NO. 24-6376

IN THE
SUPREME COURT OF THE UNITED STATES

MARION BOWMAN, JR.,

Petitioner,

v.

BRYAN P. STIRLING, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

*W. JOSEPH MAYE
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305
jmaye@scag.gov

*Counsel of record

Counsel for Respondent

CAPTIAL CASE

[EXECUTION SET FOR JANUARY 31, 2025]

QUESTIONS PRESENTED

I. Did trial counsel provide prejudicially deficient assistance of counsel by repeatedly introducing and amplifying noxious racial stereotypes about Bowman, as condemned by this Court in *Buck v. Davis*, 580 U.S. 100, 121-22 (2017), and in contravention of this Court's precedent seeking eradication of racial prejudices in the criminal justice system?

LIST OF PARTIES

Respondents agree with Petitioner that the caption reflects all the appropriate parties.

STATEMENT OF RELATED PROCEEDINGS

Petitioner's death sentence was imposed on October 22, 2001. Since that time, he has been engaged in near-constant litigation. The following reflect proceedings directly related to his trial and sentence:

> *State v. Bowman*, 2001-GS-18-00348 & 2001, Dorchester County, South Carolina, sentenced on May 23, 2002.
>
> *State v. Bowman*, No. 26,071, South Carolina Supreme Court denial of direct appeal relief on November 28, 2005.
>
> *Bowman v. South Carolina*, No. 05-10282, U.S. Supreme Court denial of a petition for writ of certiorari on June 12, 2006.
>
> *Bowman v. State*, 2006-CP-18-00569, Dorchester County, South Carolina, denial of state post-conviction relief on March 12, 2012.
>
> *Bowman v. State*, No. 2012-213468, South Carolina Supreme Court denial of petition for writ of certiorari on April 15, 2016.
>
> *Bowman v. Stirling*, CA 9:18-287-TLW, U.S. District Court for the District of South Carolina, denial of petition for writ of habeas corpus issued on March 26, 2020.
>
> *Bowman v. Stirling*, No. 20-12, U.S. Court of Appeals for the Fourth Circuit, opinion and order issued on August 16, 2022, and order denying rehearing *en banc* issued on September 13, 2022.
>
> *Bowman v. Stirling*, No. 226722, U.S. Supreme Court denial of a petition for writ of certiorari on May 22, 2023.
>
> *Bowman v. Stirling*, No. 2024-002113, South Carolina Supreme Court denial of petition for writ of habeas corpus on January 16, 2025.

TABLE OF CONTENTS

QUESTIONS PRESENTED 1

LIST OF PARTIES 2

STATEMENT OF RELATED PROCEEDINGS 3

TABLE OF AUTHORITIES 6

BRIEF IN OPPOSITION 8

CITATIONS TO OPINIONS BELOW 9

JURISDICTIONAL STATEMENT 9

STATUTORY PROVISIONS INVOLVED 10

STATEMENT OF THE CASE 10

A. Facts of the Crime 10
B. Procedural History 14
1. Trial Level Proceedings 14
2. Direct Appeal Proceedings 16
3. State Collateral Action Proceedings 16
4. Section 2254 Habeas Action 18

ARGUMENTS

I. There is no ruling based on federal law for this Court to review, and therefore no jurisdiction over the matter is presented. 20

II. Petitioner's argument is tantamount to a second and successive habeas action seeking relief on the basis of an ineffective assistance of counsel claim that, though meritless, was available to Petitioner at the outset of his state collateral proceedings.....25

III. Bowman's claim that Mr. Cummings was racist and that he injected racists beliefs and issues into Petitioner's trial are entirely baseless.....29

CONCLUSION 39

APPENDIX .....BIO, App A-D

TABLE OF AUTHORITIES

Page(s)

Cases

Bowman v. State,
422 S.C. 19, 809 S.E.2d 232 (2018) 18
Bowman v. Stirling,
45 F.4th 740 (4th Cir. 2022) 11
Buck v. Davis,
580 U.S. 100 (2017) 1, 35
Butler v. State,
397 S.E.2d 87 (S.C. 1990) 21
Coleman v. Thompson,
501 U.S. 722 (1991) 23, 24, 25
Elk Grove Unified Sch. Dist. v. Newdow,
542 U.S. 1 (2004) 22
Gonzalez v. Crosby,
545 U.S. 524, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005) 26
Harris v. Reed,
489 U.S. 255 (1989) 23
John v. Paullin,
231 U.S. 583, 34 S. Ct. 178, 58 L. Ed. 381 (1913) 20
Key v. Currie,
406 S.E.2d 356 (S.C. 1991) 20
McWee v. State,
593 S.E.2d 456 (S.C. 2004) 21
Moore v. Stirling,
871 S.E.2d 423 (S.C. 2022) 21, 24, 25
Robertson v. State,
795 S.E.2d 29 (S.C. 2016) 17
State v. Bowman,
366 S.C. 485, 623 S.E.2d 378 (2005) 16
Tucker v. Catoe,
552 S.E.2d 712 (S.C. 2001) 21
Wilson v. Moore,
178 F.3d 266 (4th Cir. 1999) 9, 22, 23
Yates v. Aiken,
349 S.E.2d 84 (S.C. 1986) 23, 24

Statutes

28 U.S.C. § 1257(a) 9, 10
28 U.S.C. § 2244(b) 10, 26
28 U.S.C. § 2244(b)(2)(B) 26

28 U.S.C. § 2254 ..... 22, 23
28 U.S.C. § 2553(c)(1)(A) 19
28 U.S.C.A. § 2244 (West) 27
Article V, § 5, S.C. Const 20
S.C. Code Ann. § 16-3-20(B) 15
S.C. Code Ann. § 17-27-160 (B) 17

BRIEF IN OPPOSITION

Bowman, nearing execution, now makes this late attempt to raise a collateral attacks upon his conviction through a claim of ineffective assistance of counsel. Bowman claims that his trial attorney, Norb Cummings, injected racists beliefs and viewpoints into his representation during trial, and that such constitutes ineffective assistance of counsel. That allegation was not raised at any point during the normal course of direct appellate review or collateral litigation in state and federal court, which has been ongoing for nearly 20 years. Instead, Bowman raised this claim as part of a Petition for Writ of Habeas Court in the original jurisdiction of the South Carolina Supreme Court after having exhausted all state and federal court remedies. The South Carolina Supreme Court, under its own well-established state law test, did not exercise its original jurisdiction over the matter and so did not call for further briefing or oral argument, nor issue a published opinion as to the merits of the issues.[1] Instead, the Court noted in its brief order (as it did for Petitioner's other asserted claims not raised herein) the procedural impropriety of the claim and the blatant lack of record evidence exhibiting racism on the part of trial counsel. (App., p. 005a). Consequently, the South Carolina Supreme Court did not render a ruling upon the merits of the arguments under *Strickland*, *Buck*, or any other clearly established federal law. Petitioner therefore cannot meet the jurisdictional limitation requiring a

---

[1] The original jurisdiction Petition for Writ of Habeas Corpus also raised *Brady* claims and proportionality arguments, in addition to the attacks on Mr. Cummings' character by calling him a racist. It would appear that Bowman has attempted to make his attacks more veiled in his Petition before this Court – using phrases like "racialized" views instead of "racist" views – a distinction without a difference. Regardless, the Petition fails in this endeavor as it still has the intention and effect of labeling Mr. Cummings and his views as being "racist".

federal law-based ruling for review. The Petition is nothing more than successive habeas petition that seeks to bypass statutory limitations and procedures. The Petition is improper, and in any case, substantively unfounded in light of the state court record; certiorari should therefore be denied.

CITATIONS TO OPINIONS BELOW

The South Carolina Supreme Court's January 16, 2025 Order denying relief is available online in the State's C-Track database, and is provided in Petitioner's appendix for this matter, beginning at page App. p. 001a.

JURISDICTIONAL STATEMENT

On January 16, 2025, the Supreme Court of South Carolina denied a petition for writ of habeas corpus seeking original jurisdiction review of his claim that counsel injected his own racists views into his representation of Petitioner, thereby rendering ineffective assistance of counsel during his 2002 trial. Bowman attempts to invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a). (Pet. 1). Respondent submits that the Court lacks jurisdiction because the Supreme Court of South Carolina rejected review on the basis of state law grounds: its test for determining whether to exercise its original jurisdiction. *See Wilson v. Moore,* 178 F.3d 266, 275-76 (4th Cir. 1999) (a determination by the Supreme Court of South Carolina not to exercise its original jurisdiction is not a merits ruling on the underlying claim presented).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Bowman contends that his Petition involves the 6th, 8th, and 14th Amendments. (Pet. 1). Respondents contend that the relevant statutory provision are found in 28 U.S.C. § 2244(b) and 28 U.S.C. § 1257(a):

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a)

STATEMENT OF THE CASE

Bowman is currently confined in the Broad River Correctional Institution Secure Facility of the South Carolina Department of Corrections as a result of his Dorchester County convictions and death sentence for the murder of victim, 21 year old Kandee Martin (hereinafter referred to as Victim), and third-degree arson. Bowman received a sentence of ten years for his arson conviction.

Victim's murder came as a result of an execution style shooting by Bowman. The arson followed as a result of Bowman's attempt to dispose of the body by setting Victim's car on fire with her body in the trunk.

A. Facts of the Crime:

On February 16, 2001, Bowman was with his sisters Yolanda Bowman and Katrina West. While on the way to the pharmacy, they saw Victim speaking with Edward Waters. (JA 56; JA 76-79; JA 91-95; JA 118-120).[2] Bowman instructed Yolanda to pull up alongside Victim's car so that he could speak to her. He tried to get her attention through the open rear window of Yolanda's Volkswagen. In response, Victim held up her finger to Bowman and told him to "hold on a minute". She then turned back to finish her conversation. (JA 79-80; JA 95-97; JA 119-121). Victim's gesture and response angered Bowman. Edward, Katrina, and Yolanda each heard Bowman express his intent to kill Victim. (JA 80-82; JA 99; JA 120-121).

Around 7:00 or 7:30p.m. that evening, Taiwan Gadson (hereinafter "Gadson") saw Bowman riding with Victim in her green Ford Escort. Bowman called over to Gadson and told him to get in the car. (JA 345; JA 348; JA 388). With Bowman directing the way, Victim was lured out into the country, where they eventually ended up on Nursery Road. Once there, they stopped, turned off the car, and exited the vehicle. (JA 349-351; JA 388-390). Bowman and Gadson walked down the road a ways, during which time Bowman whispered to Gadson that he was going to kill Victim because she was wearing a wire. A car came down the road and the three individuals jumped into the woods until it passed.[3] (JA 352-354; JA 390-391). Victim

---

[2] Citations with "JA" represent citations to the Joint Appendix created in Petitioner's Appeal to the Fourth Circuit Court of Appeals: *Bowman v. Stirling*, 45 F.4th 740 (4th Cir. 2022).

[3] Dorchester County resident Dennis Judy noticed a car on the side of Nursery Road, with two of its wheels on the shoulder. Finding it odd that the car was parked with its lights off and windows down, Judy stopped briefly, but continued on. (JA 137-140).

then started walking back down the roadway with Bowman following. As Gadson came out of the woods behind them, he saw Bowman fire a gun three times at Victim. Victim ran towards Gadson, but stopped and turned to face Bowman. She begged, "Please Black, don't shoot me no more. I have a baby to take care of."[4] Bowman responded to her pleas by firing twice more, after which Victim fell to the ground.[5] (JA 352-358; JA 366-367; JA 391-392). Gadson, who said he "messed in his pants a little bit" from seeing the crime, jumped in the car while Bowman dragged Victim into the woods by her feet. Bowman then climbed in the driver's seat of Victim's car, remarking: "I shot that bitch in the head. Heard her head hit the ground." Once they had returned to Branchville in Victim's car, Bowman threatened to blow Gadson's brains out if he ever told anyone. (JA 367-370).

Around midnight, Bowman and some friends decided to go to the Allen Murray nightclub outside the town of Bowman, South Carolina. Bowman drove Victim's car, with Hiram Johnson, Gadson, and Darien Williams as passengers. During the drive Bowman told the men he had stolen the car and made them put on gloves. (JA 372-375; JA 418-420; JA 436). At the club, Bowman walked around the parking lot in an effort to sell Victim's car, but he was unsuccessful. (JA 422). Johnson testified that on their way back from the club Bowman had the pistol sitting in his lap, and he remarked, "I killed Kandee, heh heh heh." (JA 376-377; JA 422-424).

---

4 "Black" is Bowman's nickname. (JA 2526).

5 Local resident Bryan Newhouse heard the gunshots that night, but did not see anything when he drove down the road to investigate. (JA 153-156; JA 158-160).

At about 3:00 a.m., Bowman knocked on Travis Felder's door and asked him for help parking a car. (JA 397-400; JA 471-473; JA 474-475). Felder testified that he got in his own car and followed Bowman in the Ford Escort to Nursery Road. Bowman pulled over on the side of the road, cut his lights, and went into the woods for a minute. The next thing Felder saw was Bowman pulling a body by the feet face down. As Bowman opened the trunk and put the body inside, Felder could see by the trunk light it was Victim. (JA 448-452). Bowman looked back at Felder, and said, "You didn't think I would do it, did you? I killed Kandee Martin."

Bowman told Felder to go down the road and turn around, while Bowman drove the Escort up into a field. Felder watched as Bowman set the car ablaze. Felder then took Bowman back to town. (JA 453-456; JA 461).

The burned-out Ford Escort found by law enforcement was registered to Victim and her mother. (JA 184-186). Victim had been shot to death by two bullets, each equally fatal, with one to the back of the head, and another to the left portion of her back. (JA 299-405). Her lungs were clear, indicating that Victim was dead before being burned. (JA 309-310).

Law enforcement received information that Bowman had been with Victim the night before. Bowman was apprehended at his wife's home while hiding in his boxers beside the bed in a child's room. He was promptly arrested and Mirandized. A pair of black jeans were retrieved for Bowman so that he could dress before leaving, and inside the pocket of the pants officers found a brown lady's watch. Victim's mother later identified the watch as belonging to Victim. Bowman's friends testified that

Bowman had been wearing the pants the day before. (JA 484-487; 497; 505-507; 550-553; 562-563).

Bowman's wife, Dorothy, testified that Johnson told her where to find Bowman's gun. She located the gun, and with the help of Yolanda, Kendra, and Bowman's father, they worked to dispose of the gun for Bowman by tossing it into the Edisto River. (JA 523-533; JA 538-542; JA 553-559; JA 565-567; JA 713). With plea agreements reached for Bowman's wife and sisters, they assisted police in recovering the weapon from the river. (JA 90-91; JA 516; JA 522-523; 575-584). The gun was conclusively matched by SLED firearms examiner David Collins to five of the six Winchester .380 shell casings found at the Nursery Road scene. While the sixth casing and spent bullet could not be conclusively matched to Bowman's .380, they were consistent. (JA 670-675).

B. <u>Procedural History</u>:

1. Trial Level Proceedings.

Bowman is confined in the Broad River Correctional Institution Secure Facility of the South Carolina Department of Corrections (SCDC) as the result of his Dorchester County convictions and death sentence for the murder of Kandee Martin and third-degree arson. The Dorchester County Grand Jury indicted Bowman during the June 18, 2001 Term of Court of General Sessions for Murder and Arson, Third Degree. On July 13, 2001, the State served Bowman with a Notice of Intent to Seek the Death Penalty and Notice of Evidence in Aggravation. (JA 925-926; JA1334).

Bowman was tried by a jury before the Honorable Judge Diane S. Goodstein. At the trial, Bowman was represented by Mr. Cummings and Ms. Hardee-Thomas. The State was represented by Solicitor Bailey and Assistant Solicitor Lafond. The guilt phase of the trial lasted from May 17 to May 20, 2002. Bowman was convicted of both charges. (JA 919).

Bowman exercised his right to the twenty-four hour cooling-off period before sentencing, provided by S.C. Code Ann. § 16-3-20(B). (JA 924). The sentencing phase was conducted on May 22 and 23, 2002. Judge Goodstein submitted the following aggravating factors to the jury:

> (1) The murder was committed while in the commission of a criminal sexual conduct;
>
> (2) The murder was committed while in the commission of kidnapping;
>
> (3) The murder was committed while in the commission of robbery with a deadly weapon; and
>
> (4) The murder was committed while in the commission of larceny with the use of a deadly weapon.

(JA 1375-1378). Regarding mitigation, the judge submitted that the Defendant had no significant history of prior criminal convictions involving the use of violence against another person, the age or mentality of the defendant at the time of the crime, as well as the concept of non-statutory mitigating circumstances. (JA 1384-1385).

The jury found the existence of two of the four submitted aggravating factors: the murder was committed in the commission of a kidnapping, and the murder was committed during the commission of a larceny with the use of a deadly weapon. (JA 1404). The jury recommended Bowman be sentenced to death. (JA 1404). Judge

Goodstein subsequently sentenced Bowman to death for the murder conviction, and ten years confinement for the third-degree arson conviction.

2. Direct Appeal Proceedings.

On May 24, 2002. Bowman filed a notice of appeal to the South Carolina Supreme Court, with the assistance of counsel Robert M. Dudek, Esquire, Assistant Appellate Defender of the South Carolina Office of Appellate Defense. (*See* JA 1410-1466; at 1541-1550). Assistant Attorney General S. Creighton Waters, Esquire, represented the State. (JA 1467-1540). The appeal was perfected with Bowman raising five grounds for relief. (JA 1410-1466; 1467-1540; JA 1416-1417). Oral arguments were heard on October 6, 2005. The South Carolina Supreme Court affirmed Bowman's convictions in a published Opinion. *State v. Bowman*, 366 S.C. 485, 489, 623 S.E.2d 378, 380 (2005). A petition for rehearing was denied by the Court on January 6, 2006.

Bowman filed a Petition for Writ of Certiorari with the United State Supreme Court on April 5, 2006. This Court denied certiorari by Order dated June 12, 2006. (JA 1558).

3. State Collateral Action Proceedings.

Bowman next sought Post-Conviction Relief on April 7, 2006. (JA 1551-1557; 1561-1598). The Supreme Court of South Carolina stayed the execution for the post-conviction relief action and appointed the Honorable James E. Lockemy, Circuit Court Judge, to hear the PCR case. Judge Lockemy appointed James A. Brown, Jr., Esquire, and Charlie Jay Johnson, Jr., Esquire, to represent Bowman during the

post-conviction relief action. By Order filed February 6, 2008, Mr. Johnson was relieved and John Sinclaire, III, Esquire, was appointed to represent Bowman with Mr. Brown.[6] (JA 1657-1658).

All pleadings in the action were completed by March 15, 2007. (JA 1659-1667; 1672-1683; 1693-1709; 2908; 2927-3035; 1599-1652). The evidentiary hearing was held on September 15-18, 2008; September 29-30, 2008; November 24, 2008; and December 18, 19, and 22, 2008. The parties also submitted post-hearing briefs for the court. (JA 3036; 3238-3266).

On March 12, 2012, the PCR Court filed its Order of Dismissal. (JA 3267). The Order of Dismissal addressed more than forty alleged claims for relief. Bowman's subsequent Motion to Alter or Amend Judgment was denied on October 31, 2012. (JA 3398-3415; JA 3416; JA 3417).

Bowman appealed. Again, appellate counsel Dudek and Alexander filed his Petition for Writ of Certiorari to the South Carolina Supreme Court, followed by the State's Return and Bowman's Reply. (JA 3418-3504; 3574). The South Carolina Supreme Court granted Certiorari as to Question 6, but denied certiorari on the remaining questions presented. (JA 3600). Following additional briefing, the Supreme Court issued its published Opinion, *Bowman v. State*, 422 S.C. 19, 809

---

[6] Bowman has been represented by counsel at every stage of his direct and collateral proceedings. For indigent defendants seeking capital post-conviction relief, South Carolina provides for the appointment of two attorneys with a heightened qualification requirement: "at least one attorney appointed pursuant to section 17-27-160(B) must have either (1) prior experience in capital PCR proceedings, or (2) capital trial experience and capital PCR training or education." *Robertson v. State*, 795 S.E.2d 29, 36 (S.C. 2016); see also S.C. Code Ann. § 17-27-160 (B).

S.E.2d 232 (2018), filed January 10, 2018, wherein it affirmed Bowman's conviction and sentence. (JA 3612-3678; 3679-3699).

It was at that point that Bowman turned to the federal courts.

4. Section 2254 Habeas Action

Bowman was represented by attorneys Elizabeth Franklin-Best and Laura Young in the litigation of his Petition for Federal Habeas Corpus Relief before the South Carolina District Court. Following the appropriate pleadings, the Honorable Bristow Marchant, United States Magistrate Judge, recommended that summary judgment be granted and the action denied. (JA 3700-3807; 3809-3925; 3926; 3965; 3984-4103). Then, following Objections and Reply, the Honorable Terry L. Wooten, Senior United States District Court Judge, issued an Order accepting the Report and Recommendation, denying federal habeas relief, and denying a certificate of appealability on March 26, 2020. (JA 4105-4129; 4131-4137; JA 4138-4213). Bowmans's subsequent Rule 59(e) motion was likewise denied. (JA 4215-4229; 4231-4245; 4246-4250; 4252-4261).

Counsel for Bowman filed a Notice of Appeal and opening brief to the United State Fourth Circuit Court of Appeals on September 4, 2020, and February 5, 2021, respectively. Pursuant to 28 U.S.C. § 2553(c)(1)(A), the Fourth Circuit granted a Certificate of Appealability as to Bowman's *Brady* claims, but it denied appealability to the remaining issues. Following briefing, on August 16, 2022, the Fourth Circuit Court of Appeals issued its published Opinion and Judgment affirming the decision of the district court. The Mandate was stayed pending Bowman's Petitioner for

Rehearing *En Banc*. The Fourth Circuit later denied Bowman's petition for rehearing *en banc* by Order filed September 13, 2022. (App. 36a). The Mandate was issued on September 21, 2022.

Counsel for Bowman filed his Petition for Writ of Certiorari before this Court on February 10, 2023. Respondent filed its Brief in Opposition, and this Court denied certiorari on May 22, 2023.

Following the notice of execution in this matter on January 3, 2025, Petitioner sought a Petition for Writ of Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. As discussed below, the South Carolina Supreme Court did not exercise its original jurisdiction and denied the action by Order dated January 16, 2025. Bowman has sought certiorari and Respondent's Brief in Opposition now follows.

REASONS WHY THE PETITION SHOULD BE DISMISSED OR, ALTERNATIVELY, DENIED

The petition should be denied as Bowman cannot meet the jurisdictional requirements for review by this Court. However, even if Moore could show a jurisdictional basis, the Petition is improper as a second and successive application for federal habeas relief. Lastly, if this Court wishes to engage in a fact-intensive review, the state court record demonstrates that there is no merit to Petitioner's claim.

ARGUMENT

I. There is no ruling based on federal law for this Court to review, and therefore no jurisdiction over the matter is presented.

Bowman alleges error in the Supreme Court of South Carolina's analysis of his ineffective assistance of counsel claim. Fatal to this assertion is that the Supreme Court of South Carolina, applying its own state-law test, never exercised jurisdiction and did not rule on the merits of Bowman's federal claim. The only decision at issue is the one of whether to exercise jurisdiction over a matter that does not present a federal question for this Court to review. "Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law." *John v. Paullin*, 231 U.S. 583, 34 S. Ct. 178, 58 L. Ed. 381 (1913) (1913).

Under the state constitution, the Supreme Court of South Carolina has the authority to issue writs in its original jurisdiction. Article V, § 5, S.C. Const. However, the court primarily functions as an appellate court. *See, e.g., Key v. Currie*, 406 S.E.2d 356, 357 (S.C. 1991). A petition must overcome the longstanding rule that "a writ of habeas corpus is reserved for the very gravest of constitutional violations, 'which, *in the setting*, constitute[ ] a denial of fundamental fairness shocking to the universal sense of justice.' " *Moore v. Stirling*, 871 S.E.2d 423, 429 (S.C. 2022) (citing *Butler v. State*, 397 S.E.2d 87, 88 (S.C. 1990)). The "in the setting" requirement refers not just to a presence or absence of error, but also requires consideration of whether

there was "a meaningful opportunity to protect" defendant's "rights." *Tucker v. Catoe*, 552 S.E.2d 712, 718 (S.C. 2001). *See also McWee v. State*, 593 S.E.2d 456, 458 (S.C. 2004) (explaining that in *Butler*, then again in *Tucker*, to grant relief, the Supreme Court of South Carolina "found it was the combination of the constitutional violation *and* other circumstances which compelled it to conclude the applicant had been denied fundamental fairness shocking to the universal sense of justice").

To be sure, an initial review of the petition is necessary by the South Carolina Supreme Court, but the review is not simply of the proposed claim, it also a review of the context of the case. "While the allegations in the petition are treated as true, the petition must set forth a *prima facie case* showing the petitioner is entitled to relief," which is to say, "it must allege that the petitioner has exhausted all other remedies, and it must set out a constitutional claim that meets the standard delineated in *Butler*." *Moore v. Stirling, 871 S.E.2d* at 429 (emphasis added). The South Carolina Supreme Court appropriately conducted this limited initial review and what followed was the Court's emphatic rebuke of Petitioner's characterization of the record. As such, Bowman failed to make this preliminary showing under state law to have the state court exercise review in its original jurisdiction. The dismissal of this action absent the exercise of original jurisdiction is also demonstrated in the South Carolina Supreme Court noting that "even if there were evidence to support Bowman's claim" (*i.e. a prima facie case*), "the claim would fail because Bowman (1) could have raised the issue of trial counsel's conduct during trial in his PCR proceeding, (2) has presented no reason for not raising the issue then, and (3) fails to demonstrate

conduct on the part of trial counsel that was shocking to the universal sense of justice." The Court's finding is a clear application of South Carolina Code of Laws Ann. § 17-27-90 (requiring that all grounds for relief available to an applicant must be raised in his original, supplemental or amended application, and any ground not so raised may not be the basis for a subsequent application absent sufficient reason for the failure). A court cannot be said to have rendered a merits ruling on a claim that it expressly deems procedurally improper. Thus, the petition was dismissed on the basis of the state law test, not federal law.

The Fourth Circuit has similarly found that denial of original jurisdiction petitions submitted to the Supreme Court of South Carolina do not constitute rulings on merits.[7] *Wilson v. Moore*, 178 F.3d 266, 277 (4th Cir. 1999). Wilson's case was based in federal habeas corpus and reviewed under 28 U.S.C. § 2254; consequently, whether the state court considered the claim on the merits affected not only procedural default, but also whether the materials submitted in the petition for original jurisdiction review could be considered a part of the state court record for § 2254 review. *Id.*, at 273. The Fourth Circuit rejected Wilson's argument that the order, which reflected the petition was "denied," indicated that Supreme Court of South Carolina considered the merits of the federal claim. The Fourth Circuit held "[a]fter examining the totality of the circumstances accompanying the entry of the state order, we conclude that the order fairly appears to rest on state procedural

---

[7] In general, this Court may depend on the federal court of appeals to have "familiarity" with the state law at issue. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 16 (2004) ("Our custom on questions of state law ordinarily is to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located.").

grounds, not federal law." *Id.*, at 275-276. It reached that conclusion having considered that there was no mention of federal law in the order and there was no discernable difference in the state court's use of "denied" rather than "dismissed" to indicate the type of review given. *Id.* The Fourth Circuit considered other state court orders including one that had been presented to this Court previously, *Yates v. Aiken*, where this Court had reversed the denial of a petition and remanded to the Supreme Court of South Carolina for further proceedings. *Id.*, at 275 n. 9 (citing *Yates v. Aiken*, 349 S.E.2d 84, 85 (S.C. 1986), *rev'd*, 484 U.S. 211 (1988)). It noted, however, that subsequent guidance from this Court was then available to determine whether the action was based on independent and adequate state law grounds, citing *Harris v. Reed*, 489 U.S. 255 (1989), and *Coleman v. Thompson*, 501 U.S. 722, 729 (1991), and that precedent reinforced its conclusion that the ruling was not on the merits. *Id.*[8]

The juxtaposition between a matter where original jurisdiction was exercised, and a matter where it was not, is well established by *Moore v. Stirling*, 871 S.E.2d 423, 429 (S.C. 2022) and *Moore v. Stirling*, Appellate Case No., 2024-001345. There, over the course of two years, Moore presented two separate petitions for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court. In the first, regarding proportionality and other matters, Moore was granted the

---

[8] Additionally, as the Supreme Court of South Carolina explained in the subsequent opinion following remand, Yates had filed *both* a petition for writ of certiorari to review his denial of post-conviction relief *and* a petition for writ of habeas corpus in the original jurisdiction. Those petitions were consolidated before the Court, logically making review of one over the other difficult. *See Yates*, 349 S.E.2d at 85.

opportunity for briefing and oral argument only to the proportionality claim, and though Petitioner did not receive the relief he wished, a published opinion followed. In contrast, Moore's second habeas petition claiming error under *Batson* was denied by simple order without an authorization of briefing and oral argument. The South Carolina Supreme Court's treatment of Bowman's petition is in keeping with their handling of Moore's second petition. The second original jurisdiction petition was denied by simple order that provided only the briefest of discussions each of the five claims raised – with the content of such discussion noting the procedural history of the claims, the procedural prohibitions to the claims, and curt recognition that the record was not in support of Petitioner's position. Specific to the procedural prohibitions against Petitioner's claims of ineffective assistance of counsel due to racism, the Supreme Court noted that "Even if there were evidence to support Bowman's claims, the claim would fail because Bowman (1) could have raised the issues of trial counsel's conduct during trial in his PCR proceeding, (2) has presented no reason for not raising the issue then, and (3) fails to demonstrate conduct on the part of trial counsel that was shocking to the universal sense of justice." (App. p. 005a). Such is a clear invocation of South Carolina's procedural prohibition against successive PCR actions under S.C. Code of Laws § 17-27-90. Original jurisdiction was clearly denied here.

Following the example set in *Moore*, the Supreme Court of South Carolina did not exercise jurisdiction on the merits of Bowman's ineffective assistance claim. A passing or light review of the record is not enough for Bowman to show proper

jurisdiction in this Court where *in addition to showing a possible constitutional error,* a state petition still must establish the procedural or other failures that demonstrate the extraordinary exercise of original jurisdiction would be warranted. Either way, Bowman fails to present this Court with a federal issue to review based on the Supreme Court of South Carolina's summary denial of the exercise of its original jurisdiction – it is undeniable that the state test requires more than consideration of the claim for the exercise of jurisdiction and that test is a matter solely of state law that will not support jurisdiction here. *John, supra. See also Coleman,* 501 U.S. at 729 ("This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.").

II. Petitioner's argument is tantamount to a second and successive habeas action seeking relief on the basis of an ineffective assistance of counsel claim that, though meritless, was available to Petitioner at the outset of his state collateral proceedings.

Bowman's Petition for Certiorari asserts a claim of ineffective assistance of counsel and seeks relief in the form of a writ of habeas corpus from what it argues is an incorrect decision on the merits by South Carolina Supreme Court. Bowman is mistaken.

In addition to Respondent's arguments above that the South Carolina Supreme Court did not exercise original jurisdiction and provide a merits ruling to the application of federal law, the action here fails to satisfy the procedural requirements needed for AEDPA review because the claim was found to be procedurally barred by in state court. As Petitioner has already sought federal habeas relief and

unsuccessfully appealed the denial of such relief, this Petition triggers the application of 28 U.S.C. § 2244(b)(2)(B) and the record facts demonstrate that he cannot overcome its threshold limitations. *See Gonzalez v. Crosby*, 545 U.S. 524, 530, 125 S. Ct. 2641, 2647, 162 L. Ed. 2d 480 (2005) (noting that an "application" under § 2244(b) is a "filing that contains one or more claims" for federal habeas relief from a state court conviction). Under subsection (a)(2)(B), a second or successive habeas corpus application shall be dismissed unless "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence" and "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C.A. § 2244 (West). Here, the record demonstrates that the factual predicate (albeit a meritless one) was available to Petitioner at the outset of his PCR litigation and could have been explored through investigation and discovery because Petitioner uses portions of the trial transcript and evidentiary hearing as the foundation of his claim. As such, Petitioner fails subsection (a)(2)(B)(i). Likewise, the out-of-context portions of the record presented by Petitioner would fall well short of "clear and convincing evidence that no factfinding would have found Petitioner guilty" of Victim's murder. Petitioner cannot satisfy the statutory requirements for presenting a second and successive habeas petition to this Court.

III. Bowman's claim that Mr. Cummings was racist and that he injected racists beliefs and issues into Petitioner's trial are entirely baseless.

Bowman asserts that trial counsel, Norb Cummings, was a racist and that he injected his own racist beliefs and tensions into Bowman's trial to the jury. Apart from being a direful denunciation of trial counsel, both personally and professionally, and notwithstanding Respondent's argument as to the lack of jurisdiction in this matter, Petitioner's arguments *often* misrepresent the state court record, are simply without merit, and are unworthy of a grant of certiorari by this Court.

Perhaps to assuage the inflammatory nature of his racism allegations against counsel, Bowman first begins his argument with a general attack upon the quality of Mr. Cummings representation and the satisfaction of his duties to investigate. Petitioner has been litigating ineffective assistance of counsel claims *for nearly twenty years*; he has had ample time to speak with any individuals he wished, including those who only now, after exhaustion of all remedies, provide an affidavit of generalized disapproval. In contrast to such, the PCR court addressed numerous claims of ineffective assistance of counsel and it found none meritorious and worthy of relief. The South Carolina Supreme Court then had the opportunity to review those decisions. It did so, and it granted certiorari as to one of the ineffective assistance claims raised. Nevertheless, in review, Bowman was properly denied relief. Likewise, the federal Magistrate, District Court, and Fourth Circuit all undertook a review of the ineffective assistance claims raised by Bowman and found none to warrant relief. Petitioner's attempt to start again with such claims for consideration, outside the established processes for review under AEDPA, and after nearly two full decades of

prior unsuccessful litigation against the quality of representation, is to discount the measured and thoughtful rulings of numerous judges and justices.

Bowman next steers his arguments toward the inflammatory. Pertinent to Petitioner's trial was the testimony and evidence offered for purposes of establishing the aggravating circumstances for the sentence of death, and to that end the jury was ultimately charged with deciding whether armed larceny, armed robbery, kidnapping, and/or criminal sexual conduct had taken place in tandem with the murder. At times, PCR counsel's questioning of counsel in relation to those aggravators resulted in a discussion of race during the PCR evidentiary hearing. [9] However, Petitioner has not presented the record fairly to this Court.

The lack of evidence tending to show that counsel was racist and inserted such racial bias into the trial is demonstrated throughout the Petition. First, the Petition itself belies the credibility of the allegation. Specifically, Bowman asserts "[w]hile counsel did not make *as many* racist statements during trial as he did during the PCR proceeding. . .". (Pet., p. 17) (emphasis added). **Contrary to this assertion, in review of Bowman's entire argument Respondent cannot find *any* record citations by Bowman that demonstrate counsel presented his own racial biases to the jury during trial.** This is a key tell to the fallacies of Petitioner's argument: nearly all of Bowman's references to the state court record rely upon statements and discussions that took place during the PCR evidentiary hearing, in a

---

9 The lack of merit to Petitioner's claim is highlighted by the fact that the topic of race was squarely discussed during the PCR evidentiary hearing, *but no ineffective assistance of counsel claim was raised in response.*

setting where counsel was able to speak candidly about the concerns of the trial. Instead of Bowman pointing to actual articulations of racial bias in the trial transcript, what is presented are misrepresentations of and out-of-context references to the record, often with overt efforts by Bowman to inappropriately "bracket in" racial animus that is absent from the record itself.[10]

Counsel's limited references to race – to which the trial transcript is nearly nonexistent, and to which the PCR hearing is limited and intentionally explanatory – collectively demonstrate his efforts *to guard against* the jury allowing any potential racial biases to play into their analysis of the evidence. Moreover, such is not just Respondent's presentation of competing inferences from the record. Trial counsel ***explicitly*** testified that as the trial progressed he became worried the State was trying to place the case in a black defendant/white victim framework alongside the fact that there was a sexual relationship between them.[11] Counsel believed that this was inappropriate and in response he actively sought to diffuse such possibilities.[12] To wit, counsel testified as follows:

> [H]ere is my theory and this is what I want to show. Marion and Kandee were friends, they were intimate friends, if I can use the words. I wanted to show that this man would not hurt that little girl because he cared about her and that she was an intimate friend of Mr. Bowman's. So, anything that the State wanted to try to show dirty about their intimate relationship was that, again, black versus white,

---

10 Petitioner frequently brackets the word "white" to inject it into the record where it has not been stated. (See Pet. p. 9, 11, 17, and 21).

11 *Respondent vehemently asserts that there was no such efforts on the part of the solicitor and no such claims have ever been raised in collateral proceedings. But regardless, the record demonstrates that Mr. Cummings was attempting to defuse the potential for racism, not insert it.*

12 Desirous of preventing any racial prejudice given that his client's nickname being "Black" and the victim being white, Mr. Cummings even made a motion in limine to exclude his client's nickname from trial. (BIO App. A).

white with a black male, that Mr. Bailey was trying to get the ultimate penalty and yet they were friends.

. . .

Q: Well, now, Mr. Bowman is married to someone else, isn't he?
A: Oh, yes. We talked all about the adultery and all the other stuff, and you read the transcript.

. . .

Q: That would be fornication, too, wouldn't it, which is another crime in South Carolina?

. . .

Q: Okay. Here is what I'm trying to find out. So, when information about Mr. Bowman and Miss Martin having sex comes in it actually tells the jury, Dorchester County jury, which I would consider to be a small town jury –
A: It is.
Q: -- that this African American man and this white lady had been having sex while Mr. Bowman is married to another lady and also while he is not married to Miss. Martin?
A: But they were intimate friends and the only way to show that he had no ill motive or reason to kill this lady was that they were intimate friends.

. . .

Q: . . . Why didn't you object to his testimony about the DNA coming in in relation to the murder?
A: Because I wanted to show he was with her, that he cared about Kandee, there was no rape, let the DNA come in, my man's DNA is inside her. I'm sorry, maybe we differ on this, but I wanted to show that they were friends, they were intimate friends.

. . .

A: I wanted that in as part of my strategy.

. . .

Q: The sex is relevant to what?
A: Intimate friendship. For the last time, Mr. Brown, I know what you're trying to say. I wanted to show the State was trying to do over kill here, they were trying to paint it dirty, I tried to clean it up.

. . .

> A. I think [Mr. Bailey] stepped over the line. I know what he wanted, a black man and a white woman having sex, we both know what that is. I cleared it up, in my humble opinion.
> Q. You made the best –
> A. I made the best of it.
> Q. Him playing dirty?
> A. That's right.

(BIO App. B). Trial counsel's testimony in this regard is an explicit articulation that he was not "injecting" race into the trial – he was attempting to prevent such inappropriate considerations by the jury. Despite these clear articulations of his intent and strategy, Petitioner has seen fit to call Mr. Cummings a racist, misrepresent the record to this Court, and present out-of-context fragments of record in the hopes of securing relief from his sentence.

Petitioner's first error in reference to the record demonstrates those efforts in relation to kidnapping. (Pet. p. 7). Counsel attempted to show a lack of credibility in witness Gadson's accounting of events. He did so by demonstrating that Gadson's articulation of Victim's alleged fear of the situation she was in did not make logical sense in light of the actions that Victim took to hide *with* her alleged kidnapping assailants, whom were of a different race – he argued that if Gadson's testimony was to be believed she would have instead run to the passing car for aid. Counsel's purpose was clearly to demonstrate *the absence* of a racial element to Victim's circumstances of the case and Counsel even expressed to the jury his reluctance for having to bring the topic up at all. Counsel telling a jury that the application of a racial bias *does not make sense*, does not amount to injecting racial bias into the trial. Nevertheless,

Petitioner seeks to twist this closing argument into an unfounded attack on Mr. Cumming's character and his performance as counsel.

Petitioner next turns to counsel's alleged failure to object to the DNA evidence in the case, his reference to victim as a "little girl", and an excerpt from the closing argument wherein counsel argued to the jury that the state's use of DNA evidence was put before them despite the lack of evidence demonstrating nonconsensual sexual conduct. To that end, counsel again noted the lack of logic to such evidence and rhetorically asked if such [DNA evidence] was introduced to stoke the anger of the jury. Notably absent from counsel's arguments here is any reference to race, and to the extent Petitioner suggests that a racial issue was implied – counsel's explicit testimony was that he tried to quell any racial animus. Petitioner also asserts that this exchange brings into question why counsel did not object to the admission of the DNA evidence at trial. However, Petitioner fails to note that counsel already answered that question fifteen years ago during the PCR evidentiary hearing:

> Q. Why didn't you object to this testimony about the DNA coming in in relation to the murder?
> A. Because I wanted to show he was with her, that he cared about Kandee, there was no rape, let the DNA come in, my man's DNA is inside her. I'm sorry, maybe we differ on this, but I wanted to show that they were friends, they were intimate friends. . . . Fitts, I believe, was a DNA person, right?
> Q. He was.
> A. Right. And he couldn't tell when the DNA was put there.
> Q. That's correct.
> A. And I wanted that in as part of my strategy.

(BIO, App B). This response is simply incongruent with Petitioner's claims that counsel harbored racist views or injected such views into the trial.

Petitioner next attempts to juxtapose co-counsel Hardee-Thomas's (whom Petitioner informs is of African-American decent) articulation of a consensual sexual encounter as being more willingly discussed than it was by Mr. Cummings. Petitioner *insinuates* that the completely unreferenced topic of race somehow made Mr. Cummings personally uncomfortable and that he wanted to "get away from the topic as quickly as possible rather than just arguing that Bowman and Martin had consensual sex – as his black co-counsel did." (Pet. p. 8). Notwithstanding the extreme unlikelihood that Petitioner could simultaneously have one white attorney injecting his own racial animus into the trial on a subject he explicitly stated was part of his trial strategy, and one black attorney *not* raising any concern over lead-counsel's supposed overt racism (or providing current counsel with an Affidavit to such), there are a number of incongruencies or omissions to Petitioner's arguments that are key to understanding the full scope of issues in play. First, trial counsel work together to present evidence and arguments – it is not a comparative exercise. This is especially so given that the referenced pages (App. 71a and 96a) represent the back-to-back closing arguments for sentencing by both Ms. Hardee-Thomas and Mr. Cummings; there was no need for excessive repetition. Second, the reference to App. p. 180a is not a discussion of closing arguments, it references a portion of the trial where co-counsel was asking questions of a witness and sought to confer with lead counsel before going further. To that end, Petitioner neglects to mention the fact that Mr. Cummings was adamantly against introducing evidence that would attack the reputation of Victim as being a drug user and prostitute, given that he (appropriately)

believed such would be extremely detrimental to the defense. Third, as the topic involved the insinuation of sexual conduct of the defendant and the victim, counsel was also being wary of the fact that he had successfully excluded statements by Mr. Bowman regarding sex with victim's corpse. (BIO App C). Preventing the admission of such evidence was of paramount importance for counsel, and the door could potentially have been opened for either of these topics if further questioning was not artfully handled.

Next Bowman infers racial animus by way of an unsubstantiated bracketed inferences: "The references to Martin's picture and Bowman, as he appeared in court, is clearly a head-nod to Martin being a 'little [white] girl' with blonde hair, App. Q, 63a, App. S, 181a, and Bowman being a very dark-skinned black man with a cornrow hairstyle at the time of his arrest." (Pet., p. 9). [13] There is no reference to Victim as being a "little girl" on page 96a.[14] There is no reference to Victim as being a "little [white] girl" anywhere in the trial record. There is no reference to blonde hair anywhere in the record. There is no reference to cornrows anywhere in the record. Here, and repeatedly within the Petition, Bowman has taken the few occasions during trial where counsel referred to victim as a "little girl" and combined it with the one occasion counsel stated "little white girl" *during the PCR evidentiary hearing where race had become a topic of discussion.* (BIO App D). Petitioner has severely

---

13 Bowman does the same unsubstantiated bracketed inference for counsel's comments again in Footnote 29 of the Petition. (See Pet., p. 38).

14 It should be noted that Petitioner also attempts to draw error to even the *non-racial* use of the phrase "little girl," despite it being often used a means of avoiding the appearance of callousness and being an accurate descript of Victim's diminutive stature.

misused grammatical brackets in an illicit attempt to suggest to this Court that "little [white] girl" has been counsel's racist perception all along – even though the jury never once heard counsel refer to victim in that manner. The nature of this case, and Petitioner's wholly unsupported arguments are detached from any reasonable reliance upon this Court's holding in *Buck v. Davis*, 580 U.S. 100 (2017). Both the spirit and the letter of the *Buck* decision is that counsel should guard against the impetus of juries, courts, or attorneys permitting race to be a factor in the adjudication of justice. Brackets aside, the record demonstrates adamant and consistent efforts by trial counsel to prevent racial bias from impacting the proceedings. *He was successful in doing* so and Petitioner's attempt to mischaracterize counsel's efforts and impute racial animus through grammatical ploys is an afront to this Court's directives.

Petitioner continues his dubious tactics by referencing the portion of counsel's PCR testimony where he recalled a prior case where he believed the State portrayed the white victim as being with five African American men – *even though his reference to that case did not demonstrate racial animus so much as it demonstrated his disdain for racial animus and his wariness of the issue.* Again, Petitioner presents the topic out of context, given that the discussion was elicited on the basis of why counsel considers it a poor strategy to attack the character of the victim. Petitioner then takes his unsubstantiated argument one step further, by insinuating – without supporting citation – that Mr. Cummings considered it slanderous "that a 'white girl' had sexual

relationships with 'African-American men.'" Petitioner's assertion is an egregious misrepresentation of Mr. Cummings minimal testimony, which states:

> What I'm saying is, it does no good, that Gardner case up here where they tried to portray that white girl being with five African American men and, Mr. Brown, you slander a victim, you know the little girl is dead, they got those nasty pictures in there in this penalty phase with the burned body, the statement allegedly, "Black, please don't shoot me, I got a baby." Marion would have known she had a child, he grew up with her. I tried to stay away from hurting Miss Martin in any way because all all the evidence and all the facts show she got shot in the back.

(BIO App D). And, by subsequent quotation, Petitioner contradicts his own argument by later quoting Mr. Cummings statement: "But I also had the horrible experience dealing with Missy McLaughlin [*Gardner*] trial where the lady was also accused of using her body for drugs, and believe me, it didn't sit well with the jury." (Pet. p. 12). Clearly, counsel's reference to "slander" is not related to the fact that a white woman would engage in sexual activities with a black man, but that she would use her body with multiple partners for the purpose of acquiring drugs. Petitioner's distortions of the record here are heinous.[15] [16]

---

[15] Bowman similarly distorts the record in its reference to App. p. 116a, as constituting an admission by counsel that "he believed a white 21-year-old female would not voluntarily be with two similarly-aged black males in a remote area in the early hours of the morning under any circumstances." (See Pet. p. 17). An accurate accounting of Counsel's statement demonstrates that it geared toward Victim being tricked or lured to her death as satisfaction of the kidnapping aggravator, for which he staunchly asserted that the collective circumstances of the crime were extremely difficult to present in any convincing fashion to a Dorchester County jury. Contrary to Bowman's assertions, Counsel offered no personal views as to what white females voluntarily do or do not do with African-American males.

[16] Bowman distorts the record again by stating that counsel apologized for even suggesting a sexual relationship existed between "a little [white] girl" and a 20-year-old black male. (See Pet. p. 17-18). In contradiction, the substance of the discussion is entirely one relating to sexual relations and the argument that the State was presenting an unrelated sexual/CSC aspect to the case to distract or enrage the jurors. It is Bowman who imputes a racial element to this argument, not counsel, and

Petitioner's arguments that follow all attempt to bypass the absence of race being disputed, and instead focus upon relitigating the handling of evidence regarding drug use and prostitution by the victim – all of which continue to fall under the clearly stated and clearly appropriate strategy of not attacking the character of a murdered victim and not disclosing that defendant was victim's drug dealer. In any case, those matters are both legally and figuratively exhausted by Petitioner's decades of litigation. To these arguments, the Petition presents additional unsubstantiated inferences as to Mr. Cummings' mindset, by suggesting, in contravention of his expressed strategy, that victim "was assaulted while alive or dead *rather than even considering the possibility that she engaged in consensual relations with Bowman.*" (Pet. p. 11)(emphasis added). In addition to the fact that Mr. Cummings testified under oath to the exact opposite inference of the evidence (BIO App B), Petitioner now appears unconcerned by the fact that that State possessed several statements *from Bowman* that would have connected him to the murder and indicated that victim and/or her corpse was used for sexual intercourse by others in his presence – *despite only his DNA being found on the vaginal swabs.* (BIO App C). Mr. Cummings was successful in suppressing that evidence, and was rightfully concerned with how *that* evidence might impact a jury.

It is not racist to recognize and guard against *the potential racism of others* and in large part had counsel not articulated the answers he did in his PCR testimony – Petitioner would likely be asserting that counsel was ineffective for not be cognizant

---

Bowman purposefully ignores the portion of his referenced page that **demonstrates that counsel was apologizing for raising his voice during the trial.** (App., p. 096a, lines 17-18).

of the issue of race with – *as PCR counsel put it* – a "small town jury." (7482). In short, Bowman expressly calls Mr. Cummings a racist and pleads with this Court to grant relief on the basis that counsel injected his racial beliefs into the trial while failing to identify even one time where racially animus views were presented to the jury. Each of Bowman's claims lacks a substantiated foundation because the commentary relied upon from the PCR evidentiary hearing is misrepresented to this Court, and the topic of race was being explored by PCR counsel as part of an evaluation of why counsel did not choose to attack the character and lifestyle habits of the Victim. Bowman does not rely upon this tactic in a limited or minor way, Instead, the Petition bears this out repeatedly, and a fair and proper presentation of the record demonstrates the total lack of merit to Petitioner's claims.

The instances in which Bowman has misrepresented the record or used counsel's statements out of context are too numerous to count in his Petition, but the dubiousness of his arguments have not gone unnoticed. In seeking certiorari from this Court Petitioner has conveniently left out the admonishment that he received for making these same arguments to the South Carolina Supreme Court. Though normally tempered in their language, the South Carolina Supreme Court noted that it "flatly disagree[d]" with Petitioner's assertions, noted that "[t]here is no evidence trial counsel exhibited racism during his representation of Bowman," and concluded "Bowman has fashioned a meritless narrative by taking trial counsel's testimony during the PCR hearing completely out of context. . ." (App. p. 005a). As discussed, there is no merits based application of federal law for this Court to review, but

nonetheless the stinging retort from South Carolina Supreme Court is a fair measure of the consideration this Court should given Petitioner's arguments: zero.

Certiorari should therefore be denied.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

*W. JOSEPH MAYE
Assistant Attorney General

By: s/ W. Joseph Maye
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305
jmaye@scag.gov

Counsel for Respondents

**counsel of record*
January 27, 2025

APPENDIX TO BRIEF IN OPPOSITION

Appendix A – Trial transcript – 1017-1018 and 3620-3622

Appendix B – PCR evidentiary hearing - 7478-84; 7712

Appendix C – PCR evidentiary hearing – 7559; 7735; 7846 – 51; 7964-65

Appendix D – 7124; 7480; 7490; 7395

APPENDIX A

of us. Obviously, Judge, I probably would have a motion to argue the validity of the arrest based on some testimony that's come out and probably leave that to Her Honor's pleasure as to how much Mr. Bailey and I argue that point of law. Judge, there will be some issues as to any -- there will probably be a search and seizure issue, Your Honor, again, dealing with the elements of the effect of the arrest and the manner thereof, ma'am.

I have some motions, Judge, particularly dealing with the polygraph now since there's been a big integral part here. And I know, Your Honor, that's normally a motion that we'll either make together because some testimony may come out adverse to Your Honor's instructions and prohibit that, so I know I would have a motion in limine for that.

We have an issue, Judge, of nicknames which we all know is an issue in our state from some of the former ones, my client. I will make a motion in limine again, I'll put this in writing, have it in writing. I just want to make sure we get our ducks in a row, my client's nickname, street name is Black, B-l-a-c-k. To

avoid any sense of prejudice coming into this case since we have an alleged white -- we have a white lady who's dead, we have a black gentleman accused of the crime, other black members of the community that are accused of crimes, I would ask that the motion in limine be heard and hopefully granted to keep the nickname Black out. And, again, I know sometimes it's by accident or by just comfortableness the way people talk, but, you know, that would be an issue I would like to argue if we have to.

I don't have any off the top of my head other than I know arrest, search, and seizure. And of course depending on how Her Honor rules at the end of this motion perhaps some time to argue that, either Mr. Bailey or I. So I don't think more than probably three days of arguments. Because most of the other stuff, Judge, is going to be completely legal and --

THE COURT: Okay. Yeah.

MR. BAILEY: Judge, I wouldn't anticipate that much time for this reason: I think the validity of the arrest and search and seizure issue would kind of of necessity have to be decided as part of the Jackson v. Denno. I

defendant by his nickname.

THE COURT: Oh, yes.

MR. BAILEY: I don't know if we wanted to address that.

MR. CUMMINGS: Yes, ma'am. I put that in writing after we had talked about it in the court and previous things.

THE COURT: Yes.

MR. CUMMINGS: And, Your Honor, if I may take a few moments, I thank Mr. Bailey, again, Judge, my client's nickname, for lack of better words, is Black. It's spelled B-l-a-c-k. Your Honor, my client is an African-American citizen, he is clearly, Judge, in a case here today where Your Honor has heard from one of the other issues that we have worked very hard, Mr. Bailey and I and Ms. Thomas, Mr. Lafond, and all the members of the solicitor's office staff to keep race out of this case and give any citizen a fair and impartial trial.

It would be unduly harmful, Your Honor, respectfully, to my client to be referred to constantly as Black. He has a name, his name is Mr. Marion Bowman, Jr. The Court has admonished even us lawyers to not use each

other's first names in court because of the decorum and respect for the bench in our proceedings. And I would ask, Your Honor, that any reference to him be prohibited, that we have a motion in limine to not use nicknames.

Inadvertently once in a while, Judge, we all know people call each other by a name. I may refer to my deputy over here as Sammy, you know, anything. But, Judge, respectfully, we are asking for a motion in limine to be granted and an order granted that his nickname not be allowed to be used in court.

And, likewise, it would go for the defense that we could not impede or try to call other people by their nicknames. Understanding, Judge, with that situation, with the fact that my client is an African-American male, I think it's imperative for the Court it might cause great prejudicial harm to my client to be referred by his nickname in this courtroom based on the fact that there may be some quantitative rationale or reasoning to race issue in here as well as the connotation that we treat -- somebody might treat a black person differently then a white person, or the fact that he's black

may cause some inner prejudice or inner feeling of bias against any citizen.

THE COURT: Yes, sir, Mr. Bailey.

MR. BAILEY: Your Honor, I certainly don't intend to play any kind of race card here and I think the jury can see that Mr. Bowman is African-American. I don't consider that nickname to be a derogatory name. I mean, Mr. Cummings might, I do not. And I have talked to numerous people in the Branchville community in preparation for this case and I don't think any of them has referred to him as Marion, either call him J. R. or Black, that's his nickname, that's how he's known.

Other codefendants here they pretty much all got a nickname and I don't think there's anything derogatory about it. I'm not going to refer to him as Black if Mr. Cummings does not want me to; however, these people who have know him all of his life, or automatically when they talk about it they will either say J.R. or Black.

THE COURT: Your point is he would be referred to as his -- by his nickname for identification purposes.

APPENDIX B

notice of what to respond to in his trial and so what were you on notice of regarding the CSC in conjunction with the murder, not a rape six years earlier or something?

A Just like we talked about.

Q Just Nursery Road?

A That was it, what we talked about.

Q And who does the State say was at Nursery Road?

A Mr. Bowman, Kandee Martin and Mr. Gadson.

Q All right.

A Allegedly Mr. Felder comes back with gasoline, if you believe that.

Q Postmortem?

A Right, if you believe that.

Q Okay. So, according to the State's theory they presented, it was Miss Martin, Mr. Gadson and Mr. Bowman?

A Correct.

Q Why didn't you ask Tawain Gadson about the lack of sexual activity at Nursery Road?

A I don't know. I didn't ask it.

Q And if you had asked him it would have been good for him to say there was no sex on that road, wouldn't it?

A But if he did say there was sex on the road it might have hurt my client more. I'm not going to ask a witness a question which I don't know the answer to, because the guy didn't decide to testify until he flipped in that courtroom.

Q And let's follow up with this. And did you all try to go interview him and the State deny you access to their witness?

A No, they didn't deny access. I was going to rely on what he was going to testify about, what was in the statements. I talked to Gene Dukes and Gene didn't want us talking to his client.

Q What did Mr. Dukes tell you about Gadson witnessing sex on Nursery Road premortem?

A He didn't say. He said, "My man ain't talking to you, good luck, I saved my guy."

Q Well, Mr. Dukes excluded you from talking to a witness who was talking to the State?

A He told me, "My man is not going to talk." He don't have to talk to me. As I understand, witnesses don't have to talk to you.

Q Well, after they talk to the State and they cut a deal, I don't know, that may be a little different dynamics on that. The reason I ask, how do you prepare for them?

A You prepare by cross-examining by their written statement and by the facts you know from what you learn.
Q Excellent. All right, let's look at his written statement. And if you would, take a look at what has been marked as Plaintiff's Exhibit 5 and Plaintiff's Exhibit 6. Do you recognize those? They have been entered in evidence.
A Yes, sir.
Q Okay. Can you show me in those statements where Mr. Gadson says there was sex on Nursery Road between Mr. Bowman and Miss Martin?
A He doesn't.
Q Okay. So, why didn't you ask about the lack of sex, why didn't you ask Mr. Gadson about there being no sex between Miss Martin and Mr. Bowman?
A I will say I did not ask the question but here is my theory and this is what I want to show. Marion and Kandee were friends, they were intimate friends, if I can use the words. I wanted to show that this man would not hurt that little girl because he cared about her and that she was an intimate friend of Mr. Bowman's. So, anything that the State wanted to try to show dirty about their intimate relationship was that, again, black versus

white, white with a black male, that Mr. Bailey was trying to get the ultimate penalty and yet they where friends.

Q Hold on one second.

A That is what I did.

Q Well, now, Mr. Bowman is married to someone else, isn't he?

A Oh, yes. We talked all about the adultry and all the other stuff, and you read the transcript.

Q We --

A My partner and I, Miss Thomas and I, she is chair two.

Q You all talked about adultry?

A Oh, yes.

Q Tell me about, to make sure it's clear, Mr. Bowman is not married to Miss Martin?

A Not that I'm aware of. He never told us that.

Q That would be fornication, too, wouldn't it, which is another crime in South Carolina?

A Bigamy?

Q No, fornication, sex without being married.

A The jails would really be over populated, wouldn't they? I understand.

Q I doubt the judge is going to concede that is

not a crime. Misprison wasn't charged for 150 years and it is still valid.

THE COURT: Can we not just ask questions?

Q Okay. Here is what I'm trying to find out. So, when information about Mr. Bowman and Miss Martin having sex comes in it actually tells the jury, Dorchester County jury, which I would consider to be a small town jury --

A It is.

Q -- that this African American man and this white lady had been having sex while Mr. Bowman is married to another lady and also while he is not married to Miss Martin?

A But they were intimate friends and the only way to show that he had no ill motive or reason to kill this lady was that they were intimate friends.

Q Well, hold on a second, now. We had some family members testify about Miss Martin being friends with Mr. Bowman, right?

A Yes.

Q And they could have shown they were intimate friends. You're talking about sex, right?

A Well, intimate friends means sex, I'm sorry, in that context in that courtroom that day. Again, sir, I used everything I could, including the

family, to prove he cared about that lady. Yes, maybe he committed adultry, that is God's law and man's law but, again, I'm trying to be here to save his life.

Q Let's go back to that. Now, adultry is against both God's law and man's law?

A I understand that, God's law and man's law.

Q Here is why I asked. CSC is charged as an aggravator and that is alleged and proceeded on in the penalty phase, but the last witness the State presents is a gentleman name Fitts, the last witness that Mr. Bailey puts up. Why didn't you object to his testimony about the DNA coming in in relation to the murder?

A Because I wanted to show he was with her, that he cared about Kandee, there was no rape, let the DNA come in, my man's DNA is inside her. I'm sorry, maybe we differ on this, but I wanted to show that they were friends, they were intimate friends. Maybe she did trade the watch for sex in some jurors' mind or if you read between the lines here, but Fitts, I believe, was a DNA person, right?

Q He was.

A Right. And he couldn't tell when the DNA was

put there.
Q That's correct.
A And I wanted that in as part of my strategy.
Q And how does that change your strategy when you find out from Mr. Gadson that sex didn't occur on Nursery Road?
A I didn't care about his testimony at all. Gadson was a liar and I call him that today. Gadson, in my theory of the case, with my client was the shooter. I didn't want to believe anything the man said. My cross-examination was limited of him. I kept it simple so he didn't hurt me. He had an agenda to prove.
Q The sex is relevant to what?
A Intimate friendship. For the last time, Mr. Brown, I know what you're trying to say. I wanted to show the State was trying to do over kill here, they were trying to paint it dirty, I tried to clean it up.
Q Hold on, relevant to what element of a murder charge?
A What element of murder? He had no malice to this lady, had no reason to hurt her.
Q Malice is whoever pulls the trigger, right?
A You can infer malice. I'm talking about real

court, he goes first.
Q Here is my question. What fact was that relevant to?
A relevant to show that he and her were lovers and friends.
Q I'm talking about Mr. Bailey.
A Mr. Bailey?
Q What was relevant for him to put it up at all?
A I think he stepped over the line. I know what he wanted, a black man and white woman having sex, we both know what that is. I cleared it up, in my humble opinion.
Q You made the best --
A I made the best of it.
Q Him playing dirty?
A That's right.
Q All right. Now let's talk about the work record, and I ask you to take a look at Plaintiff's Exhibit 76. Would you look at the dates on that form, that work sheet?
A Yes, sir.
Q Now, generally what is the age somebody is allowed to work?
A It varies, whether it's family, whether it is

APPENDIX C

as we mentioned before, you had the four statements suppressed at the beginning of this case, correct?
A After long hearings, yes, sir.
Q And in that particular statement there were some particularly egregious claims made by Mr. Bowman, correct?
A Yes, sir.
Q Okay. So, obviously you had gotten that excluded. Were there also similar egregious claims made in the William S. Hall report?
A Yes, sir. You read a letter from Mr. Bailey yesterday to defense counsel or you, sir, I don't remember now, at the bottom, about sex with the dead girl in his statement.
Q You had had statements from Mr. Bowman in that regard excluded. Is it fair to say the last thing you wanted to do is open the door for that to come back in? Is that correct?
A Yes.
MR. BROWN: Your Honor, I have to object. Mr. Waters knows unreliable pieces of evidence is never admissible to --
MR. WATERS: Your Honor, I'm talking about the William S. Hall report which --
MR. BROWN: It is not admissible by law.

Q That also could potentially cause the Solicitor then to go with the first three statements which were not suppressed, correct?
A As you asked the question, yes, and how he would have done it, I don't know. But I know he would have tried everything he could have.
Q And even though those were not the inculpatory statements in the nature of the fourth one they still had things in them you would rather them be out rather than in, is that correct?
A Right. I fought hard to keep everything out, at least I thought.
MR. BROWN: I'm a little confused about the characterization of that being opening the door to a statements that never had been kept out.
MR. WATERS: I'm talking about the first three statements.
MR. BROWN: Right, how do you open the door to the statements that are okay, admissible to begin with?
MR. WATERS: Let me rephrase it, then.
BY MR. WATERS:
Q I'm not saying opening the door, what I'm saying is, then obviously the Solicitor might come back and respond by using, introducing those three

A He didn't, no.
Q Okay. And what information did you have that suggested that Mr. Bowman had sex during the commission of the murder?
A Well, one, his DNA was in her.
Q No, during the commission of the murder?
A During, specifically at the time of the murder?
Q Yes, sir. What we would term the res gestae of the murder.
A Mr. Bowman on about four occasions, and I spell this out in a letter that I sent to Norb Cummings giving him one more chance to take a life sentence in this case, at least four times referenced other people who supposedly were with him at the time of the murder having sex with her either after she was dead or immediately before she was dead. So, he seemed fixated on sex with the victim. His semen was in her. I'm not sure if that answers the question. That is the best information I have.
Q Well, without disputing the DNA, are you suggesting that Mr. Bowman and Miss Martin had sexual intercourse? What evidence shows it occurred during the res gestae period of the

murder, and I don't know which way --
A Well, his own statement alleging that sex took place between either the corpse of the victim or the victim during her lifetime at about the time she was dead by attributing this to other people.
Q Well, let's make sure. I want to kind of go back on that. You had an aggravator of CSC?
A Okay.
Q And CSC has to be a live victim, because it is a different charge for sex with a corpse?
A Okay.
Q So, what I'm talking about is during that time period up to her death but marked in the beginning by the res gestae of the murder, and I don't know how you want to paint that, but what I'm trying to focus in on --
A I'm not trying to paint anything. I'm just trying to answer your questions, and your question wasn't whether or not there was a CSC charge, it was whether or not there was sex with the victim.
Q During the murder, the res gestae of the murder, not whether there was sex like the day before, that afternoon or that morning, because the murder is alleged to have taken place at 8:00 o'clock in the evening.

A The statement he gave alleging that sex occurred on or about the time, either postmortem, perimortem or premortem.
Q And we're talking about statements that other people had sex with her?
A Yes, in his presence, different people at different times.
Q And what evidence substantiated the claim that other people had sex with her, that other people --
A Your client's own statement -- what evidence substantiated that?
Q What evidence substantiated that, that other people had sex with her?
A Nothing.
Q Nothing substantiated that statement, so --
A You're saying your client lied and what evidence do I have he told the truth, none.
Q Well, what I'm saying, that is an unsubstantiated statement, how does that prove he had sex? He didn't say he did, did he?
A You didn't ask me what proof. You asked me what evidence I had in support of the proposition that he had sex with --
Q If I'm following this theory, the fact that

Travis Felder says Mr. Bowman burned the car would be evidence that Travis Felder burned the car?

A You have lost me. You're talking about sex, then you're talking about a car. I don't remember, I can't answer you.

Q We'll back up. What evidence shows that Mr. Bowman had sex during the res gestae timeframe of the murder but before she expired?

A Okay, bear with me a second, please. In his first statement he said that the victim was killed by Terry Kelly, also known as Peanut, and Tarus Gant. He said that Kelly then had sex with Martin's corpse.

He next gave a statement saying that Terry Kelly and James Gadson murdered Martin and her body was fondled after she was shot.

The third statement he said Gadson shot the victim and then he shot her himself, Bowman did. Presumably after she is already dead. He stated, further stated in that statement that Gadson had sex with her corpse and that he burned the car with the body in it. He next stated that Charles Fralick murdered Martin.

So, he attributes sexual conduct to Terry Kelly and James Gadson with Martin's corpse. And

due to the fact he gave numerous statements saying that various people had sex with her after she was shot and the fact that his DNA was in her, putting those facts together, that's the basis of my belief that there was some criminal sexual conduct occurred at or about the time of her death.

Q Okay. And I'm sorry, I don't understand, I don't understand how a statement that says somebody else had sex with her is evidence that he had sex with her, the pivotal part, during the res gestae to murder?

MR. WATERS: Objection, asked and answered.

THE COURT: Do you want to clarify that any further?

A I can try to. I'm not basing that on any one particular thing. I'm basing that on several statements in which your client alleged he either had knowledge of or was present when other people had sex with the victim at or about the time she died and I couple that with the fact that their semen is not in her, your client's semen is in her. Putting that whole thing together, it formed a belief in my mind that there was criminal sexual conduct that occurred with the victim. Normally you don't have sex with somebody, then kill them.

Q A couple parts to this I have a question about. The part about the other people having sex, I think you said was unsubstantiated?
A Yes.
Q Okay. So, Mr. Bowman had said other people had sex with her, that is an unsubstantiated statement?
A Yes. How many times do I have to say it, Mr. Brown? Unsubstantiated. He's the only one said it.
Q Is there anything else that serves as a basis for belief that Mr. Bowman had sex with her during the res gestae of the murder?
MR. WATERS: Objection, asked and answered.
MR. BROWN: Okay.
THE COURT: He has given you all he can give you on that, or all he's going to give you.
MR. BROWN: I just have to make sure.
BY MR. BROWN:
Q Let me ask you about Tawain Gadson's mental health evaluation. Did you ever provide that document to Mr. Cummings or Miss Marva Hardee-Thomas?
A I don't believe I did.
Q And Mr. Gadson talked --

himself well, can talk and express himself. Not necessarily that, "I think he's a credible witness," or anything of that nature.

But regardless, it is not anything from which a valid claim can be gotten. The main thing is were the statements disclosed, was the evidence disclosed, then it is up to defense counsel to deal with what they want to do with it. This particular case, with regard to Darien Williams, they had all the statements, with regard that James Gadson they had all the statements. What Bailey may have believed at any point is no claim of any evidence, concrete evidence.

With regard to the William S. Hall report, the William S. Hall report isn't admissible against Marion Bowman in this case. It could be admissible if Marion Bowman were to assert any sort of mental status defense. As we listened to Mr. Cummings, after he had that statement, the fourth statement suppressed, which talks about post death sex, which is also mentioned in the William S. Hall report, he was not going after that human victim in pretrial proceedings, going to open the door where that again, and it is expressed in the record, you can look at, I will obviously cite it again in

briefing, I had Mr. Cummings look at it where he specifically says, on the record says, "Your Honor, as a strategic matter there is some things that I'm not going to elicit because I don't want to open any doors in light of the pretrial proceedings," and that is what he testified to, that is what he was talking about.

But turn around and looking at James Gadson, it is not admissible against James Gadson as impeachment. The William S. Hall report is no more admissible in that regard as it would be for Marion Bowman in the case in chief. Not only that, there is also issues about medical privacy and that sort of thing. I don't think there is any legal reason if the Solicitor gets a William S. Hall report, which is essentially confidential medical information about a defendant, that he then has to just farm it out to every co-defendant that is there.

THE COURT: I'm with your last part but your other part before that, are you standing on that, that I guess the tenor of the law is that report was not reviewable by the different -- I mean, it seems to me Mr. Gadson could very well have waived all his rights when he talked to the, when he

APPENDIX D

tried that Gardner case up here where they tried to portray that white girl being with five African American men and, Mr. Brown, you slander a victim, you know the little girl is dead, they got those nasty pictures in there in this penalty phase with her burned body, the statement allegedly, "Black, please don't shoot me, I got a baby." Marion would have known she had a child, he grew up with her. I tried to stay away from hurting Miss Martin in any way because all the evidence and all the facts show she got shot in the back.

Q Let me ask you about Tawain discussing Kandee smoking crack out on Nursery Road. Have you heard that before?

A Yes.

Q Now, he didn't testify about that at the trial?

A No, sir, and I didn't open up that door because allegedly, again Mr. Brown, with highest respect, they were out there to commit a burglary, that's great, they paint a picture of my kid out there to try and have a burglary, be a felon. Then they paint a picture of they are going to do a job on a house. That didn't get out.

Q Was Tawain given instructions?

A You prepare by cross-examining by their written statement and by the facts you know from what you learn.
Q Excellent. All right, let's look at his written statement. And if you would, take a look at what has been marked as Plaintiff's Exhibit 5 and Plaintiff's Exhibit 6. Do you recognize those? They have been entered in evidence.
A Yes, sir.
Q Okay. Can you show me in those statements where Mr. Gadson says there was sex on Nursery Road between Mr. Bowman and Miss Martin?
A He doesn't.
Q Okay. So, why didn't you ask about the lack of sex, why didn't you ask Mr. Gadson about there being no sex between Miss Martin and Mr. Bowman?
A I will say I did not ask the question but here is my theory and this is what I want to show. Marion and Kandee were friends, they were intimate friends, if I can use the words. I wanted to show that this man would not hurt that little girl because he cared about her and that she was an intimate friend of Mr. Bowman's. So, anything that the State wanted to try to show dirty about their intimate relationship was that, again, black versus

say my guy shot that little girl.
Q You didn't interview him, either?
A No. I wasn't allowed to by his lawyer.
Q Did you ask Walter Bailey to interview his witness, I mean Walter's witness?
A I asked the defense attorney, I didn't ask Walter Bailey to interview the State's witness, now.
Q And let me ask you, if Walter would have told him to speak with you under this plea agreement that says he has to cooperate, he would have had to have spoken with you, wouldn't he?
A Cooperate with the defense?
Q Cooperate with Mr. Bailey. If Mr. Bailey said talk to Mr. Cummings, then Mr. Gadson would have had to do so, wouldn't he?
A You say that. I don't know that to be true. I don't think he had to cooperate other than to tell the truth and cooperate with the State to provide testimony.
Q It says testify truthfully or cooperate, doesn't it?
A Right.
Q It actually is an alternative?
A Yes, sir.

Gadson to show that the State was threatening him with death penalty murder but he didn't do anything?

A The way you ask that question, yes, sir.

Q Because like if I threatened to do something to somebody but they didn't do anything wrong it is just a flat threat, isn't it, it is not a deal, it's a threat?

A It is a threat. Hopefully Mr. Dukes would have -- I don't know, I don't know why Mr. Dukes let him sign the sheet. I know why, it saved his life, to get away from being in the possibility of death penalty.

Q So, if he testified at trial he didn't do anything --

A If the jury believed that, that is the next thing.

Q But if Mr. Gadson says, "I'm just there," but he did something that made him liable for murder, than the fact he says, "I was just there and didn't participate," that is not true, is it?

A You're asking me again in that arena whether or not the jury is going to believe him. No, you know what they believed, they believed that little white girl was dead and then burned and somebody

No. 24-6376

IN THE
SUPREME COURT OF THE UNITED STATES

MARION BOWMAN, Jr. Petitioner,

v.

BRYAN P. STIRLING, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Respondents.

PROOF OF SERVICE

I, **W. Joseph Maye**, of counsel for the Respondent, do swear that on this date, January 27, 2025, as required by Supreme Court Rule 29, I have served the enclosed Brief in Opposition on all parties required to be served by electronic mail to Teresa L. Norris, Esq., S. Boyd Young, Esq. Lindsey Vann, Esq., and by depositing two copies of the same in the United States Mail, first class postage prepaid, addressed as follows:

Teresa L. Norris, Esq.
Capital Habeas Unit of the Fourth Circuit
129 West Trade Street, Suite 300
Charlotte, North Carolina 28202
Teresa_norris@fd.org

Lindsey S. Vann, Esq.
900 Elmwood Ave., Suite 200
Columbia, South Carolina 29201
lindsey@justice360sc.org

S. Boyd Young
S.C. Comission on Indigent Defense
SCCID-Capital Trial Division
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
byoung@sccid.sc.gov

I further certify that all parties required by Rule to be served have been served.

This 27th day of January, 2025.

s/ W. Joseph Maye
W. Joseph Maye
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305