

FILED: June 4, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 24-6059  
(5:23-hc-02152-D-RJ)

---

JONATHAN EUGENE BRUNSON

Petitioner - Appellant

v.

JOHN HERRING, Superintendent, Maury Correctional Institution

Defendant - Appellee

---

J U D G M E N T

---

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**No. 24-6059**

---

JONATHAN EUGENE BRUNSON,

Petitioner - Appellant,

v.

JOHN HERRING, Superintendent, Maury Correctional Institution,

Defendant - Appellee.

---

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:23-hc-02152-D-RJ)

---

Submitted: May 30, 2024

Decided: June 4, 2024

---

Before GREGORY and HARRIS, Circuit Judges, and MOTZ, Senior Circuit Judge.

---

Dismissed by unpublished per curiam opinion.

---

Jonathan Eugene Brunson, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jonathan Eugene Brunson seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 petition as an unauthorized, successive § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Brunson has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:23-HC-2152-D

JONATHAN EUGENE BRUNSON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JOHN HERRING, )  
 )  
 Respondent. )

**ORDER**

On July 3, 2023, Jonathan Eugene Brunson (“Brunson” or “petitioner”), a state inmate proceeding pro se, petitioned for a writ of habeas corpus under 28 U.S.C. § 2254 [D.E. 1]. On September 12, 2023, Brunson moved to amend his petition [D.E. 4]. As explained below, the court denies Brunson’s motion to amend and dismisses Brunson’s petition as successive.

Over the course of several years, Brunson committed multiple sex acts upon his minor stepdaughter. See State v. Brunson, 221 N.C. App. 614, 615, 727 S.E.2d 916, 917–18 (2012). On June 17, 2011, a jury convicted Brunson of attempted statutory rape of a thirteen year old, eight counts of sexual activity by a substitute parent by cunnilingus and fellatio, seven counts of taking indecent liberties with a child, statutory sexual offense of a fourteen year old by cunnilingus, fellatio, and penetration; four counts of committing a crime against nature by cunnilingus and fellatio, four counts of statutory sexual offense of a fifteen year old by cunnilingus, fellatio, and penetration, and attempted statutory rape of a fifteen year old. See id. at 615–16, 727 S.E.2d at 918; Pet. [D.E. 1] 1–2.

Brunson appealed. See Brunson, 221 N.C. App. at 616, 727 S.E.2d at 918; Pet. at 2. While Brunson's appeal was pending, he filed a motion for appropriate relief ("MAR") in the North Carolina Court of Appeals. See Brunson, 221 N.C. App. at 616 n.2, 727 S.E.2d at 918 n.2. On July 17, 2012, the North Carolina Court of Appeals found no error. See id. at 622, 727 S.E.2d at 922. In that same opinion, the court of appeals dismissed without prejudice petitioner's MAR to allow petitioner to file the motion with the trial court. See id. at 616 n.2; 727 S.E.2d 918 n.2. Brunson filed a MAR in the state trial court, which denied it on November 25, 2013. See Brunson v. Solomon, No. 5:14-HC-2009-FL, 2015 WL 331496, at \*2 (E.D.N.C. Jan. 26, 2015) (unpublished).

On January 9, 2014, Brunson filed a section 2254 petition, which the court dismissed as untimely on January 26, 2015. See Brunson, 2015 WL 331496, at \*2; Pet. at 7. On June 18, 2015, the United States Court of Appeals for the Fourth Circuit dismissed Brunson's appeal. See Brunson v. Solomon, 606 F. App'x 86 (4th Cir. 2015) (per curiam) (unpublished). On November 2, 2015, the United States Supreme Court denied Brunson's petition for a writ of certiorari. See Brunson v. Taylor, 577 U.S. 964 (2015). On September 6, 2016, Brunson filed a second habeas petition, which the court dismissed as successive on August 26, 2017. See Order, Brunson v. Taylor, No. 5:16-HC-2222, [D.E. 12] (E.D.N.C. Aug. 26, 2017).

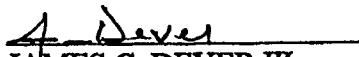
In Brunson's section 2254 petition, Brunson argues that he is innocent because "there is no physical evidence in the case" and that the trial judge committed "structural error" by allowing the jury to consider the known perjured testimony of the victim without a curative instruction. See Pet. at 4-6. Before filing a second or successive application for habeas relief in the district court, an applicant "shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see Magwood v. Patterson, 561 U.S. 320,

330–31 (2010). “A dismissal of a habeas petition as time-barred is a decision on the merits and any subsequent habeas petition challenging the same conviction or sentence is ‘second or successive’ for purposes of 28 U.S.C. § 2244(b).” Leatherwood v. Perry, No. 1:14-CV-220, 2015 WL 4756984, at \*3 (W.D.N.C. Aug. 12, 2015) (unpublished) (collecting cases); see King v. Corrigan, No. 22-1581, 2022 WL 17836537, at \*1–2 (6th Cir. Dec. 19, 2022) (unpublished). This court does not have jurisdiction to review Brunson’s petition unless the United States Court of Appeals for the Fourth Circuit authorizes such review. See 28 U.S.C. § 2244(b)(3)(A); Burton v. Stewart, 549 U.S. 147, 157 (2007) (per curiam); In re Stevens, 956 F.3d 229, 231 (4th Cir. 2020); In re Phillips, 879 F.3d 542, 545 (4th Cir. 2018). Brunson failed to obtain authorization from the Fourth Circuit before filing this section 2254 motion. Thus, the court dismisses his petition as successive.

After reviewing Brunson’s petition, the court finds that reasonable jurists would not find the court’s treatment of Brunson’s claims debatable or wrong and that the claims do not deserve encouragement to proceed any further. Accordingly, the court denies a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In sum, the court DENIES petitioner’s motion to amend [D.E. 4] and DISMISSES WITHOUT PREJUDICE petitioner’s habeas petition [D.E. 1]. Petitioner must obtain authorization from the Fourth Circuit before filing this application. The court DENIES a certificate of appealability. The clerk shall close the case.

SO ORDERED. This 1 day of November, 2023.

  
JAMES C. DEVER III  
United States District Judge

FILED: July 9, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 24-6059  
(5:23-hc-02152-D-RJ)

---

JONATHAN EUGENE BRUNSON

Petitioner - Appellant

v.

JOHN HERRING, Superintendent, Maury Correctional Institution

Defendant - Appellee

---

O R D E R

---

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Gregory, Judge Harris, and  
Senior Judge Motz.

For the Court

/s/ Nwamaka Anowi, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:23-HC-2152-D

JONATHAN EUGENE BRUNSON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JOHN HERRING, )  
 )  
 Respondent. )

**ORDER**

On July 3, 2023, Jonathan Eugene Brunson (“Brunson” or “petitioner”), a state inmate proceeding pro se, petitioned for a writ of habeas corpus under 28 U.S.C. § 2254 [D.E. 1]. On September 12, 2023, Brunson moved to amend his petition [D.E. 4]. As explained below, the court denies Brunson’s motion to amend and dismisses Brunson’s petition as successive.

Over the course of several years, Brunson committed multiple sex acts upon his minor stepdaughter. See State v. Brunson, 221 N.C. App. 614, 615, 727 S.E.2d 916, 917–18 (2012). On June 17, 2011, a jury convicted Brunson of attempted statutory rape of a thirteen year old, eight counts of sexual activity by a substitute parent by cunnilingus and fellatio, seven counts of taking indecent liberties with a child, statutory sexual offense of a fourteen year old by cunnilingus, fellatio, and penetration; four counts of committing a crime against nature by cunnilingus and fellatio, four counts of statutory sexual offense of a fifteen year old by cunnilingus, fellatio, and penetration, and attempted statutory rape of a fifteen year old. See id. at 615–16, 727 S.E.2d at 918; Pet. [D.E. 1] 1–2.



Brunson appealed. See Brunson, 221 N.C. App. at 616, 727 S.E.2d at 918; Pet. at 2. While Brunson's appeal was pending, he filed a motion for appropriate relief ("MAR") in the North Carolina Court of Appeals. See Brunson, 221 N.C. App. at 616 n.2, 727 S.E.2d at 918 n.2. On July 17, 2012, the North Carolina Court of Appeals found no error. See id. at 622, 727 S.E.2d at 922. In that same opinion, the court of appeals dismissed without prejudice petitioner's MAR to allow petitioner to file the motion with the trial court. See id. at 616 n.2; 727 S.E.2d 918 n.2. Brunson filed a MAR in the state trial court, which denied it on November 25, 2013. See Brunson v. Solomon, No. 5:14-HC-2009-FL, 2015 WL 331496, at \*2 (E.D.N.C. Jan. 26, 2015) (unpublished).

On January 9, 2014, Brunson filed a section 2254 petition, which the court dismissed as untimely on January 26, 2015. See Brunson, 2015 WL 331496, at \*2; Pet. at 7. On June 18, 2015, the United States Court of Appeals for the Fourth Circuit dismissed Brunson's appeal. See Brunson v. Solomon, 606 F. App'x 86 (4th Cir. 2015) (per curiam) (unpublished). On November 2, 2015, the United States Supreme Court denied Brunson's petition for a writ of certiorari. See Brunson v. Taylor, 577 U.S. 964 (2015). On September 6, 2016, Brunson filed a second habeas petition, which the court dismissed as successive on August 26, 2017. See Order, Brunson v. Taylor, No. 5:16-HC-2222, [D.E. 12] (E.D.N.C. Aug. 26, 2017).


In Brunson's section 2254 petition, Brunson argues that he is innocent because "there is no physical evidence in the case" and that the trial judge committed "structural error" by allowing the jury to consider the known perjured testimony of the victim without a curative instruction. See Pet. at 4-6. Before filing a second or successive application for habeas relief in the district court, an applicant "shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see Magwood v. Patterson, 561 U.S. 320,

330–31 (2010). “A dismissal of a habeas petition as time-barred is a decision on the merits and any subsequent habeas petition challenging the same conviction or sentence is ‘second or successive’ for purposes of 28 U.S.C. § 2244(b).” Leatherwood v. Perry, No. 1:14-CV-220, 2015 WL 4756984, at \*3 (W.D.N.C. Aug. 12, 2015) (unpublished) (collecting cases); see King v. Corrigan, No. 22-1581, 2022 WL 17836537, at \*1–2 (6th Cir. Dec. 19, 2022) (unpublished). This court does not have jurisdiction to review Brunson’s petition unless the United States Court of Appeals for the Fourth Circuit authorizes such review. See 28 U.S.C. § 2244(b)(3)(A); Burton v. Stewart, 549 U.S. 147, 157 (2007) (per curiam); In re Stevens, 956 F.3d 229, 231 (4th Cir. 2020); In re Phillips, 879 F.3d 542, 545 (4th Cir. 2018). Brunson failed to obtain authorization from the Fourth Circuit before filing this section 2254 motion. Thus, the court dismisses his petition as successive.

After reviewing Brunson’s petition, the court finds that reasonable jurists would not find the court’s treatment of Brunson’s claims debatable or wrong and that the claims do not deserve encouragement to proceed any further. Accordingly, the court denies a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In sum, the court DENIES petitioner’s motion to amend [D.E. 4] and DISMISSES WITHOUT PREJUDICE petitioner’s habeas petition [D.E. 1]. Petitioner must obtain authorization from the Fourth Circuit before filing this application. The court DENIES a certificate of appealability. The clerk shall close the case.

SO ORDERED. This 1 day of November, 2023.

  
JAMES C. DEVER III  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:23-HC-2152-D

JONATHAN EUGENE BRUNSON,     )  
  )  
                          Petitioner,     )  
  )  
                          v.                 )  
  )  
JOHN HERRING,                     )  
  )  
                          Respondent.     )

**ORDER**

On July 3, 2023, Jonathan Eugene Brunson (“Brunson” or “petitioner”), a state inmate proceeding pro se, petitioned for a writ of habeas corpus under 28 U.S.C. § 2254 [D.E. 1]. On September 12, 2023, Brunson moved to amend his petition [D.E. 4]. As explained below, the court denies Brunson’s motion to amend and dismisses Brunson’s petition as successive.

Over the course of several years, Brunson committed multiple sex acts upon his minor stepdaughter. See State v. Brunson, 221 N.C. App. 614, 615, 727 S.E.2d 916, 917–18 (2012). On June 17, 2011, a jury convicted Brunson of attempted statutory rape of a thirteen year old, eight counts of sexual activity by a substitute parent by cunnilingus and fellatio, seven counts of taking indecent liberties with a child, statutory sexual offense of a fourteen year old by cunnilingus, fellatio, and penetration; four counts of committing a crime against nature by cunnilingus and fellatio, four counts of statutory sexual offense of a fifteen year old by cunnilingus, fellatio, and penetration, and attempted statutory rape of a fifteen year old. See id. at 615–16, 727 S.E.2d at 918; Pet. [D.E. 1] 1–2.

Brunson appealed. See Brunson, 221 N.C. App. at 616, 727 S.E.2d at 918; Pet. at 2. While Brunson's appeal was pending, he filed a motion for appropriate relief ("MAR") in the North Carolina Court of Appeals. See Brunson, 221 N.C. App. at 616 n.2, 727 S.E.2d at 918 n.2. On July 17, 2012, the North Carolina Court of Appeals found no error. See id. at 622, 727 S.E.2d at 922. In that same opinion, the court of appeals dismissed without prejudice petitioner's MAR to allow petitioner to file the motion with the trial court. See id. at 616 n.2; 727 S.E.2d 918 n.2. Brunson filed a MAR in the state trial court, which denied it on November 25, 2013. See Brunson v. Solomon, No. 5:14-HC-2009-FL, 2015 WL 331496, at \*2 (E.D.N.C. Jan. 26, 2015) (unpublished).

On January 9, 2014, Brunson filed a section 2254 petition, which the court dismissed as untimely on January 26, 2015. See Brunson, 2015 WL 331496, at \*2; Pet. at 7. On June 18, 2015, the United States Court of Appeals for the Fourth Circuit dismissed Brunson's appeal. See Brunson v. Solomon, 606 F. App'x 86 (4th Cir. 2015) (*per curiam*) (unpublished). On November 2, 2015, the United States Supreme Court denied Brunson's petition for a writ of certiorari. See Brunson v. Taylor, 577 U.S. 964 (2015). On September 6, 2016, Brunson filed a second habeas petition, which the court dismissed as successive on August 26, 2017. See Order, Brunson v. Taylor, No. 5:16-HC-2222, [D.E. 12] (E.D.N.C. Aug. 26, 2017).

In Brunson's section 2254 petition, Brunson argues that he is innocent because "there is no physical evidence in the case" and that the trial judge committed "structural error" by allowing the jury to consider the known perjured testimony of the victim without a curative instruction. See Pet. at 4–6. Before filing a second or successive application for habeas relief in the district court, an applicant "shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see Magwood v. Patterson, 561 U.S. 320,

330–31 (2010). “A dismissal of a habeas petition as time-barred is a decision on the merits and any subsequent habeas petition challenging the same conviction or sentence is ‘second or successive’ for purposes of 28 U.S.C. § 2244(b).” Leatherwood v. Perry, No. 1:14-CV-220, 2015 WL 4756984, at \*3 (W.D.N.C. Aug. 12, 2015) (unpublished) (collecting cases); see King v. Corrigan, No. 22-1581, 2022 WL 17836537, at \*1–2 (6th Cir. Dec. 19, 2022) (unpublished). This court does not have jurisdiction to review Brunson’s petition unless the United States Court of Appeals for the Fourth Circuit authorizes such review. See 28 U.S.C. § 2244(b)(3)(A); Burton v. Stewart, 549 U.S. 147, 157 (2007) (per curiam); In re Stevens, 956 F.3d 229, 231 (4th Cir. 2020); In re Phillips, 879 F.3d 542, 545 (4th Cir. 2018). Brunson failed to obtain authorization from the Fourth Circuit before filing this section 2254 motion. Thus, the court dismisses his petition as successive.

After reviewing Brunson’s petition, the court finds that reasonable jurists would not find the court’s treatment of Brunson’s claims debatable or wrong and that the claims do not deserve encouragement to proceed any further. Accordingly, the court denies a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In sum, the court DENIES petitioner’s motion to amend [D.E. 4] and DISMISSES WITHOUT PREJUDICE petitioner’s habeas petition [D.E. 1]. Petitioner must obtain authorization from the Fourth Circuit before filing this application. The court DENIES a certificate of appealability. The clerk shall close the case.

SO ORDERED. This 1 day of November, 2023.

  
JAMES C. DEVER III  
United States District Judge

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT

NAME: JONATHAN EUGENE BRUNSON

CASE NO: 5:23-HC-2152-D.

PLACE OF CONFINEMENT: MAURY CORRECTIONAL INST. PRISONER NO: 0493187

PETITIONER:

RESPONDENT:

JONATHAN EUGENE BRUNSON

V.S.

JOHN HERRING, SUPERINTENDENT

MAURY CORRECTIONAL INSTITUTION

THE ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA.

PETITION

1. SUPERIOR COURT, CUMB, CO, N.C. ENTERED JUDGMENT. CASE NO: 08CAS63535-46.
2. DATE OF JUDGMENT OF CONVICTION: 2011. DATE OF SENTENCING: 2011
3. LENGTH OF SENTENCE: 20 YEARS X 5 (BOXCAR)
4. I WAS CONVICTED OF MORE THAN ONE CRIME.
5. CRIMES: STATUTORY SEX OFFENSE OF 13, 14, 15 YEAR DLO; ATTEMPTED

STATUTORY SEXUAL OFFENSE OF 13, 14, 15 YEAR OLD; INDECENT LIBERTIES;  
SEXUAL ACTIVITY BY SUBSTITUTE PARENT, AND CRIMES AGAINST NATURE.

6. I PLEAD NOT GUILTY AND TRIED BY JURY.

7. I DID NOT TESTIFY.

8. I APPEALED. 9. COURT OF APPEALS OF NORTH CAROLINA. NO. ; 18-881

(I BELIEVE). RESULT: DENIED. DATE OF RESULT: DON'T KNOW.

CITATION: DON'T KNOW. GROUNDS RAISED: RITCHIE DISCOVERY VIOLATION.

CAN'T REMEMBER OTHERS. REVIEWED BY NORTH CAROLINA SUPREME COURT: NO.

CERTIORARI BY U.S. SUPREME COURT: NO.

10. OTHER THAN DIRECT APPEALS, I HAVE FILED A MOTION CONCERNING THIS  
JUDGMENT OF CONVICTION IN STATE COURT.

11. YES TO QUESTION 10. (1) NAME OF COURT: SUPERIOR COURT, LUMB. CO.

(2) CASE NO. OBCRS63535-46. (3) DATE OF FILING: DECEMBER 13, 2021. (4)

MOTION FOR APPROPRIATE RELIEF. (5) GROUNDS RAISED: "DEFENDANT'S CONVICTION

WAS OBTAINED IN VIOLATION OF HIS RIGHT TO AN IMPARTIAL JUDGE IN

VIOLATION OF DUE PROCESS OF LAW AND HIS RIGHT TO A FAIR TRIAL.

(U.S. CONST. AM. 5, 6, 14; N.C. CONST. ART. I, SECTION 18, 19, 23)" AND

"DEFENDANT'S CONVICTION WAS OBTAINED BY JUDGE FULLY KNOWINGLY

ALLOWING ILLEGAL TESTIMONY OF THE SOLE PROSECUTING WITNESS TO BE

DELIBERATED UPON BY THE JURY IN VIOLATION OF DUE PROCESS OF LAW

AND DEFENDANT'S RIGHT TO A FAIR TRIAL. (U.S. CONST. AM. 5, 6, 14; N.C.

CONST. ART. I, SECTIONS 10, 14, 23)." (6) I DID NOT RECEIVE A HEARING WHERE EVIDENCE WAS GIVEN ON MY MOTION, THE FACE OF THE RECORD AND TRIAL TRANSCRIPT (JUNE 16, Tpp. 8-10) WAS THE ONLY EVIDENCE PRESENTED BY PETITIONER. (7) RESULT: THE MAR COURT MISAPPLIED HARMLESS ERROR STANDARD TO STRUCTURAL ERROR BY A BIASED TRIAL JUDGE THAT IS NOT TO BE SUBJECTED TO HARMLESS ERROR ANALYSIS. SEE CHAPMAN V. CAL., 386 U.S. 18, 23, 8 A. 8.; TURNER V. OHIO, 373 U.S. 510, 41 S. Ct. 437, 71 L. Ed 749 (1971). (8) DATE OF RESULT: DECEMBER 19, 2022.

SECOND MOTION: (1) NAME OF COURT: SUPERIOR COURT, CUMB. CO. (2) CASE NO.: 08CR563535-46. (3) DATE OF FILING: JULY 12, 2018. (4) MOTION FOR APPROPRIATE RELIEF. (5) GROUNDS RAISED: DEFENDANT'S CONVICTION WAS OBTAINED IN VIOLATION OF DUE PROCESS OF LAW, DEFENDANT'S CONVICTION WAS OBTAINED BY THE STATES UNCONSTITUTIONAL FAILURE TO REVIEW IN CAMERA SOCIAL SERVICES RECORDS AS REQUIRED BY PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987). (6) I DID NOT RECEIVE A HEARING WHERE EVIDENCE WAS GIVEN ON MY MOTION, (7) RESULT: DENIED ON GROUNDS OF NO MERIT AND PROCEDURAL BAR, (8) DATE OF RESULT: AUGUST 14, 2018.

THIRD MOTION; NAME OF COURT: SUPERIOR COURT, CUMB. CO. (2) CASE NO.: 08CR563535-46. (3) DATE OF FILING: OCTOBER 8, 2018. (4) MOTION FOR APPROPRIATE RELIEF, (5) GROUNDS RAISED: DEFENDANT'S CONVICTION WAS OBTAINED BY THE STATES UNCONSTITUTIONAL FAILURE TO REVIEW IN CAMERA SOCIAL SERVICES RECORDS. (6) I DID NOT RECEIVE A HEARING WHERE EVIDENCE WAS GIVEN ON MY MOTION, (7) RESULT: DENIED, (8) DATE OF RESULT: JANUARY 17, 2019.



I APPEALED THE FIRST AND SECOND MOTIONS, I DON'T REMEMBER THE THIRD.

12. GROUND ON WHICH I AM BEING HELD IN VIOLATION OF THE CONSTITUTION, LAWS AND TREATIES OF THE UNITED STATES:

GROUND ONE: PETITIONER IS ACTUALLY INNOCENT AND INVOKES THE ACTUAL INNOCENCE EXCEPTION AND DUE PROCESS CLAUSES UNDERLYING MCQUIGGIN V. PERKINS, 569 U.S. 383, 386 (2013) AND SCHUP V. DELO, 513 U.S. 298, 329 (1995).

(a) SUPPORTING FACTS: THE NEW EVIDENCE AND FACE OF THE RECORD SHOWS CONCLUSIVELY: (1) THAT THERE IS NO PHYSICAL EVIDENCE IN THE CASE (SEE EXHIBIT A, STATE'S PHYSICAL EVIDENCE REPORT); AND (2) THAT THE TRIAL JUDGE FOUND THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE." (JUNE 16, Tpp. 8-10) (SEE EXHIBIT B, EXCERPTS FROM TRIAL TRANSCRIPT).

GROUND TWO: CONSTITUTIONAL ERROR THAT IS STRUCTURAL ERROR BY A BIASED TRIAL JUDGE — HAVING A "DIRECT, PERSONAL, [AND] SUBSTANTIAL IN[VOLVEMENT] IN REACHING A CON[VICTION] AGAINST [PETITIONER] IN HIS CASE" IN VIOLATION OF THE FOURTEENTH AMENDMENT AND PETITIONER'S RIGHT TO DUE PROCESS OF LAW, TUMLEY V. OHIO, 213 U.S. 510, 535, 47 S.Ct. 437, 445 (1927).

(a) SUPPORTING FACTS: THE NEW EVIDENCE AND FACE OF THE RECORD

SHOWS CONCLUSIVELY : (1) THAT THERE IS NO PHYSICAL EVIDENCE IN THIS CASE (SEE EXHIBIT A, STATES PHYSICAL EVIDENCE REPORT); (2) THAT THE STATES CASE DEPENDED ENTIRELY ON THE TESTIMONY OF THE SOLE PROSECUTING WITNESS; (3) THAT THE TRIAL JUDGE FOUND THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE" (JUNE 16, TP. 8) (SEE EXHIBIT B, EXCERPTS FROM TRIAL TRANSCRIPT); (4) THAT THE TRIAL JUDGE STATED SHE WAS "IN A QUANDARY AS TO WHAT TO DO ABOUT [THIS PERJURY]" (JUNE 16, TP. 8); (5) THAT THE TRIAL JUDGE THEN IMPROPERLY ASKED THE PROSECUTOR "DO YOU HAVE ANY SUGGESTIONS ABOUT WHAT SHE SHOULD DO ABOUT THIS PERJURY (JUNE 16, TP. 8); (6) THAT THE PROSECUTOR THEN ADMITTED AND CONCEDED THAT THE SOLE PROSECUTING WITNESS "LIED UNDER OATH INTENTIONALLY" (JUNE 16, TP. 8); (7) THAT THE PROSECUTOR THEN IMPROPERLY SUGGESTED TO THE TRIAL JUDGE THAT THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS REMAIN AS "A CREDIBILITY ISSUE FOR THE JURY TO DISCERN" (JUNE 16, TP. 9); (8) THAT THE TRIAL JUDGE THEN AGREED WITH THE PROSECUTOR'S IMPROPER SUGGESTION TO ALLOW THE JURY TO DELIBERATE ON THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS BY RESPONDING "ALL RIGHT" (JUNE 16, TP. 9); (9) THAT, BASED UPON THIS MEETING-OF-THE-MINDS AGREEMENT, THE TRIAL JUDGE THEN KNOWINGLY AND INTENTIONALLY FAILED TO GIVE A CURATIVE JURY INSTRUCTION TO DISREGARD THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS AT ANY TIME AFTER SHE STATED "GOOD MORNING" TO THE JURY AND "THE STATE MAY CALL ITS NEXT WITNESS" (JUNE 16, TP. 10); AND (10) THAT, BASED UPON THIS MEETING-OF-THE-MINDS AGREEMENT, THE TRIAL JUDGE THEN KNOWINGLY AND INTENTIONALLY ALLOWED

THE JURY TO DELIBERATE AND CONVICT PETITIONER BASED UPON WHAT SHE AND THE PROSECUTOR BOTH KNEW AND CONCLUDED TO BE PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS.

(b) I DID EXHAUST MY STATE REMEDIES ON GROUND TWO.

(c) DIRECT APPEAL OF GROUND TWO; NO. ATTORNEY OVERLOOKED IT.

(d) POST-CONVICTION PROCEEDINGS: (1) YES, I DID RAISE THIS ISSUE THROUGH A POST-CONVICTION MOTION IN A STATE TRIAL COURT. (2) TYPE OF MOTION: MOTION FOR APPROPRIATE RELIEF; NAME OF COURT: SUPERIOR COURT, CUMBERLAND CO.; CASE NO.: 08CR563535-46; DATE OF COURT'S DECISION: DECEMBER 19, 2022; RESULT: DENIED BY MISAPPLICATION OF HARMLESS ERROR STANDARD TO STRUCTURAL ERROR BY A BIASED TRIAL JUDGE CLAIM. (3) I DID NOT RECEIVE A HEARING ON MY MOTION. (4) I DID APPEAL. (5) I DID RAISE THIS ISSUE IN THE APPEAL. (6) COURT OF APPEALS OF NORTH CAROLINA, CASE NO.: P31-420. DATE OF DECISION: FEBRUARY 14, 2023. RESULT: DENIED. (7) N/A. (8) OTHER REMEDIES: I FILED A PETITION FOR DISCRETIONARY REVIEW IN THE SUPREME COURT OF NORTH CAROLINA.

GROUND THREE: N/A

GROUND FOUR: N/A

13. GROUND TWO THAT I HAVE RAISED IN THIS PETITION HAS BEEN PRESENTED TO THE HIGHEST STATE COURT HAVING JURISDICTION

14. YES. I HAVE PREVIOUSLY FILED A HABEAS PETITION IN A FEDERAL

COURT REGARDING THE CONVICTION THAT I AM CHALLENGING IN THIS PETITION;

§ 2254 HABEAS PETITION FILED IN U.S. DISTRICT COURT; CASE NO. :  
5:14-hc-2009-FL; RITE DISCOVERY VIOLATION; BRADY DISCOVERY  
VIOLATION; UNREASONABLE SEARCH AND SEIZURE VIOLATION. RELIEF  
DENIED FOR PROCEDURAL DEFAULT ON JANUARY 26, 2015.

15. YES, I DO HAVE A PETITION FOR DISCRETIONARY REVIEW NOW PENDING IN  
THE SUPREME COURT OF NORTH CAROLINA FOR THE JUDGMENT I AM CHALLENGING.  
CASE NO. : 247 P 16-9, ISSUES RAISED: (1) THE TRIAL COURT ABUSED  
ITS DISCRETION BY FAILURE TO MAKE FINDINGS OF FACT BASED UPON PETITIONER'S  
ONLY MATERIAL EVIDENCE PRESENTED IN THE RECORD AND TRIAL TRANSCRIPT  
(JUNE 16, 1 pp. 8-10); (2) THE COURT OF APPEALS ERRED BY FAILURE TO  
REMAND TO TRIAL COURT FOR FAILURE TO MAKE SUFFICIENT FINDINGS; (3)  
THE COURT OF APPEALS ERRED BY FAILURE TO REVIEW PETITIONER'S STRUCTURAL  
ERROR CLAIM DE NOVO; (4) THE COURT OF APPEALS ERRED BY FAILURE TO  
FIND ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT; (5) THE TRIAL  
COURT ABUSED ITS DISCRETION BY MISAPPLYING THE HARMLESS ERROR STANDARD  
OF REVIEW UNDER G.S. § 15A-1419 (b)(1) AND (d) TO PETITIONER'S BIASED  
JUDGE CLAIM IDENTIFIED AS TUMLEY STRUCTURAL ERROR; (6) THE COURT OF  
APPEALS ERRED BY FAILURE TO VACATE THE TRIAL COURT'S 19 DECEMBER 2022  
ORDER WRONGLY APPLYING HARMLESS ERROR STANDARD OF REVIEW UNDER  
G.S. § 15A-1419 (b)(1) AND (d) TO PETITIONER'S BIASED JUDGE CLAIM IDENTIFIED  
AS TUMLEY STRUCTURAL ERROR; (7) THE TRIAL COURT ABUSED ITS DISCRETION  
BY FAILURE TO APPLY STRUCTURAL ERROR STANDARD OF REVIEW TO PETITIONER'S  
BIASED TRIAL JUDGE CLAIM IDENTIFIED AS TUMLEY STRUCTURAL ERROR;

(8) THE COURT OF APPEALS ERRED BY FAILURE TO VACATE THE TRIAL COURTS ORDER FOR FAILURE TO APPLY STRUCTURAL ERROR STANDARD OF REVIEW TO PETITIONER'S BIASED JUDGE CLAIM IDENTIFIED AS TUMEX STRUCTURAL ERROR; AND (9) THE COURT OF APPEALS ERRED BY FAILURE TO VACATE PETITIONER'S CONVICTIONS FOR STRUCTURAL ERROR BY A BIASED TRIAL JUDGE.

16. ATTORNEYS WHO REPRESENTED ME: (a) NONE AT PRELIMINARY HEARING; (b) NONE AT ARRAIGNMENT AND PLEA; (c) NONE AT TRIAL; (d) NONE AT SENTENCING; (e) ON DIRECT APPEAL; MARILYN DIER, 211 NORTH COLUMBIA STREET, CHAPEL HILL, N.C. 27514; (f) NONE AT POST-CONVICTION; (g) NONE ON APPEAL FROM RULING IN POST-CONVICTION.

17. I DO NOT HAVE ANY FUTURE SENTENCE TO SERVE AFTER I COMPLETE THE SENTENCE FOR THE JUDGMENT THAT I AM CHALLENGING.

18. TIMELINESS OF PETITION: THE REASON WHY § 2244 (b)(2) SECOND OR SUCCESSIVE PETITION AND § 2244 (d)(1) ONE YEAR STATUTE OF LIMITATIONS DOES NOT BAR MY PETITION IS BECAUSE: THE PETITION INVOKES THE SUPREME COURT DECISION IN MCQUIGGIN V. PERKINS, 569 U.S. 383, 386 (2013) THAT "[A]CTUAL INNOCENCE, IF PROVED, SERVES AS A GATEWAY THROUGH WHICH A PETITIONER MAY PASS WHETHER THE IMPEDIMENT IS A [§ 2244 (b)(2) SECOND OR SUCCESSIVE PETITION] PROCEDURAL BAR, AS IT WAS IN SCHUP V. DELO, 513 U.S. 298... OR [§ 2244 (d)(1)] EXPIRATION OF THE AEDPA STATUTE OF LIMITATIONS." MCQUIGGIN V. PERKINS, 569 U.S. 383, 386 (2013). A § 2254 PETITIONER SEEKING TO RELY ON MCQUIGGIN AND SCHUP MUST "PERSUADE THE DISTRICT COURT THAT,

IN LIGHT OF THE NEW EVIDENCE, NO JUROR, ACTING REASONABLY, WOULD HAVE VOTED TO FIND HIM GUILTY BEYOND A REASONABLE DOUBT," id (ALTERATION IN ORIGINAL) (QUOTING SCHLUP V. DELO, 513 U.S. 298, 329 (1995)). IN OTHER WORDS, PETITIONER "MUST PRESENT 'NEW EVIDENCE OF INNOCENCE SO STRONG THAT A COURT CANNOT HAVE CONFIDENCE IN THE OUTCOME OF THE TRIAL UNLESS THE COURT IS ALSO SATISFIED THAT THE TRIAL WAS FREE OF NONHARMLESS CONSTITUTIONAL ERROR." REID V. TRUE, 349 F. 3d 788, 806 (4th CIR. 2003) (QUOTING SCHLUP, 513 U.S. AT 316). "SCHLUP MAKES PLAIN THAT THE HABEAS COURT MUST CONSIDER 'ALL THE EVIDENCE', OLD AND NEW, INCRIMINATING AND EXCULPATORY, WITHOUT REGARD TO WHETHER IT WOULD NECESSARILY BE ADMITTED UNDER RULES OF ADMISSIBILITY THAT WOULD GOVERN AT TRIAL." HASH V. JOHNSON, 845 F. 2d 711 (4th CIR. 2012) (QUOTING HOUSE V. BELL, 547 U.S. AT 538, 126 S. CT. 2064) (CITING SCHLUP, 513 U.S. AT 327-28, 115 S. CT. 851). "A CREDIBLE SHOWING OF ACTUAL INNOCENCE MAY ALLOW A PRISONER TO PURSUE HIS CONSTITUTIONAL CLAIMS... ON THE MERITS NOTWITHSTANDING THE EXISTENCE OF A [§ 2244(b)(2) AND(d)(1)] PROCEDURAL BAR TO RELIEF." MCQUIGGIN V. PERKINS, 133 S. CT. 1924, 1931 (2013). "A PROPER SHOWING OF ACTUAL INNOCENCE IS SUFFICIENT TO SATISFY THE 'MISCARRIAGE OF JUSTICE' REQUIREMENT," WOLFE V. JOHNSON, 565 F. 3d 140, 160 (4th CIR. 2009) (CITING HOUSE V. BELL, 547 U.S. 518, 536-37 (2006)). "A SHOWING OF ACTUAL INNOCENCE CAN SERVE AS A GATEWAY" INsofar AS IT "MAY BE UTILIZED BY A § 2254 PETITIONER TO SECURE THE ADJUDICATION OF HIS OTHERWISE DEFAULTED CLAIMS." WOLFE, 565 F. 3d AT 164 (CITATION OMITTED). "A PETITION SUPPORTED BY A CONVINCING" SHOWING OF ACTUAL INNOCENCE RAISES "SUFFICIENT DOUBT ABOUT [THE PETITIONER'S] GUILT TO UNDERMINE CONFIDENCE IN

THE RESULT OF THE TRIAL WITHOUT THE ASSURANCE THAT THE TRIAL WAS UNTAINTED BY CONSTITUTIONAL ERROR." HOUSE, 547 U.S. AT 539. "[H]ENCE, A REVIEW OF THE MERITS OF THE CONSTITUTIONAL CLAIMS IS JUSTIFIED." id (CITATION OMITTED). "[A] § 2254 PETITIONER IS ENTITLED TO HAVE THE ACTUAL INNOCENCE ISSUE ADDRESSED AND DISPOSED OF IN THE DISTRICT COURT," WOLFE V. JOHNSON, 565 F.3d 140, 160, 164 (4th Cir. 2009), (CITING BOUSLEY V. UNITED STATES, 523 U.S. 614, 623, 118 S.Ct. 1604, 140 L. Ed. 2d 828 (1998) (REMANDING SCHLUP ISSUE WHEN DISTRICT COURT FAILED TO ADDRESS IT). "THE DISTRICT COURTS FAILURE TO ADJUDICATE THE SCHLUP ACTUAL INNOCENCE ISSUE CONSTITUTES AN ERROR OF LAW, AND THUS AN ABUSE OF DISCRETION," WOLFE, 565 F.3d AT 163-70,

IN THIS CASE AT BAR, PETITIONER SHOWS HIS ACTUAL INNOCENCE AND CONSTITUTIONAL CLAIM AS FOLLOWS:

A. PETITIONER'S NEW EVIDENCE ESTABLISHES ACTUAL INNOCENCE UNDER SCHLUP STANDARD BY SHOWING NO JUROR, ACTING REASONABLY, WOULD HAVE VOTED TO FIND HIM GUILTY BEYOND A REASONABLE DOUBT." SCHLUP, 513 U.S. AT 329.

TWO BASIC FACTS CONSPIRE TO PROVE CONCLUSIVELY PETITIONER'S ACTUAL INNOCENCE. FIRST, THERE IS NO PHYSICAL EVIDENCE IN THE CASE, (SEE EXHIBIT A, STATES PHYSICAL EVIDENCE REPORT), SECOND, THE TRIAL JUDGE FOUND THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE," THEREBY RENDERING HER AN UNRELIABLE WITNESS. (JUNE 16,

Tpp. 8-10) (SEE EXHIBIT B, EXCERPTS FROM TRIAL TRANSCRIPT). AND VOILA — THE JURY DID NOT HAVE ANY EVIDENCE TO FIND PETITIONER "GUILTY BEYOND A REASONABLE DOUBT," ZILCH. ACCORDINGLY, THE TRIAL JUDGE SHOULD HAVE DISMISSED THE CASE ON HER OWN MOTION. INSTEAD, THE TRIAL JUDGE ALLOWED THE JURY TO DELIBERATE AND CONVICT PETITIONER ON THIS KNOWN PERJURED TESTIMONY WITHOUT GIVING A CURATIVE JURY INSTRUCTION. PETITIONER HAD A DUE PROCESS RIGHT TO SHOW THIS PERJURY TO THE JURY. A JURY PROPERLY INSTRUCTED TO DISREGARD THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING <sup>WITNESS</sup> AFTER THE TRIAL JUDGE FOUND HER "TESTIMONY IS NOT TRUE" (JUNE 16, Tpp. 8-9), COULD NOT CONCLUDE SOLE PROSECUTING WITNESS TRUSTWORTHY AND THUS WOULD NOT RELY ON HER TESTIMONY AS EVIDENCE "BEYOND A REASONABLE DOUBT" THAT PETITIONER ABUSED HER, SCHUP, 513 U.S. AT 329. CONSEQUENTLY, WITHOUT PHYSICAL EVIDENCE AND MINUS THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS THERE WOULD NOT HAVE BEEN ANY EVIDENCE FOR JURORS TO BASE A VERDICT OF "GUILTY BEYOND A REASONABLE DOUBT." PROPERLY INSTRUCTED JURORS WOULD HAVE THEREFORE BEEN COMPELLED TO VOTE TO ACQUIT PETITIONER AS THEIR ONLY LAWFUL OPTION. IF THE TRIAL JUDGE PLANTED THE SEED OF REASONABLE DOUBT IN THE MINDS OF THE JURORS BY PROPERLY INSTRUCTING THEM TO DISREGARD THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS AFTER SHE FOUND HER "TESTIMONY IS NOT TRUE" THEN "NO JUROR, ACTING REASONABLY, WOULD HAVE VOTED TO FIND [PETITIONER] GUILTY BEYOND A REASONABLE DOUBT," SCHUP, 513 U.S. AT 329. THUS, PETITIONER'S NEW EVIDENCE ESTABLISHES ACTUAL INNOCENCE UNDER THE FOREGOING SCHUP STANDARD.



B. PETITIONER'S NEW EVIDENCE ESTABLISHES ACTUAL INNOCENCE UNDER SCHLUP STANDARD BY SHOWING "COURT CANNOT HAVE CONFIDENCE IN THE OUTCOME OF TRIAL [NOR BE] SATISFIED THAT THE TRIAL WAS FREE OF NONHARMLESS CONSTITUTIONAL ERROR." SCHLUP, 513 U.S. AT 316.

C. PETITIONER NEW EVIDENCE AND FACE OF RECORD ESTABLISHES HIS CLAIM OF CONSTITUTIONAL ERROR THAT IS STRUCTURAL ERROR BY A BIASED TRIAL JUDGE — HAVING A "DIRECT, PERSONAL, [AND] SUBSTANTIAL INVOLVEMENT" IN REACHING A CON[VICTION] AGAINST HIM IN HIS CASE" IN VIOLATION OF THE FOURTEENTH AMENDMENT AND HIS RIGHT TO DUE PROCESS OF LAW. TUMSEY V. OHIO, 273 U.S. AT 523, 47 S. CT. 437, 71 L. ED 749 (1927).

THE UNITED STATES SUPREME COURT HELD "IT CERTAINLY VIOLATES THE FOURTEENTH AMENDMENT AND DEPRIVES A DEFENDANT IN A CRIMINAL CASE OF DUE PROCESS OF LAW TO SUBJECT HIS LIBERTY OR PROPERTY TO THE JUDGMENT OF A COURT, THE JUDGE OF WHICH HAS A DIRECT, PERSONAL, SUBSTANTIAL PECUNIARY INTEREST IN REACHING A CONCLUSION AGAINST HIM IN HIS CASE." TUMSEY V. OHIO, 273 U.S. AT 523, 47 S. CT. 437. "JUDICIAL MISCONDUCT IS FOUND WHERE [THERE'S] AN ALIGNMENT ON THE PART OF THE COURT WITH ONE OF THE PARTIES." UNITED STATES V. BLOOD, 435 F. 3d 612, 629 (6th CIR. 2006) (CITATIONS AND QUOTATION MARKS OMITTED). ADDITIONALLY, THE UNITED STATES SUPREME COURT HAS "FOUND AN ERROR TO BE 'STRUCTURAL', AND THUS SUBJECT TO

AUTOMATIC REVERSAL ONLY IN A VERY LIMITED CLASS OF CASES." JOHNSON  
V. UNITED STATES, 520 U.S. 461, 468, 117 S.Ct. 1544, 137 L.Ed. 2d 718  
 (1997) (CITING GIDEON V. WAINWRIGHT, 372 U.S. 355, 83 S.Ct. 792, 9  
 L.Ed. 2d (1963) (COMPLETE DENIAL OF COUNSEL); TURNER V. OHIO, 273 U.S.  
 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927) (BIASED TRIAL JUDGE); VASQUEZ  
V. HILLERY, 427 U.S. 254, 106 S.Ct. 617, 88 L.Ed. 2d 598 (1986)  
 (RACIAL DISCRIMINATION IN SELECTION OF GRAND JURY); MCKASKLE V.  
WIGGINS, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed. 2d 122 (1984) (DENIAL OF  
 SELF-REPRESENTATION AT TRIAL); WALLER V. GEORGIA, 467 U.S. 39, 104 S.Ct.  
 2210, 81 L.Ed. 2d 31 (1984) (DENIAL OF PUBLIC TRIAL); SULLIVAN V. LOUISIANA,  
 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed. 2d 192 (1993) (DEFECTIVE REASONABLE-  
 DOUBT INSTRUCTION)). THOSE CASES, THE COURT HAS EXPLAINED, CONTAIN  
 A "DEFECT AFFECTING THE FRAMEWORK WITHIN WHICH THE TRIAL PROCEEDS,  
 RATHER THAN SIMPLY AN ERROR IN THE TRIAL PROCESS ITSELF," ARIZONA  
V. FULMINANTE, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991),  
 SUCH ERRORS "INFECT THE ENTIRE TRIAL PROCESS," BRECHT V. ABRAHAMSON,  
 507 U.S. 619, 630, 113 S.Ct. 1710, 123 L.Ed. 2d 353 (1993), AND "NECESSARILY  
 RENDER A TRIAL FUNDAMENTALLY UNFAIR," ROSE V. CLARK, 478 U.S. 570,  
 577, 106 S.Ct. 3101, 92 L.Ed. 2d 460 (1986). PUT ANOTHER WAY, THESE  
 STRUCTURAL ERRORS DEPRIVE A DEFENDANT OF "BASIC PROTECTIONS" WITHOUT  
 WHICH "A CRIMINAL TRIAL CANNOT RELIABLY SERVE ITS FUNCTION AS A  
 VEHICLE FOR DETERMINATION OF GUILT OR INNOCENCE... AND NO CRIMINAL  
 PUNISHMENT MAY BE REGARDED AS FUNDAMENTALLY FAIR." id., AT  
 577-578, 106 S.Ct. 3101. (CITING NEDEK V. U.S., 507 U.S. 1, 119  
 S.Ct. 1827, 144 L.Ed. 2d 35 (1999)). HERE, IN PETITIONER'S CASE,  
 THE FACE OF THE RECORD PROVES CONCLUSIVELY THAT THE TRIAL

JUDGE, IN ALIGNMENT WITH THE PROSECUTOR: (1) "DIRECT[LY]" AND "PERSONAL[LY]" ENTERED AN ORAL (AND TRANSCRIBED) MEETING-OF-THE-MINDS AGREEMENT WITH THE PROSECUTOR AGAINST PETITIONER TO ALLOW THE JURY TO DELIBERATE ON KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS FOR PETITIONER'S CONVICTION (JUNE 16, Tpp. 8-10); (2) "DIRECT[LY]" AND "PERSONAL[LY]" FAILED TO GIVE A CURATIVE JURY INSTRUCTION TO DISREGARD THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS BASED UPON THE ORAL AGREEMENT; AND (3) "DIRECT[LY]" AND "PERSONAL[LY]" ALLOWED THE JURY TO DELIBERATE AND CONVICT PETITIONER BASED UPON KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS BASED UPON THE ORAL AGREEMENT. THEREFORE, THE FACE OF THE RECORD PROVES CONCLUSIVELY THAT STRUCTURAL ERROR BY A "BIASED TRIAL JUDGE" DID IN FACT OCCUR BY PROVING CONCLUSIVELY THAT THE TRIAL JUDGE HAD "A DIRECT, PERSONAL, [AND] SUBSTANTIAL INVOLVEMENT" IN REACHING A CON[VICTION] AGAINST [PETITIONER] IN HIS CASE." TUMELY, SUPRA AT 523, 47 S.Ct. 437. THUS, THE FACE OF THE RECORD PROVES CONCLUSIVELY THAT THE TRIAL JUDGE "VIOLATE[D] THE FOURTEENTH AMENDMENT AND DEPRIVE[D] [PETITIONER] OF DUE PROCESS OF LAW" THAT REQUIRED "AUTOMATIC REVERSAL" OF PETITIONER'S CONVICTIONS. IN OTHER WORDS, THIS TUMELY STRUCTURAL ERROR (1) DISQUALIFIED THE TRIAL JUDGE, (2) TERMINATED THE TRIAL COURTS JURISDICTION, AND (3) RENDERED THE PROCEEDINGS NULL AND VOID. IT ALL HAPPENED EXACTLY WHEN THE TRIAL JUDGE CONSUMMATED THE ORAL AGREEMENT WITH THE PROSECUTOR AGAINST PETITIONER BY "DIRECT[LY]" AND "PERSONAL[LY]" ALLOWING THE JURY TO START DELIBERATING ON THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS FOR PETITIONER'S CONVICTION —

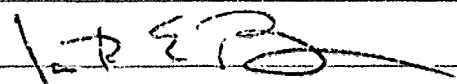
WITHOUT GIVING A CURATIVE JURY INSTRUCTION. THUS, NOT ONLY WAS JURISDICTION LOST BEFORE A JURY VOTE COULD TAKE PLACE, BUT THE TRIAL COURT LACKED JURISDICTION TO COMMIT PETITIONER AND ITS JUDGMENT OF CONVICTION IS THEREFORE NULL AND VOID. THE TRIAL JUDGES DISQUALIFYING INVOLVEMENT IN REACHING A CONVICTION AGAINST PETITIONER THEREFORE CONSTITUTED A "DEFECT AFFECTING THE FRAMEWORK WITHIN WHICH [PETITIONER'S] TRIAL PROCEED[ED]". FULMINANTE, SUPRA. THE TRIAL JUDGES DISQUALIFYING INVOLVEMENT "INFECT[ED] THE ENTIRE TRIAL PROCESS," BRECHT, SUPRA, AND "RENDER[ED] [PETITIONER'S] TRIAL FUNDAMENTALLY UNFAIR," ROSE, SUPRA. PUT ANOTHER WAY, THE TRIAL JUDGES DISQUALIFYING INVOLVEMENT IN REACHING A CONVICTION AGAINST PETITIONER DEPRIVED PETITIONER OF "BASIC PROTECTIONS" WITHOUT WHICH "[PETITIONER'S] CRIMINAL TRIAL [COULD NOT] RELIABLY SERVE ITS FUNCTION AS A VEHICLE FOR DETERMINATION OF GUILT OR INNOCENCE, ... AND NO CRIMINAL PUNISHMENT [OF PETITIONER] MAY BE REGARDED AS FUNDAMENTALLY FAIR," ROSE, SUPRA. THIS TUMELY STRUCTURAL ERROR IS THEREFORE "SUBJECT TO AUTOMATIC REVERSAL," JOHNSON, SUPRA. FURTHERMORE, FEDERAL COURTS APPLY THE BRECHT STANDARD OF HARMLESS ERROR IN HABEAS PROCEEDINGS. UNDER THIS STANDARD, HABEAS RELIEF IS AUTOMATICALLY GRANTED FOR CONSTITUTIONAL ERRORS THAT ARE STRUCTURAL ERRORS. STRUCTURAL ERROR IS A "STRUCTURAL DEFECT IN THE CONSTITUTION OF THE TRIAL MECHANISM, WHICH DEFY ANALYSIS BY HARMLESS ERROR STANDARD." THE EXISTENCE OF SUCH DEFECTS — [DEPRIVATION OF RIGHT TO AN IMPARTIAL JUDGE], FOR EXAMPLE — REQUIRES AUTOMATIC REVERSAL OF THE CONVICTION BECAUSE THEY INFECT THE ENTIRE TRIAL PROCESS," BRECHT V. ABRAHAMSON,

507 U.S. 619, 630, 113 S.Ct. 1710, 123 L.Ed. 2d 353 (1993) (QUOTING ARIZONA V. FULMINANTE, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991)). OVERALL, UNDER THESE CIRCUMSTANCES, IT IS COMPLETELY IMPOSSIBLE FOR "A COURT [TO] HAVE CONFIDENCE IN THE OUTCOME OF [PETITIONER'S] TRIAL [AND] BE SATISFIED THAT THE TRIAL WAS FREE OF NONHARMLESS CONSTITUTIONAL ERROR," SCHUP, 513 U.S. AT 316. THUS, PETITIONER'S NEW EVIDENCE AND FACE OF THE RECORD (1) ESTABLISHES ACTUAL INNOCENCE UNDER THE FOREGOING SCHUP STANDARD, AND (2) PROVES CONCLUSIVELY HIS CONSTITUTIONAL CLAIM OF STRUCTURAL ERROR BY "A BIASED TRIAL JUDGE." TURNER, SUPRA.

THEREFORE, PETITIONER ASK THE COURT GRANT THE FOLLOWING RELIEF:

- (1) DISCHARGE FROM STATE CUSTODY;
- (2) REVERSAL OF CONVICTIONS;
- (3) DISMISSAL OF CHARGES;
- (4) EXPUNGEMENT OF RECORD; AND
- (5) ANY OTHER RELIEF TO WHICH PETITIONER MAY BE ENTITLED.

THIS THE 3RD DAY OF JULY 2023

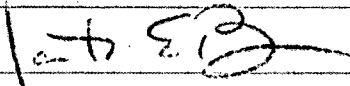
  
JONATHAN E. BRANSON

P.O. BOX 506

MAURY, NORTH CAROLINA 28554

VERIFICATION/DECLARATION

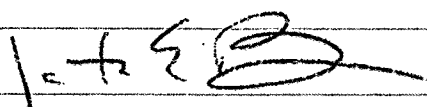
I, JONATHAN E. BRUNSON, HEREBY DECLARE THAT I AM THE PETITIONER IN THE ABOVE MATTER, THAT I HAVE READ THE FOREGOING § 2254 PETITION AND THE CONTENTS THEREOF ARE TRUE TO MY OWN KNOWLEDGE. THIS THE 3RD DAY OF JULY 2023.

  
JONATHAN E. BRUNSON

PROOF OF SERVICE

I CERTIFY THAT ON JULY 3, 2023, I MAILED A COPY OF THIS § 2254 PETITION TO THE STATE ATTORNEY GENERAL AT THE FOLLOWING ADDRESS: N.C. DEPT. OF JUSTICE, P.O. BOX 629, RALLIGH, NORTH CAROLINA 27602.

THIS 3RD DAY OF JULY 2023.

  
JONATHAN E. BRUNSON

MAURY CORRECTIONAL INSTITUTION  
P.O. BOX 506  
MAURY, NORTH CAROLINA 28554

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

JONATHAN E. BRUNSON,  
PETITIONER,  
  
v.

JOHN HERRING,  
RESPONDENT.

EVIDENCE IN SUPPORT OF PETITION  
UNDER 28 U.S.C. § 2254 FOR  
WRIT OF HABEAS CORPUS BY A  
PERSON IN STATE CUSTODY ASSERTING  
"ACTUAL INNOCENCE GATEWAY PLEA"  
MCQUIGGIN V. PERKINS, 569 U.S. 383  
386 (2013)

EVIDENCE EXHIBITS IN SUPPORT OF § 2254 PETITION DATED JULY 3, 2023,

1. EXHIBIT A CUMBERLAND CO. SHERIFF'S OFFICE PHYSICAL EVIDENCE REPORT  
PAGE 009 OF THE STATES DISCOVERY
2. EXHIBIT B EXCERPTS FROM TRIAL TRANSCRIPT (JUNE 16, Tpp. 8-10) (NEW)
3. EXHIBIT C AFFIDAVIT BY PETITIONER DATED 3 JULY 2023 (NEW)

RESPECTFULLY SUBMITTED THIS THE 3RD DAY OF JULY 2023.

  
JONATHAN E. BRUNSON

MAURY CORRECTIONAL INSTITUTION  
P.O. BOX 506  
MAURY, N.C. 28554

EXHIBIT A

CUMBERLAND COUNTY SHERIFF'S OFFICE  
PHYSICAL EVIDENCE

OCA: \_\_\_\_\_

DESCRIPTION	DATE AND WHERE IT WAS FOUND
N/A	

If additional evidence needs to be listed, please attach an additional sheet.  
Please check all reports requested by the investigating officer in this case.

(a) Medical ☐

(d) Controlled Substances ☐

(b) Blood ☐

(e) Accident Report ☐

(c) Finger Prints ☐

Any other tests requested:

Yes ☐ No ☐

Were photographs requested:

Yes ☐ No ☐

\_\_\_\_\_



EXHIBIT B

NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NOS.: 08 CRS 63535, 63537-45

STATE OF NORTH CAROLINA,

VS.

TRANSCRIPT OF TRIAL  
VOLUME IV OF V  
THURSDAY, JUNE 16, 2011

JONATHAN EUGENE BRUNSON,  
DEFENDANT.

Volume IV of V of the transcript of trial commencing June 13, 2011, during the June 13, 2011, Session of Criminal Superior Court held in Cumberland County, Fayetteville, North Carolina, before the Honorable Mary Ann Tally, Superior Court Judge Presiding.

APPEARANCES:

Rita Cox, Assistant District Attorney  
Graham Gurnee, Assistant District Attorney  
Office of the District Attorney  
131 Dick Street  
Fayetteville, North Carolina 28301  
On Behalf of the State

Jonathan Eugene Brunson, pro se  
On Behalf of the Defendant

Reported by: Suzanne G. Phillips, CVR  
Official Court Reporter

concern: This witness has said on the stand in front of this jury --

MS. COX: Yes, Your Honor.

THE COURT: -- that she reported this to Dr. Ellis in 2006 and continued to report it. I found that to be very troublesome because I do not believe that a therapist would risk losing a license by failing to follow the statute which requires a report. I don't mean a written report. It can be done under the statute orally or in writing or by telephone. ~~So my concern is that apparently that testimony is not true.~~ And I'm in a quandary as to what to do about it.

Do you have any suggestions?

MS. COX: Your Honor, I understand that Ms. Hudson-Williams believes she told the doctor at the beginning and that the doctor made a subsequent referral, that she believes that she was in therapy for two years. We also know that -- it is our understanding from her mother that therapy did not begin until sometime in 2007 or possibly 2008. Ms. Hudson may have been mistaken. I don't believe that she lied under oath intentionally, that she is confused somewhere about her dates because it's been sometime in the past.

She has also indicated that she has some memory loss and some issues that she has had medically. I think that is a credibility issue for the jury to discern; however, I do not support the premise that Ms. Labrittini Hudson-Williams lied under oath.

THE COURT: All right. Anything further?

MS. COX: Your Honor, would you care to read the DSS record that we have?

THE COURT: Yes, ma'am. Thank you.

MS. COX: If I may approach. And copies of these have been provided to the defendant. And just for the record, they would be pages number 35 through 50 from the State's felony file and pages 23 through 33.

THE COURT: All right. And when you're making that referral, you're talking about discovery that was provided to him?

MS. COX: That's correct.

THE COURT: All right. Thank you very much.

MS. COX: May I approach?

THE COURT: Yes, ma'am.

(Ms. Cox approaches the bench.)

THE COURT: All right. Let's bring the jury in.

(The members of the jury enter the courtroom  
and are seated in the jury box.)

THE COURT: Good morning. I'm going to give  
you time to open your packages and also if you will be sure  
to put your juror badges on.

The State may call its next witness.

MR. GURNEE: May it please the Court, we  
would call Rosalyn Perry to the witness stand.

(Pause)

THE CLERK: Do you swear the evidence you  
give to the Court and jury in this action shall be the  
truth, the whole truth, and nothing but the truth, so help  
you, God?

THE WITNESS: I do.

(WHEREUPON,

ROSALYN PERRY,

WAS CALLED AS A WITNESS FOR THE STATE, DULY SWORN, AND  
TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

BY MR. GURNEE:

Q. Good morning, Ms. Perry. Would you tell the  
Court, for the record, your full name.

A. Rosalyn Renee Perry.

## AFFIDAVIT

I, JONATHAN E. BRUNSON, SWEAR UNDER PENALTY OF PERJURY THAT IN CASE NOS. 09CRS63535-46, STATE OF NORTH CAROLINA V. JONATHAN EVANS BRUNSON, I EYEWITNESSED DURING TRIAL;

1. THAT THE TRIAL JUDGE MADE A FINDING THAT THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE" (JUNE 16, Pp. 8-10);
2. THAT THE TRIAL JUDGE FINDING THAT THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE" WAS NOT PRESENTED AT TRIAL TO JURORS;
3. THAT THE TRIAL JUDGE ENTERED AN ORAL AGREEMENT WITH THE PROSECUTOR AGAINST ME TO ALLOW THE JURY TO DELIBERATE ON KNOWN PERJURED TESTIMONY OF SOLE PROSECUTING WITNESS FOR MY CONVICTION;
4. THAT, BASED UPON THIS ORAL AGREEMENT AGAINST ME, THE TRIAL JUDGE THEN FAILED TO GIVE A CURATIVE JURY INSTRUCTION TO DISREGARD THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS;
5. THAT, BASED UPON THIS AGREEMENT AGAINST ME, THE TRIAL JUDGE THEN ALLOWED THE JURY TO DELIBERATE AND CONVICT ME BASED UPON THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS;
6. THAT ASSISTANT DISTRICT ATTORNEYS RITA COX AND GRAHAM BURNES WITNESSED THE SAME; AND

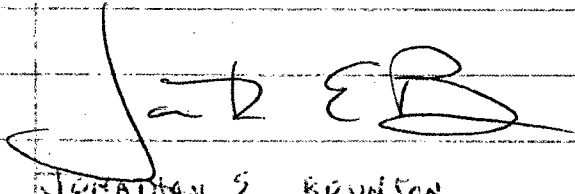
JONATHAN S. BRUNSON

EXHIBIT C  
AFFIDAVIT

PG. 2

7. THAT ATTORNEY JEFF NULL WITNESSED THE SAME.

THIS THE 3<sup>RD</sup> DAY OF JULY 2023.



JONATHAN S. BRUNSON

P.O. BOX 506

MAURY, NORTH CAROLINA 28554

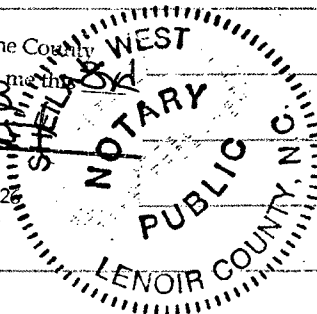
North Carolina

Greene County

Sworn to and subscribed before me this  
day of July 2023

Sheep  
Notary Public Signature

My Commission Expires 08/06/2026



CUMBERLAND COUNTY SHERIFF'S OFFICE  
PHYSICAL EVIDENCE

OCA: 

DESCRIPTION	DATE AND WHERE IT WAS FOUND
N/A	

If additional evidence needs to be listed, please attach an additional sheet.  
Please check all reports requested by the investigating officer in this case.

(a) Medical ☐(d) Controlled Substances ☐(b) Blood ☐(e) Accident Report ☐(c) Finger Prints ☐

Any other tests requested:

Yes ☐ No ☐

Were photographs requested:

Yes ☐ No ☐

## EXHIBIT B

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF CUMBERLAND

FILE NOS.: 08 CRS 63535, 63537-45

STATE OF NORTH CAROLINA,

VS.

JONATHAN EUGENE BRUNSON,  
DEFENDANT.]  
]  
]  
]  
]  
]  
]  
]  
]  
]TRANSCRIPT OF TRIAL  
VOLUME IV OF V  
THURSDAY, JUNE 16, 2011

Volume IV of V of the transcript of trial commencing  
June 13, 2011, during the June 13, 2011, Session of  
Criminal Superior Court held in Cumberland County,  
Fayetteville, North Carolina, before the Honorable Mary Ann  
Tally, Superior Court Judge Presiding.

APPEARANCES:

Rita Cox, Assistant District Attorney  
Graham Gurnee, Assistant District Attorney  
Office of the District Attorney  
131 Dick Street  
Fayetteville, North Carolina 28301  
On Behalf of the State

Jonathan Eugene Brunson, pro se  
On Behalf of the Defendant

Reported by: Suzanne G. Phillips, CVR  
Official Court Reporter



concern: This witness has said on the stand in front of this jury --

MS. COX: Yes, Your Honor.

THE COURT: -- that she reported this to Dr. Ellis in 2006 and continued to report it. I found that to be very troublesome because I do not believe that a therapist would risk losing a license by failing to follow the statute which requires a report. I don't mean a written report. It can be done under the statute orally or in writing or by telephone. ~~So my concern is that apparently that testimony is not true.~~ And I'm in a quandary as to what to do about it.

Do you have any suggestions?

MS. COX: Your Honor, I understand that Ms. Hudson-Williams believes she told the doctor at the beginning and that the doctor made a subsequent referral, that she believes that she was in therapy for two years. We also know that -- it is our understanding from her mother that therapy did not begin until sometime in 2007 or possibly 2008. Ms. Hudson may have been mistaken. I don't believe that she lied under oath intentionally, that she is confused somewhere about her dates because it's been sometime in the past.

She has also indicated that she has some memory loss and some issues that she has had medically. I think that is a credibility issue for the jury to discern; however, I do not support the premise that Ms. Labrittini Hudson-Williams lied under oath.

THE COURT: All right. Anything further?

MS. COX: Your Honor, would you care to read the DSS record that we have?

THE COURT: Yes, ma'am. Thank you.

MS. COX: If I may approach. And copies of these have been provided to the defendant. And just for the record, they would be pages number 35 through 50 from the State's felony file and pages 23 through 33.

THE COURT: All right. And when you're making that referral, you're talking about discovery that was provided to him?

MS. COX: That's correct.

THE COURT: All right. Thank you very much.

MS. COX: May I approach?

THE COURT: Yes, ma'am.

(Ms. Cox approaches the bench.)

THE COURT: All right. Let's bring the jury in.

(The members of the jury enter the courtroom  
and are seated in the jury box.)

THE COURT: Good morning. I'm going to give  
you time to open your packages and also if you will be sure  
to put your juror badges on.

The State may call its next witness.

MR. GURNEE: May it please the Court, we  
would call Rosalyn Perry to the witness stand.

(Pause)

THE CLERK: Do you swear the evidence you  
give to the Court and jury in this action shall be the  
truth, the whole truth, and nothing but the truth, so help  
you, God?

THE WITNESS: I do.

(WHEREUPON,

ROSALYN PERRY,

WAS CALLED AS A WITNESS FOR THE STATE, DULY SWORN, AND  
TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

BY MR. GURNEE:

Q. Good morning, Ms. Perry. Would you tell the  
Court, for the record, your full name.

A. Rosalyn Renee Perry.

JONATHAN E. BRUNSON

EXHIBIT C

PG.1

## AFFIDAVIT

I, JONATHAN E. BRUNSON, SWEAR UNDER PENALTY OF PERJURY THAT IN CASE NOS. 08CR2563535-46, STATE OF NORTH CAROLINA V. JONATHAN EUGENE BRUNSON, I TESTIFIED DURING TRIAL;

1. THAT THE TRIAL JUDGE MADE A FINDING THAT THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE" (JUNE 16, pp. 8-10);
2. THAT THE TRIAL JUDGE FINDING THAT THE SOLE PROSECUTING WITNESS' "TESTIMONY IS NOT TRUE" WAS NOT PRESENTED AT TRIAL TO JURORS;
3. THAT THE TRIAL JUDGE ENTERED AN ORAL AGREEMENT WITH THE PROSECUTOR AGAINST ME TO ALLOW THE JURY TO DELIBERATE ON KNOWN PERJURED TESTIMONY OF SOLE PROSECUTING WITNESS FOR MY CONVICTION;
4. THAT, BASED UPON THIS ORAL AGREEMENT AGAINST ME, THE TRIAL JUDGE THEN FAILED TO GIVE A CURATIVE JURY INSTRUCTION TO DISREGARD THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS;
5. THAT, BASED UPON THIS AGREEMENT AGAINST ME, THE TRIAL JUDGE THEN ALLOWED THE JURY TO DELIBERATE AND CONVICT ME BASED UPON THE KNOWN PERJURED TESTIMONY OF THE SOLE PROSECUTING WITNESS;
6. THAT ASSISTANT DISTRICT ATTORNEYS RITA COX AND GRAHAM GURNEE WITNESSED THE SAME; AND

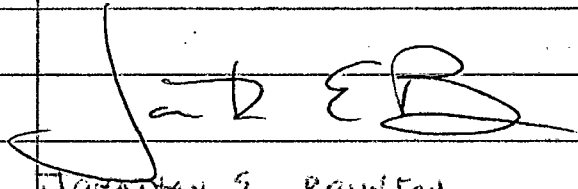
JONATHAN S. BRUNSON

EXHIBIT C  
AFFIDAVIT

PG. 2

7. THAT ATTORNEY JEFF NULL WITNESSED THE SAME,

THIS THE 3<sup>RD</sup> DAY OF JULY 2023.



JONATHAN S. BRUNSON

P.O. BOX 506

MAURY, NORTH CAROLINA 28554

North Carolina

Greene County

Sworn to and subscribed before me this  
day of July, 2023

Notary Public Signature

My Commission Expires 08/06/2026

