

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Rishawn Lamar Reeder — PETITIONER
(Your Name)

vs.

Warden Reynold — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

the United States Court of Appeal for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rishawn Lamar Reeder #316370
(Your Name)

P.O. Box 205
(Address)

Ridgeville, S.C. 29472
(City, State, Zip Code)

Unknown
(Phone Number)

QUESTION(S) PRESENTED

1. Did the court erred in finding trial counsel ineffective for failing to present the Spartanburg Regional Hospital security surveillance camera video
2. Did the court erred in finding trial counsel ineffective for failing to investigate and call as a witness eyewitness Glenn Kelly
3. Did the court erred in finding trial counsel ineffective for requesting self-defense jury charge
4. Did the court erred in finding trial counsel ineffective for failing to impeach SLED investigator Ila Simmons testimony on gunshot residue test result level numbers
5. Did the court erred in finding trial counsel ineffective for failing to interview alibi witnesses

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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December 9, 2014

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Decision of United States Court of Appeals For the Fourth Circuit 8/21/18

APPENDIX F

The Supreme Court
of South Carolina

Rishawn Lamar Reeder, Petitioner

v.

State of South Carolina, Respondent

Appellate Case No. 2014-002708
Lower Court Case No. 2012-CP-42-00509

Based on the vote of the Court, the petition for a writ of
certiorari is denied.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>U.s. v. Bagley, 105 S.Ct. 3375</u>	<u>8, 20</u>
<u>Donnelly v. DeChristoforo, 94 S.Ct. 1868</u>	<u>8, 14</u>
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<u>Trodel v. Wainwright, 758 F.2d 1457</u>	<u>14</u>
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STATUTES AND RULES

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 _____ 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 _____ 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 _____ 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 of Common Pleas Seventh Judicial Circuit 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 August 21, 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: October 2, 2018, and a copy of the order denying rehearing appears at Appendix _____.

NOTE: Mandate stated judgment of this court, entered August 21, 2018
☐ An extension of time to file the petition for a writ of certiorari was granted takes to and including _____ (date) on _____ (date) effect in Application No. ____ A _____. October 10, 2018

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 November 09, 2016.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. XIV, sec.1:

All persons born or naturalized in the United States and subject and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

STATEMENT OF THE CASE

Petitioner was indicted and charged with assault with intent to kill, assault and battery with intent to kill, and murder. Petitioner proceeded to trial before the Honorable Roger L. Couch and a jury on May 9-12, 2011. Petitioner was represented by Michael Brown, Esquire. Among other things, Ila Simmons, forensic chemist of the South Carolina Law Enforcement Division (SLED) forensic laboratory trace evidence department was qualified as an expert in the field of gun shot residue testing. She testified to gunshot residue level numbers found on Petitioner, allege codefendant, and victims. The jury also was shown Southeastern Converters surveillance camera video a business in the area of the crime scene of the four way stop of Mount Pleasant Road and Burns Road that revealed the suspect and victim cars going to and leaving the crime scene. The solicitor in closing argument told the jury "And Thank God for this video surveillance camera. Otherwise we wouldn't even be here.(App.I.pg.427 line 19-20).

The jury found Cathcart and Petitioner guilty on all charges. Trial judge sentenced Petitioner to Life. Petitioner appealed his conviction and sentence to the South Carolina Court of Appeal. On August 30, 2011, the appeal was dismissed because Petitioner through counsel, failed to timely order the transcript and/or serve and file the initial brief of appellant.

On January 23, 2012, Petitioner filed for post-conviction relief. Petitioner was represented by J. Falkner Wilkes, Esquire. Petitioner called Glenn Kelly an eyewitness to testify on his behalf at the PCR hearing. Petitioner presented Spartanburg Regional Hospital security surveillance camera video as exculpatory scientific evidence that he was never at the crime scene at the PCR hearing.

Petitioner presented the South Carolina Law Enforcement Division(SLED) forensic services laboratory report gunshot tests

results that prove Sled investigator Ila Simmons gave perjured testimony in regards to level numbers that never existed at trial during the PCR hearing. Petitioner and counsel, presented Officer Smith and subpoena exhibit to show that they tried to locate alibi witnesses with due diligence but were unable to do so due to alibi witnesses moving from the past residence. (App.II.pg.573 line 22-25, pg.574 line1-22, 575 line7-23, 592 line17-25, pg.593 line1-6)

The PCR Judge denied and dismissed Petitioner's PCR application, finding that Petitioner had failed to meet his burden of proof as to all issues. Petitioner filed a motion pursuant to S.C.R.Civ.P.59(e), which was denied. Petitioner, through counsel, filed a notice of appeal on or about December 19, 2014. On or about September 8, 2015, Petitioner, through counsel, filed a petition for writ of certiorari in the South Carolina Supreme Court. The Supreme Court denied the petition for writ certiorari on November 9, 2016. The case was remitted to the lower court on November 29, 2016. Petitioner timely filed his §2254 petition on March 29, 2017.

This matter was referred to United States Magistrate Judge Bristow Marchant for a Report and Recommendation. Respondent filed a motion for summary judgment on June 6, 2017. By order filed June 12, 2017, Petitioner was advised of the summary judgment procedures and the possible consequences if he failed to respond adequately. Petitioner filed for a response in opposition on July 24, 2017, to which Respondent filed a reply on July 31, 2017. On August 16, 2017, the Magistrate Judge issued a Report and Recommendation in which he determined that the PCR judge's findings and conclusions were support in the record and not contrary to established law.

Accordingly, Magistrate Judge recommended that Respondent's motion for summary judgment be granted. Petitioner filed objections to the Report and Recommendation on August 28, 2017, to which Respondent filed a reply on September 8, 2017. Petitioner filed a surreply on September 21, 2017. The Magistrate Judge makes only a recommendation to this court. The recommendation

has no presumptive weight. The responsibility for making a final determination remains with this court. This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions.

On March 22, 2018, Senior United States District Judge Margaret B. Seymour, granted summary judgment and denied and dismissed Petitioner's §2254 petition. Also no Certificate of Appealability was granted.

Petitioner timely filed a notice of appeal on March 30, 2018. Circuit Judges Wynn and Diaz, along with Senior Judge Shedd, denied a Certificate of Appealability and the Appeal was dismissed on August 21, 2018. Petitioner had Appealed from the United States District Court for the District of South Carolina, at Beaufort, to the United States Court of Appeals For the Fourth Circuit.

On September 5, 2018, Petitioner timely filed a petition for rehearing and rehearing en banc, the court issued a stay of mandate. On October 2, 2018, the court denied the petition for rehearing and rehearing en banc. Entered at the direction of the panel: Judge Wynn, Judge Diaz, and Senior Judge Shedd. Filed on October 10, 2018, the judgment of the court, entered August 21, 2018, took effect that date. The Mandate constituted the mandate of the court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

Petitioner is timely filing petition for Writ of Certiorari in The Supreme Court of the United States. Petitioner also submitted a copy of the newly discovered evidence of Alibi witness Antionette Butler(Porsche) statement with the petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

This case involves several questions of exceptional importance. There is proof of actual innocence thru exculpatory scientific evidence by way of Spartanburg Regional security surveillance camera video showing Petitioner could of never been at the crime scene. There has been newly discovered revealed to the courts, of one of the original 3 alibi witnesses Antionette Butler(Porsche) that was never contacted by trial counsel after Petitioner gave trial counsel all 3 alibi witnesses statements to prepare his defense before trial. Alibi witness Antionette Butler(Porsche) statement corroborate the Spartanburg Regional Hospital security surveillance camera video, that Petitioner was in Crescent Hills the night he was robbed and shot, exonerating Petitioner proving Petitioner was never at the crime scene.

Petitioner respectfully request the Courts to expand the record by googling, www.Mapdevelopers.com to see by way of technology that Southeastern Converters business at 340 Mount Pleasant Road; Spartanburg, SC 29307, which is shows the suspect car and the victim car leaving the crime scene at 3:54:26am on 3/14/-2009 and Spartanburg Regional Hospital were Petitioner was arriving inside the hospital at 3:55:02am on 3/14/2009, is at 101 East Wood Street; Spartanburg, SC 29303, which are approximately 5 miles in distance from the two locations. Based upon this GPS system of scientific technology it is totally IMPOSSIBLE for anyone to travel approximately 5 in 36 SECONDS. These security cameras shows this MISCARRIAGE OF JUSTICE of Petitioner's tainted wrongful conviction. Petitioner deserves release as the Court erred in granting relief to Petitioner as the facts of this case shows and prove ACTUAL INNOCENCE of this INNOCENT MAN suffering from this MISCARRIAGE OF JUSTICE.

The prosecution used false evidence of gunshot residue test results stating level numbers to the jury that NEVER EXISTED by SLED investigator Ila Simmons trial testimony. According to the SLED laboratory results of the gunshot residue test results those LEVEL NUMBERS DOESN'T EXIST. These level numbers were

the only thing the prosecution had to make Petitioner the shooter. There was no prior incident or motive for Petitioner to even be the shooter. The victims even told police they NEVER SEEN or KNOWN Petitioner. Victims NEVER PICKED Petitioner out of photo line-up.

The law firmly established that the fourteenth amendment to the Constitution of the United States cannot tolerate a state criminal conviction obtained by knowing use of false evidence or improper manipulation of material evidence. U.S. v. Bagley, 473 U.S. 677, 105 S.Ct. 3375. The term "false evidence" includes the introduction of specific misleading evidence important to the prosecution's case in chief or the nondisclosure of specific evidence valuable to the accused's defense. Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868. This clearly established Federal law, as determined by the Supreme Court of the U.S. applies to this case. The opinion of the Courts conflict with the decision of the U.S. Supreme Court.

This case is a clear MISCARRIAGE OF JUSTICE and a denial of due process of law and effective assistance of counsel resulting in an unfair trial against the innocent Petitioner being wrongfully convicted.

Further everywhere Petitioner stated Crescent Hills Apartments making known Petitioner's location where I was robbed and shot at the PCR hearing is ERASED in the PCR App Transcript of Record. See App.II.pg661 line22-24; pg 663 line4-9; pg 668 line1-10; pg669 line8-10; pg670 line7-18; pg680 line21-24. NOTE: THIS IS A MISCARRIAGE OF JUSTICE AND MISCONDUCT FOR THE COURT RECORD TO ERASE ANY PRESENCE OF WHERE PETITIONER STATED HIS WHEREABOUTS HE TOLD TRIAL LAWYER TO PROVE HIS DEFENSE THAT HE WAS INNOCENT AND NEVER AT THE CRIME SCENE. TO ERASE IMPORTANT EVIDENCE OF AN INNOCENT ACCUSE EXPLAINING HIS DEFENSE TO PROVE HIS INNOCENCE IS MISCONDUCT AND UNFAIR THAT WARRANT GRANTING PETITIONER'S PETITION.

In addressing question one presented, ineffective assistance of counsel failing to present the Spartanburg Regional Hospital security surveillance camera video, trial counsel denied

petitioner his 6th amendment right of the U.S. Constitution. This constitutional error, resulted in the incarceration of of an innocent person that this Court has spoken against in McQuiggins v. Perkins, 133 S.Ct. 1924. Fundamental miscarriage of justice exception, is grounded in the equitable discretion of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons.

It is clear from the prosecution stress the importance of the Southeastern Converters security camera video showing the suspect and victim cars leaving the crime scene. App.I.pg.424 line18-25. The prosecutor even stated "AND THANK GOD FOR THIS VIDEO SURVEILLANCE CAMERA. OTHERWISE WE WOULDN'T EVEN BE HERE." App.I.pg.427 line19-20. The Southeastern Converters security camera video was key evidence to help in the state's case. The Southeastern Converters security camera video shows the cars leaving the crime scene at 3:54:26am on March 14, 2009.

It was below professional norms, for trial lawyer not to present Spartanburg Regional Hospital Security surveillance camera video that rebuts the state's key evidence and shows Petitioner was NEVER at the crime scene exonerating an INNOCENT PERSON by way of exculpatory scientific evidence of security surveillance camera video. The Spartanburg Regional hospital security surveillance camera shows Petitioner walked inside the hospital at 3:55:02am on March 14, 2009, which makes it IMPOSSIBLE for Petitioner to travel from the crime scene to WALKING INSIDE the HOSPITAL which is APPROXIMATELY 5 MILES in DISTANCE within 36 SECONDS. NOBODY can TRAVEL APPROX. 5 MILES in 36 SECONDS. This only shows and prove petitioner is an innocent person and never was at the crime scene. This Court decision in Schlup v. Delo, 513 U.S. 298, to present a credible claim of actual innocence, a petitioner must "support his allegations of constitutional error with reliable evidence-whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was not presented at trial".

The Court decision in Schlup applies to this case because the Spartanburg Regional hospital security surveillance camera

video is new reliable exculpatory scientific evidence that shows petitioner's ACTUAL INNOCENCE and WAS NOT PRESENTED AT TRIAL due to trial counsel violating Petitioner's federal constitutional right to effective assistance of counsel.

This federal constitutional error by trial counsel caused a MISCARRIAGE OF JUSTICE resulting in an INNOCENT PERSON being wrongfully convicted. Antionette Butler(Porsche) alibi witness statement corroborates the Spartanburg Regional Hospital security camera video, letting it be known Petitioner was in Crescent Hills Apartment where she stayed the night petitioner was robbed and shot. Trial counsel even ABANDONED his DUTY lined out by the Courts in Strickland v. Washington and Wiggins v. Smith.

Trial counsel never investigated or contacted the alibi witness Antionette Butler(Porscha) who along with Tacoya Carpenter and Shaunte Jeter, who wrote statements that Petitioner gave to trial counsel BEFORE TRIAL to CLEAR PETITIONER of the charges and ESTABLISH FACTS to present a complete defense.

This Court has recognized the importance of trial counsel investigating and locating favorable fact witnesses.Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527. A criminal defense has a duty to undertake reasonable investigation which at a minimum includes interviewing potential witnesses and making an investigation of the facts and circumstances of the case. Counsel couldn't of made a trial strategic choice when trial counsel never INVESTIGATED ALL LINES OF DEFENSE PRIOR TO TRIAL.Strickland v. Washington, 466 U.S. 678, 104 S.Ct. 2052. If there is more than one plausible line of defense, the Court held, counsel should ideally investigate each line SUBSTANTIALLY BEFORE making a strategic choice about which lines to rely on at trial.Strickland v. Washington, 466 U.S. 678, 104 S.Ct. 2052. In this case, trial counsel could'nt of investigated the exculpatory scientific evidence of the Spartanburg Regional hospital security surveillance camera video, because he would of discovered petitioner was actually innocent and never at the crime scene as the surveillance camera rebutted the Southeastern Converters security video.

Trial lawyer below professional norms, caused a miscarriage of justice resulting in petitioner, an innocent person being incarcerated from the constitutional errors. Petitioner suffered denial of due process of law and denial of a fair trial. The court opinion conflict with clearly established Federal law that have been determined by the Supreme Court of the U.S. in referenced cited Court cases. Petitioner deserves granting of this Petition.

In addressing question two presented, ineffective assistance of counsel failed to investigate and call as a witness eyewitness Glenn Kelly. Trial counsel never contacted or investigated eyewitness Glenn Kelly, who voluntarily call 911 emergency after witnessing a shooting 15 FEET from outside his home of Burns Road at the four-way stop of Burns Road and Mount Pleasant Road between a crown vic and mustang.

Eyewitness Glenn Kelly, correctly indentified the victim's car the crown vic. Eyewitness Glenn Kelly is a neutral eyewitness having no relation to either victims or suspects in this case. Eyewitness Glenn Kelly identification of a mustang as the suspect car rebuts and destroys the state's theory of the 4 door nissan being the actual suspect car involved in this shooting. There has never been made a 4 door mustang in this world. Eyewitness Glenn Kelly was a favorable witness to the defense and his credibility is trustworthy as he was 15 FEET away from the crime scene and has no reason to lie as he correctly identified the crown vic of the victim car and suspect mustang. The state's case was WEAK and MERE SPECULATION. Victims already identified a green unknown make&model vehicle as the suspect car to police.

The burned up 4 door nissan the state allege to be the vehicle involved is GREY NOT GREEN. Eyewitness Glenn Kelly further rebuttal of the state's evidence and theory could of helped the defense as there has NEVER been made a 4 DOOR MUSTANG in this world. Eyewitness Glenn Kelly was a material witness that should of been INVESTIGATED and SUBPOENAED as a WITNESS for the DEFENSE. To ABANDON an EYEWITNESS is to deny petitioner the constitutional rights of the right to present a defense

effective assistance of counsel, and due process of law.

A criminal defendant's right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutor's to the jury so it may decide where the truth lies, this right is a fundamental element of due process of law. Washington v. Texas, 388 U.S., 87 S.Ct. 1920.

There was no proof petitioner was even in the grey 4 door nissan that the state alleged. The state theory was WEAK and should of been rebutted by the material eyewitness that was 15 FEET from the crime scene. The Spartanburg Regional Hospital already made it CLEAR that Petitioner was ACTUALLY INNOCENT and NEVER at the crime scene. Trial counsel's preparation for trial was below professional norms and resulted in constitutional violations causing a MISCARRIAGE OF JUSTICE for petitioner an INNOCENT PERSON being incarcerated from the DENIAL of a FAIR TRIAL.

In regards to addressing question three presented, did the court erred in finding trial counsel ineffective for requesting self-defense jury charge. Trial counsel even admitted after trial, that petitioner informed trial counsel that he didn't have or possess any firearm that evening and he has no knowledge of any ongoing situation with anyone involved in this case. SEE App.I.pg479 line3-18. Petitioner even gave trial counsel BEFORE trial 3 alibi witnesses statements to verify that Petitioner was in his neighborhood Crescent Hills Apartment where petitioner was robbed and shot. Antionette Butler(Porsche) one of the 3 alibi witnesses statement that is newly discovered evidence that corroborates this version of the defendant's facts and defense. For trial counsel to requesting self-defense jury charge was CLEARLY a CONFLICT OF INTEREST denying petitioner's constitutional rights effective assistance of counsel, the right to present HIS DEFENSE, due process of law, and a FAIR TRIAL. Trial counsel was not acting in the role of an ADVOCATE of Petitioner's DEFENSE.

The adversial process protected by the Sixth Amendment REQUIRES that the ACCUSE have "COUNSEL ACTING in the ROLE of an ADVOCATE".United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039. In this case, trial counsel abandoned petitioner's VERSION of the FACTS and DEFENSE by placing petitioner on the scene and making him the shooter was a MISCARRIAGE OF JUSTICE and and violated petitioner's Sixth Amendment right by NOT ADVOCATING petitioner's DEFENSE. Trial counsel denied petitioner a fair trial from this below professional norm. Trial counsel didn't adhere to his loyalty to petitioner. Effective assistance of counsel REQUIRES that an ATTORNEY ADHERE to his UNDIVIDED LOYALTY to HIS CLIENT.STRICKLAND v. WASHINGTON, 104 S.Ct. 2052.

Petitioner was denied effective assistance of counsel when trial counsel REQUESTED SELF-DEFENSE JURY CHARGE causing petitioner to be denied a fair trial and constitutional violation that resulted in a miscarriage of justice for an innocent person to be incarcerated. Petitioner deserves this wrongful conviction be vacated and petition granted.

In regards to question four presented, did the court erred in finding trial counsel ineffective for failing to impeach SLED investigator Ila Simmons testimony on gunshot residue test result level numbers. Trial counsel allowed state's witness to COMMIT PERJURY by TESTIFYING to LEVEL NUMBERS that NEVER EXISTED. Any competent trial counsel would of objected to the FALSE EVIDENCE that PREJUDICE his client. From the USE of the FALSE GUNSHOT RESIDUE LEVEL NUMBERS in this trial TAINTED the trial and denied petitioner of a FAIR TRIAL.

The Supreme Court long ago opinioned that a STATE MAY NOT KNOWINGLY USE FALSE EVIDENCE, INCLUDING FALSE TESTIMONY to OBTAINED a TAINTED CONVICTION.Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173. "This is REGARDLESS of whether the government solicited testimony it KNEW or SHOULD HAVE KNOWN to BE FALSE or simply ALLOWED such TESTIMONY to pass UNCORRECTED".United States v. Kelly, 35 F.3d 929(4th Cir.1994). A NEW TRIAL is REQUIRED when the government's KNOWING USE of FALSE TESTIMONY could have AFFECT the JUDGMENT of the JURY. Investigator Ila Simmons

TESTIFIED to gunshot residue LEVEL NUMBERS at TRIAL. SEE App.I.pg 330 line25- pg.331 line1-25. The prosecutor USED these FALSE LEVEL NUMBERS in trial to the jury to make petitioner the shooter SEE App.I.pg.425 line18-24. From looking at the SLED laboratory report these gunshot residue LEVEL NUMBERS NEVER EXISTED and were FALSE EVIDENCE.SEE App.II.pg.730-734.

The USE of this FALSE EVIDENCE is a CLEAR MISCARRIAGE OF JUSTICE and a denial of a fair trial were petitioner wrongful conviction should be vacated and petition granted. The law firmly established that the fourteenth amendment to the Constitution of the United States cannot tolerate a state criminal conviction obtained by knowing use of false evidence or improper manipulation of material evidence.Trodel v. Wainwright, 785 F.2d 1457; U.S. v. Bagley, 473 U.S. 677, 105 S.Ct. 3375. The term "false evidence" includes the introduction of specific misleading evidence important to the prosecution's case in chief or the nondisclosure of specific evidence valuable to the accused's defense.Trodel v. Wainwright, 667 F.Supp 1456; Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868.

The court opinion CONFLICT with the Supreme Courts decision which should be applied to this case as the FALSE EVIDENCE used to obtained the tainted conviction that was a miscarriage of justice resulting in an innocent person being incarcerated. Petitioner was denied a fair trial and deserves for this petition to be granted.

In regards to addressing question five presented, did the court erred in finding trial counsel ineffective for failing to interview alibi witnesses. Antionette Butler(Porsche) submitted newly discovered evidence of a statement to the courts voluntarily exonerating petitioner from the crime letting it be known petitioner was in Crescent Hills Apartments the night he was robbed and shot. Alibi witness also let it be known trial counsel never contacted her on petitioner behalf to support his defense. Alibi witness corroborates the Spartanburg Regional Hospital security surveillance camera video, that Petitioner was never at the crime. Alibi witness Antionette Butler(Porsche) stated

she was never contacted by trial lawyer to clear this innocent petitioner. Trial lawyer below professional norms to NOT CONTACT ALIBI WITNESS that would of exonerated client is clearly unreasonable and a clear constitutional errors that resulted in an innocent person being incarcerated. Trial lawyer denied petitioner the constitutional rights to effective assistance of counsel, the right to present a complete defense, and due process of law.

This court past decision in Wiggins applies to this case. In this case, trial lawyer didn't investigate the alibi witness, this court has stressed the importance of counsel investigating favorable witness to the accused. Here in this case trial lawyer abandoned investigating alibi witness to exonerate petitioner. This Court in Strickland, stressed that it is a trial lawyer duty to undertake reasonable investigation which at a MINIMUM includes INTERVIEWING POTENTIAL WITNESSES and making an INVESTIGATION of the FACTS and CIRCUMSTANCES of the CASE.Strickland

A criminal defendant's right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutor's to the jury so it may decide where the truth lies, this right is a fundamental element of due process of law.Washington v. Texas, 388 U.S., 87 S.Ct. 1920. This Court decision in Washington applies to this case. Petitioner's trial lawyer constitutional errors, denied petitioner this fundamental element of due process of law outlined in Washington.

As alibi witness Antionette Butler statement is newly discovered evidence, it meets the Court fundamental miscarriage of justice exception to overcome procedural default. This case is one of EXCEPTIONAL IMPORTANCE because there is exculpatory scientific evidence by way of Spartanburg Regional Hospital Security Surveillance Video that corroborates alibi witness statement the establish petitioner is actually innocent. Trial counsel didn't investigate the alibi witness or the hospital surveillance video that was BOTH strong exculpatory evidence

to help petitioner's defense. Neither was presented at trial. Had both been presented at trial no reasonable juror would of convicted an innocent man who can't travel 5 MILES in 36 SECONDS from the crime scene to walking inside the hospital. Alibi witness Antionette Butler(Porsche), let it be known that petitioner was in Spartan Terrace Apartments(FOR THE RECORD SPARTAN TERRACE IS THE ORIGINAL NAME OF THE PRESENT CRESCENT HILLS APARTMENTS). It was unreasonable for trial lawyer to not investigation and call alibi witness at trial when she corroborates what petitioner told trial lawyer, that he was in Crescent Hills(Spartan Terrace) Apartments where he was robbed and shot that night. It was below professional norms for trial lawyer to abandon this favorable witness that exonerates petitioner, especially when it is corroborated by exculpatory scientific evidence of hospital security surveillance camera video that rebuts Southeastern Converters security surveillance camera video that shows petitioner can't travel 5 MILES in 36 SECONDS, therefore was never at the crime scene.

Alibi witness Antionette Butler(Porsche) is not originally from South Carolina, so she is known to move from one residence to another. Alibi witness Antionette Butler(Porsche) had moved from Crescent Hills(Spartan Terrace) Apartments as well as Tacoya Carpenter and Shaunte Jeter had moved by the time petitioner PCR hearing was held. Petitioner is in prison and unable to find out when and where people move in their life. Petitioner has no control over people move and living there life in society. Petitioner shouldn't be at fault for finally locating 1 of the 3 original alibi witnesses and getting there statement to the Court when all of them had moved from the Apartments where petitioner was robbed and shot at on March 14, 2009. Petitioner only knew Antionette Butler by Porsche not by her government name. Petitioner did due diligence in trying to get Porsche(Antionette Butler), Tacoya Carpenter, and Shaunte to PCR hearing but they had moved from Crescent Hills(Spartanburg Terrace) apartments where petitioner was robbed and shot at that night.App.II. pg.573

line22-pg.574 line1-22;pg.592 line1-25. Though petitioner tried with due diligence to develop this alibi claim, it is impossible to locate and subpoena alibi witnesses that move to another residence you are unaware of while in prison with limited communication. Petitioner should not be held accountable for people deciding to move to different residence in their life. Petitioner is in prison with limited ways to contact the outside world.

The new evidence of Alibi witness Antionette Butler that petitioner was in Crescent Hills(Spartan Terrace) Apartments the night of the crime, no reasonable factfinder "would have convicted him" if this alibi witness was presented at trial. Alibi witness stated she was never contacted by trial lawyer to act as a witness for petitioner's defense. This type of deficient performance is below professional norms for a counsel not to investigate or subpoena an alibi witness that corroborates the hospital security surveillance video that shows petitioner couldn't travel 5 MILES in 36 SECONDS from the crime scene to the hospital proving actual innocence of the accused. To hinder petitioner from presenting alibi witness and hospital video to present defendant's version of the facts as well as the prosecution to the jury denied petitioner a fundamental element of due process of law from trial counsel below profession norms at trial.

This case has exceptional importance, we have an alibi witness who has come forward revealing newly discovered evidence that Petitioner was at Crescent Hills(Spartan Terrace) apartments at her apartment the night of the crime and that she was never contacted by trial lawyer when she was willing to testify to clear up the accusations against the innocent petitioner. What is very below professional norms, is trial counsel lawyer never investigated alibi witnesses that had wrote statements that petitioner gave trial lawyer before trial that corroborates a security surveillance camera that shows petitioner can't TRAVEL 5 MILES in 36 SECONDS, so it was IMPOSSIBLE for petitioner to have been at the crime scene. Trial lawyer never even investigat-

ed that the time stamp on the surveillance was accurate or inaccurate. For trial lawyer to say it might be inaccurate without any proof to refut scientific evidence of technology cameras is very below professional norms and unreasonable.

The hospital security video clearly reveals petitioner can't travel the 5 MILES in 36 SECONDS from the crime scene to the hospital, so therefore this is actual innocence by way of exculpatory scientific technology equipment petitioner couldn't of been at crime scene. For trial counsel to say the reason he didn't present a security surveillance camera that shows your client is innocent and can't TRAVEL 5 MILES in 36 SECONDS making it IMPOSSIBLE for your client to have been at the crime scene because "maybe the state could of brought somebody in to say that the timestamp is off" is unreasonable if trial counsel never even investigated that it was discovered to be inaccurate. If trial counsel would of investigated the investigator who obtained all security surveillance videos during police investigation state the ONLY security timestamp that is inaccurate is the Sunoco gas station security video being an hour off due to daylight saving. Based upon trial counsel during a proper independent investigation trial lawyer would of clearly seen the hospital security video is ACCURATE in its TIMESTAMP and Petitioner is INNOCENT.

This is a VERY SERIOUS MATTER because an INNOCENT MAN is in prison incarcerated serving a LIFE sentence for a WRONGFUL CONVICTION from FALSE EVIDENCE to obtain this TAINTED CONVICTION. This revelation by an alibi witness that she was never contacted by trial counsel further shows the constitutional violations of effective assistance of counsel, where counsel didn't investigate alibi witnesses or investigate exculpatory scientific technology evidence of Spartanburg Regional hospital surveillance video that corroborate each other showing it is IMPOSSIBLE for petitioner to TRAVEL the 5 MILES from the crime scene to the hospital in 36 SECONDS. The HOSPITAL SECURITY VIDEO is VERY IMPORTANT just like the Southeastern Converters security camera video that the state use to show the time and place the cars leaving the crime scene in trial. The Spartanburg Regional security video is relevant as well and POWERFUL evidence to

cars leaving the crime scene in trial. The Spartanburg Regional security video is relevant as well and POWERFUL evidence to petitioner's defense to prove his actual innocence. Trial lawyer uses the excuse that the security camera shows petitioner walking around with allege codefendant is false, the film shows petitioner goes to the desk with security guard and is push to medical attention, the security guard takes petitioner a opposite direction showing they not together. The other person in the camera walks pass petitioner and security guard shows they are not together. The only reason that petitioner and the other person walks inside the same door of the hospital is because the main door was locked and the security guard instructed me to come to the side door so he could let me in. There is no evidence showing petitioner arrived with allege codefendant or even in a same vehicle with codefendant, further there is police report by investigator talanges that both petitioner and allege codefendant drove to hospital proving that they were not together.

SEE App.II.pg.736;pg. 740

Even if they petitioner was with allege codefendant, if thats him in the video based on the timestamp, he must wasnt at the crime scene either because NOBODY CAN TRAVEL APPROXIMATELY 5 MILES in 36 SECONDS from the crime sence to walking in the hospital. Regardless of their accusations there is no proof petitioner was with allege codefendant because they are not seen getting out of a vehicle together, plenty people walk inside a public place through the same entrance at the same time its a public place, doesn't mean they are together. Trial counsel excuses for not presenting exculpatory scientific technology security video because of speculation when it clearly shows petitioner is actually innocent is unreasonable and a miscarriage of justice.

If trial counsel would of did an independent investigation he would of discovered that the prosecution used false testimony by SLED investigator Ila Simmons about level numbers that didn't exist to make petitioner the shooter to obtain the tainted conviction. Trial counsel allowed this knowingly false evidence to

go uncorrected during the adversial testing process that affected the judgment resulting in a tainted conviction. No reasonable counsel wouldn't of set there allowing false evidence to presented in trial to prejudice their client. This below professional norms indeed denied petitioner of a fair trial. These constitutional errors caused a miscarriage of justice and this innocent petitioner is wrongfully convicted serving a LIFE sentence.

This Court, in Bagley spoke of the ZERO TOLERANCE for state criminal convictions obtained by knowing use of false evidence. Based off this Court decision in Bagley needs to be applied to this case because it is clear the state knowingly use false evidence or improper manipulation of material evidence. This Court opinioned in its decision in Napue that a new trial is REQUIRED when the government's knowing use of false testimony could have affect the judgment of the jury. The Napue decision applies to petitioner's case requiring a NEW TRIAL.

Trial counsel raised self-defense jury charge was a clear miscarriage when he never told counsel he was shooting and he was never at the crime scene. For trial counsel to deny petitioner's right to present his version of the facts for no defense then to place your client at the scene and make him the shooter when there is evidence to exonerate him is unreasonable constitutional errors causing miscarriage of justice and an unfair trial to an innocent petitioner is below professional norms.

This Court should allow petitioner to overcome procedural default where it would be a miscarriage of justice to allow an innocent person to stay in prison where there is an alibi witness that was never investigated or contacted by trial lawyer to support petitioner's defense, there is exculpatory scientific technology evidence of Spartanburg Regional security surveillance video that show petitioner cant travel approximately 5 miles in 36 seconds from the crime scene to walking inside the hospital that was never investigated by trial lawyer because any competent lawyer would of presented the corroborating alibi witness with hospital security video that exonerates an INNOCENT PERSON and the prosecution used false evidence of level numbers that never

existed as trial lawyer didn't object to this false evidence that affected the judgment of the jury resulting in a tainted conviction this Court been established it has a zero tolerance for.

Petitioner did due diligence to raise question three, four, and five presented but appellate counsel failed to raise the substantial grounds after PCR hearing which is out of the petitioner's control. SEE attach letters with habeas corpus §2254 form that was sent to appellate counsel by petitioner to do due diligence in raising all petitioner's relevant claims after PCR hearing. Petitioner meets the Courts decision of Williams v. Taylor, 529 U.S. 420, 120 S.Ct. 1479 some greater fault not attributable to petitioner.

Petitioner still deserves to overcome procedural default on the exception of the miscarriage of justice grounds of actual innocence by way of the newly discovered alibi witness statement that corroborates the exculpatory scientific technology evidence of Spartanburg Regional surveillance video that wasnt present at trial because of incompetent trial lawyer who never objected to the state knowingly use of false evidence during trial to obtain a tainted conviction.

This innocent deserves relief because the court erred in ruling on the questions presented in this writ of certiorari showing because of the miscarriage of justice an innocent person is serving a LIFE sentence that is a tainted conviction.

CONCLUSION

Based on all the grounds given above petitioner respectfully requests and prays the Court correct this miscarriage of justice were an innocent person is serving time on a tainted conviction. ~~The petition for a writ of certiorari should be granted.~~

The petitioner prays the Supreme Court grants the court's decision.

Respectfully submitted,

Rishawn Roeder

Date: December 31, 2018