

No. 21-6700

ORIGINAL

Supreme Court, U.S.
FILED

OCT 14 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Tremaine Rashon Wray #337442 — PETITIONER
(Your Name)

VS.

Warden Dennis Bush — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tremaine Rashon Wray #337442
(Your Name)

386 Redemption Way
(Address)

McCormick, S.C. 29899
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1) Whether Petitioner was denied his Fourteenth Amendment right to Due Process, due to Prosecutorial Misconduct, by The State District Attorney knowing presentation of false or perjured material testimony and when it failed to correct (the State's Sole Eyewitness) false or perjured testimony while testifying against the Petitioner, and not eliciting the truth?

(2) Whether Petitioner was denied his right to a fair trial and deprived of liberty without Due Process in violation of Fourteenth Amendment, when the state submitted discovery evidence (Handwritten Police Report) without the authoring Officer's information and identification, 'suppressing' the material witness and exculpatory evidence, and replacing the material witness (Police Officer) and his exculpatory evidence with false discovery evidence (fake Typewritten Police Report) and a different (Police Officer's) name and information (whom was never at the crime scene), which it knew created a false impression or material facts which are known not to be true, and was deceitfully constructed with intent to deceive, which 'suppressed' material discovery evidence in violation of Brady?

(3) Whether Petitioner was denied his Sixth Amendment right to effective assistance of counsel and Fourteenth Amendment right to a fair trial, by Trial Counsel's failure to impeach the State's Sole Key Eyewitness, with the Report of the Responding Officer and by his failure to move to admit the Police Report into evidence as a part of Petitioner's defense as an Official Report accepted from the hearsay rule under Federal Rule of Evidence 803(8)(c)?

(4) Whether Petitioner was denied his Sixth Amendment right to effective assistance of counsel and Fourteenth Amendment right to a fair trial, by Trial Counsel's failure to investigate potentially exculpatory information in Police Report and to interview and subpoena Officer Weldon Gregory to testify pursuant to his Police Report and to authenticate ('anonymous' Police Report) and verify that he is the Officer who prepared the Report?

(5) Whether Petitioner was denied his Sixth Amendment right to effective assistance of counsel and Fourteenth Amendment to fair trial, by Trial Counsel's failure to object to, and challenge the alternate theory of "the hand of one, hand of all" under accomplice liability, being charged to the Jury as an alternate basis for conviction in this First Degree Murder Case?

(6) Whether Petitioner was denied his Fourteenth Amendment right to Due Process, due to Prosecutorial Misconduct, by the Prosecutors and the Assistant Solicitors' improper comments, remarks and arguments that the Petitioner's Tan Suburban was positive for Gunshot Residue, throughout Petitioner's entire trial, which so infected the Petitioner's trial with unfairness that it made the resulting conviction a denial of Due Process?

QUESTION(S) PRESENTED

- (7) Whether Petitioner was denied his Sixth Amendment right to effective assistance of counsel and Fourteenth Amendment Due Process right to a fair trial, by both Trial Counsel's failure to object to misleading and prejudicial statements and Expert Opinions, during the State's Gunshot Residue expert witness testimony, while giving his Opinion and Conclusion to the Jury, in conflict and in contrast to the actual Forensic Evidence results?
- (8) Whether Petitioner was denied his Sixth Amendment right to effective assistance of counsel at the PCR stage, by PCR Counsel, a.) failing to file a proper Rule 59(e) Motion to Alter or Amend the Judgment, pursuant to Rule 59(e), SCRPC, to properly preserve for Appellate review, the Petitioner's issues/grounds that were properly raised at the PCR hearing, but not ruled upon by the PCR Court; b.) and for filing an improper 59(e) Motion to Reconsider, which did not preserve any of the Petitioner's claims/issues/arguments that were properly raised, but not ruled upon; which caused Petitioner's claims to be procedurally barred?
- (9) Whether Petitioner was denied his Sixth Amendment right to effective assistance of PCR Appellate Counsel, a.) when PCR Appellate Counsel refused to, and failed to raise any of Petitioner's properly preserved non-frivolous meritorious claims to the State's Highest Court (South Carolina Supreme Court) for appellate review, b.) and for raising a claim/issue to the South Carolina Supreme Court, which was created by PCR Appellate Counsel and raised for the first time, when it was raised to the South Carolina Supreme Court, and because it was not a claim that Petitioner had raised at his PCR hearing, (but was the only claim PCR Appellate Counsel raised to the State's Highest Court); which was ruled on and denied by the South Carolina Supreme Court, when the State's Highest Court did not have jurisdiction to rule on issue that was not raised at Petitioner's PCR hearing; but it did anyway?
- (10) Did the PCR judge err in refusing to find trial counsel ineffective in failing to cross-examine the State's Sole Eyewitness about the fact that he initially did not identify Petitioner or his co-defendant by name despite knowing both of them, and described the suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a white SUV, possibly a Nissan with a black stripe down the side, descriptions that matched two other individuals stopped shortly after the shooting took place in a white Isuzu Rodeo SUV with ammunition consistent with the shell casings found at the scene of the shooting?

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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STATUTES AND RULES

§17-27-80-Hearing on application, final judgment.- The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

Rule 59(e) Motion to Alter or Amend Judgment, RULE 59(e), SCRPC, -asking the PCR Court to make specific findings of fact and conclusions of law and rule on the issues not ruled on in the Order.

Rule 243, SCACR

RULE 243. CERTIORARI TO REVIEW POST-CONVICTION RELIEF ACTIONS

(a) Review by Writ of Certiorari. A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party for a writ of certiorari, according to the procedure set forth in this Rule.

OTHER

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STATUTES AND RULES

Rule 203 SCACR, S.C. Code Ann. §17-27-10, et seq.; S.C. Code Ann. §17-27-90. If the PCR court fails to address a claim as is required by S.C. Code Ann. §17-27-80, counsel for the applicant must make a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC. Failure to do so will result in the application of a procedural bar by the South Carolina Supreme Court.

Rules Civ. Proc., Rule 71.1(g). An applicant has a right to an appellate counsel's assistance in seeking review of the denial of postconviction relief.

Under the postconviction relief rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple"; this "bite" includes an applicant's right to appeal the denial of a postconviction relief application, and the right to assistance of counsel in that appeal. Rules Civ. Proc., Rule 71.1(g).

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 1A 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 2A 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 3A 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 In The Court Of Common Pleas For The Fifth Judicial Circuit court appears at Appendix 3A, 4A 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 25, 2021.

☐ 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: May 18, 2021, and a copy of the order denying rehearing appears at Appendix 1A, c.

☐ 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).

On May 18, 2021 the United States Court of Appeals for the Fourth Circuit denied the rehearing with suggestion for rehearing en banc and the petition for rehearing by the panel.

☒ For cases from **state courts**:

The date on which the highest state court decided my case was March 7, 2017. A copy of that decision appears at Appendix 3A.

☐ 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).

On March 7, 2017 the South Carolina Supreme Court denied the petition for writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part as follows: "nor shall any State deprive any person of life, liberty, or property, without due process of law"...

Amendment XIV

Section 1. All persons born or naturalized in the United States 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 the laws.

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows: "nor shall any person be deprived of life, liberty, or property, without due process of law."

Fifth Amendment's Due Process Clause makes Fourteenth Amendment's guarantee of equal protection applicable to federal entities, not just state entities mentioned explicitly in Fourteenth Amendment's text. Constitutional Law § 3861

Fifth Amendment and Fourteenth Amendment "due process" serve roughly the same purposes and should be given consistent interpretation. Constitutional Law § 3855

Equal protection analysis in Fifth Amendment area is same as that under Fourteenth Amendment. Constitutional Law § 3861

Law of land - The Words

"due process of law" were undoubtedly intended to convey the same meaning as the words, "by the law of the land", in Magna Charta

The "due process" provision of Amend. 14, just as that in this clause, was intended to guarantee procedural standards adequate and appropriate to protect at all times people charged with or suspected of crime by those holding positions of power and authority. Constitutional Law § 4500

The Sixth Amendment to the Constitution of the United States provides in pertinent part as follows: "In all criminal prosecutions, the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

"As To Question One(1) Presented For Review"

The State's Sole Key Eyewitness (Ricky Jacobs) testimony, which resulted in Petitioner's conviction, was that he saw gunfire coming from Petitioner's Tan Suburban, toward the club/car wash. Ricky Jacobs testified that after the shots were fired from the Tan Suburban, the passenger in the White SUV fired, one shot, straight up in the air. This is also the same version that Ricky Jacobs told Investigator Don McRae when Inv. McRae interviewed Ricky Jacobs at the scene approximately 1 hour 30 minutes after Officer Ray Weldon Gregory originally interviewed Ricky Jacobs at the scene, prior to Inv. McRae's arrival to the scene. The State's Case rested on the eyewitness testimony of Ricky Jacobs. The State's 'primary' witness testified falsely that he had not made any statements other than his one and only statement to Inv. McRae that was disclosed to defense; but in fact, the witness had made a prior inconsistent statement that was not disclosed to the defense and the Solicitor failed to correct this false testimony. This false evidence not only bore upon this witness' credibility, it also bore directly upon the defendant's guilt.

Ricky Jacobs, who appeared as the State's Sole Eyewitness against Petitioner, falsely testified: 1) That he had not spoken to anyone other than Inv. McRae about what he had witnessed. 2) That when the Police initially arrived he did not tell any Uniformed Officer what he saw. 3) That he did not provide descriptions of any vehicles to this Officer. 4) That he did not provide descriptions of any Suspects to this Officer. 5) That when the Police first arrived the Responding Officer only focused on securing the crime scene and refused to speak with him, by repeatedly instructing him to step back. 6) That the first time he explained what he observed was to Inv. McRae. 7) That the only person that he spoke with that night/morning was Inv. McRae.

Petitioner presented direct testimony at his PCR hearing from Uniformed Officer Ray Weldon Gregory. Officer Gregory testified that he was the First Officer to arrive to the scene, and that he is the Reporting Officer who authored the anonymous Handwritten Incident Report, in which he authenticated through his PCR testimony. He also testified that he did interview "The Bar Owner (Ricky Jacobs)" as to what he eye witnessed and Ricky Jacobs provided him with this statement at the scene, which is contained in his Police Report, which confirmed and established proof that: 1) Ricky Jacobs did in fact speak to someone else other than Inv. McRae about what he had witnessed. 2) That when the Police initially arrived, he did in fact tell this Uniformed Officer what he saw. 3) That he did provide descriptions of the vehicle to this Officer which was a White (SUV), possibly a Nissan. 4) That he did in fact provide descriptions of two Suspects to this Officer, and these suspects were a completely different set of Suspects, whom Ricky Jacobs had originally identified to this Officer as doing this shooting towards the victim. 5) That the first time he explained what he observed was actually to this Officer Ray Weldon Gregory, and not to Inv. McRae as he falsely testified to on the stand. 6) That Inv. McRae was not the only person that he spoke with that night/morning, as he falsely testified to -

STATEMENT OF THE CASE

on the stand. He actually spoke to Officer Ray Weldon Gregory, approximately 1 hr. 30 min. before he spoke with Inv. McRae. 7) That he never mentioned or described a Tan or Champagne Colored Suburban (SUV) at all, in his Original Version that he had given to this Officer while he was explaining what he saw. 8) That he never implicated nor described neither Petitioner Wray nor co-defendant Mr. Watts at, in his Original Statement to Officer Gregory, as the Suspects who began shooting toward the club/ car wash, even though he stated in his testimony that he had known Mr. Wray and Mr. Watts for years. 9) That Ricky Jacobs had in fact changed the direction of the shots from this white vehicle as initially being "fired over the top of the vehicle, towards the club; to "this White vehicle firing one shot, straight up in the air, which is the version that he told Inv. McRae and is the only version that he testified to the Jury, in Petitioner's trial. 10) that Ricky Jacobs had actually given an initial statement to Officer Weldon Gregory at the scene, and then later had given a second statement to Inv. McRae, which manifested that he had actually given two different, contrasted and contradicting versions of the shooting to two different Officers.

[The issue is not why Ricky Jacobs failed to tell the truth; rather, it is why the Solicitor, who knew Ricky Jacobs testimony to be false, failed to correct it.]

"How the Federal Question Was Raised and Passed Upon" (Appendix 4A, 5A, 6A, 7A)

Petitioner properly first raised this Claim at his PCR hearing and submitted his exhibits to support this claim. [This issue is Petitioner's strongest, most important and meritorious issue]. The PCR Court did not rule on this claim. Petitioner's PCR Counsel refused Petitioner's repeated requests and demands for her to file a proper Rule 59(e) Motion to Alter or Amend Judgment, asking the PCR Court to specifically rule on this issue. She instead, file a frivolous 59(e) Motion to Reconsider. Petitioner desparately filed and mailed to the PCR judge, a Pro-Se proper use of the 59(e) Motion to Alter or Amend the Judgment asking the PCR Court to make specific findings of fact and conclusions of law and rule on the issues/arguments that Petitioner drafted and submitted to the Court. It stated what the Court overlooked and misapprehended in its Final Order. It stated what Petitioner wished to be altered or amended in the Order. And it stated supporting case law and other authorities to support Petitioner Motion. The PCR Court rejected Petitioner's Pro-Se 59(e) Motion because Petitioner was still represented by PCR Counsel and because PCR Counsel submitted a improper 59(e) Motion to Reconsider. After continuous pressing from Petitioner for PCR Counsel to at least raise Petitioner's strongest, most important claim to the PCR Judge, using the proper Rule 59(e) Motion To Alter or Amend judgment, PCR Counsel finally submitted a Motion To Supplement Or Amend Plaintiff's Previously Filed Motion To Alter Or Amend Judgment Pursuant To Rule 59(e), SCRPC, raising this specific claim for the PCR Court to rule on. At the end of the Motion and argument PCR Counsel stated that she consulted with Megan Harrigan Jameson, Assistant Attorney General for the State of South Carolina, prior to filing this Motion and she, on behalf of the State of South Carolina, does not object to the same being filed. Petitioner never heard, seen, or read anything else whatsoever, in response or in reference to this Motion or Argument. (This is explained in more detail in Petitioner's number eight (8) -

STATEMENT OF THE CASE

of the Questions Presented in this Petition). The Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). In the Magistrate Court Report and Recommendation he stated and held, "Petitioner contends that he was denied the right to a fair trial due to prosecutorial misconduct, by prosecuting authorities knowingly presenting false or perjured material testimony, or by failing to correct testimony of Jacobs. However, this is a direct appeal issue that was not properly preserved at trial for appellate review. As previously noted, South Carolina case law provides that an APCR is not a substitute for direct appeal issues. (p.42), "Therefore, Petitioner has not shown Jacobs offered perjured or false testimony. As such, to the extent that this issue could have been raised in Petitioner's APCR, Petitioner has failed to show a substantial issue." (p.45). Petitioner also appealed this issue in The United States District Court For The District Of South Carolina Beaufort Division. (Appendix 2A). The U.S. District Court held, "because Ground Ten was not ruled on by the PCR Court, it was unavailable for further collateral review." (p.25, p.26, U.S. District Court's Order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit, (Appendix 1A) in which this court judgment was "In accordance with the decision of this Court, a certificate of appealability is denied and the appeal is denied. Petitioner then raised this claim in the petition for rehearing, with suggestion for rehearing en banc, to this Court. (Appendix 1A, Appendix C). "The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P.35 on the petition for rehearing en banc. Entered at the direction of the panel: Judge Keenan, Judge Richardson, and Judge Quattlebaum."

STATEMENT OF THE CASE

"As to Question Two (2) Presented For Review":

Petitioner's Brady Violation Claim against the State was not merely from the mere fact that Mr. Gregory's name was cutt-off of the bottom of the handwritten Incident Report. In Petitioner's Motion of Discovery, the State submitted 1) 'anonymous' Handwritten Incident Report; 2) False/Altered, Typewritten Incident Report; 3) and an Supplemental Report. 1) 'anonymous' Handwritten Police Report had Complainant listed as Ricky Jacobs, and No Responding/Reporting Officer listed at the bottom of the report to show who's report this was. 2) False/Altered Typewritten Police Report had Complainant listed as Deputy Ryan Galinski and also the Responding/Reporting Officer listed as Deputy Ryan Galinski. This made it appear to the defense that both Incident Reports belonged to Deputy Ryan Galinski, which deceitfully gave the defense the false impression that Deputy Ryan Galinski generated both of these Incident Reports and this means that this places Deputy Ryan Galinski at the scene of the crime, because the Officer that generates the Incident Report is whomever the first Responding Officer is to arrive to the scene. U.S. v. Bartko 728 F.3d 327. 3) Supplemental Report, has the Reporting Officer listed as Deputy Ryan Galinski, and it places Deputy Galinski on two notch road as the Officer who pulled over the white SUV vehicle. This Supplement Report independently corroborates the Narrative of Statements provided in both the Handwritten and Typewritten Incident Reports, with descriptions of the two suspects matching, and the descriptions of the white SUV vehicle that fired the shots toward the club/carwash matching. To the Petitioner's concern, he was confused because it would have been impossible for Deputy Ryan Galinski to have been in two different places at the same time. 1) At trial, Deputy Ryan Galinski was shown the 'anonymous' Handwritten Incident Report and testified that, that was not his handwriting. That, that's a handwritten report from another Officer. That he never went to the crime scene and that he did not fill out an Incident Report; he only filled out an Supplemental Report. 2) He was shown the False/Altered Typewritten Incident Report with his name listed on it as the Complainant, and also listed on it as the Reporting Officer; he testified that it was not the report that he submitted. That he did not generate that report. That he has no knowledge of who generated it. And that he has never seen that report. (S.C. Code Ann. §16-9-10; (A)(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State). 3) He was shown the Supplemental Report and testified that this was his Supplemental Report that he submitted. It wasn't until after the testimony of Ryan Galinski that the defendant's discovered that the Typewritten Incident Report was a false/altered Incident Report. It wasn't until the testimony of Investigator Don McRae towards the end of Petitioner's trial, that the State, for the first and only time ever revealed the Name of Officer Weldon Gregory and attached his name to the 1) 'anonymous' Handwritten Incident Report; which -

STATEMENT OF THE CASE

was also proof that Petitioner's trial counsel failed to Investigate the potentially exculpatory information in those Police Reports. This is also when the defendants discovered that Ricky Jacobs gave perjured testimony and lied under oath in denying ever speaking with the first Responding/Reporting Officer to the scene and providing descriptions of the original 'primary' vehicle involved in the shooting, and the Suspects to this Officer; and that the first and only time that he ever described what he saw, was to Inv. Don McRae.

"How the Federal Question was Raised and Passed Upon"

Petitioner properly first raised this claim at his PCR hearing and submitted his exhibits to support this claim. The PCR Court gave a general ruling which lacked specific findings of fact and conclusions of law; and did not address the specific argument raised. (Appendix 4A, 5A, 6A, 7A). Petitioner's PCR Appellate Counsel refused Petitioner's request to raise this issue to the South Carolina Supreme Court. In fact, she did not raise any of Petitioner's Claims that he properly raised at his PCR hearing, but instead, she raised a brand new claim, in which the Petitioner did not raise at his PCR hearing; and not a claim that the PCR Court had ruled on or even considered. (This is explained in more detail in Petitioner's number Nine (9) of the Questions Presented in this Petition). The Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). In the Magistrate Judge, Bristow Marchant Report and Recommendation, p.34 footnote, he states that in Ground Four (Petitioner's Brady Claim); Petitioner attempts to raise direct appeal issue that was not preserved at trial. That South Carolina case law provides that a PCR is not a substitute for direct appeal issues. He held that Petitioner's Ground Four which is not an Ineffective assistance claim, was not properly pursued in state court and is therefore procedurally barred. And that because Petitioner did not properly raise and preserve this issue in his State Court proceedings, it is barred from further state collateral review. (p.35). Magistrate Judge further stated in his footnote on p.40, "With regard to Ground Four, as previously discussed, this issue was a direct appeal issue. Accordingly, while Petitioner makes the argument that his PCR appellate counsel was the cause for his failure to properly raise and preserve this issue, this issue was defaulted at the trial level and could not have been properly raised in his direct appeal, initial PCR, and/or PCR appellate proceeding. Petitioner has offered no other cause, other than his PCR appellate counsel's actions, for his procedural default of this claim. Petitioner also appealed this issue in The United States District Court For The District Of South Carolina Beaufort Division. (Appendix 2A). The U.S. District Court judge Bruce H. Hendricks, held "Petitioner objects that Ground Four "is not a direct appeal issue" and that "it is a Post Conviction Relief issue", which he raised at his PCR hearing. Petitioner's response to the motion of summary judgment concedes that he did not raise Ground Four in his direct appeal. The Court agrees with Respondent that because Petitioner did not properly present the claim "to the South Carolina appellate courts in a procedurally viable manner when he had the opportunity, and the state courts would find any attempt to raise it now to be procedurally improper, the claim is procedurally barred from review in federal habeas corpus." (p.25, Order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit (Appendix 1A); in which this court judgment was In accordance with the decision of this Court, a certificate of appealability is denied and the appeal is dismissed.

STATEMENT OF THE CASE

"As To Question Three (3) Presented For Review":

At Petitioner's trial, the State's Star Eyewitness, Ricky Jacobs was the cornerstone of the State's entire Case. He stated that he saw gunfire coming from the driver's side area of Petitioner's Tan Suburban but he couldn't see who was shooting; he also stated that a White SUV, fired one shot, straight up in the air, from the passenger side of that vehicle. This is the version that he had told to Investigator, Officer Don McRae. But what the defense didn't know was that this same eyewitness knowingly gave perjured testimony to the jury, concerning this version of events, and that Prosecutors suppressed material impeachment evidence from the defense, which was also suppressed from the jury as well. The material impeachment evidence in the Police Report revealed that the same Sole Eyewitness had Originally described and identified an entirely different set of suspects, and their vehicle as the suspects that shot the victim, and their vehicle as being the 'primary' vehicle shooting towards the club/carwash, where the victim was standing. It also reveals that the Original Statement, the Sole Eyewitness had given to Deputy Weldon Gregory, was in complete contrast, and completely contradicted his statement that he had given to Inv. McRae, and his testimony to the jury. Trial Counsel failed to move to admit the Police Report into evidence as part of Petitioner's defense as an Official Report, excepted from the hearsay rule under Federal Rule Of Evidence 803(8)(c). (*U.S. v. Bodey* 147 Fed. Appx. 338 4th Circuit (N.C.), 2005). Pursuant to Rule 803(8)(c), "factual findings resulting from an investigation made pursuant to authority granted by law is not excluded by the hearsay rule if introduced against the Government in criminal cases," unless the sources of information or other circumstances indicate lack of trustworthiness." Police Reports may be appropriately admitted on behalf of a defendant if the provisions of this rule are satisfied. The sources of information or other circumstances does not indicate lack of trustworthiness because the information given at the scene in the Police Report was independantly corroborated or verified by other Police Officers who pulled the vehicle over, with the passenger found to be sitting on ammunition matching the shell casings found at the crime scene, and matching the bullet found in the victim's pants leg.

"How The Federal Question Was Raised and Passed Upon"

Petitioner properly, first raised this claim at his PCR hearing and submitted his Exhibits to support his claim. In the Order of the dismissal the PCR Judge wrote: (Appendix 4A, 5A, 6A, 7A), "After reviewing the entire record and testimony presented, this Court finds that the Applicant has failed to establish any deficiency of trial counsel in regards to his allegations involving Weldon Gregory. Trial counsel testified that as a general rule, he does not like to call members of law enforcement as defense witnesses because it is more harmful than helpful to defendants based on his more than forty years of experience. Additionally, he testified that he was able to impeach Jacobs with other documents and testimony, including Gregory's incident report, although not all documents were admitted into the record at trial. This Court agrees with trial counsel's assessment as Jacobs was thoroughly examined as to his recollection of events and his identification of Applicant and his co-defendant. Therefore this Court finds that trial counsel's performance was not deficient and that Applicant has failed to meet his burden of truth." The PCR judge additionally found that Petitioner failed to show prejudice writing, "This Court finds that Gregory's testimony added little to the overall presentation and likely would have had no impact on the result of the proceeding." [Trial Counsel admitted that he did not question Jacobs about what he initially told Officer Gregory, so he could not have impeached Jacobs with Gregory's Incident Report, as stated by the PCR Judge. Trial Counsel did not challenge Jacobs on virtually every aspect of his recollection. *Gonzales v. Wong*, 667 F.3d 965, 684 (9th Cir. 2011) ("impeachment evidence does not become immaterial merely because there is some other impeachment of the witness at trial. Where the withheld evidence opens up new avenues for impeachment, it can be argued that it is still material"). Without the Police Report being put into evidence, the State was able to object -

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every time that the defense would try to go into what the information inside this Police Report says, and the Trial Judge would sustain the Objections. [See PCR transcript, p.1750, p.1751, p.1752, p.1753, p.1755, p.1824]. The Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). [In Respondent's motion for summary judgment, [they] completely lied and stated that Petitioner's Ground Five (which is now Petitioner's number three (3) of the Questions presented for review, in this Petition); Ground Six (which is now number Four (4) of the Questions presented for review), and Ground Twenty Three (which is now number Ten (10) of the Questions presented for review), were all raised by Petitioner's PCR appellate counsel, in Petitioner's PCR appeal. (Completely false; see PCR Appellate Counsel's, Kathrine H. Hudgins, Petition for Writ of Certiorari to the South Carolina Supreme Court)]. In Magistrate Court, Report And Recommendation, he stated "and out of an abundance of caution, the undersigned has addressed all three of these issues as exhausted claims. (p.17, footnote, report and recommendation). Magistrate Court also stated "As previously noted, the South Carolina Supreme Court subsequently denied Petitioner's PCR appeal wherein Petitioner arguably presented the issues raised in Grounds Five, Six, and Twenty-Three." (p.27, report and recommendation). [As to Petitioner's Question presented for review, number Three (3)], Magistrate Court held "the undersigned can discern no reversible error in the PCR Court's findings and conclusions. (p.30, report and recommendation). Magistrate Court further found "Therefore, Petitioner has failed to show that trial counsel's performance was deficient for failing to further impeach Jacobs with Gregory's report and for failing to move that report into evidence." (p.31, report and recommendation). Petitioner also appealed this issue in The U.S. District Court For The District Of South Carolina Beaufort Division. (Appendix 2A). This Court stated that as to Petitioner's Ground Five, Six, and Twenty-Three, The Magistrate Judge observed that "the PCR court rejected these claims after a full hearing, making relevant findings of fact and conclusions of law," and that "[f]acts related to these were also raised in Petitioner's PCR appeal to the State Supreme Court"; he therefore determined that these claims were "properly exhausted" for the purpose of reviewing the motion for summary judgment... (p.6, p.7, p.8, U.S. District Court's Order). The U.S. District Court held "However, the Court agrees with the findings of the Magistrate Judge and the PCR Court before him." (p.10), "Accordingly, the Court finds that Petitioner has failed to show either that trial counsel's performance was deficient or that the deficiency resulted in prejudice to the defense. The Court therefore grants the motion for summary judgment as to Grounds Five, Six, and Twenty-Three. (p.11, U.S. District Court's Order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit (Appendix 2A); in which this court judgment was in accordance with the decision of this court, a certificate of appealability is denied and the appeal is denied.

STATEMENT OF THE CASE

"As To Question Four (4) Presented For Review":

Petitioner's trial counsel failed to investigate potentially exculpatory information in Police Report, and to interview and subpoena Officer Ray Weldon Gregory to testify to pursuant to his Police Report and to authenticate this Police Report and verify that he is the Officer who prepared the Report. This Police Report included statements made to Officer Weldon Gregory at the scene, by the State's Star Eyewitness, Complainant Ricky Jacobs, in which he describes and identifies an completely different set of suspects shooting towards the club/carwash where the victim was standing, and an entirely different vehicle SUV that these suspects were in. Because of trial counsel's unprofessional errors, the Jury never knew that this Police Report even exists. The material information in this Police Report is a first account or version of the shooting that Ricky Jacobs provided to Law Enforcement about what he had allegedly eyewitnessed. He provided this information minutes after the crime was committed; when it was fresh on his mind. Unknown to the Jury, Ricky Jacobs testimony on the stand, was actually his second version or account of the events of the shooting that he told Officer Don McRae when he arrived to the scene approximately 1 hrs. 30 minutes later. Officer Gregory's testimony and Police Report would have manifested to the Jury that Ricky Jacobs gave perjured testimony on the stand to conceal all of the exculpatory statements and information that he had given to Officer Gregory, by denying that he ever even spoken to Officer Gregory, at all, and that Investigator Don McRae was the first and only Officer that he had spoken to in this Case. *Washington v. Smith* 48 F. Supp. 2d at 1149.

"How The Federal Question Was Raised and Passed Upon"

Petitioner properly first raised this Claim at his PCR hearing and submitted his Exhibits to support this claim. The PCR Court agreed with trial counsel's assessment pertaining to Ricky Jacobs; and found that trial counsel's performance was not deficient and that applicant has failed to meet his burden of proof. The PCR judge additionally found that Petitioner failed to show prejudice. (Appendix 4A, 5A, 6A, 7A). The Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). In the Respondent's motion for summary judgment, (they) completely lied and stated that Petitioner's Ground Six (which is now Petitioner's number Four (4) of the Questions presented in this Petition), along with Ground Five (which is now number Three (3) of the Questions presented), and Ground Twenty-Three (which is now number Ten (10) of the Questions presented); were all raised by Petitioner's PCR appellate counsel, in Petitioner's PCR appeal. (Completely false; see PCR appellate counsel, Kathrine H. Hudgins, Petition for Writ of Certiorari to the South Carolina Supreme Court). In the Magistrate Court report and recommendation, he stated "and out of an abundance of caution, the undersigned has addressed all three of these issues as exhausted claims. (p.17, footnote, report and recommendation). The Magistrate Court also stated "As previously noted, the South Carolina Supreme Court subsequently denied Petitioner's PCR appeal wherein Petitioner arguably presented the issues raised in Grounds Five, Six, and Twenty-Three." (p.27, report and recommendation). [As to Petitioner's Question Presented number Four (4)], Magistrate Court held "the undersigned can discern no reversible error in the PCR Court's findings and conclusion. (p.30, report and recommendation). Magistrate Court further found "Petitioner has also failed to show -

STATEMENT OF THE CASE

that trial counsel's performance was deficient for failing to investigate potentially exculpatory evidence in that Police Report, or to interview and subpoena Gregory to authenticate his report and testify concerning the information. (p.31 report and recommendation).

Petitioner also appealed this issue in The U.S. District Court For The District Of South Carolina Beaufort Division. (Appendix 2A). The U.S. District Court stated that as to Petitioner's Ground Five, Six, and Twenty-Three; the Magistrate Judge observed that "the PCR court rejected these claims after a full hearing, making relevant findings of fact and conclusions of law", and that "[f]acts related to these were also raised in Petitioner's PCR appeal to the Supreme Court"; he therefore determined that these claims were "properly exhausted" for the purpose of reviewing the motion for summary judgment... (p.6, p.7, p.8, U.S. District Court's Order). The U.S. District Court held "However, the Court agrees with the findings of the Magistrate Judge and the PCR Court before him." (p.10) "Accordingly, the Court finds that Petitioner has failed to show either that trial counsel's performance was deficient or that the deficiency resulted in prejudice to the defense. The Court therefore grants the motion for summary judgment as to Grounds Five, Six, and Twenty-Three. (p.11, U.S. District Court's Order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit. (Appendix 1A); in which this court judgment was "In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

STATEMENT OF THE CASE

"As To Question Five (5) Presented For Review:

Petitioner had a joint trial with his co-defendant. Petitioner was convicted under "the hand of one, is the hand of all" theory under "accomplice liability" theory. To admit evidence under "the hand of one hand of all" theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. *State v. Woomey*, 276 S.C. 258. The state put forth no evidence to show or establish the Petitioner's participation in the death of the victim. The only evidence the State presented was that the Petitioner drove his vehicle on the night of the incident. The State presented to the Trial Court during the Petitioner's Directed Verdict motion, and to the Jury during closing argument, a "double theory" stating "Under the hand of one, hand of all, they are both guilty of murder, whether the defendant Watts handed the gun to Tremaine Wray and had him fire where the gunshot residue is or whether he leaned over himself while Mr. Wray was busy driving the vehicle. Regardless they were aiding and abetting one another. Either Wray was driving while the shots were fired or Watts provided him the firearm to conclude or to commit the act and spray the parking lot with bullets." (PCR Trans. p. 1865) "So you can, just right off the bat, you know that Watts was seen with an weapon getting into the passenger side and you know that Wray is driving. As he drives he's assisting in letting Watts spray the parking lot. Or you may find that Watts handed Wray the firearm and in handing him he's assisting, aiding, abetting him in completing this crime." (PCR Trans. p. 1902, p. 1903) There was no evidence, nor testimony, that the Petitioner's co-defendant handed a gun to Petitioner and had Petitioner fire a weapon. There was no evidence, nor testimony, that the Petitioner's co-defendant fired a weapon and that the Petitioner let the co-defendant fire a weapon while the Petitioner was driving his own vehicle. The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes. *State v. Lane* 406 S.C. 118, 121. The State presented to establish to the Jury that the two defendants were both 'aider and abettors'. That the two defendants were 'aiding and abetting' one another. There was no 'principal' presented, established, or proved beyond a reasonable doubt to the Jury, as to neither one of the defendants. The State 'by passed' that burden. Under an accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. *State v. Langley*, 334 S.C. 643; *State v. Ward* 374 S.C. 606. How can you have two 'aider and abettors' and no 'principal'? If there is no 'principal', how can a Jury make the determination whether or not the other co-defendant aided and abetted the 'principal' or whether the other co-defendant was just simply present while a crime was being committed and had knowledge that a crime was being committed?

"How The Federal Question Was Raised And Passed Upon"

Petitioner properly first raised this claim at his PCR hearing and submitted his Exhibits to support this claim. The PCR Court mentioned that Petitioner raised this Claim at his PCR while on the stand; but the PCR Court didn't specifically rule on this Claim. (Appendix 4A, 5A, 6A, 7A). Petitioner's PCR Counsel refused Petitioner's specific request to file a Proper Rule 59(e) Motion to Alter or Amend Judgment, asking the PCR Court to specifically rule on this issue. She instead, filed a frivolous 59(e) Motion to Reconsider. (This is explained in more detail, in Petitioner's number Eight (8) of the Questions Presented in this Petition). Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). In the Magistrate Court Report and Recommendation he stated "Respondent correctly points out that while Petitioner arguably raised this issue by testifying about it in his PCR hearing, the PCR court did not rule on it and it was not preserved for appellate review. (p.45) "Here, Petitioner was convicted as a principal on the charges under the theory of "the hand of one is the hand of all". (p.46) "Accordingly, Petitioner has not shown his counsel was ineffective for failing to object to the charge, and as a result has failed to show a substantial issue with regard to Ground Eleven to overcome the procedural bar. Petitioner also appealed this issue in The United States District Court For The District Of South Carolina Beaufort Division (Appendix 2A). The U.S. District Court held "The court finds no clear error in the Report as to this claim and accordingly grants the motion for summary judgment as to Ground Eleven. (p.14, U.S. District Court's order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit (Appendix 3A) in which this court judgment was "In accordance with the decision of this court, a certificate of appealability is denied and the appeal is denied."

STATEMENT OF THE CASE

"As To Question Six (6) Presented For Review":

The State's entire case against the Petitioner and his co-defendant rested on the testimony of their sole Star Eyewitness Ricky Jacobs. Ricky Jacobs testimony throughout Petitioner's trial was that he saw gunshots coming from the driver's side area of Petitioner's Tan Suburban, but that he couldn't see who was shooting. The State didn't have forensic evidence or scientific evidence, to corroborate Ricky Jacobs or to support his testimony. The State had a GSR Expert from S.L.E.D., do an analysis on Particle Lifts from Petitioner's vehicle to try to locate GSR from Petitioner's Tan Suburban. [For the Record, Petitioner's Tan Suburban was Negative for Gunshot Residue (GSR).], [You should also analyze the cumulative effect of this issue, coupled with Petitioner's Question Seven (7) Presented for Review in this Petition]. Throughout Petitioner's entire trial, the Prosecution so infected Petitioner's trial with unfairness by consistently and repeatedly presenting (as forensic evidence of Petitioner's guilt) to the Trial Judge and also to the Jury, that Petitioner's Tan Suburban tested Positive for Gunshot Residue. (1) Pretrial Motion; (2) State's Opening Arguments to the Jury; (3) Prosecutor's arguments against Petitioner's objection to the admission of the State's GSR Expert Witness from SLED; (4) The Prosecutor's arguments against Petitioner in his Motion For A Directed Verdict, and also to support their hand of one, hand of all theory; (5) State's Closing Arguments. In order to report a finding of Gunshot Residue, SLED has a protocol that requires that they must have a finding of all three (3) required elements, that make up Gunshot Residue, present at one time, which are 1. Lead, 2. Barium, 3. Antimony. (Not three round particles of Lead). SLED looks at the round lead particles to see if it contains all three (3) of the required components. If the round particles do not contain all three (3) components of GSR together, the results of the test that is reported is No Gunshot Residue Found. But, even though Agent Moskal did not find GSR in Petitioner's Tan Suburban, Agent Moskal still conclusively stated (repeatedly) that a gun was fired in the driver's side area of Petitioner's Tan Suburban. This extremely prejudiced Petitioner's trial because even though he only found one (1) component out of the three (3) required protocol components, he still confused and misled the jury into believing that a gun or weapon was fired from Petitioner's vehicle because on one hand you had the GSR Expert testifying that his expert opinion and conclusion is that the 16 round lead particles found in the Petitioner's Tan Suburban, means that a gun or weapon was fired from the driver's side area of the Petitioner's Tan Suburban. And on the other hand you had the Prosecutor stating, presenting, and establishing to the Jury (as evidence of Petitioner's guilt) that the Petitioner's Tan Suburban tested Positive for GSR. In order for Agent Moskal to have been able to give an Opinion and Conclusion to Jury that a gun or weapon was fired from (any vehicle) whatsoever, He would have first, needed to pass SLED's threshold of finding elevated amounts of the three (3) required components, together 'in round particles'; 1. Lead, 2. Barium, 3. Antimony, which is (Gunshot Residue). In order for the Prosecution to be able to state, comment, argue, and properly present to the Trial Judge and to the Jury that Petitioner's vehicle was Positive for GSR, the Petitioner's Tan Suburban would have had to, actually tested Positive for Gunshot Residue, and then SLED's GSR report would have reflected that. [This allowed the State to manipulate the facts of the results of the GSR test on Petitioner's vehicle, and it caused the Trial Judge, the Jury, and the Court of Appeals to make their determinations and decisions based on Gunshot Residue evidence that did not exist.]

"How The Federal Question Was Raised And Passed Upon"

Petitioner properly first raised this Claim at his PCR hearing and submitted his Exhibits to support this claim. The PCR Court mentioned that Petitioner raised this Claim at his PCR while on the stand; but the PCR Court didn't specifically rule on this claim. (Appendix 4A, 5A, 6A, 7A). Petitioner's PCR Counsel refused to file a Proper Rule 59(e) Motion to Alter or Amend Judgment, asking the PCR Court to specifically rule on this issue. She instead, filed frivolous 59(e) Motion to Reconsider. (This is explained in more details in Petitioner's number Eight (8) of the Questions Presented in this Petition). Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). The Magistrate Court stated that this issue was not raised in Petitioner's PCR hearing or ruled on in Petitioner's PCR proceedings. (p. 48, Report and Recommendation). Petitioner also appealed this issue to the U.S. District Court of South Carolina. (Appendix 2A). The U.S. District Court, held "The Court finds no clear error in the Report as to this claim and accordingly grants motion for summary judgment." (p. 15, District Court's order). Petitioner also appealed this issue to the U.S. Court of Appeals, 4th Circuit (Appendix 1A), in which this Court judgment was "In accordance with the decision of this court, a certificate of appealability is denied and the appeal is denied."

STATEMENT OF THE CASE

"As To Question Seven (7) Presented For Review":

Agent Moskal only found a total of Sixteen (16) round lead particles in Petitioner's vehicle; which is only one (1) component out of the three (3) required components of Gunshot Residue. Agent Moskal bypassed SLED's threshold and protocol of finding elevated amounts of the three (3) required components, Lead, Barium, and Antimony, together, in order for him to be able to indicate that a weapon has been fired or be able to state that it is consistent with or somebody handling or being in the vicinity of a weapon when it was fired. In the PCR Court's Final Order; it recites the PCR testimony of the Petitioner's Trial Counsel Mr. Arie Bax: He testified that he moved to suppress testimony regarding gunshot residue because the State's expert did not find gunshot residue and could not conclusively state that a gun (was) fired in Applicant's car. (Appendix 4A, 5A, 6A, 7A) (Final Order p. 16 of 39). He (Mr. Bax) testified that her Honor did limit Moskal's testimony somewhat, ruling that he could only testify that round lead particles were found and the significance of this finding, but not that gunshot residue was found in the car or that a weapon was definitively fired from the car. (Final Order, p. 17 of 39). He (Mr. Bax) testified that Moskal never testified that gunshot residue was found and was very careful to testify within the trial court's parameters. [Moskal did not testify within the trial court parameters. See PCR transcript p. 1510, p. 1535, p. 1564, p. 1572]. He Mr. Bax testified that he was able to get Moskal to admit that: "...he could not conclusively state that gunshot residue was found, the other two components of gunshot residue has not been found; and he could not conclusively state that a weapon had been (was) fired in the car,..." (Final Order, p. 17 of 39). [But Mr. Moskal did conclusively state that a weapon had been (was) fired in the car. See PCR transcript p. 1510, p. 1535, p. 1564, p. 1572].

"How the Federal Question Was Raised and Passed Upon"

Petitioner properly first raised this Claim at his PCR hearing and submitted his exhibits to support this claim. The PCR Court mentioned that Petitioner raised this Claim at his PCR while on the stand; but the PCR Court didn't specifically rule on this Claim. (Appendix 4A, 5A, 6A, 7A). Petitioner's PCR Counsel refused Petitioner's request to file a Proper Rule 59(e) Motion to Alter or Amend Judgment, asking the PCR Court to specifically rule on this issue. She instead, filed a frivolous 59(e) Motion to Reconsider. (This is explained in more detail in Petitioner's number Eight (8) of the Questions Presented in this Petition). Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). In the Magistrate Judge, Bristow Marchant's Report and Recommendation he stated Petitioner did not raise this claim in his PCR proceeding, and it was likewise not ruled upon by the PCR judge. Therefore, it was not preserved for appellate review. (p. 48, Report and Recommendation). The Magistrate judge held, "Based upon the record showing defense counsel's strenuous objection prior to Moskal's testimony and the renewal of that objection, Petitioner has failed to show that his counsel was deficient for not objecting to the testimony and evidence regarding the GSR testing. Petitioner has also failed to show any prejudice by his counsel not taking additional action or making additional objections regarding this issue. Therefore, Petitioner has failed to show Ground Thirteen to be a substantial issue. (p. 49, Report and Recommendation). Petitioner also appealed this issue in The U.S. District Court For The District Of South Carolina Beaufort Division (Appendix 2A). The U.S. District Court, held "Given the nature of the objections, the Court agrees that Petitioner cannot show that he was prejudiced by counsel failing to object further. The motion for summary judgment is granted as to this claim." (p. 16, U.S. District Court's Order). Petitioner also appealed issue to U.S. Court Of Appeals For The Fourth Circuit (Appendix 1A) in which this court judgment was "In accordance with the decision of this court, a certificate of appealability is denied and the appeal is denied."

STATEMENT OF THE CASE

"As To Question Eight (8) Presented For Review":

The core of Petitioner's Ineffective Assistance of PCR Counsel claim is not what PCR Counsel did before and during the PCR hearing. [Petitioner had to take his own initiative to raise the claims while he was on the stand; that his PCR Counsel refused to amend to his PCR hearing before the hearing. Petitioner raised those claims to preserve them for appellate review to the State's Highest Court and any other further proceedings, appeals, etc., despite PCR Counsel's refusal to amend them.]. The Core of Petitioner's claim starts by what PCR Counsel, 1. refused to do; and 2. did not do, after the PCR hearing, which impeded and obstructed Petitioner's numerous desperate efforts to comply with the State's procedural rules; and caused Petitioner's strongest claims/issues to be procedurally defaulted, in which there is a reasonable likelihood that these issues would have prevailed on appeal to the South Carolina Supreme Court and beyond. (The Petitioner's purpose of showing how PCR Counsel was ineffective before and during the PCR hearing was to show the reviewing Courts that her actions, not only after the PCR Hearing was ineffective and caused prejudice, but that her actions before the hearing and during the hearing was ineffective as well, and also to give the reviewing Court's the entire picture; to show the conflicts between Petitioner and PCR Counsel throughout the entire process of her representation.). Petitioner took extreme measures, and made every attempt; and made every effort; and pursued all avenues, to ensure that his claims that were not ruled on; were properly preserved for appellate review and further collateral proceedings so that they would not be procedurally defaulted. Petitioner used all of the Options that he had and didn't have; even desperately acting on his own behalf when he had reason to believe that his PCR attorney was abandoning his strongest, most meritorious claims to appeal to; not only the State's Highest Court (South Carolina Supreme Court), but also further collateral review to Federal Courts. [Petitioner specifically argued that his PCR Counsel was ineffective for refusing (Petitioner's repeated requests and demands) for her to file a proper Rule 59(e) Motion to Alter or Amend Judgment specifically requesting the PCR Judge to Rule on the Petitioner's claims, specifically stating what claims were not ruled on; what claims Petitioner wishes to be Altered and Amended, and supporting case law or other authority to support his motion; to preserve for appellate review to the State's Highest Court; issues that he properly raised at PCR hearing, but was not ruled upon by the PCR Judge.]. All of the reviewing Courts have 'Continuously' overlooked the Petitioner's Sixteen (16) Exhibits (correspondence letters and documents between Petitioner and Petitioner's PCR Counsel, etc.); which Directly Established and Completely Established Proof, first hand, showing cause and prejudice from PCR Counsel's refusal to preserve Petitioner's unrul'd Claims / Issues for Appellate Review. [That is how Petitioner knows that the Court Judge's continues to overlook and 'not actually read all' of his Sixteen (16) Exhibits that he submitted in with his Ground Twenty Four Claim; which is now Petitioner's Question Eight (8) Presented For Review in this Petition.]. Petitioner intended to use this claim to show the 'necessary cause' for any of his claims that may have been procedurally barred or procedurally defaulted, not as a basis for relief, nor as a ground for relief.

STATEMENT OF THE CASE

"How the Federal Question Was Raised and Passed Upon"

Petitioner raised this claim/issue in his Federal Habeas Corpus Petition. (Appendix 2A). The Magistrate judge held, "However, as set forth below, the undersigned finds that Petitioner has failed to show the necessary "cause" to overcome the procedural bar with respect to any of these claims." (p.37, Report And Recommendation). "Petitioner's final remaining Ground for relief, Ground Twenty-Four, presents a separate issue. In this claim, Petitioner contends that his PCR counsel was ineffective for not raising certain issues and not filing a proper Rule 59(e) motion. However, this claim concerns alleged infirmities in Petitioner's state PCR proceeding, and as such are not a basis for federal habeas relief. Therefore, Petitioner has failed to state a viable claim for relief based on any alleged errors in his PCR proceeding. This claim should be dismissed. (p.64, p.65, Report And Recommendation). Petitioner also appealed this issue in The United States District Court For The District Of South Carolina Beaufort Division (Appendix 2A). The U.S. District Court held "The Magistrate Judge found that these contentions concern "alleged infirmities in Petitioner's state PCR proceeding, and as such are not a basis for federal habeas relief. To the extent Petitioner objects to this finding, the Court finds the objection to be general and conclusory. The Court finds no clear error in the Magistrate Judge's analysis and therefore grants the motion for summary judgment as to this claim. For the reasons set forth herein, the Court agrees with the analysis and recommendation of the Magistrate Judge. Accordingly, Petitioner's objections are overruled and the Report is adopted. (p.28, U. S. District Court's Order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit (Appendix 1A) in which this court judgment was "In accordance with the decision of this court, a certificate of appealability is denied and the appeal is denied. Petitioner also raised this claim in the petition for rehearing, with suggestion for rehearing en banc. (Appendix 1A, Appendix C). "The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. Entered at the direction of the panel: Judge Keenan, Judge Richardson, and Judge Quattlebaum."

Petitioner intends to use this claim to show cause for any of his claims that have been procedurally barred or procedurally defaulted. (Petitioner has Sixteen (16) Exhibits that establishes proof to this claim; in which he has submitted in with this Petition).

STATEMENT OF THE CASE

"As To Question Nine(9) Presented For Review":

On Petitioner's PCR Appeal, petitioner was represented by PCR Appellate Counsel, Ms. Kathrine H. Hudgins, Appellate Defender with the South Carolina Commission on Indigent Defense, Division of Appellate Defense. The appeal was not perfected with the filing of a Petition for Writ of Certiorari to the South Carolina Supreme Court. In the Petition for Writ of Certiorari, PCR appellate Counsel presented the one and only claim raised in (Petitioner's Question Ten(10) presented for review), not Petitioner's (formerly Grounds Five and Six, but now is Petitioner's Questions Two(2) and Four (4) presented for review). PCR appellate counsel argued "only a single issue" to the South Carolina Supreme Court, which was a brand new claim created by PCR Appellate Counsel and raised for the first time, when it was raised to the State's Highest Court. It was not a claim that Petitioner had raised at his PCR hearing, but it was still ruled on and denied by the South Carolina Supreme Court, when the State's Highest Court did not have jurisdiction to rule on this issue that was not even raised by Petitioner, at his PCR hearing. Petitioner had fifteen (15) meritorious, non frivolous, issues/claims that he properly raised at his PCR hearing. Petitioner forwarded these fifteen (15) meritorious issues to her at her request, with the purpose of including them within the writ of certiorari, in which she refused Petitioner's, clear requests, to do and which she failed to do. On February 22, 2016, Petitioner wrote PCR appellate counsel a letter explaining to her that he requested and insisted that she appeal, to the South Carolina Supreme Court, his most important Constitutional Violation Issue (formerly Ground Ten; but is now Petitioner's Question One (1) presented for review), and she informed him that she was not going to submit that argument, and she did not. Petitioner asked for her to explain to him, in a letter, as to why she refused to submit that issue, in the petition for writ of certiorari to the State Highest Court. PCR appellate counsel gave her answer as to why she didn't raise Petitioner's issue. On September 7, 2016, Petitioner wrote PCR appellate counsel a letter requesting for her to explain to him, in the form of a letter, as to why she did not present to the State's Highest Court, in the form of a petition for writ of certiorari, any of the fifteen (15) Grounds, Issues, Arguments that Petitioner raised in his PCR hearing. She answered that she raised a issue that, in her opinion, is most likely to result in the Court granting the relief Petitioner seeks, and she determined that the other fifteen (15) issues that Petitioner raised, either lacked merit or would not result in relief. [It is up to the South Carolina Supreme Court judges to make that determination; not PCR Appellate Counsel. Her duty is to assist the Petitioner in presenting his properly preserved PCR claims to the State Highest Court, in the form of Petition for Writ of Certiorari to the South Carolina Supreme Court.]. (See Petitioner's Exhibits S, T, U, V, W, X, Y, Z). On February 15, 2017, petitioner filed a motion to relieve PCR Appellate Counsel, of her duties, as well as the Petition for Writ of Certiorari, with the ability to proceed Pro-Se, and ample time to file his own petition. Petitioner respectfully asked the Courts to grant his request to relieve counsel, to remove the filed petition for Writ of Certiorari, and afford petitioner the necessary time as a Pro-Se litigant, to file his petition for writ of certiorari in order to protect his due process rights "to retaining a full bite at the apple".

"How the Federal Question Was Raised and Passed Upon"

This Claim was raised by Petitioner in his petition of a writ of habeas corpus pursuant to 28 U.S.C. §2254. The Magistrate Court concluded, it is recommended that the Respondent's motion for summary judgment be granted, and that the Petition be dismissed, with Prejudice (Appendix 2A). The Court held: As for the issues defaulted at the PCR appellate court level, Petitioner contends that even though he forwarded all —

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fifteen issues that were raised in his PCR proceeding and requested that his PCR appellate counsel present all of those issues, she instead raised only one issue in his PCR appeal. However, as set forth below, the undersigned finds that Petitioner has failed to show the necessary "cause" to overcome the procedural bar with respect to any of these claims. [What is the point of the prisoner (Petitioner) being required by Rules of State Procedures, to make sure his PCR claims are properly preserved for PCR appellate review, if when it is time to raise them to the South Carolina Supreme Court, the Petitioner is being deprived of any review of those claims at all; because his PCR appellate, deprived him of an appeal of his PCR claims, which impedes and obstructs the Petitioner from complying with the State's established procedures? *Garza v. Idaho*, 139 S.Ct. 738. (The Petitioner's PCR appellate counsel is not the one who is sitting in prison, fighting for their life, liberty, and freedom, challenging their conviction and sentence, so that [they] may be released from custody, and depending on "The Court System" to address their claims/issues.). Even though a prisoner doesn't have a right to counsel on PCR appeal, when [they] 'are' appointed to represent prisoner, [they] still have an obligated duty as appointed counsel, to appeal his preserved PCR claims to the State's Highest Court. Petitioner's PCR appellate counsel did not raise any of his PCR claims. She raised "Zero" of his PCR claims that he had properly preserved for appellate review to the State's Highest Court. Then she raised a brand new claim that could not be raised. If Petitioner did not raise the Claim at PCR hearing and the PCR judge did not rule on such claim, Petitioner can not raise a new claim on PCR appeal for the first time to South Carolina Supreme Court for appellate review. This issue raised for first time has not been presented to any State Court or PCR Court for consideration. Therefore, this claim could not even be raised by Petitioner in his appeal to the State Highest Court. It was not even an issue preserved for appellate review, to be considered on appeal to the State Highest Court. The South Carolina Supreme Court, lacked subject matter jurisdiction to entertain, and adjudicate the new issue raised for first time on appeal to State's Highest Court.

Plyler v. State, 309 S.C. 408, 424 S.E. 2d 477, the Supreme Court will not consider issues not raised below.

① Criminal Law & Post-Conviction Relief

Criminal Law & Necessity of Ruling on Objection or Motion

Issue of whether trial counsel was ineffective for failing to object to erroneous malice charge was procedurally barred on certiorari review by the Supreme Court where issue was neither raised nor ruled on at postconviction relief hearing.

① On certiorari to this Court, Plyler raises the issue of whether trial counsel was ineffective for failing to object to an erroneous malice charge. Since this issue was neither raised at the PCR hearing nor ruled upon by the PCR court, it is procedurally barred. *Hyman v. State*, 278 S.C. 501, *Isom v. State*, 170 N.E. 3d 623, *State v. Policao*, 402 S.C. 547,

State v. Porch, 417 S.C. 619

Headnote: As a general rule, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal.

State v. Geer, 391 S.C. 179

Petitioner intends to use this claim to show the 'necessary cause' for any of his claims that have been procedurally barred or procedurally defaulted. (Petitioner has Eight (8) Exhibits, Exhibits S, T, U, V, W, X, Y, Z, that establishes proof to this claim, in which he has submitted in with this Petition).

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"As To Question Ten (10) Presented For Review"

This was not an issue that was raised by Petitioner, to the PCR Court in his evidentiary hearing and this issue was therefore certainly not ruled on, by the PCR judge, but yet this issue was the one and only issue/claim that was presented to the State's Highest Court, by Petitioner's PCR Appellate Counsel, to the South Carolina Supreme Court. This argument is actually a new argument that was raised for the first time, when it was raised in the writ of Ecertiorari to the South Carolina Supreme Court, by Petitioner's PCR appellate counsel, and the South Carolina Supreme Court ruled on this brand new claim. [Due to Petitioner's PCR Counsel on appeal review, refusing his repeated request for her to raise all of his PCR Claims that Petitioner went through great measures to properly preserve for appellate review, and due to her not raising any of Petitioner's PCR Claims to the South Carolina Supreme Court, petitioner was forced to, and had no other choice but to continue to raise this brand new claim on appeal to higher courts for further proceedings.] Petitioner's Trial Counsel did not utilize any of the facts, at all, concerning the initial statement that Ricky Jacobs (State's Sole Eyewitness), had given to Deputy Weldon Gregory, in his cross-examination; and each and every time either defense tried to go into any of the information pertaining to the exculpatory statements that Ricky Jacobs had given to Deputy Gregory, the State would strenuously object, and the Trial Court Judge would sustain each and every one of those objections. (See PCR transcript, p.1750, p.1751, p.1752, p.1753, p.1755, p.1824). In fact, Ricky Jacobs had actually denied ever speaking to the first Officer that had written down his initial statement. Petitioner's trial counsel didn't cross-examine Ricky Jacobs about ~~the~~ the fact that he initially did not identify Petitioner or his co-defendant by name despite knowing both of them, but described the Suspects involved in the shooting as one black male with dreadlocks and one black male with a close cut haircut and a striped shirt driving a White SUV, possibly a Nissan with a black stripe down the side, descriptions that matched two other individuals stopped shortly after the shooting took place in a White Isuzu Rodeo SUV with ammunition consistent with the shell casings found at the scene of the shooting. Shortly after the shooting, Deputy Galinski stopped a White Rodeo matching the vehicle identified by Ricky Jacobs. The driver and passenger were uncooperative with Police. Deputy Galinski found one round of 38 caliber ammunition and some rounds of 9mm (millimeter) ammunition, under the front passenger on the seat, in which the passenger was sitting on when he was removed from the vehicle. At the hospital, another Officer recovered a fired 9 millimeter bullet from the pants of the deceased. Investigator Collins, an expert in firearms and tool mark examination testified that the bullet recovered from the hospital matched two fired bullets jackets recovered at the scene and all three had been fired by the same gun. Inv. Collins also examined ten fired 9 millimeter Luger caliber cartridge cases recovered from the scene of the shooting. Inv. Collins testified -

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that the ten cartridge cases were fired by one gun but he could not say that the same gun fired the cartridge cases and the three recovered bullets because no firearm was submitted for comparison. Investigator Collins testified that the several rounds of ammunition found in the White SUV are the same bullets; the same caliber; the same brand; the same type; and the same head stamp as the shell casings recovered from the roadway at the scene; the projectiles recovered from the scene; and the bullet recovered from the victim. During the Evidentiary Hearing, Trial Counsel admitted that he did not question Jacobs about what he initially told Officer Weldon Gregory. When asked if he questioned Jacobs about the statement he provided to Officer Gregory, Trial Counsel testified, "No, I did not. As I said, I think it came out in other ways, with the exception of the thing about firing towards the club. I just did not. In the scheme of things, I thought that was a minor point". [The inconsistencies from Officer Gregory's report did not come out in other ways. The failure to cross-examine Jacobs, a key State's Witness, and the only eyewitness to the shooting, about his initial statement to Officer Gregory was not "a minor point".]. At trial Jacobs testified that the 'first and only' Officer he spoke with after the shooting was Investigator McRae, in contrast to the testimony of Officer Deputy Weldon Gregory at Petitioner's PCR evidentiary Hearing. Counsel failed to ask Jacobs about the statement made to Officer Gregory. Jacobs was the key witness for the prosecution. His Eyewitness credibility or lack thereof was a critical factor for the jury to determine. While counsel challenged statements Jacobs made to Investigator McRae, counsel failed to challenge the inconsistencies between the initial statement given to Officer Weldon Gregory and Jacobs' trial testimony.

"How the Federal Question Was Raised and Passed Upon"

Petitioner did not raise this claim at his PCR hearing, and the PCR Court did not rule on this issue. (Appendix 4A, 5A, 6A, 7A). PCR appellate Counsel raised this brand new issue, for the first time, to the South Carolina Supreme Court, and the Court ruled on this issue anyway and denied the writ of certiorari on this issue. (Appendix 3A). Petitioner next raised this issue in his federal habeas corpus. (Appendix 2A). Magistrate Judge held "Therefore, the undersigned has considered this claim as having been exhausted at the State level for purposes of federal habeas review.", "Again, the undersigned can discern no reversible error in the state court's findings on this claim.", "Petitioner has failed to show his counsel was deficient for not further cross-examining Jacobs.", "In addition, Petitioner has failed to show prejudice." (P.32, p.33, Report And Recommendation). Petitioner appealed issue to U.S. District Court For The District Of South Carolina Beaufort Division (Appendix 2A). Court held "However, the Court agrees with the findings of the Magistrate Judge and the PCR court before him.", "Accordingly, the Court finds that Petitioner has failed to show either that trial counsel's performance was deficient or that the deficiency resulted in prejudice to the defense. The Court therefore grants the motion for summary judgment as to Ground Twenty Three. (p.10, p.11, Judges Order). Petitioner also appealed this issue to the United States Court Of Appeals For The Fourth Circuit (Appendix 1A), in which this court judgment was "In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

Reasons For Granting The Petition

As to Question One (1) in this Petition, the decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court, is in direct conflict with the decisions of the Supreme Court of South Carolina, the U.S. Supreme Court, the U.S. Court of Appeals, 3rd Circuit, the U.S. District Court, W.D. Pennsylvania, as well as other state and federal courts. The Magistrate Court, District Court, and U.S. Court of Appeals, 4th Circuit, assumed without proper analysis that the Petitioner's claim was a 'direct appeal' issue that was not properly preserved at trial for appellate review, and explained that under South Carolina Law, an application for post-conviction relief is not a substitute for an appeal. (quoting *Simmons v. State*, 215 S.E. 2d 883, 885 (S.C. 1975)). Petitioner submits that this issue is not a direct appeal issue. It is a PCR issue that Petitioner did raise at his PCR hearing. Petitioner submits that this erroneous conclusion is in direct conflict with the Supreme Court of South Carolina in *Riddle v. Ozmint*, Opinion No. 26153, May 22, 2006 - Supreme Court, 369 S.C. 39, 631 S.E. 2d 70, which held in their Scope Of Review - "We are concerned here not with the routine PCR issue whether trial counsel was ineffective, but instead with the question whether prosecutorial misconduct denied Petitioner's due process right to a fair trial." [These Courts also erroneously further found that because Petitioner's claim is not an underlying ineffective assistance of counsel claim, it does not even fall under the Martinez exception, and erroneously determined that Petitioner's claim were procedurally defaulted at the PCR Court or in the PCR appeal, because the underlying claim do not implicate ineffective assistance of counsel.]. Petitioner submits he properly raised and presented this issue at his PCR hearing which was properly pursued in the initial PCR proceeding, so that he could properly present the claim to the South Carolina Supreme Court in a procedurally viable manner on appeal to the State's Highest Court. The U.S. Court of Appeals, 4th Circuit erroneously concluded that Petitioner did not show a denial of a constitutional right and therefore denied Petitioner's certificate of appealability on this issue and dismissed the appeal. This Court has erroneously overlooked the fact that Petitioner's conviction is tainted by perjured testimony in violation of his Fourteenth Amendment right to due process.

The decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court, is in direct conflict with the decisions of the Supreme Court of South Carolina which have held that "State was obligated to correct (Key Witness') false testimony in capital murder trial that he had not spoken to anyone other than that Police Officer to whom he had given initial statement, when Solicitor knew that (Key Witness') had given second statement to Police..." (the issue is not why (Key Witness') failed to tell the truth; rather, it is why the Solicitor, who knew (Key Witness') testimony to be false, failed to correct it.), (Reversal required because "the failure to correct false evidence is as reprehensible as its presentation"). 110K 2036 K. Duty to correct false or perjured testimony.

The decision of the U.S. Court of Appeals, 4th Circuit, the U.S. District Court, and the Magistrate Court, is in direct conflict with the decisions of the Supreme Court of South Carolina in *Riddle v. Ozmint*, which is fully applicable to Petitioner's issue in this case. Petitioner's Question One (1) in this Petition, derived from *Riddle v. Ozmint*. The Petitioner's issue in *Riddle v. Ozmint* case, 'mirrors', the Petitioner's Question One (1) of this Petition in the instant case. The Supreme Court of South Carolina granted certiorari, and found that the Solicitor's Office violated petitioner's due process rights when it failed to correct misstatements made by Jason while testifying against petitioner. In *Riddle v. Ozmint*, the State's Key Eyewitness (Jason) was asked more than once, whether he had spoken about the case to anyone other than Officer Harris, when he gave his first statement. He denied speaking with anyone other than that Police Officer to whom he had given initial statement, neglecting to mention a second statement he had made to Police, a different Officer, and the Supreme Court of South Carolina held that the Solicitor failed to correct the witness -

Reasons For Granting The Petition

(Jason's) false trial testimony; thus reversing the PCR Judge's finding that the State did not violate due process by failing to correct (Jason's) false testimony and that petitioner was found not to have met his burden of showing the State knowingly used perjured testimony. As in Petitioner's Case; here, the U.S. Court of Appeals, 4th Circuit; the U.S. District Court; and Magistrate Court; never properly considered that at Petitioner's 2009 trial, Ricky Jacobs was asked more than once whether he had spoken to any Uniformed Law Enforcement Officers about what he had eyewitnessed, when they first arrived to the scene? Did he provide descriptions of any vehicles? Was the first time he explained what he observed was to Investigator Don McRae? Was Investigator McRae the only person that he spoke with that night?; etc.

Ricky Jacobs denied speaking with anyone other than Investigator Don McRae about what he had witnessed; neglecting to mention his Original Statement; the version of the shooting that he had initially given to Responding Police Officer, Deputy Weldon Gregory; and also neglecting to mention that he had ever spoken to this Officer about this Case; or any other Law Enforcement Officer whatsoever other than Investigator Don McRae. The Solicitor, knowing this testimony to be false; failed to correct Ricky Jacobs false/perjured testimony and allowed it to go uncorrected when it appeared. [The issue is not why Ricky Jacobs failed to tell the truth; rather, it is why the Solicitor, who knew Ricky Jacobs testimony to be false, failed to correct it.]

The decision of the U.S. Court Of Appeals, 4th Circuit; the U.S. District Court; and Magistrate Court; is in direct conflict with the decisions of the U.S. Supreme Court in *Napue v. People of State of Illinois*, 360 U.S. 264, 79 S.Ct. 1173; holding - the Prosecution's knowing use of false evidence violates due process, regardless of whether the evidence goes to a substantive issue or merely to the witness' credibility. It is of no consequence that the falsehood bore upon the witness credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. It is well established that a

conviction obtained through use of false evidence, known to be so by representatives of the State, must fall under the Fourteenth Amendment. *Id.* at 269, 79 S.Ct. 1173 (citing *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340.

"The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*

Constitutional Law ✶ Failure to correct false testimony
Criminal Law ✶ Effect of perjured testimony; remedy
A due process violation occurs at a criminal trial when the State although not soliciting false evidence, allows it to go uncorrected when it appears; a conviction must be set aside even if the false testimony goes to a witness's credibility rather than defendant's guilt. U.S. Const. Amend. 14.

Constitutional Law ✶ Use of Perjured or Falsified Evidence
The Standard of Review applicable to perjured testimony claims under the Due Process Clause is strict, this is so not just because those claims involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process. U.S. Const. Amend. 14. *Giglio v. U.S.*, 405 U.S. 150, 153, 92 S.Ct. 763

The decision of the U.S. Court Of Appeals, 4th Circuit; the District Court; and Magistrate Court; is in direct conflict with the decisions of the Supreme Court; the U.S. District Court, W.D. Pennsylvania, in *Haskell v. Folino* 461 F.Supp.3d 202, and the U.S. Court of Appeals, 3rd Circuit, in *Haskell* 866 F.3d 139 in their Standard of Review on this type of claim.

According to the analysis of those U.S. Federal Courts; these Courts use "The Reasonable Likelihood Standard". Using their Standard; In order for Petitioner to further establish his claim; Petitioner must show that (1) Ricky Jacobs committed perjury, (2) the District Attorney knew or should have known that the testimony was false, (3) the false testimony was not corrected, and (4) there is a reasonable likelihood that the perjured testimony could have affected the judgment of the jury. The actual prejudice standard does not apply to claims that the State has knowingly presented or knowingly failed to correct perjured testimony in violation —

Reasons For Granting The Petition

of due process, a reasonable likelihood that the perjured testimony affected the judgment of the jury is all that is required. U.S. Const. Amend. 14, 28 U.S.C.A. § 2254. The issue raised by this conflict is of continuing importance, and should be resolved by this Court. 1) Ricky Jacobs lied (committed perjury) when he falsely testified: a. that he had not spoken to anyone other than Investigator McRae about what he had witnessed; b. that when Police initially arrived he did not tell any Uniformed Officer what he saw; c. that he did not provide descriptions of any vehicles to the Responding Uniformed Officer; d. that he did not provide descriptions of any suspects to the Responding Uniformed Officer; e. that when Police first arrived, the Responding Officer only focused on securing the crime scene and refused to speak with him, by repeatedly instructing him to step back; f. that the first time he explained what he observed was to Inv. McRae; g. that the only person that he spoke with that night / morning was Investigator McRae.

2) The State's District Attorney of course knew testimony was false (or should have known).

3) The State's District Attorney did not correct (his false testimony).

4) Ricky Jacobs was the State's Key Witness. No other witnesses claimed to have eyewitnessed shooting, nor could provide any descriptions of any suspects nor any vehicles.

Thus (Jacobs) who claimed to have eyewitnessed the shooting; provided strong evidence that Petitioner and Co-defendant committed crime. As the State's District Attorney put it in its closing argument at Petitioner's trial, "Ricky Jacobs, he's the most important witness in this case." PCR Trans. p. 1917. And the State's District Attorney's decision to vouch for (Jacobs) credibility only emphasizes his importance. Id. at p. 1938 ("So I submit to you, Ladies and Gentlemen, he had no motivation to cooperate with the Police. He's telling the truth. There's no evidence of any bad blood between he and the Defendants"), ("Ricky Jacobs didn't call 911 because he was making sure his customers were safe. He did not talk to Responding Officers because they were busy securing the crime scene. The first and only time he explained what he witnessed was to Investigator McRae when he arrived to the scene.") p. 1930. Given his central role; knowledge of his exculpatory statements to Responding Officer, Deputy Weldon Gregory describing a completely different set of suspects; and knowledge that the two suspects got into a White SUV and the passenger got out, sat up on the door of the vehicle and was shooting over the top of the vehicle toward the club/carwash toward the victim; and therefore committing this crime, [In complete contrast of his trial testimony that the passenger in the White SUV, "fired one shot, one time, straight up in the air."], and knowledge that his Original Statement to Deputy Weldon Gregory was independently corroborated by other Police Officers who pulled over the SUV vehicle, matching the description given, matching the shooting suspects detailed description, and the live bullet rounds that were found in the vehicle; in which the passenger of that vehicle were sitting on; matching the shell casings that were found in the roadway, and the bullet found in the victim's pants leg; poses a reasonable and significant, likelihood of affecting the judgment of the Jury.

Ricky Jacobs omissions were done with the willfull intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory. U.S. Const. Amend. 5, 14. Presenting false testimony cuts to the core of a defendant's right to due process. Whether the State's District Attorney nondisclosure was a result of negligence or design; it is the responsibility and duty of the State's District Attorney to correct it. Given the importance of this Key Witness's testimony, his credibility was therefore an important issue in the case, and evidence of any perjury / false testimony would be relevant to his credibility and the Jury was entitled to know of it. Because this fact was kept from the jury, due process requires relief and granting of Petitioner's Petition for Writ of Certiorari on this claim / issue. The facts of this Case lead to the inescapable conclusion that the mandates of the Fourteenth Amendment, have been violated. In Petitioner's view, the Courts below have denied him rights to which, *Riddle v. Ozmint*, Opinion No. 26153, May 22, 2006 - Supreme Court, 369 S.C. 39, 631 S.E. 2d 70; *Napue v. People of State of Illinois*, 360 U.S. 264, 79 S.Ct. 1173; *Haskell v. Folino*, U.S. Court of Appeals, 3rd Circuit, 866 F.3d 139; *Haskell v. Folino*, U.S. District Court, W.D. Pennsylvania 461 F. Supp. 3d 202; *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340; *Giglio v. U.S.*, 92 S.Ct. 763; *Brown v. Wainwright*, 785 F.2d 1452, 1464; *U.S. v. Bartko*, 728 F.3d 327; *People of the Territory of Guan v. Palomo*, 115 S.Ct. 750; indicates he is entitled. This Court should grant Certiorari.

Reasons For Granting The Petition

As to Question Two(2) in this Petition, the Magistrate Court, District Court, and 4th Circuit U.S. Court of Appeals, erroneously assumed that Petitioner's claim was a 'direct appeal' issue that was not properly preserved at trial for appellate review, explaining 'under South Carolina Law, an application for PCR relief is not substitute for appeal.' [This issue is not direct appeal issue, but is a PCR issue raised by Petitioner at his PCR hearing.]. These Courts erroneous conclusion is in direct conflict with Supreme Court of South Carolina in *Riddle v. Ozmint*, Opinion No. 26153, 369 S.C. 39, 631 S.E. 2d 70; holding: (1) Solicitor's failure to disclose impeachment evidence constituted Brady violation. We granted Certiorari to consider (PCR) order denying relief to Petitioner. We find the Solicitor's Office violated *Brady v. Maryland* when it suppressed certain evidence involving witness (Jason)... (This was first time Riddle raised Brady violation claim, when he raised it at his (PCR) hearing.). These Courts erroneously found that, this issue was defaulted at trial level and couldn't be properly raised in direct appeal, initial PCR, and/or PCR appellate proceeding. (There's no State nor Federal Courts, nor any Cases that supports this finding). The 'Suppressed' 'Exculpatory Evidence' in Police Report would have manifested to the Jury that (the State's Sole Key Eyewitness) gave perjured testimony, under oath, that he never told any Uniformed Officer what he saw that night, and would have revealed his Original exculpatory statements to Police. The Jury would reasonably have been troubled by the adjustments to his Original story by the time of Investigator Don McRae's arrival to the scene. His Original description of 'primary' shooters, matched two other individuals in a white SUV (Isuzu Rodeo or Nissan), not a Tan or Champagne colored Suburban. Plus his Original description of the direction those suspects were shooting; had gone from, "over the top of the vehicle, toward the club/carwash; where the victim was standing" to "one shot, one time, straight up in the air. These developments would have fueled a withering cross-examination, destroying confidence in his story and raising a substantial implication that the Prosecutor had coached him to give it. Since the evolution over time of a given eyewitness's description can be fatal to its reliability, *Manson v. Brathwaite*, 97 S.Ct. 2243, 2253 (reliability depends in part on the accuracy of prior description), [his] identifications would have been severely undermined by use of [his] Suppressed Statements. The likely damage is best understood by taking the word of the Prosecutor, who contended during closing arguments that "Ricky Jacobs, he's the most important witness in this case." "So I submit to you, Ladies and Gentlemen, he had no motivation to cooperate with the Police. He's telling the truth. There's no evidence of any bad blood between he and the Defendants", "Ricky Jacobs didn't call 911 because he was making sure his customers were safe. He did not talk to Responding Officers because they were busy securing the crime scene. The first and only time he explained what he witnessed was to Investigator McRae when he arrived to the scene". Ricky Jacobs was the State's best witness. The harm to the State's case on identity would not have been confined to [his] testimony alone. The fact that no other witness could have provided a eyewitness description pointing to Petitioner nor his Co-defendant, would have undercut the prosecution all the more because the remaining witnesses called to testify could not provide any descriptions of any —

Reasons For Granting The Petition

suspects, nor any descriptions of any vehicles. And even aside from such important details, the effective impeachment of one eyewitness can call for a new trial even though the attack does not extend directly to others, as we have said before. See *Agurs*, 427 U.S., at 112-113, 96 S.Ct., at 2401-2402.

The decision of the U.S. Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court, is in direct conflict with the Supreme Court of the United States in *Kyles v. Whitley* 155 S.Ct. 1555 which holds, in determining whether evidence that government failed to disclose to defendant satisfied "materiality" test of Brady, question is not whether defendant would more likely than not have received different verdict with evidence, but whether in its absence he received "fair trial", understood as a trial resulting in verdict worthy of confidence, "reasonable probability" of different result is accordingly shown when government's evidentiary suppression undermines confidence in outcome of trial. U.S.C.A. Const. Amends. 5, 14.; U.S. v. Bartko, 728 F.3d 327; Constitutional Law ~ Due Process is violated not only where the prosecution uses perjured testimony to support its case, but also where it uses evidence which it knows creates a false impression of a material fact. U.S.C.A. Const. Amend. 5.; Criminal Law ~ Evidence is "exculpatory" and "favorable", for purpose of determining whether its suppression by the Prosecution violates Brady, if it may make the difference between conviction and acquittal had it been disclosed and used effectively.

The decision of the U.S. Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court, is in direct conflict with the United States Court of Appeals, Eleventh Circuit, *Ventura v. Attorney General*, 419 F.3d 1269, which held, Giglio error is a species of Brady error that occurs when undisclosed evidence demonstrates that the prosecution's case included perjured testimony and that the prosecution knew, or should have known, of the perjury.

This Court should grant certiorari so that Petitioner could sufficiently establish to this Court that the Petitioner's due process right to a fair trial was violated, when the Solicitor's Office committed Brady violation and committed Giglio error; when it suppressed 'material' exculpatory evidence; and suppressed 'material' perjured testimony.

Reasons For Granting The Petition

As to Question Three(3) in this Petition, the decision of the United States Court Of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court, is in direct conflict with the decisions of the United States Court of Appeals, Fourth Circuit Federal Rule of Evidence 803(8)(c) which states "factual findings resulting from an investigation made pursuant to authority granted by law is not excluded by the hearsay rule if introduced against the Government in criminal cases," unless the sources of information or other circumstances indicate lack of trustworthiness. Police reports may be appropriately admitted on behalf of a defendant if the provisions of this rule are satisfied. The decision of the United States Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court, is in direct conflict with the United States Court of Appeals For The First Circuit in *Conley v. U.S.*, 415 F.3d 183.

Constitutional Law

Government's suppression of impeachment evidence can warrant new trial on due process grounds where evidence is highly impeaching, or when witness's testimony is uncorroborated and essential to conviction. *U.S.C.A. Const. Amend. 5*.

The Supreme Court has found violations where the Government failed to disclose impeachment evidence that could have been used to impugn the credibility of the Government's "key witness," see *Giglio v. United States*, 405 U.S. 150, 154-55, 92 S. Ct. 763, or that could have "significantly weakened" key eyewitness testimony. *Kyles*, 514 U.S. at 441, 453, 115 S.Ct. 1555.

The U.S. Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court erroneously agreed with the PCR Courts finding that trial counsel testified that he was able to successfully cross-examine Jacobs without calling Gregory as a defense witness and was able to impeach Jacobs with other documents and testimony, including Gregory's incident report, although not all documents were admitted into the record at trial. These Courts erroneously overlooked the fact that trial counsel admitted that he did not question Jacobs about what he initially told Officer Gregory, so he could not have impeached Jacobs with Gregory's Incident Report, as stated by the PCR Judge. Also, without the Police Report being put into evidence, the State would object everytime the defense would try to go into what the information inside this Police Report says, and the Trial Court Judge would sustain each and every objection. According to the United States Court of Appeals For The Ninth Circuit, in *Gonzales v. Wong*, 667 F.3d 965, 684 (9th Cir. 2011) impeachment evidence does not become immaterial merely because there is some other impeachment of the witness at trial. Where the withheld evidence opens up new avenues for impeachment, it can be argued that it is still material. This Court should grant Certiorari on this Claim.

Reasons For Granting The Petition

As to Question Four (4) in this Petition, the decision of the United States Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court erroneously found that Petitioner has also failed to show that trial counsel's performance was deficient for failing to investigate potentially exculpatory evidence in that Police Report, or to interview and subpoena Gregory to authenticate his report and testify concerning the information, and that the Court finds that the Petitioner has failed to show either that trial counsel's performance was deficient or that the deficiency resulted in prejudice to the defense.

The decision of these Courts is in direct conflict with the decisions of the United States District Court, E. D. Wisconsin 1999 WL 261665, in *Washington v. Smith* 48 F.Supp. 2d at 1149, Criminal Law & Defense Counsel's failure to investigate potentially exculpatory information in Police Report was a constitutionally deficient performance. Const. Amend. 6.

Criminal Law & 641.13(2.1) Even if individual acts or omissions of defense counsel are not so grievous as to merit a finding of prejudice, their cumulative effect may be substantial enough to support a finding of prejudice, thus warranting relief for ineffective assistance of counsel. Const. Amend. 6.

Criminal Law & 641.13(6) Failure to investigate can be enough in some instances to constitute ineffective assistance to counsel. Const. Amend. 6.

The Police Report included statements made to Officer Deputy Weldon Gregory, at the scene, which were not only exculpatory; but impeaching; and established perjured testimony given by the State's Key Sole Eyewitness, while testifying against Petitioner and his co-defendant. Because of Counsel's unprofessional errors; the Jury never knew that this Police Report even exists; nor that the exculpatory statements; impeachment evidence; and perjured testimony even exist. These Court decisions were also erroneous because Petitioner's trial counsel failed to attempt to investigate, and interview a promising witness, Deputy Weldon Gregory; who would have been extremely valuable to Petitioner's Case; and Jury trial. These Court's decisions conflict with the decisions of *Bryant v. Scott*, 28 F.3d 1411, 1417 (5th Cir. 1994), A strategic decision by counsel not to call a particular witness is entitled to deference, but no deference is required if counsel failed to attempt to investigate. *Montgomery v. Peterson*, 846 F.2d 407, 412 (7th Cir 1988), non-strategic decision not to investigate is inadequate performance. In *Workman v. Tate*, 957 F.2d 1339, 1345 (6th Cir. 1992), where counsel fails to investigate and interview promising witnesses and thus has no reason to believe they would not be valuable, counsel's inaction constitutes negligence. This Court shall grant Certiorari to review this claim.

Reasons For Granting The Petition

As to Question Five (5) in this Petition, the decision of the United States Court of Appeals, 4th Circuit, the District Court, and the Magistrate Court erroneously found that Petitioner was convicted as a 'principal' on the charge under the theory of "the hand of one is the hand of all", and accordingly Petitioner has not shown his counsel was ineffective for failing to object to the charge, and the court finds no clear error in the Report as to this claim. The decision of these Courts were erroneous because the primary point of this claim was that there was no 'principal' presented, established, nor proved beyond a reasonable doubt to the Jury. The State 'bypassed' that burden. The Petitioner and his co-defendant were both convicted as 'aider and abettors'. There is no case law that states, nor supports that when you have two defendants who are co-defendants; that the State can present and establish to the Jury (to obtain an conviction under accomplice liability theory) that the two defendants were both 'aider and abettors'. That the two defendants were 'aiding and abetting' one another. When there is no 'principal'. How can you have two 'aider and abettors' and no 'principal'? Where in the trial transcript does it show where the State has presented, established, or proved the identity of the defendant as the person who committed the charged crime? State v. Lane, 406 S.C. 118, 121; State v. Hepburn, Op. No. 27336 (S.C. Sup. Ct., 2013) (Shearouse Adv. Sh. No. 52 at 40), Lewis, 403 S.C. at 354-56, 743 S.E. 2d at 129. The decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court is in conflict with the circumstances for guilt determined in other State and Federal Courts dealing with the theory of "hand of one, hand of all" under accomplice liability. Court of Appeals of South Carolina, State v. Condrey, 349 S.C. 184, Supreme Court of South Carolina, State v. Langley, 334 S.C. 643. This Court should grant certiorari to address this particular type of claim, which is of great importance, not only to Petitioner, but to others similarly situated. There is no other case, State nor Federal, where both co-defendants were convicted as 'aider and abettors' to one another, and neither one of the defendants was presented or established or proved beyond a reasonable doubt to the jury as a 'principal'. Every case that has dealt with "the hand of one is the hand of all", "accomplice liability" theory; has presented, established, or proved the identity of the defendant as the person who committed the charged crime or crimes, 'the principal'. And then the other co-defendant was either convicted as an 'aider and abettor' to the 'principal'; or determined to be simply present while a crime was being committed, or had knowledge that a crime is being committed, which are both not sufficient to make a defendant a participant in a crime. The decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court is in conflict with the circumstances determined by the Court of Appeals of South Carolina in State v. Ward 374 S.C. 606. In Ward's case, there was testimony from eyewitnesses that Ward fired gunshots out of the vehicle, and testimony from his co-defendant that Ward had fired shots toward the other vehicle, therefore Ward was convicted as a 'principal' on the charge of murder under the theory of "the hand of one is the hand of all", and his co-defendant was determined to have 'aided and abetted' the 'principal' Ward, and convicted. In the instant case, at most, the State's evidence showed that Petitioner drove his vehicle on the night of the incident. There was no evidence whatsoever, nor testimony that the Petitioner had ever fired a weapon nor ever had a gun or weapon in his possession, at all, on the night of the incident. This Court should grant certiorari to address this claim.

Reasons For Granting The Petition

As to Question Six(6) in this Petition, the decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court erroneously found no clear error as to this claim and accordingly granted the motion for summary judgment to the Respondent. These Courts also erroneously found that the Solicitor's improper comments, remarks, and arguments that Petitioner's Tan Suburban was Positive for Gunshot Residue, were consistent with the State's SLED Gunshot Residue Expert Michael Moskal's testimony.

The decisions of these Courts were erroneous because not only were the State's improper comments completely false, they misled the Jury; denied Petitioner's due process right to a fair trial; and these remarks were not 'isolated'. They were 'extensive' throughout Petitioner's entire trial. The confusing and misleading testimony from State's SLED GSR Expert indicates how crucial the gunshot residue evidence was to State's Case. They had not expected the results to come back Negative on Petitioner's SUV; and those Negative results considerably undermined their Sole Key Eyewitness account of the incident. So the State decided to manipulate the facts of the results of the Gunshot Residue test on Petitioner's Tan Suburban, and still present Gunshot Residue Evidence that didn't exist. The decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court is in direct conflict with the Supreme Court of South Carolina decision in Ard v. Catoe 372 S.C. 318, 642 S.E. 2d 590. The results of the Gunshot residue test in Ard's, contained various combinations of two (2) out of the three (3) required elements of Gunshot Residue (lead-antimony, lead-barium, lead-copper, antimony-barium); and the State's SLED GSR Expert, in that case, testified that the results of the test was that no Gunshot Residue found; and then at the Applicant Ard's PCR hearing he testified that based on SLED's protocol, and based on this protocol, he accurately reported a finding of Negative for Gunshot Residue. However, he further explained that as time went on, there were concerns that when non-round particles were found with the three (3) required elements were found, or perfectly round lead particles were found, these findings should be reported as "inconclusive". He stated that if the analysis was conducted under the modern protocol, his conclusion would be that the various combinations of the two (2) out of the three (3) required particles, at best, would be "inconclusive" for Gunshot Residue. He further explained that an "inconclusive" finding meant it was not consistent with the person firing the gun, but could be consistent with the person handling the weapon. He further explained that SLED's standard is to report a **Positive Conclusion of Gunshot Residue, only** if perfectly round Gunshot Residue particles were detected, which specifically meant spherical particles containing barium, antimony, and lead. This Ard's case further confirms the degree of how far the State was willing to go; and did go, to deprive Petitioner a fair trial. The GSR test results on Petitioner's vehicle in this instant case, was marginally less than the GSR test results in Ard's case. Only one (1) out of the three (3) required elements were found in Low Levels in Petitioner's vehicle, which was lead. (16 in total, out of over 5,000 microscopic particles). But this did not stop the Prosecution from so infecting Petitioner's trial with unfairness, by constantly making improper comments, remarks, and arguments pertaining to Petitioner's Tan Suburban being Positive for Gunshot Residue, throughout Petitioner's entire trial:

State's Opening Arguments to the Jury: "You will hear from Michael Moskal as well, a trace expert in Gunshot Residue at SLED. He will tell you how the Defendant's car was Positive for Gunshot Residue." (PCR Trans. p.369, lines 19-21)

State's Closing Arguments: "Well, why do we have Gunshot Residue on the driver's side rear door frame?" (PCR Trans. p.1936, lines 23-24)

"Well, Ladies and Gentlemen, remember I asked Agent Moskal, is it consistent and is it possible when you are firing a firearm out of a moving vehicle, outside a window, for Gunshot Residue to come back to the back seat, and he said, yes. That's how it got there." (PCR Trans. p.1937, lines 3-7)

"You ask yourself if Agent Moskal was lying or telling the truth about his findings. And his ultimate conclusion, Ladies and Gentlemen, is that the evidence is most consistent with a firearm being fired -

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from the driver's side area." "And that corroborates Ricky Jacobs as well. Forensic Evidence does not lie." (PCR Trans. p.1937, lines 11-15, and 19-20). [The Prosecutor also argued these false forensic evidence results to the Trial Judge to prevail in their argument against the Defense in our Motion To Suppress Hearing] "Your Honor, they were seeking forensic evidence related to the shooting, which included Gunshot Residue, which was collected in this case, and which turned out to be Positive." (PCR Trans. p.331, lines 8-10) "Their word is likely that evidence of the shooting would be found in this vehicle whether it be Gunshot Residue or ballistics. And in this case, there was Gunshot Residue." (PCR Trans. p.332, lines 5-8) [The Prosecutor also argued these false forensic evidence results to prevail in their arguments against the Defense Objection to the admission of the Gunshot Residue evidence that their Expert Witness SLED Agent Mr. Moskal, would be testifying to.]

"Prosecutor: And so your Honor, this is corroborating evidence. It is extremely probative to the State's Case." "The Court: Does he take it further to say the type of gun and ---"

"Prosecutor: No. He can't identify what type of gun, he can't identify who fired the gun."

"The Court: It's just a matter that a gun was ---"

"Prosecutor: Was fired from inside the car."

"The Court: Okay. Wait, say the last part?"

"Prosecutor: That a firearm--- consistent with a firearm being fired from within the car."

"The Court: Okay. Now tell me about the from within the car, part, though?"

"Prosecutor: Because when you have Gunshot Residue inside the driver's area--"

"The Court: Oh, I see what you're saying."

"Prosecutor: --- that's consistent when someone has fired a gun from that area." (PCR Trans. p.1455, lines 14-25, p.1456, lines 1-7)

[The Prosecutor also argued these false forensic evidence results to the Trial Judge in their arguments against, Petitioner, in his Motion For A Directed Verdict, and also to support their hand of one, hand of all theory, and to falsely corroborate their Key Eyewitness Ricky Jacobs statement to Investigator Don McRae; and his perjured testimony.]

"Under the theory of hand of one, hand of all, they are both guilty of Murder whether the Defendant Watts handed the gun to Tremaine Wray and had him fire where the Gunshot Residue is or whether he leaned over himself while Mr. Wray was busy driving the vehicle." (PCR Trans. p.1865, lines 13-18)

"The testimony has been consistent that only one shot was fired from the Rodeo up in the air, and multiple shots were fired out of the Tan Suburban. Gunshot Residue Evidence corroborates that and supports that." (PCR Trans. p.1865, lines 21-24)

Given that no other State or Federal Courts have ruled on this particular type of issue / claim; for reviewing courts to look for guidance on this issue; consideration by this Court is necessary on the independent ground that the holding below conflicts squarely with the inescapable conclusion that the mandates of the Fourteenth Amendment have been violated. This Court should grant Certiorario

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As to Question Seven(7) in this Petition, the decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court, erroneously found that, based upon the record showing defense counsel's objection prior to Moskals testimony, and the renewal of objection, Petitioner has failed to show that his counsel was deficient for not objecting to the testimony and evidence regarding the GSR testing; and Petitioner has also failed to show any prejudice by his counsel not taking additional action or making additional objections regarding this issue. First of all, the State's Gunshot residue expert from SLED, testified 'repeatedly' that his conclusion is that a weapon was fired from Petitioner's vehicle, and testified 'repeatedly' that his findings were consistent with a weapon having been fired in the driver's side area of Petitioner's vehicle, which prejudiced Petitioner, denied him a fair trial, confused and mislead the Jury into believing that a gun or weapon was fired from Petitioner's vehicle; and State also used his Opinions to bolster their Key Sole Eyewitness credibility. The State's GSR Expert could not even reach that Opinion because the results of his report does not meet the SLED protocol or threshold, that is required for him to reach, in order to be able to give an Opinion or Conclusion of a weapon being fired from Petitioner's vehicle. According to SLED's protocol, Gunshot Residue can not be indicated by a tester unless all three(3) of the required components (which is Lead, Barium, and Antimony) are present at one time. SLED has a threshold where if there is a elevated amount of those three(3) components together, that it is consistent with or indicative of a weapon having been fired. It is necessary that all three(3) components be present to suggest that an individual fired a weapon, because when all three(3) components are detected, it is important that they are present in elevated or high levels, because high or elevated levels of these components are more consistent with someone having fired a weapon, and low levels of the three(3) components are more consistent with the residue coming from other environmental factors. But only one(1) out of three(3) required elements were found in Low Levels in Petitioner's vehicle, which was Lead. [Because only round lead particles were found, but not the remaining two components of GSR (barium and antimony), any testimony that his conclusion is that a weapon was fired from Petitioner's vehicle was confusing and misleading to the Jury, and also allowed the State to manipulate the facts of the Gunshot Residue Tests results, by allowing the State to falsely argue and present to the Trial Judge and to Jury, throughout Petitioner's 'entire trial', that Petitioner's vehicle tested Positive for Gunshot Residue, when in fact it was Negative for GSR.] The decision of these Courts is in direct conflict with the decision of the Supreme Court of South Carolina in Ard v. Catoe 372 S.C. 318, 642 S.E. 2d 590, holding, the failure of Applicant's attorney to properly pursue or challenge gunshot residue test results amounted to ineffective assistance of counsel, sufficient to warrant a new trial. [In Ard's case, the State's position was to present that the victim's hands tested negative for Gunshot Residue]. In Ard's Case, SLED Agent Joseph Powell testified as State's GSR Expert. Powell stated that he ran the GSR test to see if he can find any elevated elements of materials called barium, antimony and lead. Powell explained that these are the three elements which are found in Gunshot Residue. Powell testified that after the test was complete, the values were not sufficient for a Positive cause that were was Gunshot Residue, but there was an indication. Powell stated that there were several particles which were very interesting. He also referenced the various combinations and numerous findings of Lead, and various lead-antimony, lead-barium, lead-copper, and antimony-barium, but there was not any or enough material for us to be able to call Gunshot Residue, thus victim had no gunshot residue on her hands. He explained that SLED's standard was to report a Positive Conclusion of Gunshot Residue only if perfectly round Gunshot Residue particles were detected, which specifically meant spherical particles containing barium, antimony, and lead. However, he further explained that there were concerns that when non-round particles were found with the three required elements, or perfectly round lead particles were found, these findings should be reported as "inconclusive". He stated that his conclusion would be that two particles on victim's hand were inconclusive for gunshot residue. He explained that an "inconclusive" finding meant it was not consistent with the person firing the gun, but could be consistent with the person handling the weapon. Powell stated if defense counsel had asked, he would have explained that the evidence from victim's hands, which revealed at least two particles with the three required elements, was consistent with gunshot residue and could have come from victim handling a weapon. [In Petitioner's Case, the State's SLED GSR expert's findings were significantly even less than that found by State's SLED GSR expert's in Ard's case.]. Counsel could have established that while there was a scientific finding of "No Gunshot Residue", there nevertheless was no evidence that a weapon was fired from Petitioner's vehicle. Petitioner is not confident that a jury, adequately informed, would have convicted Petitioner of murder. This Court should grant Certiorari to review this issue.

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As to Question Eight (8) in this Petition, the decision of the U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court, is in direct conflict with the decisions of the U.S. Supreme Court in *Martinez v. Ryan*, and *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed. 2d 674.

The U.S. Court of Appeals, 4th Circuit, the District Court, and Magistrate Court erroneously found that the Petitioner has failed to show the necessary "cause" to overcome the procedural bar with respect to any of these claims. These Courts also further erroneously found that the Petitioner has failed to state a viable claim for relief based on any alleged errors in his PCR proceeding. Each of these Courts' erroneous rulings were in their agreeing of the analysis of the reviewing Courts before them ('in accordance').

These Courts also erroneously found that the Petitioner contends that his PCR counsel was ineffective for not raising certain issues and not filing a proper Rule 59(e) motion. However, this claim concerns alleged infirmities in Petitioner's state PCR proceeding, and as such are not a basis for federal habeas relief.

The decisions of these Courts is in direct conflict of the decisions of the U.S. Supreme Court in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), which held: "The rules for when a prisoner may establish cause to excuse a procedural default reflect a equitable judgment that only where a prisoner is impeded or obstructed in complying with the State's established procedures will a federal habeas court excuse the prisoner from the usual sanction of default. Habeas Corpus § 405.1, and; A finding of cause and prejudice allows a federal court to consider the merits of a claim that otherwise would have been procedurally defaulted. Habeas Corpus § 404; and also held that inadequate assistance of counsel "at initial-review collateral review proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." Petitioner's PCR Counsel refused Petitioner's specific request, and failed to file a proper Rule 59(e) motion, to prevent procedural default on Petitioner's substantial claims. Until this Court resolves the conflict that exists among a Petitioner taking extreme measures to preserve his claims for appellate review to the State's highest Court and any other further proceedings, appeals, etc., all in his desperate efforts to comply with the State's procedural rules, so that his claims would not be procedurally defaulted. Then in turn, to have his PCR Counsel to abandon his properly raised, meritorious substantial issues, by blatantly refusing to file a proper Rule 59(e) motion to alter or amend judgment, and filing an improper Rule 59(e) Motion to Reconsider, not identifying any claims that were not ruled upon by the PCR Court, in which the State's established procedures clearly states must be done, and to have his PCR Counsel to blatantly disregard the State's established PCR procedures and rules, and impede and obstruct him from complying with the State's established procedures, by failing to file the proper 59(e) motion, against Petitioner's will, all in turn, to have those claims die by procedural default; then in turn, to have those claims die, by procedural default; then in turn, to have the reviewing Federal Courts find that the Petitioner has failed to show the necessary "cause" to overcome the procedural bar with respect to any of his claims; is an inevitable trap which will always result to 'a dead end' on a Petitioner's claims/issues. For this Court to continue to allow this cycle to continue regularly between a Prisoner, his PCR attorney, and the reviewing Federal Courts, a prisoner will never be able to prevail on his raised claims and will always have his 14th Amendment to procedural due process violated. 'The dead end cycle': The Prisoner is always going to raise his claims in compliance with the State's established procedures. (1) - "The trap" - The PCR Court will purposely fail to rule on one (1) or more of the Prisoner's PCR Claims, (2) The Prisoner's PCR Counsel will simply refuse to file the Rule 59(e) motion to alter or amend judgment, requesting —

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PCR Court to address the Prisoner's claims not ruled upon; (3) The Federal Courts will deem the Prisoner's Claims as Procedurally defaulted or Procedurally barred; (4) The reviewing Federal Courts will find that the Prisoner has failed to show the necessary "cause" to overcome the procedural bar with respect to any of his claims. And 'the dead end trap cycle' continues to other prisoners similarly situated.

The only remedy to end this cycle is for this Court to requiring the PCR Court to specifically address each and every claim that the prisoner raises at his PCR hearing; and not to continue to allow or accept the PCR Court deliberately failing to address a claim. Also, the remedy to end this cycle is for this Court to make it a requirement; that a Prisoner's PCR attorney must make a Rule 59(e) motion to alter or amend the judgment; when the PCR Court fails to address a claim; and that a Prisoner's PCR Counsel "may not" refuse; or "can not" refuse to file a Rule 59(e) motion to preserve the Prisoner's properly raised claims for appellate review and further proceedings.

In South Carolina, a person in custody has two primary means of attacking the validity of his conviction: (1) through a direct appeal, or (2) by filing an application for PCR. State law requires that all grounds be stated in the direct appeal or PCR application. Rule 203 SCAC R; S.C. Code Ann. §17-27-10, et seq.; S.C. Code Ann. §17-27-90; *Blakeley v. Rabon*, 266 S.C. 68, 221 S.E. 2d 767 (S.C. 1976). If the PCR court fails to address a claim as is required by S.C. Code Ann. §17-27-80, counsel for the applicant must make a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC. Failure to do so will result in the application of a procedural bar by the South Carolina Supreme Court. *Marlar v. State*, 375 S.C. 407, 653 S.E. 2d 266 (S.C. 2007).

[Please read Petitioner's Sixteen (16) Exhibits/Documents; Exhibit 1-Exhibit 16; that he has submitted in; along with this Petition, pertaining to this specific claim/issue. This is detailed, direct proof, which establishes 'cause' for procedural default as to any of Petitioner's claims that may have been procedurally defaulted.] There is really a simple solution to this procedural turmoil for not only the Petitioner, but to other Prisoners similarly situated. (1) The PCR Court can simply address all of the Prisoner's raised claims, as it is required to do, and supposed to do; Or; (2) The Prisoner's PCR Counsel could (and should), simply file the proper Rule 59(e) motion, requesting the judge to address the unaddressed claims; and the Prisoner could focus on seeking further review of his claims, attacking the validity of his conviction; instead of being subjected to the aftermath of a 'dead end circus obstacle' on his now procedurally defaulted claims because (1) the PCR Court fails to address a claim or claims; (2) The PCR Counsel refused to file a Rule 59(e) motion to the PCR Court asking the PCR Court to address the claim or claims. This Court should grant certiorari because consideration by this Court is necessary on the issue raised by this conflict which is of continuing importance to not only Petitioner, but to other Prisoner's similarly situated, and should be resolved by this Court.

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As to Question Nine (9) in this Petition, the U.S. Magistrate Court held: "As for the issues defaulted at the PCR appellate court level, Petitioner contends that even though he forwarded all fifteen issues that were raised in his PCR proceeding and requested that his PCR appellate counsel present all of those issues, she instead raised only one issue in his PCR appeal. However, as set forth below, the undersigned finds that Petitioner has failed to show the necessary "cause" to overcome the procedural bar with respect to any of these claims." Even though there is no constitutional right to an attorney in state - post conviction proceedings, that doesn't mean that the indigent prisoner's Court appointed attorney, has a right to forfeit the prisoner's PCR claims and relinquish his appeal to the State's Highest Court, against the Petitioner's will, and without the prisoner's consent. This is not a case involving mere "attorney error". PCR appeal counsel did not follow "required" state procedures which led to the forfeiture of the proceeding itself. Her deficient performance deprived me of a appeal altogether. This violation of PCR appeal counsel rendered the proceeding unreliable, or non-existent. (The PCR appeal counsel must "only" present the PCR issues to the South Carolina Supreme Court, regardless of whether the Supreme Court actually reaches the merits of the claim.). PCR appeal counsel didn't make a determination between which preserved PCR issues to raise to the State's Highest Court. She dismissed all of my preserved PCR claims and she only raised one "invalid claim" to the State's Highest Court, and did not raise a single one of my preserved PCR claims. That's equivalent to denying me the PCR appeal altogether. There was technically no appeal. Take away the "invalid claim" that was raised, and that leaves zero issues raised to the State's Highest Court on PCR appeal which is prohibited. It is unacceptable for any Court to allow a PCR appeal attorney to relinquish their indigent client's PCR appeal altogether. [28 U.S.C. §2254 clearly states that a Petitioner may present "only" those issues that were presented to the South Carolina Supreme Court through an appeal from the denial of the PCR application, but the only issue that was presented to the Court was a brand new "invalid" issue, which was procedurally improper, because it was a issue that was never raised or presented at PCR proceeding not ruled on by PCR Court.]. (But since it was raised by PCR appellate counsel and not the Petitioner, the South Carolina Supreme Court still ruled on it anyway, which is prohibited by their own established procedures and Supreme Court rules. They did not have jurisdiction to rule on a "ineligible" claim that was raised for the first time, when it was raised to the South Carolina Supreme Court on appeal from denial of the Petitioner's PCR application). In *Coleman v. Thompson*, he had no right to counsel to pursue his appeal in State habeas proceeding. But while my case was still at the State level PCR appeal stage, under South Carolina law, I had right to appeal the denial of my PCR claims, and I had right to PCR appeal counsel in that appeal. *Odum v. State*, 337 S.C. 256, 523 S.E. 2d 733, Supreme Court of South Carolina held (under the postconviction relief rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple", this "bite" includes an applicant's right to appeal the denial of a postconviction relief application, and the right to assistance of counsel in that appeal), (an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief.) Rules Civ. Proc. Rule 71.1(g). *Id.*, *Williams v. Ozmint*, 380 S.C. 473, 671 S.E. 2d 600, *Bray v. State*, 366 S.C. 137, 620 S.E. 2d 743. PCR appellate counsel had duty to raise every preserved, meritorious PCR issue to State's Highest Court, that was ruled on by PCR Court, in obedience to State and Federal procedures, and to their client's expressed desire. Their duty has no room for the exercise of discretion. Especially when your Court's are not flexible with procedural requirements before indigent prisoners suffer procedural default on his substantial constitutional claims. Where appeal is available as a matter of right, a decision to seek or forgo review is for the convict himself, not his lawyer, *Jones v. Barnes*, 103 S.Ct. 3308, who owes a duty of effective assistance at the appellate stage. PCR appellate counsel's decision not to appeal my properly preserved PCR claims amounts to the failure to perform 'a purely simple task' that cannot be considered a strategic decision, for the sake of some further achievable goal. *Garza v. Idaho*, 139 S.Ct. 738, *Rodriguez*, 89 S.Ct. 1715. In any event, the bare decision whether to appeal is ultimately the defendant's, not counsel's, to make. *McCoy*, 138 S.Ct., at 1507-08, *Barnes*, 103 S.Ct. 3308. Where, as here, a Petitioner has expressly requested an appeal, counsel performs deficiently by disregarding the prisoner's instructions. There was no procedurally viable opportunity for Petitioner to raise his PCR claims to the State's Highest Court, when his appointed PCR appellate counsel took away his opportunity and deliberately failed to properly and expeditiously present her client's contentions in the light most favorable to her client. It was her duty to honorably to her opinion that all of Petitioner's PCR issues either lacked merit or would not result in relief. It is up to the South Carolina Supreme Court judges to make that determination, not PCR Appellate Counsel. It is for the Court to pass upon on the legal basis of the claim after its presentation by counsel in as favorable manner as it permits. *Willis v. U.S.*, 489 F.2d 707, *McCartney v. United States*, 343 F.2d 471. [I had even went as far as filing a Motion To Relieve PCR Appellate Counsel, to remove the filed Petition for Certiorari, with the ability to proceed pro-se, and ample time to file my own Petition for Writ of Certiorari, in order to protect my due process rights "to retaining a full bite at the apple". I had also submitted my exhibits to support my Motion To Relieve PCR Appellate Counsel, which -

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demonstrates that PCR appellate counsel would not pursue my preserved issues and that she holds fast to this position. I however, was adamant in my position that "I must protect my rights to a full review in the appellate process" within the State Court on Federal Habeas review under the A.E.D.P.A. • Needless to say, I was not granted my request.]. Through my endless research of Cases and Court rulings that this Court currently has in place, at the PCR appeal stage, the indigent prisoners' preserved PCR claims are 'set up for failure', because this system that 'this Court' currently has in place is designed to allow all appointed PCR appeal attorneys, to use their own discretion or judgment to procedurally bypass seeking relief on the indigent prisoners' constitutional claims, forcing the prisoners' PCR claims into procedural default, (against the prisoners' will and without the prisoners' consent), knowing that they 'can not' and 'will not' be 'held accountable' or 'at fault'. For the indigent prisoner, having a appointed PCR appellate counsel is "worthless". Their representation is suppose to help, to assist the indigent prisoner in perfecting his appeal in properly presenting his preserved PCR claims to the State's Highest Court in a procedurally viable manner, where it is the prisoners' only opportunity to. But their representation is only "harmful" and "damaging" to the indigent prisoner, because they are "unrestrictedly" allowed to procedurally default the indigent prisoners' preserved PCR claims, (against the prisoners' will), without being held accountable or at fault, and the prisoner must "pay the price" as a direct result and become involuntarily liable or unfairly subjected to be held at fault. See Coleman v. Thompson, 111 S.Ct. 2546, [24] Habeas Corpus • Forfeiture, Waiver, Bypass, Procedural Default, or Failure to object, Habeas Corpus • Ineffectiveness or want of counsel; As between state and petitioner, it is petitioner who must bear burden of failure to follow state procedural rules. In absence of constitutional violation, petitioner bears risk in federal habeas for all attorney errors made in course of representation. U.S.C.A. Const. Amend. 6. For the Prisoner, this makes filing an application for PCR, as a primary mean of attacking the validity of his conviction, "Pointless"! Petitioner had no chance at all of achieving his goals on PCR appeal. It is unreasonable for an attorney to not respect her clients' expressed desires, and uphold her duty to avoid taking steps that will cost her client the benefit of having his Constitutional PCR Claims presented to the South Carolina Supreme Court, the Magistrate Court, the District Court, the U.S. Court of Appeals, 4th Circuit, and ultimately the U.S. Supreme Court. This falls in the category of a prisoner going through great measures to make sure that he follows the State's established procedures to properly preserve his constitutional PCR claims for appellate review on PCR appeal, then PCR appeal counsel causes prisoners' claims to be procedurally defaulted on purpose and prisoner can't hold his deficient PCR appellate counsel at fault, resulting in the same 'patterns' that 'you' Courts have, 'set up', for indigent prisoners' claims/issues to fail. "The dead end cycle" on prisoners Constitutional claims, because Petitioner's opportunity was "hog-tied" in to procedural default by PCR Appellate counsel's deficiencies. (PCR appeal counsel's meaningless representation did not supply Petitioner with actual advocacy on his behalf, no Court ever found that Petitioner's appeal of PCR issues would have been frivolous, and Petitioner was not given the opportunity to file a Pro Se brief on his own behalf. Petitioner was constructively denied assistance of counsel during a proceeding that was equivalent to "his final opportunity to retaining a full bite at the apple"). Counsel performs in a professionally unreasonable manner by failing to follow the indigent prisoner's expressed instructions with respect to an appeal. Especially if it would be (procedurally improper for indigent prisoner to file Pro-Se PCR appeal). That question lies at the heart of this claim. Under what circumstances does PCR appeal counsel have a obligation to appeal their client's preserved PCR claims to the State's Highest Court?, Where the Prisoner has his 'only' opportunity to preserve his PCR claims, to be able to file petition for habeas relief in Federal Court, and on further review to the higher Federal Courts. I never received a full procedural 'bite at the apple' because I was prevented from seeking any review of the denial of my PCR application. [An indigent prisoner will never be able to prevail on his Constitutional PCR claims beyond this stage if this continues. This will continue to be a permanent "dead end" on the indigent prisoner's preserved PCR claims.]. This Court should grant Certiorari because consideration by this Court is necessary on the issue raised by this conflict which is of continuing importance to not only Petitioner, but to other Prisoners similarly situated, and should be resolved by this Court.

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As to Question Ten (10) in this Petition, the decision of the United States Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court held "Therefore, the under signed has considered this claim as having been exhausted at the State level for purposes of federal habeas review." Again, the undersigned can discern no reversible error in the State Court's findings "on this claim", "Petitioner has failed to show his counsel was deficient for not further cross-examining Jacobs." "In addition, Petitioner has failed to show prejudice." The decision of the United States Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court is in complete contrast with the decisions of the United States Court of Appeals, Sixth Circuit in *Clark v. Warden*, 934 F.3d 483, and *Jamison v. Collins* 291 F.3d 380, stating the defendant suffers prejudice when the prosecutions case hinges on the testimony of one eyewitness and lone eyewitness identification indicated other suspects. *Harris v. Lafler*, 553 F.3d 1028, 1034 (6th Cir. 2009). The jury in Petitioner's case never had the opportunity to make an informed decision because Petitioner's trial counsel never cross-examined the State's only eyewitness about his initial descriptions and identification of a different set of suspects and a completely different primary vehicle as the shooters, toward the club/ carwash where the victim was standing, because Officer Weldon Gregory was suppressed from this case by the State and trial counsel never questioned the State's only eyewitness about his exculpatory statements he provided Officer Gregory. How can the reviewing Courts continue to purposely ignore the material fact that the ballistics expert, Investigator Collins testified that the several 9mm bullets found in the front passenger seat, in which one of the other suspects was sitting on, matched the same shell casings recovered from the roadway at the scene; the projectiles recovered from the scene; and the bullet recovered from the victim. ("the same bullets, the same caliber, the same brand, the same type, and the same headstamp"). [Had any of this evidence been found in Petitioner's vehicle, it would have been concrete evidence, or at the least, strong evidence to establish guilt; but the simple fact that this overwhelming evidence was found in the white SUV and not Petitioner's vehicle; the reviewing Courts choose to ignore it and not address it.]. The United States Court of Appeals For The Fourth Circuit, the District Court, and the Magistrate Court has decided a federal question in a way not in accord with the applicable decisions heretofore rendered by the United States Court of Appeals For The Sixth Circuit and the Supreme Court of South Carolina in *Miller v. State*, 379 S.C. 108, 665 S.E. 2d 596. This Court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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