. Once Petitioner regained control, he fired "two shots" out the rear window of the truck, to alert the aggressor he was armed. Even with this knowledge [Derrick] continued to pursue the truck, didn't even slow down, and didn't even realize [Dover] was hit by a bullet. Even accepting [Derrick's] testimony as true, he was so preoccupied with chasing the truck, swerving back and forth across the interstate, [Dover] did not matter until he exited the interstate behind the truck before finally giving up the chase. Thus, "it was very necessary to introduce at PCR, what trial counsel omitted from his defense". Which demonstrates both (1) deficient performance and (2) prejudice to establishing the defense of self-defense. For these reasons under argument one (1); certiorari should be granted.

ARGUMENT (2)

2. Here, Petitioner was denied his Sixth and Fourteenth Amendment rights to a fair trial, where counsel failed to obtain an expert forensic person to testify at his trial. Where a preliminary investigation would have demonstrated [Derrick] was high on multiple drugs and alcohol on the night of the incident.

In determining whether a criminal defense counsel sufficiently investigated and presented evidence favorable to the defendant, a court must identify an affirmative decision not to proceed with the evidence and assess the reasonableness of the decision under the facts and circumstances within counsel's knowledge: In Wiggins v. Smith, 539 U.S. 510, 521 (2003) (quoting Strickland v. Washington, 466 U.S. 668 (1984)). See also Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) ("The validity of counsel's strategy is reviewed under 'an objective standard of reasonableness'"). (quoting Ingle v. State, 348 S.C. 467, 560 S.E.2d 401, 402 (2002)).

Here, the Petitioner had a convincing case for self-defense. Once raised by the defendant, the State must disprove self-defense beyond a reasonable doubt. State v. Wiggins, 33 S.C. 538, 500 S.E. 2nd 489 (1998). Thus, the State must prove a reasonable doubt any of the following. (1) The defendant had some fault in bringing on the difficulty. (2) The defendant was not in actual imminent danger of losing his life or sustaining serious bodily injury under the circumstances that would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm of losing his own life, and (3) the

defendant did not actually believe that he was in imminent danger of losing his life or sustaining serious bodily injury under the circumstances in which a reasonably prudent man of ordinary fairness and courage would have entertained the same belief. (4) The defendant had other probable means of avoiding the danger. State v. Bryant, 336 S.C. 340, 520 S.E.2d 319 (1999).

Clearly, with such an analysis above. Trial counsel acting competently could only rebut the State's offer of proof "by demonstrating [Derrick's] behavior caused by using mixed drugs. In which forensic experts could have made a very convincing case to support a high hurdle the State could not have overcome. Meaning, "the State would be unable to prove beyond a reasonable doubt, any of the factors given in Bryant", where the jury would have heard the testimony of Mike Lankford's recollection of [Derrick's] intoxicated state of mind when departing from the cookout.

In otherwords, "the abnormally aggressive behavior by [Derrick], is what initiated the shooting". And even after the shots were fired, [Derrick] continued his unexplainable aggressive behavior which could only be explained when factoring in the use of multiple drugs.

The State's star witness observed [Derrick] reaching for something under the seat, coupled with; "[Derrick] attempted to ram Petitioner's truck into the retaining wall of interstate I-20, at a high rate of speed". Petitioner fired through the back window of the truck in self-defense and self-preservation. Nothing more or less. In order to save his and his passenger's

life from sustaining serious bodily injury or death. Which could only be strategically demonstrated through the use of a forensic toxicology expert. Because counsel elected not to put forth such a defense under the circumstances of this case, it renders his performance ineffective, a clear violation of Petitioner's Sixth and Fourteenth Amendment rights to 'a fair trial'.

### ARGUMENT (3).

Finally, Petitioner questions whether his Fourteenth Amendment rights were violated similar to that in Holmes v. South Carolina, 547 U.S. 319, 324 (2006), during the PCR hearing. When the State objected to submission of an 'expert's affidavit'. Based on irrefutable studies on human reaction to drug abuse. Yet failed to have for the State its own expert in order to effectively cross-examine the affidavit's findings.

At the PCR hearing, the Petitioner, as the moving party, presented his evidence first and had the burden of proving by preponderance of the evidence, that he was entitled to relief sought in the application. State v. Cobbs, 408 S.E.2d 223; see also S.C.R. Civ. P., 71.1(e); and Butler v. State, 334 S.E.2d 813 (1985)

According to the S.C. Code of Laws, §17-27-80. As a initial way to put forth and meet the burden of proof required. The statute list "AFFIDAVITS". Thus, a objection, coupled with the PCR court sustaining such an objection. Clearly amounts to the identical error as this Court specifically outlined in Holmes. As it worked (the objection) to prevent this Petitioner from putting

forth a complete defense to the case he was wrongly convicted of.

Moreover, an objection to an expert toxicology report and its findings could only be rebutted by another expert in that same field of study. Especially when the findings within the report did not present a new phenomenon. The affidavit only tended to show "why counsel was ineffective", where he should have investigated this avenue prior to trial. Thus, the material facts needed to appeal the PCR's denial was suppressed by the State's maneuver. That has no support in law, and contrary to the statutory demands when pleading a case in the PCR court.

For these reasons, the Petitioner "did not receive a fair trial nor a fair PCR hearing or appeal therefrom". And is justifiable reasons this United States Supreme Court may exercise its discretion and grant certiorari.

Respectfully Submitted,

/s/ *John J. Moore, Jr.*  
John J. Moore, Jr.  
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cc: filed

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rich J. Moore Jr.

Date: March 29, 2018