

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 21 2013

Charleston County Capital PCR
The Honorable Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

Appellate Case Number: 2009-133266
Capital PCR Case Number: 2012-CP-10-3216

William O. Dickerson, Jr.,

Petitioner,

v.

State of South Carolina,

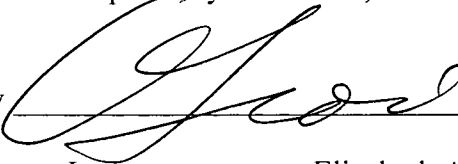
Respondent.

Appendix
Petition for Court to Review Assignment of PCR Judge
(Expedited Consideration Requested)

The following is the appendix to Mr. Dickerson's petition for this Court to review the assignment of the capital post-conviction relief judge.

Respectfully Submitted,

By



E. Charles Grose, Jr.
The Grose Law Firm, LLC
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Greenwood, SC 29646
(864) 992-3433

Elizabeth A. Franklin-Best
Blume Norris & Franklin-Best, LLC
900 Elmwood Ave, Ste. 101
Columbia, SC 20201
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May 17, 2013

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April 17, 2013

The Honorable Edgar W. Dickson
P.O. Box 1949
Orangeburg, SC 29116-1949

Re: William O. Dickerson v. State
Case Number: 2012-CP-10-3216

Dear Judge Dickson:

The purpose of this letter is to respectfully request that Your Honor withdraw from presiding over this case. Mr. Dickerson attorneys have learned about the close connection between your law clerk, Mr. Drew Evans, and Ninth Circuit Solicitor Scarlett Wilson. Please allow me to explain further.

A copy of Mr. Evans' publically accessible Linked In profile is enclosed (3 pages). Mr. Evans was employed as a law clerk for the Ninth Circuit Solicitor's Office from May 2011 to August 2011. He was also employed as a law clerk for the South Carolina Commission on Prosecution Coordination (hereinafter "Commission") from September 2011 to April 2012. The Commission's website lists Solicitor Wilson as a Commission Member.

This connection between Mr. Evans and Solicitor Wilson raises the following concerns:

- 1) Mr. Evans' interest in "criminal prosecution in particular" and employment history were not disclosed. Mr. Dickerson had to learn this information from the Internet. *See Hall v. Small Bus. Admin.*, 695 F.2d 175, 180 (5th Cir. 1983) ("magistrate and his law clerk failed fully to disclose the basis on which a reasonable person might 'harbor doubts about the magistrate's impartiality.'").
- 2) Mr. Evans' interest in "criminal prosecution in particular" shows a favoritism or bias towards the prosecution. *See Rule 506, SCACR, Cannons 1-3.*

- 3) Although the Attorney General's Office assumed primary responsibility for Mr. Dickerson's case during the direct appeal and post-conviction relief proceedings, Solicitor Wilson's involvement is ongoing. She attended the oral argument of the direct appeal on May 24, 2011, which was during Mr. Evans' employment as a law clerk in her office. Her name appears as counsel on the Supreme Court's written opinion. Her office has appeared before Your Honor and asserted privilege to significant portions of the State's file. *See* Rule 506, SCACR, Cannon 2(E)(2).
- 4) Given Mr. Evans' contacts to Charleston and interest in "criminal prosecution in particular," we are concerned he will be seeking future employment with Solicitor Wilson. *See* Rule 506, SCACR, Cannon 2(E)(3). *See also Hall, supra*, (judge disqualified based on law clerk's prior and subsequent employment).

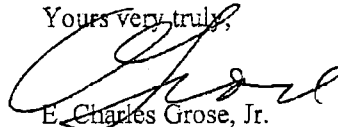
The connection between Mr. Evans and Solicitor Wilson is also concerning because of Mr. Dickerson's allegation that Solicitor Wilson violated *Batson* during his capital jury trial. Pursuant to *Miller-El v. Dretke*, 545 U.S. 231 (2005), Mr. Dickerson plans to present pattern and practice evidence. Because of Mr. Evans' employment as a law clerk in Solicitor Wilson's Office, including observing a number of trials, Mr. Evans very likely has personal knowledge of this pattern and practice evidence. Additionally, training materials prepared by the Commission have become an issue in this case. Because Mr. Evans researched, prepared, and drafted prosecution CLE materials, Mr. Evans very likely has personal knowledge of the pattern and practice evidence contained in these materials.

Because of these concerns, combined with Mr. Evans' very active participation in this case, we respectfully request Your Honor withdraw from presiding over this case.

Thank you for your attention to this matter. We look forward to hearing from you at your earliest convenience.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Elizabeth A. Franklin-Best, Esquire
Melody Brown, Esquire

Business

Drew Evans

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Profile

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**Drew Evans**

Judicial Clerk, Honorable Edgar W. Dickson
Columbia, South Carolina Legal Services

Current The First Judicial Circuit, The Honorable Edgar W. Dickson
Previous American Bar Association Real Property, Trust, and Estate Law Journal, South Carolina Commission on Prosecution Coordination, Ninth Circuit Solicitor's Office
Education University of South Carolina School of Law

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People Similar to Drew

Angelina Pargoff
Judicial Clerk at Connecticut Appellate Court
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www.linkedin.com/pub/drew-evans/4a/374/8bb
Background**Summary**

I graduated from the University of South Carolina School of Law in May 2012 and passed the July 2012 South Carolina Bar Exam. I was sworn-in in November 2012.

I am currently clerking for The Honorable Edgar W. Dickson in the First Judicial Circuit and have enjoyed exposure during my clerkship to many areas of practice including criminal law, extensively, products liability, contract law, medical malpractice, insurance and motor vehicle accidents, defamation, personal injury, Post-Conviction Relief, including a Capital PCR, and state tort claims.

I am specifically interested in civil litigation, real property, and criminal law and criminal prosecution in particular, with clerking experience in the Ninth Circuit Solicitor's Office in Charleston and the South Carolina Commission on Prosecution Coordination in Columbia. I also have clerking experience in probate and real estate law, transactional law, products liability, real property, and family law.

I was a member of the ABA Real Property, Trust, & Estate Law Journal at the law school for two years, serving as a member and a Research Editor.

Experience**Judicial Clerk**

The First Judicial Circuit, The Honorable Edgar W. Dickson
July 2012 - Present (10 months) | Orangeburg, SC

Assist Judge in hearing scheduling, attorney contacts, ruling advisement, jury charges, legal research, and order drafting.

Assisted in presiding over all aspects of the Circuit Court system including General Sessions, Common Pleas, jury trials, non-jury trials, motion hearings, plea court, General Sessions appearances, and Post-Conviction Relief Hearings (including two PCR Terms and a Capital PCR case).

Research Editor

American Bar Association Real Property, Trust, and Estate Law Journal

74
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Lincoln's legal career gave him the skills which lead to his election.

People Also Viewed

Kelly Teague
Judicial Law Clerk at The Honorable Letitia Verdin



Christine Thompson
Recent Graduate from the University of South Carolina School of Law



Timmy Finch
Associate Professor at American Military University



Matthew Sparrow
Law Clerk at Ninth Circuit Solicitor's Office



Rutledge DuRant
Associate Attorney at Thurmond Kirchner Timbee & Yalverton, P.A.



bruce durant
Chief Deputy Solicitor at 9th Circuit Solicitor's Office



Beattie Butler



Alexander G. Hall, Esq.
Attorney at The Tianken Law Firm & MBA Candidate at The Citadel

April 2011 – May 2012 (1 year 2 months) | USC School of Law

Would do a preliminary review of each article for any glaring issues with footnotes and sources, compile a list of all the footnotes and sources therein, and track down copies of each source from the internet, law school library, undergraduate library, local public libraries, or libraries from around the US and, in one particular article, from as far as France.

Law Clerk

South Carolina Commission on Prosecution Coordination

September 2011 – April 2012 (8 months)

Assisted with legal research, the research for, preparation, and drafting of Prosecution CLE materials, legislation monitoring and tracking, and technology upgrades. In 2012 I worked under a Federal Grant for Capital Litigation Training.

Law Clerk

Ninth Circuit Solicitor's Office

May 2011 – August 2011 (4 months)

Assisted solicitors in legal research and drafting, victim and witness interviews, case-building, and trial preparation; also observed a number of criminal trials for criminal sexual conduct, assault, drug offenses, homicide by child abuse, and murder. I was also able to observe many non-trial, diversion-type facets of the criminal legal system including plea court, drug court, and mental health court.

Law Clerk

Cooper Law Firm, LLC

May 2009 – August 2010 (1 year 4 months)

(Summer 2009 and 2010) Assisted with cases in a variety of legal fields including real estate law, transactional law, estate planning and probate matters, products liability and general litigation working on client relations, drafting, and legal research.

Honors & Awards

ABA Real Property, Trust, & Estate Law Journal Student Note Award

April 2012

Award for my Student Note entitled: "The Transfer on Death Deed and the Elective Share: The Outlook in South Carolina"

Skills & Expertise

Microsoft Office Social Networking Legal Research Legal Writing Legal Issues
Music Voice Word Excel

Languages

French



Linden Gulnn
Law Clerk at Johnson, Toal & Battista, P.A.



Natalie Brown
Assistant Director of Marketing, Website, and Publications at VCOM - Carolinas Campus

How You're Connected



You



Ashley Pennington

Beattie Butler



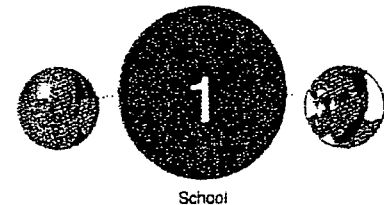
Jim Sarrister

24 more connections can introduce you to someone who knows Drew
Get introduced »



Drew Evans

In Common with Drew



People Similar to Drew



Angelina Pargoff
Judicial Clerk at Connecticut Appellate Court
Connect

Education

University of South Carolina School of Law

Doctor of Law (J.D.), 3.217

2009 – 2012

Activities and Societies: ABA Real Property, Trust, & Estate Law Journal—Member, Research Editor

Clemson University

Bachelor of Arts (B.A.), Political Science and Government, 3.63

2005 – 2009

Activities and Societies: Pi Sigma Alpha National Political Science Honor Society, Sigma Alpha Lambda National Honor Society, Southern Accents A Cappella group, Clemson Jazz Combo

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The Supreme Court of South Carolina

The State, Respondent,

v.

William O. Dickerson, Appellant.

Appellate Case No. 2009-133266

ORDER

Appellant was convicted of first degree murder, kidnapping and criminal sexual conduct and was sentenced to death. State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011). This Court denied appellant's petition for rehearing. The United States Supreme Court denied certiorari on April 23, 2012. Dickerson v. South Carolina, 2012 WL 568390 (U.S.S.C.)

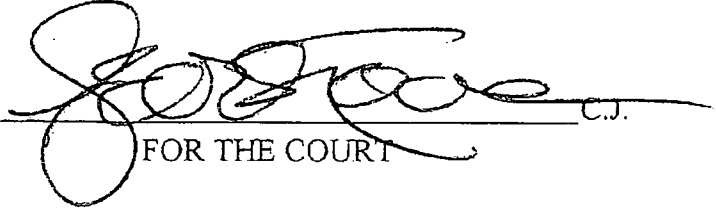
Appellant now seeks a stay of execution, pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), so that he can pursue post-conviction relief (PCR). The State does not oppose the motion.

The request for a stay of execution is granted. The stay shall remain in effect to the extent provided by this Court in *In re Stays of Execution in Capital Cases*.

The Honorable Edgar W. Dickson is hereby assigned to the PCR action appellant has filed. Judge Dickson shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled.

Judge Dickson shall conduct a hearing on appellant's desires regarding counsel within thirty days of the date of this order. Within sixty days of the date of this order, Judge Dickson shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary. A copy of the scheduling order and any amended scheduling order shall be provided to counsel, this Court and Court Administration. In addition to appellant's obligation to notify the Clerk

of this Court of the status of this matter every sixty days under In re Stays of Execution in Capital Cases, supra, Judge Dickson is requested to provide the Clerk of this Court and Court Administration with an update on the status of this matter every one hundred and twenty days.



C.J.
FOR THE COURT

Columbia, South Carolina

July 13, 2012

cc:

Donald J. Zelenka

Kathrine Haggard Hudgins

Alan McCrory Wilson

Melody Jane Brown

Scarlett Anne Wilson

Jeffrey P. Bloom

Robert Michael Dudek

John W. McIntosh

The Honorable Edward W. Dickson

Motte L. Talley, Esquire



Dickerson PCR

Charles Grose <chasgrose@gmail.com>

Mon, Aug 27, 2012 at 12:58 PM

To: "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>

Cc: Melody Brown <AGMBrown@scag.gov>, "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Dear Mr. Evans,

Thank you for your email. The State wants Mr. Dickerson to agree to a hearing date in February. Ms. Franklin-Best and I cannot, in good faith, represent to Judge Dickson and the Supreme Court that we can be prepared by then. Attached is our proposed alternative that, we believe, establishes a more realistic timeline.

Thank you for your attention to this matter.

Best,
Charles

On Aug 27, 2012, at 12:05 PM, Dickson, Edgar W. Law Clerk (Andrew C. Evans) wrote:

Melody,

Judge Dickson would prefer to have a scheduling order agreed upon as quickly as possible—hopefully by September 12th. He would be happy to meet with everyone again if necessary but would like to know wherein the conflict lies—is this just a matter of finding a date that suits everyone?

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2356 (phone)
803-535-2188 (fax)

From: Melody Brown [mailto:AGMBrown@scag.gov]**Sent:** Friday, August 24, 2012 1:25 PM**To:** Dickson, Edgar W. Law Clerk (Andrew C. Evans)

Cc: Charles Grose; Elizabeth A. Franklin-Best
Subject: RE: Dickerson PCR

Dear Mr. Evans:

I am writing to request a further conference for scheduling in Mr. Dickerson's PCR. I have consulted several times with opposing counsel and we are unable to agree on an initial scheduling order.

I would respectfully note that we are required to provide the Supreme Court with a copy of the scheduling order no later than September 12, 2012.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General
Capital Litigation Section
Post Office Box 11549
Columbia, South Carolina 29211-1549
Phone (803) 734-6305
Fax (803) 734-4035
agmbrown@scaq.gov

>>> "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org> 8/20/2012 9:59 AM >>>

Yes ma'am, that works for Judge Dickson.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2356 (phone)
803-535-2188 (fax)

From: Melody Brown [mailto:AGMBrown@scaq.gov]
Sent: Monday, August 20, 2012 9:59 AM
To: 'agmbrown@scaq.gov'; Dickson, Edgar W. Law Clerk (Andrew C. Evans)
Cc: CharlesGrose (chasgrose@gmail.com); Elizabeth A. Franklin-Best; Dickson, Edgar W. Secretary (Peggy Smith)
Subject: Re: Dickerson PCR

Hi Drew-

I will be drafting and sending around to opposing counsel this week. If it suits, I would expect that we could have a draft by the end of the week.

Melody.

Melody J. Brown
Senior Assistant Attorney General
Capital Litigation Section
Post Office Box 11549
Columbia, South Carolina 29211-1549
Phone (803) 734-6305
Fax (803) 734-4035
agmbrown@scag.gov

>>> "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org> 8/20/2012 9:54

AM >>>

Melody,

I just wanted to follow up from Friday and confirm that you will be drafting a proposed Scheduling Order (after consulting with Mr. Grose and Ms. Franklin-Best).

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2356 (phone)
803-535-2188 (fax)



Dickerson, William proposed scheduling order, Aug. 2012.doc
35K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
William O. Dickerson, #6030,	)	C/A No. 2012-CP-10-3216
	)	
Applicant,	)	
vs.	)	PROVISIONAL SCHEDULING ORDER
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter is before the Court for entry of a scheduling order pursuant to S.C. Code §17-27-160.

Procedural History

Beginning April 23, 2009, the State tried Dickerson for murder, first degree criminal sexual conduct, and kidnapping before the Honorable R. Markley Dennis and a jury. On April 30, 2012, a Charleston County jury convicted Dickerson of all charges. The State sought the death penalty. The penalty phase began on May 4, 2009. On May 7, 2009, the jurors found, as aggravating circumstances, the murder was committed while in the commission of a criminal sexual conduct, kidnapping, and physical torture. S.C. Code §16-30-20(C)(a)(1)(a), (b) and (i). The jurors recommended the death penalty for murder. Judge Dennis sentenced Dickerson to death for murder, thirty (30) years for first degree criminal sexual conduct, and thirty (30) years for kidnapping.

On October 3, 2011, the South Carolina Supreme Court affirmed Dickerson's convictions and sentences. State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011). The Supreme Court of the United States denied *certiorari* on April 23, 2012. Dickerson v. South Carolina, 132 S.Ct. 1972 (2012).

On May 16, 2012, Dickerson filed a *pro se* application for post-conviction relief (PCR) pursuant to S.C. Code §17-27-160. The State made its return on June 27, 2012.

On July 13, 2012, the South Carolina Supreme Court granted a stay of execution and vested this Court with exclusive jurisdiction to preside over Dickerson's capital PCR.

On August 17, 2012, the Court convened a hearing to determine Dickerson's desire for appointed counsel. The Court appointed E. Charles Grose, Jr. and Elizabeth A. Franklin-Best to represent Dickerson.

Findings of Fact

During the hearing to appoint counsel, the State informed the Court that the Record on Appeal consists of ten (10) five hundred (500) page volumes, which is approximately five thousand pages. Following the appointment hearing, the State provided copies of the record on appeal to appointed PCR counsel.

Although neither the Court nor PCR counsel has had an opportunity to review the complete record on appeal, the Court is aware that the Solicitor's Office provided Dickerson's trial counsel with "about three thousand pages" of discovery. ROA 170, lines 24-25. PCR counsel will have to obtain and review these documents. PCR counsel will also have to obtain and review trial counsel's files. See American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, reprinted in 31 Hofstra L. Rev. 913 (2003), Guideline 10.13- The Duty to Facilitate the Work of Successor Counsel (noting counsel's obligation to keep a copy of file for review by successor counsel). And see Commentary ("[C]ollateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation.").

Additionally, PCR counsel will have to conduct their own investigation consistent with the both federal and state law. See Wiggins v. Smith, 539 S.C. 510 (2003); Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007) (citing the ABA Guidelines with approval); Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008) (also citing the ABA Guidelines with approval).

Therefore, the Court finds that PCR counsel will need sufficient time to review the record on appeal, the numerous other documents associated with the case, and conduct their own investigation.

Conclusions of Law

The Court has reviewed In re Stays of Execution, 321 S.C. 544, 471 S.E.2d 140 (1996) and S.C. Code §17-27-160. After considering these authorities, as well as the facts and circumstances of this case currently known to the Court, the following schedule is adopted:

- 1) Pursuant to In Re Stays and the Supreme Court's Order dated July 13, 2012, PCR counsel's first status report to the Supreme Court is due on October 16, 2012, which is 60 days from appointment of counsel. PCR counsel shall provide status reports every sixty (60) days thereafter.
- 2) Pursuant to In re Stays, the First Amended PCR application is due on October 17, 2012, which is 60 days from appointment of counsel. Counsel shall provide a copy of the amended application to the Court. Amendment of the application after that date may be made with permission of the Court, although "leave shall be freely given when justice so requires and does not prejudice any other party." See Rule 15, SCRPC.
- 3) The State shall provide a return to the First Amended PCR Application within thirty (30) days following service.
- 4) Within thirty (30) days following service of the State's Return to the First Amended PCR Application, the Court will convene a status conference to discuss outstanding discovery issues and review scheduling issues.
- 5) Pursuant to S.C. Code §17-27-160(C), the evidentiary hearing is scheduled to begin no later than Monday, August 26th, 2013.
- 6) At the conclusion of the evidentiary hearing, the Court will determine whether post-hearing briefing will assist the Court. If the Court requests post-hearing briefs, the Court will set a briefing schedule.
- 7) The Final Order, specific findings of facts and conclusions of law, will be entered within 30 days from the conclusion of the evidentiary hearing or receipt of post-trial briefs. See S.C. Code §17-27-160(D). The parties will have the standard time for any post-trial motions.

This scheduling order may be modified based on a showing of good cause by either party.

See S.C. Code §17-27-160(C).

IT IS SO ORDERED.

Edgar W. Dickson
Presiding Judge, Ninth Judicial Circuit
By Special Assignment of the Supreme Court

August ____, 2012.
Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
William O. Dickerson, #6030,	)	C/A No. 2012-CP-10-3216
	)	(Capital PCR)
Applicant,	)	
vs.	)	[RESPONDENT'S PROPOSED]
	)	SCHEDULING ORDER
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Applicant filed his initial Post-Conviction Relief ("PCR") action on May 16, 2012. The State made its return on June 27, 2012. By order dated July 13, 2012, the Supreme Court of South Carolina assigned the undersigned jurisdiction over this capital PCR action. On August 17, 2012, the undersigned held a hearing regarding counsel for Applicant and to discuss scheduling pursuant to the Supreme Court's Order and S.C. Code § 17-27-160 (C). With the guidance of *In re Stays of Execution*, 321 S.C. 544, 471 S.E.2d 140 (1996), and S.C. Code § 17-27-160, this Court now issues the following scheduling order:

1. Applicant, now represented by counsel, must file an amended application no later than Wednesday, October 17, 2012. [See generally *In re Stays*, 321 S.C. at 546, 471 S.E.2d at 141, application due 60 days from appointment of counsel]. Amendment after that date may be made with permission of the Court and notice to Respondent. [See generally Rule 15, SCRPC, allowing amendment once as a matter of course, and thereafter with permission; "leave shall be freely given when justice so requires and does not prejudice any other party. "].

2. Pursuant to S.C. Code § 17-27-160 (C), the evidentiary hearing is scheduled to begin no later than Monday, February 11, 2013. [See generally §17-27-160 (C), hearing must be

scheduled within 180 days from the date of the status conference after State has filed its return “unless good cause is shown to justify a continuance”]. The Court, in its discretion, will determine whether to order post-hearing briefs or proposed orders at the conclusion of the hearing. Any such requested briefing or proposed orders shall be filed within thirty (30) days from the conclusion of the hearing.

2. The Final Order will be entered on or before Monday, April 15, 2013. [See §17-27-160 (D), requiring order with specific findings of facts and conclusions of law within 30 days from receipt of post trial briefs]. Applicant and Respondent will have the standard time for any post-trial motions.

3. The scheduling of the evidentiary hearing is subject to continuance based on a showing of good cause by either party. [See generally §17-27-160 (C), hearing must be scheduled within 180 days from the date of the status conference after State has filed its return “unless good cause is shown to justify a continuance”].

IT IS SO ORDERED.

Edgar W. Dickson, Circuit Court Judge
Ninth Judicial Circuit by Special Assignment

August ____, 2012.

_____, South Carolina.



Dickerson PCR

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org>

Mon, Aug 27, 2012 at 3:55 PM

To: Melody Brown <AGMBrown@scag.gov>

Cc: Charles Grose <chasgrose@gmail.com>, "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Counsel,

Judge Dickson believes there is good cause, pursuant to the statute, to continue the hearing past the State's February 11th date. However, he does not want to hear it as late as August 26th.

Judge Dickson believes the week of June 17th, 2013 in Charleston will work best and is currently working on clearing that date with Court Administration.

I will send out a tentative Order, based on the Defendant's proposal, as soon as possible. Judge Dickson is going to include "hard" dates in the Order (for first status report, amended PCR application, etc.) and is advising you all that he is willing to change the dates before he signs the Order, but once the Order has been signed, the dates are set in stone, so to speak.

I'll send out the tentative Order either tomorrow or Wednesday.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2356 (phone)
803-535-2188 (fax)

From: Melody Brown [mailto:AGMBrown@scag.gov]**Sent:** Monday, August 27, 2012 1:31 PM**To:** Dickson, Edgar W. Law Clerk (Andrew C. Evans)**Cc:** Charles Grose; Elizabeth A. Franklin-Best; Dickson, Edgar W. Secretary (Peggy Smith)**Subject:** Re: Dickerson PCR

Dear Drew:

[Quoted text hidden]



Dickerson PCR

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org>

Tue, Aug 28, 2012 at 10:06 AM

To: Melody Brown <AGMBrown@scag.gov>

Cc: Charles Grose <chasgrose@gmail.com>, "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Counsel,

Please find attached Judge Dickson's proposed Scheduling Order. As I said yesterday, he is willing to move dates around at this point but once the Order is signed, he would like me to stress that the dates therein are final.

I've attached a "redline" copy—based off of the Defendant's proposed order—for ease of reference.

Please let us know if all of the dates are agreeable.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2356 (phone)
803-535-2188 (fax)

From: Melody Brown [mailto:AGMBrown@scag.gov]**Sent:** Tuesday, August 28, 2012 8:35 AM**To:** Dickson, Edgar W. Law Clerk (Andrew C. Evans)**Cc:** Charles Grose; Elizabeth A. Franklin-Best; Dickson, Edgar W. Secretary (Peggy Smith)**Subject:** RE: Dickerson PCR

[Quoted text hidden]



Dickerson.Scheduling Order.doc
38K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
William O. Dickerson, #6030,	)	C/A No. 2012-CP-10-3216
	)	
Applicant,	)	
vs.	)	SCHEDULING ORDER
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter is before the Court for entry of a scheduling order pursuant to S.C. Code §17-27-160.

Procedural History

Beginning April 23, 2009, the State tried Dickerson for murder, first degree criminal sexual conduct, and kidnapping before the Honorable R. Markley Dennis and a jury. On April 30, 2012, a Charleston County jury convicted Dickerson of all charges. The State sought the death penalty. The penalty phase began on May 4, 2009. On May 7, 2009, the jurors found, as aggravating circumstances, the murder was committed while in the commission of a criminal sexual conduct, kidnapping, and physical torture. S.C. Code §16-30-20(C)(a)(1)(a), (b) and (i). The jurors recommended the death penalty for murder. Judge Dennis sentenced Dickerson to death for murder, thirty (30) years for first degree criminal sexual conduct, and thirty (30) years for kidnapping.

On October 3, 2011, the South Carolina Supreme Court affirmed Dickerson's convictions and sentences. State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011). The Supreme Court of the United States denied *certiorari* on April 23, 2012. Dickerson v. South Carolina, 132 S.Ct. 1972 (2012).

On May 16, 2012, Dickerson filed a *pro se* application for post-conviction relief (PCR) pursuant to S.C. Code §17-27-160. The State made its return on June 27, 2012.

On July 13, 2012, the South Carolina Supreme Court granted a stay of execution and vested this Court with exclusive jurisdiction to preside over Dickerson's capital PCR.

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On August 17, 2012, the Court convened a hearing to determine Dickerson's desire for appointed counsel. The Court appointed E. Charles Grose, Jr. and Elizabeth A. Franklin-Best to represent Dickerson. *per his request.* 

Findings of Fact

During the hearing to appoint counsel, the State informed the Court that the Record on Appeal consists of ten (10) five hundred (500) page volumes, which is approximately five thousand pages. Following the appointment hearing, the State provided copies of the record on appeal to appointed PCR counsel.

Although neither the Court nor PCR counsel has had an opportunity to review the complete record on appeal, the Court is aware that the Solicitor's Office provided Dickerson's trial counsel with "about three thousand pages" of discovery. ROA 170, lines 24-25. PCR counsel will have to obtain and review these documents. PCR counsel will also have to obtain and review trial counsel's files. Additionally, PCR counsel will have to conduct their own investigation consistent with the both federal and state law.

Therefore, the Court finds that PCR counsel will need sufficient time to review the record on appeal, the numerous other documents associated with the case, and conduct their own investigation. Therefore, pursuant to §17-27-160(C), good cause exists to continue the matter herein beyond the time period set forth in §17-27-10 et seq.

Conclusions of Law

The Court has reviewed S.C. Code §17-27-160. After considering the statute, as well as the facts and circumstances of this case currently known to the Court, the following schedule is adopted:

- 1) Pursuant to the Supreme Court's Order dated July 13, 2012, PCR counsel's first status report to the Supreme Court is due on October 16, 2012, which is 60 days from

12/3 

appointment of counsel. PCR counsel shall provide status reports every sixty (60) days thereafter.

- 2) The First Amended PCR application is due on October 17, 2012, which is 60 days from appointment of counsel. Counsel shall provide a copy of the amended application to the Court. Amendment of the application after that date may be made with permission of the Court. See Rule 15, SCRCP.
- 3) The State shall provide a return to the First Amended PCR Application by November 16, 2012, thirty (30) days after the First Amended PCR Application is due.
- 4) The Court shall convene a status conference to discuss outstanding discovery issues and review scheduling issue on December 17, 2012 at 2:00PM at the Calhoun County Courthouse unless the time and place are changed by the Court.
- 5) Pursuant to S.C. Code §17-27-160(C), the evidentiary hearing shall be held on June 17, 2013 in the Charleston County Courthouse beginning at 9:30AM.
- 6) At the conclusion of the evidentiary hearing, the Court will determine whether post-hearing briefing and/or a proposed order will assist the Court. If the Court requests post-hearing briefs and/or a proposed order, the Court shall set a briefing and/or proposed order schedule.
- 7) The Final Order, specific findings of facts and conclusions of law, will be entered within 30 days from the conclusion of the evidentiary hearing or receipt of post-trial briefs and/or a proposed order. See S.C. Code §17-27-160(D). The parties will have the standard time for any post-trial motions.

This scheduling order is final and not subject to modification without leave of this Court.

IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, Ninth Judicial Circuit
By Special Assignment of the Supreme Court

August 28, 2012.
Orangeburg, South Carolina.

13/3 

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: chasgrose@gmail.com
Web: GroseLawFirm.com

November 19, 2012

Via Certified Mail – Return Receipt Requested

Records Custodian
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street
Charleston, SC 29401

Re: William O. Dickerson v. State
Case Number: 2012-CP-10-3216

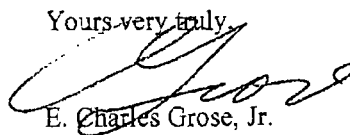
To Whom It May Concern:

Enclosed for service, please find a subpoena and attachment for the Records Custodian deposition to obtain a copy of the State's file regarding the prosecution of Mr. Dickerson.

I have noticed the deposition to occur at the Ninth Circuit Solicitor's Office in hopes this location would be most convenient for the production of these materials. If this poses a problem, then please let me know.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Melody J. Brown, Esquire
Senior Assistant Attorney General

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON COURT IN THE COUNTY OF CHARLESTON

William O. Dickerson, #6030, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

State of South Carolina, Defendant

Case Number: 2012-CP-10-3216

Pending in Charleston County

TO: Records Custodina, Ninth Circuit Solicitor's Office

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Ninth Circuit Solicitor's Office	DATE AND TIME December 7, 2012, 10:00 AM
---	--

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

Please see attachment -- Notice of Items to be Produced.

PLACE Ninth Circuit Solicitor's Office	DATE AND TIME December, 7, 2012, 10:00 AM
---	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.


Attorney/Issuing Officer's Signature Nov. 19, 2012 E. Charles Grose, Jr. Print Name
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :
The Grose Law Firm, LLC, 404 Main Street, Greenwood, SC 29646, 964-358-4466, Attorney for the Applicant

Clerk of Court/Issuing Officer's Signature Date Print Name
Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

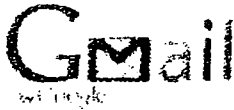
(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Notice of Items to be Produced

Pursuant to Rule 30(b)(6), SCRCF, the Ninth Circuit Solicitor's Office is instructed to designate a representative to testify about the production of documents requested by this subpoena.

The Ninth Circuit Solicitor's Office is instructed to produce a complete copy of the Ninth Circuit Solicitor's Office file or files that in any way relate to the death of Gerard Roper and/or the investigation and/or prosecutions of William O. Dickerson, Armon "Bubba" Dickerson, Rashid "Popcorn" Malik, and Selena Rouse. This production should include, but not necessarily be limited to, any and all original materials, any and all materials related to witnesses or alleged participants, regardless of whether the prosecution called the witnesses or alleged participants as witnesses and regardless of whether the materials pertain to investigations into matters unrelated to the death of Gerard Roper. This request also includes any and all materials that relate to jury selection of the trial of William Dickerson.

Issuing officer requests both a copy of all requested materials as well as the opportunity to inspect the original materials on the date and time listed in the subpoena.



William O. Dickerson v. State, Charleston Co. Capital PCR : 2012-CP-10-3216

Melody Brown <MBrown@scag.gov>

Mon, Nov 26, 2012 at 11:13 AM

To: "edicksonlc@sccourts.org" <edicksonlc@sccourts.org>

Cc: "chasgrose@gmail.com" <chasgrose@gmail.com>, "elizabeth.a.franklin@gmail.com" <elizabeth.a.franklin@gmail.com>

Dear Drew:

Please be advised that the State has moved for dismissal of a claim (in the return to the amended application), and Mr. Dickerson has moved for partial relief on the sentence for kidnapping. I would respectfully request that these motions be heard at the scheduled December 17th hearing in Calhoun County. Additionally, we may have an assertion of privilege over several records that will not be initially released in discovery. If possible, I would like to request additional time for the judge to review the assertion of privilege and the documents over which privilege is asserted to resolve such issue as soon as practicable. I would anticipate the argument and review would not take more than 30 minutes.

Thank you for your consideration. By copy of this e-mail, I am notifying opposing counsel of this request.

Melody.

Melody J. Brown

Senior Assistant Attorney General

(803) 734-6305



William O. Dickerson v. State, Charleston Co. Capital PCR : 2012-CP-10-3216

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <adicksonlc@sccourts.org>
To: Melody Brown <MBrown@scag.gov>
Cc: "chasgrose@gmail.com" <chasgrose@gmail.com>, "elizabeth.a.franklin@gmail.com" <elizabeth.a.franklin@gmail.com>

Mon, Nov 26, 2012 at 11:29 AM

That shouldn't be a problem. We'll see everyone on December 17th.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit

P. O. Box 1949

Orangeburg, S. C. 29116

803-535-2356 (phone)

803-535-2138 (fax)

From: Melody Brown [mailto:MBrown@scag.gov]
Sent: Monday, November 26, 2012 11:14 AM
To: Dickson, Edgar W. Law Clerk (Andrew C. Evans)
Cc: chasgrose@gmail.com; elizabeth.a.franklin@gmail.com
Subject: William O. Dickerson v. State, Charleston Co. Capital PCR : 2012-CP-10-3216

[Quoted text hidden]



William O. Dickerson v. State, Charleston Co. Capital PCR : 2012-CP-10-3216

Charles Grose <chasgrose@gmail.com>

Mon, Nov 26, 2012 at 11:42 AM

To: "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>

Cc: Melody Brown <MBrown@scag.gov>, "elizabeth.a.franklin@gmail.com" <elizabeth.a.franklin@gmail.com>, "Jeffrey P. Bloom" <JPBloom803@aol.com>, Bob Dudek <rdudek@sccid.sc.gov>, Kathrine Hudgins <KHudgins@sccid.sc.gov>, drewcarroll@carrolllawfirm.net

Dear Mr. Evans,

Attached please find Mr. Dickerson's Motion for the Court to Supervise Any Waiver of the Attorney-Client Privilege. This motion is being mailed today.

Please note that this motion was prepared based on the State's Return, independent from Ms. Brown's earlier email requesting Judge Dickson to review the assertion of the privilege and associated documents. If the State has a motion in the regard, Mr. Dickerson would respectfully request the State bringing the motion in written form, so Mr. Dickerson can have a fair opportunity to respond.

Out of an abundance of caution, I am copying Mr. Dickerson's trial and appellate counsel on this email.

Thank you for your attention to this matter.

Best,

Charles

[Quoted text hidden]



Motion for PCR Court to Supervise Any Waiver of the Privilege.pdf

748K

State of South Carolina

Charleston County
101 Meeting Street, Suite 400
Charleston, SC 29401
Phone (843) 958-1900
Fax (843) 958-1905



Berkeley County
300-B California Avenue
Moncks Corner, SC 29461
Phone (843) 723-3800 ext 4529
Fax (843) 719-4588

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

January 22, 2013

The Honorable Edgar W. Dickson
Judge, Ninth Judicial Circuit By Special Assignment
P.O. Box 1949
Orangeburg, SC 29116

Re: William O. Dickerson v. State of South Carolina
C/A No. 2012-CP-10-3216

Dear Judge Dickson:

As you may recall, I appeared before you in St. Matthews on December 17, 2012 and provided to the Court a DVD containing documents in the above referenced case which we claimed to be protected by the work product privilege. By your Order dated January 15, 2013, I was directed to prepare a formal privilege log in order to "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection".

Pursuant to your Order, I have attached two tables hereto titled "Dickerson Privilege Log Work Product From Paper File" and "Dickerson Privilege Log Work Product From Network Drive". These documents summarize the contents of the DVD I provided to the Court on December 17, 2012 which I have prepared to comply with your Order of January 15, 2013. Please let me know should the Court need any additional information. With kind regards, I remain

Yours Very Truly,

A handwritten signature in black ink, appearing to read "D. Bruce DuRant", followed by a horizontal line.

D. Bruce DuRant
Chief Deputy Solicitor
Ninth Judicial Circuit

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: chasgrose@gmail.com
Web: GroseLawFirm.com

January 23, 2013

The Honorable Edgar W. Dickson
P.O. Box 1949
Orangeburg, SC 29116-1949

Re: William O. Dickerson v. State
Case Number: 2012-CP-10-3216

Dear Judge Dickson:

This letter is intended to serve two purposes. First, Mr. Dickerson will respond to your law clerk's e-mail of January 22, 2013 asking if either side has any objections to taking Jeff Blooms' testimony June 27-28, 2013. Second, Mr. Dickerson requests a hearing on several matters.

Regarding Mr. Bloom's testimony, by e-mail dated January 21, 2013, Mr. Bloom advised Your Honor he can be available to testify June 27-28, 2013. Your law clerk, Mr. Andrew Evans, wrote counsel on January 22, 2013 inquiring whether either side had any objection to these dates. Although we would like to be prepared for the June hearing date, neither Ms. Franklin-Best nor I can represent in good faith that we will be prepared then. As you will recall, we had proposed a later hearing date. Because we never actually consented to the June hearing date, we cannot agree to Mr. Bloom testifying on these dates.

Related to scheduling a reasonable hearing date, Mr. Dickerson recently served discovery requests on the Attorney General asking the State to identify all capital post-conviction relief cases initiated or concluded in the last ten years and producing the scheduling orders and hearing dates from those cases. We believe that this discovery response will demonstrate that capital post-conviction cases rarely, if ever, proceed to a hearing date in less than one year after appointment of counsel. Once we receive the State's response, we will be in a better position to recommend a reasonable hearing date to Your Honor. Because of the recent decision of the Supreme Court of the United States in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), it more important than ever before that capital post-conviction litigants receive an adequate opportunity to investigate and prepare for a hearing. More important than any Supreme Court decisions, however, is our ethical responsibility to Mr. Dickerson, outlined by the *American Bar Association*

Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, reprinted in 31 Hofstra L. Rev. 913 (2003), which mandate post-conviction counsel must conduct a thorough, independent investigation in accordance with guideline 10.7." See ABA Guideline 10.15.1 (Commentary).

Next, regarding Mr. Dickerson's request for a hearing, please allow us to provide Your Honor with additional background information. Over the holiday weekend, Ms. Franklin-Best and I learned that Your Honor signed, on January 17, 2013, an order requiring trial counsel to respond to the Attorney General's letter of October 31, 2012, that the Attorney General received that order on January 18, 2013, and that the Attorney General served that order on trial counsel by e-mail on January 18, 2013. The Attorney General served that order on Mr. Dickerson by letter postmarked January 18, 2013 but not by e-mail.

The inconsistent manner of service appears calculated to ensure that the Court's order reached trial counsel before it reached Mr. Dickerson's counsel. This fact is especially concerning and disappointing because the Attorney General was aware of Mr. Dickerson's objection to the State's proposed order that were sent by e-mail to your law clerk on December 20, 2012. We understood that Your Honor would take our "position into consideration" before signing the proposed order. Although we plan to move for Your Honor to reconsider this order, the Attorney General's tactic has successfully frustrated that motion because Mr. Bloom mailed his response today.

Nevertheless, Mr. Dickerson requests a hearing on the motion to reconsider, which we expect to be completed by the end of the week. This hearing will also give Mr. Dickerson an opportunity to make additional arguments to the Court based on Mr. Bloom's response.

Mr. Dickerson understands that, also on January 17, 2013, Your Honor signed the order requiring the Ninth Circuit Solicitor's Office to prepare a privilege log for he the over 1000 pages of materials withheld during Mr. Bruce Durant's deposition on December 7, 2012. That would make the Solicitor's response due on January 27, 2012. As Your Honor will recall from the hearing on December 19, 2012, Mr. Dickerson complained that the Solicitor's Office was aware of the claims presented in the First Amend PCR Application, understood the materials Mr. Dickerson wanted to obtain, and claimed work product for materials relevant to at least one of these claims. Once Mr. Dickerson receives and has an opportunity to review the Solicitor's privilege log, his counsel will be able to provide additional information to Your Honor in response to this claim of privilege. Mr. Dickerson, accordingly, would like to further address this matter at the hearing.

In addition, the State has served a response to Mr. Dickerson's motion for the Court to draft all future orders. Mr. Dickerson requests this motion to be heard at the same time.

Of course, Mr. Dickerson will need to be present at the hearing.

By copy of this letter to Ms. Brown, Mr. Dickerson is advising the State of this communication and our request for a hearing.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

cc: Elizabeth A. Franklin-Best, Esquire
Melody Brown, Esquire
Clerk of Court, Charleston County



State of South Carolina
The Circuit Court of the First Judicial Circuit

Edgar Warren Dickson
Judge

Post Office Box 1949
151 Docket Street, Suite 207
Orangeburg, SC 29116-1949
Phone: (803) 535-2187
Fax: (803) 535-2188

January 30, 2013

VIA EMAIL AND US MAIL

Motte Talley, Esq.
Court of Appeals Building
1015 Sumter Street
Columbia, SC 29201

The Honorable Daniel E. Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201

RE: Dickerson v. State, Capital PCR, 2012-CP-10-3216

Dear Mr. Shearouse and Mr. Talley:

Pursuant to the Court's Order of July 13, 2012, please let this letter serve as an update in the above-referenced case.

On August 17, 2012, E. Charles Grose and Elizabeth Franklin-Best were appointed to represent Mr. Dickerson in his Post-Conviction Relief action. Melody Brown and Brendan McDonald represent the State of South Carolina.

On August 28, 2012, a Scheduling Order was signed that set a hearing date for June 17, 2013. For convenience of the witnesses and ease of access to the evidence, the hearing will take place in Charleston, SC.

Subsequent to the Scheduling Order, I learned that one of Mr. Dickerson's trial counsel, Jeff Bloom, would be unavailable that week. The Court determined that the hearing would go forward as scheduled and Mr. Bloom's testimony would be taken at a later date. We have discussed taking his testimony the following week, June 24, 2013, although Mr. Dickerson's counsel have apparently not consented to this date.

An Amended Post-Conviction Relief Application was filed by Mr. Dickerson's counsel on October 18, 2012. The State filed its Return to the Amended Application on November 19, 2012.

Since November, we have heard several motions from both sides and have ruled on or have taken them under advisement.

Please advise if we need to provide any further information to comply with Chief Justice Toal's Order. We will keep you apprised of our progress per the terms of that Order.

Please feel free to contact me if you have any questions or concerns.

Sincerely,



Edgar W. Dickson
Resident Judge, First Judicial Circuit
151 Docket Street, Suite 207
Orangeburg, SC 29116
(803) 535-2187

cc: Charles Grose, via email
Elizabeth Franklin-Best, via email
Melody Brown, via email
Brendan McDonald, via email



Dickerson v. State, Capital PCR, Motion to Be Present at All Hearings, Waiver of Attorney-Client Privilege, Scheduling Concerns

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org> Wed, Feb 27, 2013 at 11:06 AM
To: "Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)" <elizabeth.a.franklin@gmail.com>, "Charles Grose (chasgrose@gmail.com)" <chasgrose@gmail.com>, "Melody Brown (MBrown@scag.gov)" <MBrown@scag.gov>, "Brendan McDonald (bmcdonald@scag.gov)" <bmcdonald@scag.gov>
Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Good morning:

This letter is also in reference to the hearing before Judge Dickson on February 8, 2013 in Dorchester County.

The Court has not yet ruled on either Mr. Dickerson's Motion to Be Present at all hearings or the Supervision of the Waiver of Attorney-Client Privilege.

The Court is respectfully requesting that both sides submit Proposed Orders to the Court via email in Word format for both Motions.

Please provide them at your earliest convenience.

As to Mr. Dickerson's scheduling concerns, the Court has not yet ruled on that matter but, unless or until further notice, Mr. Dickerson's PCR Hearing is still scheduled for the week of June 17, 2013.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit

P. O. Box 1949



Dickerson v. State, Capital PCR, Motion to Be Present at All Hearings, Waiver of Attorney-Client Privilege, Scheduling Concerns

Charles Grose <chasgrose@gmail.com>

Tue, Mar 5, 2013 at 9:25 AM

To: "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>

Cc: "Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)" <elizabeth.a.franklin@gmail.com>, "Melody Brown (MBrown@scag.gov)" <MBrown@scag.gov>, "Brendan McDonald (bmcdonald@scag.gov)" <bmcdonald@scag.gov>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Dear all,

Pursuant to the Court's request, attached please find proposed orders regarding the Court supervising any waiver of the attorney-client privilege and Mr. Dickerson's right to be present during his PCR proceedings. Please let us know if you have any questions or if we can provide additional information.

Best,
Charles

[Quoted text hidden]

2 attachments



Proposed Order, Right to be Present in Courtroom.docx
117K



Proposed Order, A-C Waiver.docx
121K



William O. Dickerson v. State of South Carolina: Proposed Orders

Melody Brown <MBrown@scag.gov>

Fri, Mar 8, 2013 at 4:48 PM

To: "edicksonlc@sccourts.org" <edicksonlc@sccourts.org>

Cc: "Dickson, Edgar W. Secretary (Peggy Smith) (edicksonsc@sccourts.org)" <edicksonsc@sccourts.org>, "chasgrose@gmail.com" <chasgrose@gmail.com>, "elizabeth.a.franklin@gmail.com" <elizabeth.a.franklin@gmail.com>, Brendan McDonald <bmcDonald@scag.gov>

Dear Drew:

Attached please find the State's proposed orders regarding the Applicant's motions to be present at all hearings and for court supervision of waiver submitted pursuant to your e-mail of February 27, 2013. The proposed orders are in Word format. The attachments to the proposed order on court supervision are submitted in PDF format as they are scans of other documents. By copy of this e-mail I am providing a copy of the proposed orders and attachments to opposing counsel.

I have also attached a copy of the proposed order denying the request to prohibit the State from submitting proposed orders should the court wish to review that proposed order at the same time as the remaining orders. A paper copy of that order is also being mailed today as directed in your separate e-mail of February 27, 2013.

As always, I will be happy to make any changes requested by the Court.

Also, I would like to advise the Court that Mr. DuRant has tentative plans to be out of the country the week of June 17th. As such, I would like to request that we be able to make Mr. DuRant available the same day as Mr. Bloom the following week if he should be called to testify.

Lastly, we will have a response to opposing counsel's motion to compel submitted yesterday, and hope to have that response to you by Monday afternoon, if that would be acceptable. I would like to have our response to the Court for consideration before the Thursday hearing.

Sincerely,

Melody

Melody J. Brown

Senior Assistant Attorney General

Capital Litigation Section
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
P (803) 734-6305
F (803) 734-4035
mbrown@scag.gov

5 attachments

-  **Order Re Applicants Request to Be Present at All Hearings.docx**
28K
-  **Proposed Order. Denying Motion to Supervise Waiver.docx**
30K
-  **ATT 1 SAAG Brown letter 103112.pdf**
65K
-  **ATT 2 Bloom & Carroll letters.pdf**
118K
-  **Proposed Order. Denying Motion to Prohibit State's Submission of Proposed Orders.docx**
25K



State of South Carolina
The Circuit Court of the First Judicial Circuit

Edgar Warren Dickson
Judge

Post Office Box 1949
151 Docket Street, Suite 207
Orangeburg, SC 29118-1949
Phone: (803) 535-2187
Fax: (803) 535-2188

March 11, 2013

VIA EMAIL AND US MAIL

Motte Talley, Esq.
Court of Appeals Building
1015 Sumter Street
Columbia, SC 29201

RE: Dickerson v. State, Capital PCR, 2012-CP-10-3216

Dear Mr. Talley:

Pursuant to the Court's Order of July 13, 2012, please let this letter serve as an update in the above-referenced case.

Since my last correspondence in this matter, PCR counsel and counsel for the State have deposed Drew Carroll, Mr. Dickerson's trial counsel. They also plan to depose Jeff Bloom, Mr. Dickerson's other trial counsel, during the month of April.

We have met numerous times to hear several motions in this case. The motions include Petitioner's Motions to be Present at all motion hearings and a Motion for the Court to Supervise Waiver of Attorney Client Privilege, as well as Petitioner's Motion for Summary Judgment on his kidnapping sentence, all of which the Court currently has under advisement. The Court also heard Petitioner's Motion for the Court to Draft all Orders in this case which was denied.

The Petitioner filed a Motion for the Court to essentially reconsider the scheduled date of the PCR Hearing—the week of June 17, 2013—as well, which the Court also has under advisement. As of now, however, the Hearing is set to go forward as scheduled.

Additionally, I have taken up several ex parte funding matters with the Petitioner that I will have to decide.

We have begun holding weekly status conferences by phone or by email on Friday mornings to keep the Court and all parties apprised of any last-minute developments heading into the weekends, although our frequent hearings have negated the need for many of these.

1 A handwritten signature, possibly "EB", with a small number "1" above it.

I will continue to keep you updated as necessary. Please feel free to contact me if you have any questions or concerns.

Sincerely,



Edgar W. Dickson
Presiding Judge
151 Docket Street, Suite 207
Orangeburg, SC 29116
(803) 535-2187

cc: Daniel Shearouse, via email
Charles Grose, via email
Elizabeth Franklin-Best, via email
Melody Brown, via email
Brendan McDonald, via email



William Dickerson v. State of South Carolina: Capital PCR Action - Motion to Dismiss Motion to Compel

Melody Brown <MBrown@scag.gov>

Tue, Mar 12, 2013 at 12:13 PM

To: Charles Grose <chasgrose@gmail.com>

Cc: "edicksonlc@sccourts.org" <edicksonlc@sccourts.org>, "Dickson, Edgar W. Secretary (Peggy Smith) (edicksonsc@sccourts.org)" <edicksonsc@sccourts.org>, "elizabeth.a.franklin@gmail.com" <elizabeth.a.franklin@gmail.com>, Brendan McDonald <bmcDonald@scag.gov>, Melissa Vail <MVail@scag.gov>

Hi Charles:

We generally just ask that if the Judge finds good cause, that the reasons for the continuance be placed on the record. That will be my position here, as well. If the cause is specific, such as waiting for expert availability, or for an expert to complete testing, I will take no position and leave it to the discretion of the court. By specific, I do not mean disclosing the reasons for retaining the expert or strategic thoughts, but simply to state on the record that the court is aware of and has approved funding, for example, of a psychologist or psychiatrist, who will not be able to complete evaluation by the June hearing – that sort of specificity.

If it helps, I will readily admit that continuances have been granted in other capital PCR actions based on lack of availability of experts, or expert witnesses scheduling conflicts, or for completion of testing. However, I do not know the facts of the matter here as I have not been privy to the ex parte funding request or approvals, so I cannot speak to the specifics. FYI - There is one recent case where a continuance motion regarding testing was denied, Winkler v. State. John Mills and Emily Paavola were counsel on that case, as I remember. At any rate, any continuance would be the judge's call.

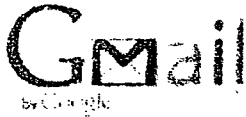
Please keep in mind that we will request time to prepare, as well. Continuances and close to hearing date disclosures severely hamper out ability to prepare.

As to information on other capital PCR cases, I have a general list of capital PCR cases to draw from that I can try to determine the dates of the actions, but I don't have ready access to all dates in all cases or all orders involving scheduling. I will go ahead and see if I can prepare a list with names for three years and at least try to get some info back toward the ten year mark, and also see if I can identify county and/or case numbers. I will bring the info with me to our hearing on Thursday.

Thank you for your e-mail. Please feel free to contact me with any additional questions or concerns, or to simply discuss any aspect of the above response.

Sincerely,
Melody.

[Quoted text hidden]



Dickerson v. State, Capital PCR, This Afternoon's hearing

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org> Thu, Mar 14, 2013 at 9:06 AM
To: "Melody Brown (MBrown@scag.gov)" <MBrown@scag.gov>, "Brendan McDonald (bmcdonald@scag.gov)" <bmcdonald@scag.gov>, "Charles Grose (chasgrose@gmail.com)" <chasgrose@gmail.com>, "Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)" <elizabeth.a.franklin@gmail.com>, "Bruce@scsolicitor9.org" <bruce@scsolicitor9.org>, "David Tatarsky (Tatarsky.David@doc.sc.gov)" <Tatarsky.David@doc.sc.gov>
Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Counsel,

I apologize for the late notice. Unfortunately, we will not be able to hold the hearing today in the Dickerson case.

Judge Dickson would like written memoranda on all of the matters we were to take up by Friday, March 22, 2013. If necessary, we will schedule a hearing for oral arguments thereafter.

Ms. Brown, do we need to do anything to inform SCDC that Mr. Dickerson need not be transported this afternoon?

We will be providing more explicit instructions as to the 9th Circuit Solicitor's Office's Privilege Assertions later today.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

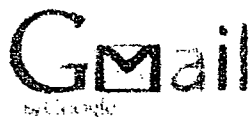
First Judicial Circuit

P. O. Box 1949

Orangeburg, S. C. 29116

803-535-2187 (phone)

803-535-2188 (fax)



Dickerson v. State, Capital PCR, 9th Circuit Solicitor's Privilege Assertion

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org>

Thu, Mar 14, 2013 at 1:05 PM

To: "bruce@scsolicitor9.org" <bruce@scsolicitor9.org>

Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>, "Charles Grose (chasgrose@gmail.com)" <chasgrose@gmail.com>, "Melody Brown (MBrown@scag.gov)" <MBrown@scag.gov>, "Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)" <elizabeth.a.franklin@gmail.com>, "Brendan McDonald (bmcdonald@scag.gov)" <bmcdonald@scag.gov>

Mr. DuRant,

In regards to the 9th Circuit Solicitor's Office's assertions of attorney work-product, the Court would give you the option to either respond to Applicant's memorandum in opposition or provide an amended privilege which complies with Rule 26(b)(5)(A) of the SC Rules of Civ. Pro.'s specificity requirements to the Court's satisfaction, obviously without disclosing the allegedly privileged information. See also, Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct.App. 1997) (holding if evidence is subject to the work product rule, its existence should be disclosed, but not the content). This would allow Mr. Dickerson's counsel the opportunity to more knowingly contest the privilege or attempt to compel their discovery.

Particularly, the Court would ask for more specific break-down of which witnesses were involved in the following documentation in the privilege log:

Work Product from the Paper File:

- 106-216: to which State witnesses do the interview notes pertain;
- 321-422: again, to which State witnesses do the interview notes pertain;
- 423-528: same;
- 529-637: same;
- 638-740: same;
- 741-838: same;
- 839-949: same;
- 950-1039: same.

Work Product from Network Drive:

- "Investigator Work File": name specific State witnesses to whom the notes pertain;

- "Pretrial Interview Notes": same;
- "Scarlett's File": to which witnesses the notes and questions pertain.

Please provide either your Memorandum or Amended Privilege Log by next Friday, March 22, 2013 and do not hesitate to contact me if you have any questions or concerns.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit

P. O. Box 1949

Orangeburg, S. C. 29116

303-535-2137 (phone)

803-535-2138 (fax)



Dickerson v. State, Capital PCR, 9th Circuit Solicitor's Privilege Assertion

Bruce Durant <bruce@scsolicitor9.org>

Thu, Mar 14, 2013 at 4:31 PM

To: "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>

Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>, "Charles Grose (chasgrose@gmail.com)" <chasgrose@gmail.com>, "Melody Brown (MBrown@scag.gov)" <MBrown@scag.gov>, "Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)" <elizabeth.a.franklin@gmail.com>, "Brendan McDonald (bmcdonald@scag.gov)" <bmcdonald@scag.gov>

Andrew,

Pursuant to your email below, I have attached an amended privilege log which I hope complies with Judge Dickson's direction for a more specific breakdown of the information submitted in the previous privilege log. With regard to the work product from pages 106 – 1039 of the paper file, I have broken it down by individual witness.

With regard to the work product from the network drive, I have added addendums, highlighted in red, which set forth the names of specific witnesses we have interview notes on.

Please advise if you need anything further and extend my thanks to Judge Dickson for allowing me to go on my vacation in June. Regards,

D. Bruce DuRant

Chief Deputy Solicitor

Ninth Judicial Circuit

101 Meeting Street, Suite 400

Charleston, SC 29401

843.958.1900

bruce@scsolicitor9.org

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans) [mailto:edicksonlc@sccourts.org]

Sent: Thursday, March 14, 2013 1:06 PM

To: Bruce Durant

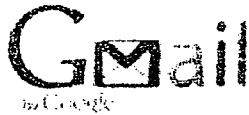
Cc: Dickson, Edgar W. Secretary (Peggy Smith); Charles Grose (chasgrose@gmail.com); Melody Brown (MBrown@scag.gov); Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com); Brendan McDonald (bmcdonald@scag.gov)

Subject: Dickerson v. State, Capital PCR, 9th Circuit Solicitor's Privilege Assertion

[Quoted text hidden]



Amended Dickerson Privilege Log.pdf
235K



Dickerson v. State, Capital PCR, 9th Circuit Solicitor's Privilege Assertion

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org>

Fri, Mar 15, 2013 at 9:40 AM

To: Bruce Durant <bruce@scsolicitor9.org>

Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>, "Charles Grose (chasgrose@gmail.com)" <chasgrose@gmail.com>, "Melody Brown (MBrown@scag.gov)" <MBrown@scag.gov>, "Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com)" <elizabeth.a.franklin@gmail.com>, "Brendan McDonald (bmcdonald@scag.gov)" <bmcdonald@scag.gov>

Mr. DuRant,

Thank you for your prompt response.

I will let you know if the Court requires any additional information from the Solicitor's Office but I anticipate it will be able to make a ruling soon.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit

P. O. Box 1949

Orangeburg, S. C. 29116

803-535-2187 (phone)

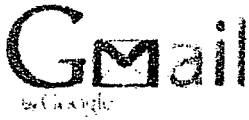
803-535-2188 (fax)

From: Bruce Durant [mailto:bruce@scsolicitor9.org]

Sent: Thursday, March 14, 2013 4:32 PM

To: Dickson, Edgar W. Law Clerk (Andrew C. Evans)

Cc: Dickson, Edgar W. Secretary (Peggy Smith); Charles Grose (chasgrose@gmail.com); Melody Brown (MBrown@scag.gov); Elizabeth Franklin-Best (elizabeth.a.franklin@gmail.com); Brendan McDonald



William O. Dickerson, status conference

Elizabeth Franklin-Best <elizabeth.a.franklin@gmail.com>

Fri, Mar 15, 2013 at 9:03 AM

To: "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>, "Melody Brown (AGMBrown@scag.gov)" <agmbrown@scag.gov>, Brendan McDonald <bmcDonald@scag.gov>, Charles Grose <chasgrose@gmail.com>

Good morning,

I thought I would confirm that we're having a meeting this morning? Or maybe not? Call in number 605-475-4700, 434710#

--
Elizabeth A. Franklin-Best
Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Ste. 101
Columbia, South Carolina 29201
(803) 765-1044



William O. Dickerson, status conference

Melody Brown <MBrown@scag.gov>

Fri, Mar 15, 2013 at 9:10 AM

To: Elizabeth Franklin-Best <elizabeth.a.franklin@gmail.com>, "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>, Brendan McDonald <bmcDonald@scag.gov>, Charles Grose <chasgrose@gmail.com>

Hi - I'm checking, too. Just called judge's chambers.

From: Elizabeth Franklin-Best [mailto:elizabeth.a.franklin@gmail.com]

Sent: Friday, March 15, 2013 9:03 AM

To: Dickson, Edgar W. Law Clerk (Andrew C. Evans); Melody Brown; Brendan McDonald; Charles Grose

Subject: William O. Dickerson, status conference

[Quoted text hidden]



William O. Dickerson, status conference

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org>

Fri, Mar 15, 2013 at 9:21 AM

To: Melody Brown <MBrown@scag.gov>, Elizabeth Franklin-Best <elizabeth.a.franklin@gmail.com>, Brendan McDonald <bmcDonald@scag.gov>, Charles Grose <chasgrose@gmail.com>

Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

I apologize for the confusion again.

I just spoke with Mr. Grose and Ms. Franklin-Best about some ex parte funding matters.

We also discussed firming up Mr. Blooms deposition in the coming days—they believe sometime in April will still be suitable.

They did not have any additional issues that have arisen this week.

If the State has any matters to bring to the Court's attention which have not already, please let us know.

Because I have not been staying on top of these status conferences (and we'll be travelling out of the circuit again next week), Judge Dickson has suggested we change this to a weekly via-email check-in on Fridays. If a pressing issue arises therein we can certainly get on the conference line but we hate to make y'all keep calling in every Friday when I keep forgetting.

Hope everyone has a good weekend.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans



Charles Grose <chasgrose@gmail.com>

William Dickerson v. State

Charles Grose <chasgrose@gmail.com>

Thu, Mar 21, 2013 at 9:52 AM

To: Melody Brown <MBrown@scag.gov>

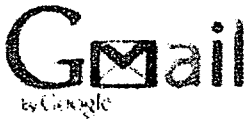
Cc: "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>

Melody,

I just received a letter in today's mail from Melissa Vail to Ms. Walker requesting the transcript of the motions hearing held on March 6, 2013 in St. George. Please confirm whether this date was listed in error. The March 6th hearing was an in camera hearing where the courtroom was cleared of everyone not connected to the case.

Thank you for your attention to this matter.

Best,
Charles



Downloaded from https://www.courts.mt.gov

William Dickerson v. State

Melody Brown <MBrown@scag.gov>
To: Charles Grose <chasgrose@gmail.com>

Fri, Mar 22, 2013 at 11:19 AM

Sorry I could not get back to you earlier, but I was in a full day hearing in Lexington yesterday on another capital case. I will check on this. I believe Ms. Walker was trying to determine if we had ordered every transcript. I thought we had. That's what I told my staff. I was not aware of a hearing on March 6th so I think we might have a miscommunication. I was at a seminar Mon, Tues and Wed. this week and did not have specific records to review dates, and did not speak with Ms. Walker personally. Again, I think this was just a miscommunication. I certainly do not want a transcript from a hearing that was meant to be and authorized to be ex parte. Thank you for letting me know.

By the way, I emailed Betsy earlier this week about the schmerber hearing transcript and a list of capital PCR actions. Since we did not have the hearing last Thurs., I was attempting to get at least some additional info for you as a courtesy to you (I let Besty know, but I don't think you knew this, so just FYI). I am back in the office today and will be sending out a scan this morning.

I will be back in touch to confirm on the transcript issue. Again, thank you for bring this to my attention.
Melody.

[Quoted text hidden]



ALAN WILSON
ATTORNEY GENERAL

March 22, 2013

Mrs. Harry Dot Walker
Court Reporter
P. O. Box 127
Rowesville, SC 29133

Re: William O. Dickerson v. State
12-CP-10-3216

Dear Ms. Walker:

Please disregard the request in our letter dated March 20, 2013 to prepare the transcript for the hearing in the above-referenced case held on March 6, 2013 before the Honorable Edgar W. Dickson in St. George, SC. This was ordered in error.

Thank you for your cooperation and assistance.

Sincerely,

Melissa Vail
Legal Assistant to Melody J. Brown
Senior Assistant Attorney General

MJB/mv
Enclosures

cc: E. Charles Grose, Jr., Esquire
Elizabeth A. Franklin-Best, Esquire
Desiree Allen, S.C. Court Administration
Honorable Edgar W. Dickson



ALAN WILSON
ATTORNEY GENERAL

April 9, 2013

The Honorable Edgar W. Dickson
Circuit Court Judge
P.O. Box 1949
Orangeburg, SC 29116

Re: William O. Dickerson v. State
2012-CP-10-3216

Dear Judge Dickson:

Pursuant to the Court's e-mail of April 4, 2013, I am enclosing a paper copy of the proposed Order Denying Applicant's Motion to Compel Production of Discovery. Also enclosed is a self-addressed, stamped envelope for your convenience in returning the signed order to me for filing with the Clerk.

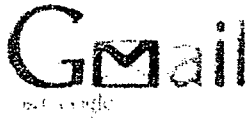
I am serving the proposed order on opposing counsel by copy of this letter.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/mv
Enclosures

cc: ☒ E. Charles Grose, Jr., Esquire (with enclosure)
Elizabeth Franklin-Best, Esquire (with enclosure)



William O. Dickerson v. State

Charles Grose <chasgrose@gmail.com>

Thu, Apr 25, 2013 at 8:57 AM

To: "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Cc: "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>, Melody Brown <MBrown@scag.gov>, Brendan McDonald <bmcDonald@scag.gov>

Dear Mr. Evans,

Judge Dickson should have received Mr. Dickerson's Amended Motion to Continue the Evidentiary Hearing with Appendix, which was mailed on Tuesday. Based on the conversation Ms. Franklin-Best and I had with Ms. Brown on Tuesday following Mr. Bloom's deposition, we understand the Attorney General will join in our request for a hearing on this motion.

Also, attached is a copy of my letter to Judge Dickson of April 17, 2013. We wanted to make sure the Court and Attorney General received this letter. We heard from the Court Monday evening regarding the motion to reconsider the matter with OID, and we saw Ms. Brown on Tuesday at Mr. Bloom's deposition. Since no one mentioned the letter, we wanted to verify that everyone received it. Because of the nature of the issue raised in this letter, Mr. Dickerson believes it should be resolved before consideration any of the other pending matters.

Thank you for your attention to these matters.

Best,
Charles

 **Judge Dickson, April 17, 2013.pdf**
249K



William O. Dickerson v. State

Dickson, Edgar W. Secretary (Peggy Smith) <edicksonsc@sccourts.org>

Thu, Apr 25, 2013 at 9:52 AM

To: Charles Grose <chasgrose@gmail.com>

Cc: "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>, Melody Brown <MBrown@scag.gov>, "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>

Attached is a copy of Judge Dickson's letter to Attorney Grose. The original will be mailed today.

Sincerely,

Peggy T. Smith

Administrative Assistant

Judge Edgar W. Dickson

P. O. Box 1949

Orangeburg, S. C. 29116

(803) 535-2187 phone

(803) 535-2188 fax

From: Charles Grose [mailto:chasgrose@gmail.com]

Sent: Thursday, April 25, 2013 8:58 AM

To: Dickson, Edgar W. Law Clerk (Andrew C. Evans); Dickson, Edgar W. Secretary (Peggy Smith)

Cc: Elizabeth A. Franklin-Best; Melody Brown; Brendan McDonald

Subject: William O. Dickerson v. State

Dear Mr. Evans,

[Quoted text hidden]



Letter to Charles Grose re April 17 letter.pdf

13K



State of South Carolina
The Circuit Court of the First Judicial Circuit

Edgar Warren Dickson
Judge

Post Office Box 1949
151 Docket Street, Suite 207
Orangeburg, SC 29118-1949
Phone: (803) 535-2187
Fax: (803) 535-2188
edicksonj@sccourts.org

April 25, 2013

Mr. E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, S. C. 29646

Re: William O. Dickerson v. State
Case No. 2012-CP-10-03216

Dear Mr. Grose:

I am in receipt of your letter of April 17, 2013, which I received on April 22, 2013.

I do not believe that an informal letter to my office is the proper means for bringing this matter to the Court's attention. If you wish to formally place this matter before the Court, a Motion needs to be filed with the Clerk's Office.

When your Motion is properly before this Court, it will be fully addressed on all the issues raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Edgar W. Dickson".

Edgar W. Dickson

EWD:pts

cc: Melody Brown
Elizabeth A. Franklin-Best



William O. Dickerson v. State

Melody Brown <MBrown@scag.gov>

Fri, Apr 26, 2013 at 12:03 PM

To: Charles Grose <chasgrose@gmail.com>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>, Brendan McDonald <bmcDonald@scag.gov>

Cc: "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>, "Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org>

Dear Judge Dickson -

I am in receipt of Applicant's motion. I respectfully request a brief telephone conference with you and opposing counsel this afternoon concerning additional information for everyone's consideration.

Sincerely,

Melody J. Brown

Senior Assistant Attorney General

Capital Litigation Section

Office of the Attorney General

State of South Carolina

P.O. Box 11549

Columbia, SC 29211-1549

P (803) 734-6305

F (803) 734-4035

mbrown@scag.gov

From: Charles Grose [mailto:chasgrose@gmail.com]

Sent: Friday, April 26, 2013 8:45 AM

To: Dickson, Edgar W. Secretary (Peggy Smith); Brendan McDonald

Cc: Elizabeth A. Franklin-Best; Melody Brown; Dickson, Edgar W. Law Clerk (Andrew C. Evans)



William O. Dickerson v. State

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org> Fri, Apr 26, 2013 at 12:09 PM
To: Melody Brown <MBrown@scag.gov>, Charles Grose <chasgrose@gmail.com>, "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>, Brendan McDonald <bmcDonald@scag.gov>
Cc: "Elizabeth A. Franklin-Best" <elizabeth.a.franklin@gmail.com>

Ms. Brown,

Unfortunately, Judge Dickson is out of the office today for the funeral of a family friend. He will be back on Monday and should be available Monday afternoon, beginning at 2:30PM.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit

P. O. Box 1949

Orangeburg, S. C. 29116

803-535-2187 (phone)

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From: Melody Brown [mailto:MBrown@scag.gov]
Sent: Friday, April 26, 2013 12:04 PM
To: Charles Grose; Dickson, Edgar W. Secretary (Peggy Smith); Brendan McDonald
Cc: Elizabeth A. Franklin-Best; Dickson, Edgar W. Law Clerk (Andrew C. Evans)
Subject: RE: William O. Dickerson v. State

[Quoted text hidden]



William Dickerson v. State: Motion for Court to Withdraw

William Dickerson v. State: Motion for Court to Withdraw

Melody Brown <MBrown@scag.gov>

Fri, Apr 26, 2013 at 12:31 PM

To: "chasgrose@gmail.com" <chasgrose@gmail.com>, "elizabeth.a.franklin@gmail.com" <elizabeth.a.franklin@gmail.com>

Cc: Brendan McDonald <bmcDonald@scag.gov>

Dear Charles and Betsy –

I have just tried to reach both of you by phone and was unsuccessful. Could you please give me a call to discuss some additional information in regard to the above motion.

Thank you.

Melody

Direct Line: (803) 734-3742

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 William O. Dickerson, #6030,

4 Plaintiff, Case No: 2012-CP-10-3216

5 vs.

6 State of South Carolina,

CERTIFIED COPY

7 Defendant.

8 D E P O S I T I O N

9 WITNESS: Solicitor Scarlett Wilson

10 DATE: Monday, March 25, 2013

11 TIME: 9:30 a.m.

12 LOCATION: Ninth Circuit Public Defenders Office

13 101 Meeting Street, 6th Floor

14 Charleston, South Carolina

15 TAKEN BY: Attorneys for the Plaintiff

16 REPORTED BY: Suesan L. Richardson

17 Professional Court Reporter

18 - - - - -

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23 803-988-0086

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1 Q Well, and that's partly --

2 A -- people first --

3 Q -- what I'm trying to get. Yeah.

4 Yeah.

5 A Mainly just to let new people --

6 Q Uh-huh (affirmative).

7 A -- who first come in know kind of what

8 all is out there.

9 Q What's expected of them? And --

10 A Yeah.

11 Q Okay. Do y'all have any resources

12 that touch on the 'how to' things?

13 A Only those that we get at training,
14 you know, like at the Solicitor's Conference --

15 Q Okay.

16 A -- or if someone goes to a specific or
17 specified training.

18 Q Okay.

19 A But that wouldn't necessarily be
20 distributed throughout the office.

21 Q Okay. Well, let me ask you a little
22 bit about the training, because you know, we have
23 our Public Defender Association and the
24 Commission, and then the hodge-podge of other
25 things. Who is actually the sponsor of the

1 Solicitor's Convention; is it Prosecution
2 Coordination, is it Solicitor's Association, is it
3 a --

4 A I don't know.

5 Q -- combination? Okay.

6 A I would imagine it's the combination,
7 but how those checks are written and all of that,
8 I just -- I don't know.

9 Q Okay.

10 A I think it's the association.

11 Q All right. Do most of your lawyers go
12 to the --

13 A Uh-huh (affirmative).

14 Q -- Solicitor's meeting?

15 A Yeah.

16 Q Okay. I mean it's a good way to get a
17 lot of hours --

18 A Right.

19 Q -- at one time, which is probably cost
20 effective compared to come of the other training
21 programs. Does Prosecution Coordination provide
22 any training for y'all?

23 A Yeah. We -- like we just had a death
24 penalty training, and we've had a few of those
25 that are done with grants that I believe -- I

Scarlett Wilson 3/25/2013

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1 don't know if that's through the commission though

2 --

3 Q Okay.

4 A -- or the association. I just don't
5 know.

6 Q Well, at one time, and I -- I mean I
7 may just be totally off base on here. At one time
8 I heard that they had some programs that they
9 would kind of go around the state, maybe to one
10 office or a group of offices. I don't even know
11 if that's the case. Have y'all ever done anything
12 like that with them?

13 A Well, it all kind of -- they're housed
14 in one --

15 Q Uh-huh (affirmative).

16 A -- location. So it's --

17 Q Right.

18 A -- again, I don't want to get pinned
19 down on whose sponsoring what. But I know that
20 Amy Clifford provides a lot of training --

21 Q Uh-huh (affirmative).

22 A -- throughout the year outside --

23 Q Okay.

24 A -- of the prosecute -- the --

25 Q All right.

1 A -- the Solicitor's Conference.

2 Q All right. So, and I guess that's
3 what I'm getting at. I'm not that concerned about
4 who writes the check.

5 A Oh, yeah, right.

6 Q But who, you know -- so you take
7 advantage -- I mean I know Amy, I don't know her
8 very well, but I know her. I know she --

9 A Right.

10 Q -- does a lot of training.

11 A Yeah.

12 Q So y'all take advantage of her
13 training --

14 A That's right.

15 Q -- that she does.

16 A Sometimes in Columbia, sometimes here.
17 I mean she'll go --

18 Q Right.

19 A -- to different areas of the state --

20 Q Right.

21 A -- and do different topics. Seems
22 like most of them are through grants.

23 Q Okay. Does the Attorney General's
24 office ever sponsor any training?

25 A They do.

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1 Q Okay. Do y'all take advantage of
2 that?

3 A Sometimes. Uh-huh (affirmative).

4 Q Okay. When -- at -- at the -- the
5 resources that you get from like the Solicitor's
6 Convention, what types of things might that be,
7 the training resources?

8 A Usually it's just a binder. More
9 recently they've gone to discs, you know, instead
10 of printing everything out.

11 Q It gets back to those writing the
12 checks.

13 A Yeah, that's right.

14 Q The discs are a lot less expensive.
15 Yeah.

16 A And, you know, it'll have different
17 outlines and maybe forms --

18 Q Uh-huh (affirmative).

19 A -- or --

20 Q Uh-huh (affirmative).

21 A -- you know, pretty typical stuff.

22 Q I've had in trials solicitors
23 reference a desk book. Do y'all make use of that?

24 A Yes.

25 Q Okay.

1 A That Solicitor Hembree started?
2 Q I -- tell me --
3 A I think that's --
4 Q -- I mean because I -- I don't know --
5 A I think Solicitor Hembree's office
6 maybe did the first few.
7 Q Uh-huh (affirmative).
8 A And I'm not sure if his office is
9 still in charge of or has taken on --
10 Q Okay.
11 A -- updating it.
12 Q All right.
13 A But that's how that began.
14 Q How often is that updated?
15 A I don't know.
16 Q All right. Does everybody get a copy
17 of that in your office?
18 A Yeah, if they want it. I think we
19 have it on a shared drive so that if somebody
20 wants to look at it they can look at it.
21 Q So it's there for anybody?
22 A Right. Uh-huh (affirmative).
23 Q What types of things does that cover?
24 A It's more nuts and bolts than our
25 policy manual would be. But it, you know, again,

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1 it's outline form, a lot of citations to cases,
2 one, two, three sentences about --

3 Q Uh-huh (affirmative).

4 A -- whatever the topic is, and then a
5 cite to get you to wherever you need to go.

6 Q Okay. And, I think you already
7 answered this, but do you know who's keeping it up
8 now?

9 A I -- you know, I'm not sure if Amy
10 Clifford has taken that over or whether or not the
11 15th Circuit -- I think it's 15th -- it's --
12 Solicitor Richardson's office is now doing it or
13 not.

14 Q Okay. Going back to sort of the
15 training programs. Do y'all ever take advantage
16 of any of the national training programs?

17 A Occasionally.

18 Q Okay.

19 A That's less often just because of
20 budget concerns.

21 Q All travel and --

22 A Yes.

23 Q -- costs and -- what type of things
24 would you look to for the national training?

25 A What do you mean?

1 Q That's what I mean, sometimes I don't
2 ask a very good question. I mean what -- is there
3 a -- would it be murder cases, CSC, DUIs, any
4 particular type of --

5 A I would --

6 Q -- area that you think they can sort
7 of enhance what --

8 A Yeah, I would look at whether or not,
9 you know, there was some emerging trend or some
10 kind of new technology or new --

11 Q Uh-huh (affirmative).

12 A -- maybe even new decisions that have
13 come down.

14 I'd look at, you know, for example,
15 I've got a woman who was one of my Child Sexual
16 Assault and Vulnerable Adult Prosecutors who's
17 very experienced is leaving, so somebody is going
18 to be taking her spot. I'm on the lookout for
19 some training for the newer person to go to in
20 those fields. You know, it --

21 Q Uh-huh (affirmative).

22 A -- might be -- you know, they're
23 usually pretty comprehensive at the national
24 level, so; you know, if I feel like there's
25 somebody in my office who would benefit from it,

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1 somebody who's --

2 Q Uh-huh (affirmative).

3 A -- going to be around for awhile, I
4 don't want to -- if I feel like somebody's going
5 to be there for a year, I don't want to spend a
6 couple thousand dollars sending them to something
7 and then them leave.

8 Q All right, you're going to have to
9 teach me how you figure out if somebody's going to
10 be there for a long time. How about on the death
11 penalty, have you ever done any of the national
12 death penalty training or has that all been more
13 local?

14 A I think there was one that was
15 national, but it was in Columbia.

16 Q Okay.

17 A And that was -- I can't remember when
18 that was. It was at the Advocacy Center.

19 Q Okay.

20 A And --

21 Q And y'all take advantage of that
22 program too, I would think. I know some of...

23 A Yeah, I think that's gone now though.

24 Q Is it gone? Okay.

25 A I think. I think they're gone.

1 Q Okay.

2 A But other than that one, I don't think
3 we've been involved in any national training. We
4 go to the ones put on by the A.G. or by the --

5 Q Uh-huh (affirmative).

6 A -- commission or association.

7 Q All right. I'm probably going to come
8 back and ask about those in a little bit more
9 detail in a second. But before we kind of move
10 on, when we've talked about personnel, we've kind
11 of talked about hiring and firing and discipline
12 and stuff. There's I guess a happier side of
13 personnel sometimes too with mentoring and
14 developing lawyers and stuff like that.

15 A Uh-huh (affirmative).

16 Q How do you handle that in your office?

17 A Well, we have the program that the
18 Chief Justice or the Supreme --

19 Q Uh-huh (affirmative).

20 A -- Court required that we have. And
21 Jennifer Shealy manages that for me in our office;
22 so, with new lawyers, they go through that process
23 and some steps are written out for that.

24 Q Did y'all develop your own --

25 A Uh-huh (affirmative).

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1 Q -- plan? Because I know they were
2 kind of encouraging law firms and offices to --

3 A Right.

4 Q -- have a standard.

5 A Yeah.

6 Q So y'all did do a standardized --

7 A Yeah.

8 Q -- kind of plan?

9 A And then beyond that, you know, I
10 expect my team leaders to lead and to --

11 Q Uh-huh (affirmative).

12 A -- to mentor that way.

13 Q Okay. And so they have sort of a
14 supervisory kind of role. Who -- just curious,
15 who are your team leaders?

16 A Jennifer Shealy, Chad Simpson and
17 Culver Kidd.

18 Q Okay. When it comes time to do the
19 hiring --

20 A Uh-huh (affirmative).

21 Q -- is that something that you and Mr.
22 Durant handle?

23 A Uh-huh (affirmative).

24 Q All right. What are you -- when
25 you're looking to hire a new lawyer, do you have

1 any criteria or anything that you're looking for?

2 How does...

3 A I'm looking for people that I think
4 will be good prosecutors. That -- I'm not as
5 interested in people who are here as a training
6 ground, but that's with what we can pay and --

7 Q Uh-huh (affirmative).

8 A -- and how public service goes, I know
9 that that's going to happen, that people get their
10 experience and leave.

11 But I'm looking for people that I
12 think can relate to others, that being law
13 enforcement victims.

14 Q Uh-huh (affirmative).

15 A I'm looking for people who I think can
16 get along but be firm and be strong. I'm not
17 overly concerned with grades, but you know, that's
18 -- I'm interested in knowing what someone's grades
19 were. I'm sort of, I guess, I'm just looking for
20 a best all around type person. You know, someone
21 that I think, as I said, can get along and relate
22 to victims and law enforcement, who can also get
23 along with folks who are already in the office,
24 who, you know, depending on what the makeup of the
25 office is at any given time, I'm looking for

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1 people who I think want to be in trial, but I also
2 recognize that we've got to have people who can
3 move the cases that will move quickly and that
4 aren't trials, and that they're just --

5 Q Uh-huh (affirmative).

6 A -- they're handling volume.

7 Q Uh-huh (affirmative).

8 A And it's okay, you know, that they
9 don't want to try a case. That's all right. But
10 most of the time I need people who are willing to
11 try a case.

12 Q Okay. When you said the makeup of the
13 office, what did -- what'd you mean by that?

14 A Different levels of experience, you
15 know, depending on where we are.

16 Q Okay. And I think you said that
17 you're looking for somebody you think might be a
18 good prosecutor. Do you look for, and I know
19 having hired people out of law school myself --

20 A Uh-huh (affirmative).

21 Q -- they're early in their career, but
22 are there things that you look for in their
23 background that might help you know that they
24 might be a good prosecutor?

25 A Well, one thing might be if they

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1 clerked for a judge or if they clerked for my
2 office or another solicitor's office, that sort of
3 thing.

4 Q Okay. Well, let me ask you about
5 that. I mean do you try to cultivate people
6 through law clerks? I mean out in the country I,
7 you know, have had --

8 A You don't have one?

9 Q -- law clerks, but --

10 A Uh-huh (affirmative).

11 Q -- you know, and I've had one that
12 came back. But you know, they were one of the
13 ones that was a year and done, and moved on.

14 A Yeah.

15 Q Charleston seems to be a little bit
16 more of an attractive place to live, so are y'all
17 able to kind of take advantage of that and --

18 A Yeah, and with the law school being
19 here --

20 Q Uh-huh (affirmative).

21 A -- that has really changed the whole
22 situation.

23 Q Okay. How so? I think I know, but --

24 A Well, because there are about a
25 million lawyers who come out of Charleston law

1 statutory appeal. I think there was also the
2 notice of appeal that was --

3 A Uh-huh (affirmative).

4 Q -- filed. Did you have any continuing
5 involvement in the case, or your office?

6 A You mean with the Attorney General's
7 office?

8 Q Yeah. And obviously they probably
9 wrote the brief and argued the --

10 A Yeah.

11 Q But I will tell you, I mean the -- on
12 what y'all provided in discovery, I mean copies of
13 the briefs are on there, copies of the first PCR
14 application, copies of our amended application on
15 there. So it appears that you're getting, either
16 you or somebody in the office, is getting
17 information from the Attorney General. I mean is
18 there any kind of ongoing communication there with
19 them?

20 A Yeah.

21 Q Let me ask you this --

22 A I mean, yeah.

23 Q Okay.

24 A They -- like we talked about having a
25 deposition.

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1 Q Uh-huh (affirmative).

2 A That I wasn't familiar with these
3 kinds of deposition. They told us about that.
4 I'm sure they told us about the oral arguments. I
5 think I went to the oral argument.

6 Q Okay.

7 A But more general things like that. We
8 haven't talked about nuts --

9 Q Would you --

10 A -- and bolts or --

11 Q -- would you or Bruce or Rutledge have
12 been available to answer questions about the
13 briefing process?

14 A Sure. Yeah.

15 Q Okay. And that would probably be
16 general with any case, right?

17 A Yeah.

18 Q And so while your involvement may
19 not be the same level, it -- it's ongoing at some
20 level, particularly in something more serious like
21 this?

22 A Yeah.

23 Q Okay. And, you said you think you
24 went to the oral argument?

25 A Uh-huh (affirmative).

1 Q Is that 'yes'?

2 A Yes.

3 Q Again that whole --

4 A I'm pretty sure --

5 Q -- translate for the court reporter

6 thing.

7 A I'm pretty sure that I went to the

8 oral argument.

9 Q All right. Do you remember if anybody

10 else went with you or if you went by yourself?

11 A I think that Bruce went also.

12 Q Okay. Anybody else?

13 A I don't remember if Rutledge went.

14 Q Okay. I have found taking, you know,

15 lawyers to oral arguments is kind of a training

16 vehicle in it --

17 A Yeah.

18 Q -- of itself, you see how the --

19 A Yeah.

20 Q -- it comes out --

21 A Right.

22 Q -- on the other end. But you don't

23 remember if you would've done anything like that

24 in this case?

25 A Training as a result of it?

4

1 for depositions about privilege, and I understand that
2 you're going to be asserting a privilege on some
3 documents later?

4 A. Yes, sir.

5 Q. And so I'm going to ask you some questions
6 about asserting the privilege, but we can deal with some
7 of that when we get to that point --

8 A. Okay.

9 Q. -- if it suits you.

10 And what I've done is marked my -- I guess my
11 cover letter and the subpoena as an exhibit for the
12 deposition today just so that we're -- have a record of
13 what we're here for. And by you appearing, I take it
14 that you're the solicitor's office designee to speak on
15 behalf of the office about Mr. Dickerson's file?

16 A. Yes, sir.

17 Q. Okay. And you're welcome to look at the
18 exhibit, but you've had a chance to look at the
19 subpoena?

20 A. I received the exhibit, yes.

21 Q. Okay. And before we went on the record, we
22 were talking a little bit about what you are providing
23 to Mr. Dickerson's team today. Can you describe that
24 for us, please?

25 A. Yes, sir. Basically, there are three sources

1 or maybe not. I don't know. I'm not a big IT guy.

2 Okay. I know they have a server. I know the county
3 maintains a server for our network -- network drive, so
4 it's not like something that's in our office.

5 Q. Okay. All right. Well, what I want to do is
6 ask you some questions about the privilege. And I
7 understand --

8 A. Uh-huh.

9 Q. -- that you're not going to reveal the
10 contents of the documents --

11 A. Right.

12 Q. -- and that sort of thing. But can you tell
13 me what criteria was used to decide what was going to be
14 claimed privileged?

15 A. Basically work product.

16 Q. Okay.

17 A. These basically will consist of our
18 handwritten notes, our typewritten notes, our interviews
19 with witnesses, our impressions of jurors, those type of
20 things. And, like I said, we will turn those over to
21 the judge. If the judge determines that y'all are
22 entitled to them, that's fine with us.

23 Q. Okay. About how many total, how many
24 documents are we talking about?

25 A. It's hard to say because -- okay, just to

10

1 give you a for instance..

2 Q. All right.

3 A. And I haven't really completed the entire --
4 entire work product part of this yet. But I had my
5 paper file; Scarlett had her paper file. So I called
6 mine -- mine was 500 pages. I haven't done hers. Now,
7 those 500 pages, they're going to be duplicated on the
8 network drive too. I mean, like I said, these are --
9 they're --

10 Q. So the -- when you say "paper file," I mean,
11 you mentioned handwritten notes. Are the handwritten
12 notes on the drive too, the hard drive?

13 A. The handwritten notes, I have -- the stuff
14 from the paper file, I will -- I have -- at least
15 mine -- and I will do Scarlett's -- I have scanned.

16 Q. Okay.

17 A. Which would include the handwritten notes,
18 and I will provide them on the CD to the judge also.

19 Q. Okay. All right. So you mentioned your
20 paper file was about 500 pages.

21 A. Right. The work product portion of it.

22 Q. All right. Okay.

23 A. But I haven't done Scarlett's yet and --

24 Q. All right. Well, let's just talk about yours
25 for a second. What -- in your 500 pages, I take it

1 there's some handwritten notes in those?

2 A. Some, yeah.

3 Q. Okay.

4 A. Not a whole lot in mine because I was, you
5 know, like, you know, witness interviews and stuff. I
6 used to do all of those by hand. A lot of times I'd do
7 them -- bring my laptop now and just type them.

8 Q. Okay. I gotcha. So yours is going to be
9 some handwritten notes, typed witness interviews?

10 A. And, you know, like direct examination
11 questions, things like that.

12 Q. Okay.

13 A. I mean, a lot of it is going to be direct
14 examination questions.

15 Q. Okay.

16 A. You know, generally with a particular
17 witness, we would consider our -- our direct examination
18 questions and our interview notes as work product.
19 We -- any -- any statements they gave to the police
20 would have been turned over in discovery. Their rap
21 sheet would have been turned over in discovery. We
22 wouldn't consider that work product. It would just be
23 stuff that we prepared in anticipation of trial.

24 Q. Okay. Out of that 500 pages, how much of it
25 do you think is your trial preparation direct examination

12

1 questions?

2 A. I'm just giving you a -- you know, this is
3 strictly a shot in the dark. Three-quarters of it,
4 maybe.

5 Q. Okay.

6 A. You know, I mean, I just have not counted it.

7 Q. Okay.

8 A. So, I mean, but I know that there were, you
9 know, questions prepared for every witness that we
10 examined.

11 Q. Okay. And the witness interviews, of the 500
12 pages, the remaining roughly a quarter, how much do you
13 think that would be?

14 A. I just don't know. You know, I mean -- I
15 just don't know. I mean, I have not broken it down.
16 So -- so -- I can tell you this. For every witness,
17 there would have been direct examination questions and
18 interview notes.

19 Q. Okay.

20 A. And there would have been interview notes
21 from perhaps me and an investigator perhaps or maybe
22 another lawyer.

23 Q. Okay.

24 A. So, but they're in existence; we will provide
25 them all.

1 though, then there's going to be some interoffice
2 e-mails, it sounds like?

3 A. Yes.

4 Q. Okay. All right. Is there a possibility
5 that there's some e-mails out there that haven't made it
6 into any of these three sources?

7 A. Yes.

8 Q. Okay. All right. Did y'all do a lot of
9 communication by e-mail?

10 A. Well, we did -- yeah. I mean, lot -- we did
11 a lot of intraoffice by e-mail.

12 Q. Okay.

13 A. And, quite frankly, with defense counsel and
14 things like that by e-mail too.

15 Q. Okay.

16 A. I mean, nobody does paper mail hardly
17 anymore.

18 Q. All right. In the work product materials, is
19 there any Brady material in those that has not been
20 disclosed?

21 A. Not that I'm aware of.

22 Q. Okay. Well, what would we have to do to make
23 certain that there's not?

24 A. Well, you know, we're turning over everything
25 to the judge. Okay? And I'm assuming if the judge

24

1 thinks that there's something there, that he would give
2 it to you.

3 Q. Okay.

4 A. All I know is that, you know, as my
5 recollection going through it, that if we got a variance
6 from something a witness told us from before, we would
7 send an e-mail.

8 Q. Okay. So you believe that it all was turned
9 over to Mr. Bloom and Mr. Carroll?

10 A. I believe so, yes, sir.

11 Q. Okay. Let me ask you -- I sort of -- I guess
12 a general question first and then maybe some specific
13 follow-ups about jury selection, preparing to select a
14 jury in a case like this. Do you have any procedures
15 that you normally follow about information that you
16 obtained for your file regarding jurors in any trial?

17 A. Not other than the jury questionnaire. I
18 mean, that's pretty much the only information we had on
19 them. And I'm assuming we always run rap sheets.

20 Q. Okay. Does your office run the rap sheets,
21 or does law enforcement run them?

22 A. Our office runs the rap sheet.

23 Q. Okay. Is that in the materials that's in
24 your file?

25 A. No, it is not.

1 Q. All right. Has that been maintained?

2 A. I don't believe so because I did not see them
3 when I went through the file --

4 Q. Okay.

5 A. -- so I'm assuming they must have been
6 shredded.

7 Q. All right. Is that the ordinary procedure?

8 A. Yes. Our ordinary procedure is to shred rap
9 sheets -- especially juror rap sheets -- after jury
10 selection because you're not really supposed to keep
11 them by virtue of NCIC and SLED regulations.

12 Q. Okay. I've heard about those regulations
13 before, but what are the rules on that and where can I
14 find a copy of them?

15 A. The FBI and/or SLED. I mean, they basically
16 are the ones that is -- primarily the FBI. They require
17 anybody that uses the NCIC system to -- to adhere to
18 their regulations. And so we have nothing to do with
19 that.

20 Q. All right.

21 A. But they are -- they are very restricted on
22 where they go.

23 Q. Would there have been any notes made on those
24 criminal histories?

25 A. No.

26

1 Q. Okay. Would those criminal histories have
2 been shared with the defense?

3 A. I don't believe so.

4 Q. And is that your ordinary policy?

5 A. I believe that's our ordinary policy.

6 Q. Okay. And what is the rationale behind that
7 policy?

8 A. I don't know. You'd have to ask the
9 solicitor.

10 Q. Okay. I may have a few more questions, but
11 can I take a look at just generally what's being
12 provided before I do that?

13 A. Sure.

14 THE WITNESS: Can I go to the restroom?

15 MR. GROSE: Yeah.

16 (A brief break transpired.)

17 MR. GROSE: I've just got a couple more
18 questions, I think.

19 A. Yes, sir.

20 BY MR. GROSE:

21 Q. And just for the record, what I'm looking at
22 is there's actually three disks. One is labeled
23 "Dickerson PCMS Documents." That would be the case
24 management documents?

25 A. Yes, sir.

1 Q. And when that happens, we should be able to
2 get a count of the number of pages?

3 A. It's going to be difficult because I hope to
4 get it all on one DVD because hopefully that -- and
5 there are going to be some things you get on that that
6 are duplicates of what you already have because they'll
7 be in a file or in a folder or something, electronic
8 folder, that has work product in it, okay. So, I mean,
9 not everything that you -- that -- on this work product
10 disk is going to be things that you haven't seen. A lot
11 of it will be stuff that you have seen. Okay? It's
12 just that we have not gone out and separated it file by
13 file and don't have the time to do so, quite frankly.

14 Q. Okay.

15 A. But it will be -- it will be pretty clear the
16 things that you're looking for, I'm assuming, because
17 you're going to be looking for our jury stuff and our
18 witness interviews, and those are going to be specific
19 folders.

20 Q. Okay.

21 A. Okay. So it will be pretty clear on there
22 where they are.

23 Q. All right.

24 A. Okay.

25 MR. GROSE: Anything else?

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 William O. Dickerson, #6030,

4 Plaintiff, Case No: 2012-CP-10-3216

5 vs.

6 State of South Carolina,

7 Defendant.

8 D E P O S I T I O N

9 WITNESS: Chief Deputy Solicitor Bruce Durant

10 DATE: Tuesday, March 26, 2013

11 TIME: 10:00 a.m.

12 LOCATION: Ninth Circuit Public Defenders Office

13 101 Meeting Street, 6th Floor

14 Charleston, South Carolina

15 TAKEN BY: Attorneys for the Plaintiff

16 REPORTED BY: Suesan L. Richardson

17 Professional Court Reporter

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1 and it also -- it also gives them some idea, you know --
2 and when they're dealing with us as to -- to -- what is
3 a good reason? What is a good --

4 Q Uh-huh (affirmative).

5 A -- not a good reason, those kind of things.

6 Q Okay. So it's, in -- in a way, sort of a
7 professional development tool, as well as --

8 A Yes, it is.

9 Q -- a case --

10 A And -- and -- and like I say, just a -- just
11 kind of a way -- that too, but -- but -- but primarily
12 to have some experienced eyes on more -- on -- on the
13 more serious cases and to make sure that we're not
14 giving away the "baby with the bath water" too.

15 Q Okay.

16 A You know? You know, if we're going to
17 reduce a serious felony down to -- you know, a 25-year
18 no parole offense down to a zero to 10 something, and
19 they're offering three --

20 Q Uh-huh (affirmative).

21 A -- there needs to be a reason for that.

22 Q Okay.

23 A And -- and so --

24 Q And sometimes there are?

25 A Oftentimes there are.

14

1 Q Yeah.

2 A Probably more often than not.

3 Q Right. Okay. So as far as other resources
4 in the office, other than the human resources, you know,
5 going to you to be a sounding board and stuff like that,
6 what do you and the other lawyers have access to as sort
7 of research, guides, training, stuff like that?

8 A Research, I'm assuming what everybody has,
9 Westlaw.

10 Q Uh-huh (affirmative).

11 A We have computer access to Westlaw that --
12 all the attorneys do. And, generally, most of the CLE
13 stuff is fulfilled by the solicitor's conference and the
14 -- the Commission For Prosecution Coordination puts on a
15 series of free seminars throughout the year that are
16 quite frequently attended by people in our office too.

17 Q Are those the ones that Amy Clifford --

18 A Yes.

19 Q -- kind of heads up?

20 A Yes. The ones she --

21 Q Because yesterday, we kind of got hung up on
22 whether that was the association or the commission or --

23 A Well, Amy works for the commission, so --

24 Q Is that right?

25 A -- so she -- but she runs -- she pretty much

1 puts all that stuff together.

2 Q Okay.

3 A Runs -- runs the seminars.

4 Q All right. So -- so that's the basic two
5 sources of training for the lawyers.

6 A Right. And we've done some in-house
7 training on occasion too.

8 Q All right. How often do y'all do that?

9 A That's kind of infrequent. It used to be
10 that we have an annual retreat --

11 Q Uh-huh (affirmative).

12 A -- an office annual retreat, but we just
13 haven't had one the last couple of years, primarily for
14 budgetary reasons and -- because it would usually not
15 be, obviously, at the office. It would be, you know, at
16 a park or something like that.

17 Q Right.

18 A And we would have half a day training and
19 half a day cook-out like kind of thing, but we just
20 haven't done that for the last two or three years.

21 Q Okay. So that would be generally the in-
22 house kind of training?

23 A Right.

24 Q Okay.

25 A For example, we did -- you know, I know we

16

1 did -- last one I remember doing was over on Isle of
2 Palms probably three years ago, maybe. And, it was that
3 -- that kind of thing.

4 Q Okay. Ever send people to national
5 training?

6 A We haven't -- we have. I mean, I'm -- but
7 it's been a long time.

8 Q Right. Just, roughly, how long?

9 A Me and another prosecutor went to San
10 Francisco about five years ago, maybe, six years ago?
11 And when I -- let -- let me preface this when I'm saying
12 five or six years ago, it's complete --

13 Q Guess?

14 A -- guess on my part --

15 Q Yeah.

16 A -- because I'm not good at those kind of
17 things. But I don't really remember sending anybody in
18 our office to a national training recently.

19 Q Okay.

20 A And primarily for the same reasons.

21 Q The budgetary reasons?

22 A The budgetary reasons.

23 Q All right. The -- the one that you went to,
24 would that have been like a national district attorneys'

25 --

1 A Yeah. It would have been national NDAA
2 thing in San Francisco.

3 Q Okay. Yesterday, there was a little bit of
4 discussion about the prosecutor's desk book. I
5 understand y'all kind of have that on a shared drive and
6 --

7 A We do. I keep a copy, actually on my desk
8 top, so.

9 Q Okay.

10 A Because I find it to be a pretty good
11 resource.

12 Q All right. And -- and do your attorneys
13 find it to be a pretty good resource?

14 A They've all been provided with a copy.
15 Quite frankly, they -- they haven't been directed to use
16 it --

17 Q Uh-huh (affirmative).

18 A -- to my knowledge, but usually, if there's
19 a question that comes up, it's been dealt with or it can
20 at least point you in the right direction --

21 Q Okay.

22 A -- if you need to do research or something
23 like that.

24 Q Well, yesterday, it sounded like Rutledge
25 used it a good bit.

18

1 A Uh-huh (affirmative).

2 Q For some of those same reasons; that it was

3 --

4 A Yeah.

5 Q -- a good starting place, at least.

6 A Exactly.

7 Q Okay. Let me ask you just a little bit
8 about your background. If you could just, I guess, sort
9 of summarize it; where you're from, where you went to
10 school, and your employment history.

11 A From Augusta, Georgia; born and raised
12 there. Went to high school there. I graduated high
13 school in '73. I went to college at South Carolina,
14 graduated from there in '77. Went to law school at
15 South Carolina, graduated from there in 1980.

16 After law school, I moved to Charleston.
17 Originally worked as an associate for Paul Garfinkle,
18 who is now a family court judge. Paul had basically
19 hired me to -- he was primarily a real estate attorney
20 at the time and kind of hired me to do the other stuff.

21 And then we had a recession in '81 and --
22 and he had to do the other stuff himself, so I basically
23 hung out a shingle in his office -- at his office for
24 maybe six months or a year.

25 Then went to the solicitor's office in

1 she sent it to me, but -- but -- because I think I
2 looked at it and it was not anything of interest to me.
3 Again, you know --

4 Q Okay. And -- and obviously, whatever that
5 is would be reflected on that disk that --

6 A Most of my -- most of my contact with Dr.
7 Schwartz-Watts, quite frankly, was this kind of stuff.

8 Q Okay.

9 A E-mailing her stuff that she had requested
10 and --

11 Q Uh-huh (affirmative).

12 A -- her sending me something back requesting
13 something else. And -- and, I don't ever remember
14 discussing anything of substance with her via e-mail.

15 Q Okay. Well, let me ask you this: I mean,
16 how much of this privileged material did you review for
17 today? And the reason that I ask you is, is because we
18 kind of got the impression from Solicitor Wilson
19 yesterday that you had done that when she hadn't.

20 A I did not review anything for today other
21 than the names that you had brought up particularly in
22 your letter.

23 Q Uh-huh (affirmative).

24 A I went back to look at those just to see
25 what they were.

42

1 Q Uh-huh (affirmative).

2 A And other than that, I have not reviewed.

3 And the Tora Brawley thing, I knew you were interested
4 in; went back and looked for that.

5 Q And the letter that you're talking about, is
6 that the one that we sent last Friday?

7 A Right. Where you were -- there were several
8 names in there --

9 Q Right.

10 A -- that you'd mentioned and obviously
11 alleging that -- that there was a Brady violation
12 because, apparently, we didn't call everybody we talked
13 to.

14 Q Well, but -- but weren't there some -- well,
15 would you agree that there are some names --

16 A Yes.

17 Q -- in Exhibit 14 that don't appear in the
18 discovery indexes?

19 A Absolutely.

20 Q Okay.

21 A We talked to -- we talked to people that --
22 that we determined had no personal knowledge of what was
23 going on and didn't need to be disclosed during
24 discovery.

25 Q All right. And it --

1 A It doesn't -- it doesn't mean that they have
2 Brady material.

3 Q Well, and if -- if -- if that's all it is,
4 then why not give that to us and let us be satisfied?

5 A Because it's not my decision to make, sir.
6 The solicitor -- Solicitor Wilson decided that she did
7 not want to release work product.

8 Q Okay. And --

9 A And -- and I am -- I am her instrument.

10 Q All right. Well, tell me about that
11 decision, because in the last deposition of the day, you
12 said that was her decision and -- and I understand that.
13 But, also, it was you that went through the file and
14 selected the documents.

15 A Right.

16 Q And, it was you that prepared the disk for
17 the judge.

18 A Yes.

19 Q And it's you that's prepared the two
20 privileged logs.

21 A Yes, sir.

22 Q And she didn't do any of that. You were her
23 instrument for doing all that.

24 A That is correct.

25 Q So -- so tell me about what you know of her

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1 decision. What did she tell you when --

2 A I am not going to answer what her reasoning
3 is because I don't know what her reasoning is. I would
4 assume that she thinks the rules should apply both ways.
5 But you'll have to ask her that question.

6 Q Okay. Well, what do you mean by "the rules
7 should apply both ways"?

8 A Well, I mean, work product, the last I heard
9 was a privilege of the prosecution and a privilege of
10 the defense.

11 Q Okay. And so it's -- you -- you think it's
12 a sort of "principled" application of --

13 A I think that's exactly what it is. I don't
14 think it has anything to do with hiding any -- hiding
15 the ball.

16 Q Okay.

17 A I think it's a principle thing.

18 Q All right. Because, you know, from -- you
19 know, from our perspective, -- and -- and you've seen
20 the memos --

21 A Uh-huh (affirmative).

22 Q -- the amount of materials has grown.

23 A Yeah.

24 Q And -- and as the privilege log grew, the
25 identities of some witnesses that were previously not

1 known --

2 A Uh-huh (affirmative).

3 Q -- emerged.

4 A Right.

5 Q That's all sort of a fair assessment.

6 A Well, I don't know if it's a fair
7 assessment. From the beginning of this thing, and the
8 initial -- the initial deposition you took of me, I've
9 made it very clear from the beginning, I had not been
10 through all of the work product at that point, other
11 than to separate it out, and I didn't know how many
12 pages we were dealing with. That has apparently turned
13 into a concrete representation by me of how many pages
14 there were. I made it clear at the time, I did not know
15 how many pages there were.

16 Secondly, a lot of this stuff is duplicated and
17 triplicated. I have my file, Scarlett had her file, a
18 lot of the stuff in those files are the same stuff.

19 Q Uh-huh (affirmative).

20 A The questions of the witnesses, the -- you
21 know, the interview notes. All of those are the same.
22 You may have the interview notes from a witness in there
23 three or four different times. So the amount of pages
24 is deceptive because there is a lot of duplication.
25 And, for example, the jury stuff. Every juror, there's

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1 a nine page questionnaire; same questionnaire the
2 defense got. Some of them have notes on them, some of
3 them don't. But -- so many of those pages are taken out
4 by the nine-page questionnaire.

5 Q Okay. I want to hand you what's Exhibit 1
6 from yesterday. And this was when we first learned of
7 the, you know, assertion of privilege. And it was from
8 Ms. Brown letting the judge know that that was going to
9 be coming and that we had that scheduling, or a status
10 conference scheduled in Calhoun County. And at that
11 point, you know, I -- and correct me if I'm wrong -- but
12 I think a fair reading of that is, is that in 30 minutes
13 we can hear two motions and the judge can review the
14 documents.

15 A Well, No. 1, you're asking me to comment on
16 a document that was drafted by someone else and I was
17 not privy to.

18 Q Okay.

19 A But I can tell you this: Work product was
20 never disclosed to them, either, so they had no idea how
21 many pages we were talking about, nor did I at the time
22 that this came up.

23 Q Okay. Well -- and that's what I'm trying to
24 figure out is, is where she got that description to say
25 "several records."

1 A I don't know.

2 Q Okay.

3 A I mean, because --

4 Q So it didn't come from you?

5 A -- to my knowledge, I never represented to
6 Ms. -- Ms. Brown that -- any specific amount of
7 documents.

8 Q Okay. All right.

9 A Because, quite frankly, at that time, I
10 didn't know. I mean, even when we took the deposition,
11 I didn't know.

12 Q Okay. Where --

13 A At that point, I think we'd only talked
14 about this thing in very general terms.

15 Q Okay. Where I think we are right now in
16 this litigation, and this privilege --

17 A Uh-huh (affirmative).

18 Q -- situation has dragged out from November
19 and it's almost April now.

20 A Uh-huh (affirmative).

21 Q Where we are, you know, from our pleadings
22 and you know from our application that we're interested
23 in whether or not there was any Brady material that --

24 A Uh-huh (affirmative).

25 Q -- that was not disclosed.

48

1 A Right.

2 Q And we're interested in whether or not
3 there's any information in your notes about the jurors
4 that would be relevant to a Batson claim.

5 A Uh-huh (affirmative).

6 Q That was a motion that was made by trial
7 counsel and it's -- and it's in our -- our application.

8 A Uh-huh (affirmative).

9 Q And, one way to clear up both of those --

10 A Uh-huh (affirmative).

11 Q -- would be to give us that information.

12 A I agree. I agree with your 100 percent, but
13 you need to understand, it's not my decision to make.

14 Q Okay. It's not your decision to make, but
15 you were the one who has decided which one of those
16 materials to include in -- I mean, for example, you
17 didn't have to give us this letter from Dr. Schwartz-
18 Watts --

19 A Right.

20 Q -- but you --

21 A And, quite frankly --

22 Q -- but you did.

23 A -- I was -- probably that was an oversight.

24 Q Okay. Well --

25 A You know, I mean, you're right. I didn't

1 have to give that to you.

2 Q Okay. But why not -- I mean, why would the
3 solicitor just not want to, you know, clear this up?

4 A I'm telling you. I think it's just a
5 principle thing with her. I don't believe there's any
6 Brady material in that file and I don't believe there's
7 anything in that file that's going to -- to bolster your
8 claim of a Batson challenge. That's -- that's my
9 opinion.

10 Q Have you shared that opinion with her?

11 A I shared that opinion with Melody, the -- my
12 personal opinion is "I don't care if we disclose the
13 file," but that --

14 Q Okay.

15 A -- is the solicitor's decision -- the
16 solicitor's decision to make.

17 Q And I appreciate you telling me what you
18 shared with her. But my question is, is did you share
19 that with -- your opinion with Solicitor Wilson?

20 A I told -- I told -- I don't know if I shared
21 that opinion. I think I may have made the comment like
22 --

23 Q Uh-huh (affirmative).

24 A -- "I don't care if we give them the whole
25 thing." And she says, "Well, I do."

50

1 Q Okay.

2 A And that was pretty much it, as far as I was
3 concerned.

4 Q And did you share the opinion with her that
5 if you just gave us this stuff, that that --

6 A I haven't --

7 Q -- could resolve --

8 A -- I haven't --

9 Q -- resolve it?

10 A I don't question my boss, sir.

11 Q Okay. Well --

12 A You know, I mean, if she's doing something
13 that I really think is wrong, yeah, I will try to talk
14 her out of it. But -- but she's the elected solicitor.
15 And -- and, I am her deputy, and as long as she's not
16 asking me to do something that's illegal or unethical,
17 I'm going to do what she tells me to do.

18 Q One of the memos -- or one of the documents
19 that we talked about yesterday was this memorandum that
20 your office filed in the Buncum case. Okay.

21 A I may have read that one time, I may not
22 have.

23 Q Okay.

24 A I don't know.

25 Q And -- and you're welcome to look at it now

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 William O. Dickerson, #6030,

4 Plaintiff, Case No: 2012-CP-10-3216

5 vs.

6 State of South Carolina,

CERTIFIED COPY

7 Defendant.

8 D E P O S I T I O N

9 WITNESS: Rutledge Durant, Esquire

10 DATE: Monday, March 25, 2013

11 TIME: 3:04 p.m.

12 LOCATION: Ninth Circuit Public Defenders Office

13 101 Meeting Street, 6th Floor

14 Charleston, South Carolina

15 TAKEN BY: Attorneys for the Plaintiff

16 REPORTED BY: Suesan L. Richardson

17 Professional Court Reporter

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1 and then you were here under Scarlett. What do you
2 think about sort of the transition between the two
3 captains, so to speak? I mean --

4 A Yeah.

5 Q -- was it kind of like sailing on the same
6 boat or was it different?

7 A You know I was here for just such a brief
8 amount of time under Ralph, that being able to compare
9 the two, I probably didn't have enough experience to do
10 that.

11 Q Okay.

12 A You know it was a big event, obviously, when
13 Ralph announced that he had pancreatic cancer. But you
14 know, the office was kept abreast probably until -- he'd
15 come in when he could here and there, but he was thin
16 and gone. It was good to see him.

17 Q Right.

18 A You know and I know that Scarlett visited
19 his house and visited him, and would keep us up to date
20 on how he was doing. I really liked working under
21 Scarlett. I thought she was very professional. And, to
22 me, I thought always tried to do the right thing.

23 Q Uh-huh (affirmative). Let's ask -- as part
24 of your training, my understanding is that Prosecution
25 Coordination Commission, I believe, may publish like a

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1 prosecutor's desk book. Does that sound familiar? Do
2 you know what --

3 A Yes.

4 Q -- I'm talking about?

5 A Yes.

6 Q Okay. Do you have one of those?

7 A I do, yes.

8 Q And, how often did you use that when you
9 were...

10 A Consulted it, you know, periodically.

11 Q Okay.

12 A But you know it was one of the things you
13 referenced all the time, so.

14 Q Okay. So, and are you alone or did all the
15 other assistant solicitors also have access?

16 A It's on the share drive, you know,
17 electronic copy. And then you can print it out. So
18 it's accessible to everybody.

19 Q Okay. And let's talk about going into the
20 penalty phase. Let's see [reviews notes]. During --
21 well, let's go back just a little bit. During the guilt
22 and innocent phase, as the jury is deliberating, and I
23 think you stated it -- they seemed to be out longer than
24 you were particularly comfortable with.

25 A Yeah, I think that's right.

South Carolina Commission on Prosecution Coordination



SOUTH CAROLINA PROSECUTOR'S DESKBOOK 2010 Edition

SOUTH CAROLINA PROSECUTOR'S DESKBOOK 2010 Edition

Revised, Updated, and Published in 2010 by
South Carolina Commission on Prosecution Coordination
Columbia, South Carolina

2007 and Earlier Editions Written by
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NOTICE

The 2010 edition of the *South Carolina Prosecutor's Deskbook* replaces all previous versions.

The *Deskbook* is a pdf document. This format will allow you to not only search for text, but also copy text for insertion into other documents (from those documents created as pdfs from Word™ Documents).

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This publication is intended for use by members of the South Carolina Solicitors' Offices. Because of the rapidly changing nature of the law, information contained in this publication may become outdated.* As a result, a prosecutor using this material must always research original sources of authority and update information to ensure accuracy when dealing with a specific legal matter. The views expressed herein are not necessarily those of the South Carolina Commission on Prosecution Coordination.

ACKNOWLEDGEMENTS

2007 and Earlier Editions:

The South Carolina Prosecutor's Deskbook had its beginnings in a notebook Caroline Fishburne Fox started several years ago, primarily using Ferguson's *Criminal Offenses in South Carolina* as a basis for a "cheat-sheet manual" of the most common offenses and issues, and adding topics and cases as new advance sheets came out. In compiling information for the *Prosecutor's Deskbook*, she relied upon the following sources as well: the NDAA's *National Prosecution Standards*; McAninch & Fairey's *Criminal Law of South Carolina*; Swerling's *South Carolina Criminal Trial Notebook*; Robert Farb's *North Carolina Prosecutors' Trial Manual*; and the 1997 and 2002 Annual Solicitors' Conference materials. She also incorporated material from the DUI trial notebook for police officers created by the Honorable J. Gregory Hembree, Solicitor of the Fifteenth Judicial Circuit, and Deputy Solicitor Fran Humphries' inner-office materials on predicate questions for confessions, competency, identification, search warrants, and the introduction of evidence.

Although Solicitor Hembree was the ultimate editor, every Assistant Solicitor in the Fifteenth Judicial Circuit provided reviews and input. Assistant Solicitor Nadia Black did the final editing of the 2007 Edition.

2010 Edition and Post-2007 Editions:

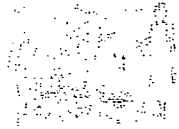
In 2008, the Commission accepted the responsibility of maintaining and updating the *Deskbook*. Under the direction of William D. Bilton, Executive Director of the Commission, Amie L. Clifford has over the years rewritten the ethics chapter and other portions of the *Deskbook*, reformatted the *Deskbook*, and updated the *Deskbook* to reflect changes in the statutory and case law.

This most recent edition of the *Deskbook* is current through the 2009 Session of the South Carolina General Assembly, as well as the cases issued by United States Supreme Court and the South Carolina appellate courts through the end of March 2010. It is hoped that the updates and the changes that have been made, and will be made in the future, will make the *Deskbook* even more useful to South Carolina's prosecutors.

Editor's Note

Every effort has been made to ensure that the information contained in the *South Carolina Prosecutor's Deskbook* is accurate and current as of the date of publication. Please send any comments or suggestions concerning the *Deskbook* to the South Carolina Commission on Prosecution Coordination, Attention: Amie L. Clifford, 1401 Main Street, Suite 825, Post Office Box 11561, Columbia, South Carolina 29211-1561.

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April 2010

Dear South Carolina Prosecutors,

The Commission is pleased to provide South Carolina's prosecutors with this new edition of *The South Carolina Prosecutor's Deskbook*. It is our hope that it will assist you in your day-to-day pursuit of justice for the citizens of our state.

In 2002, after learning many other states had a standard prosecutors' deskbook and realizing the benefit of having such a manual for South Carolina's prosecutors, the Honorable J. Gregory Hembree, Solicitor of the Fifteenth Judicial Circuit, took action. He asked Senior Assistant Solicitor Caroline Fishburne Fox, an exceptionally talented lawyer, to take on the task of writing a deskbook. She willingly did so and created a tremendous resource. *The South Carolina Prosecutor's Deskbook* was first published in 2003 by the Fifteenth Judicial Circuit Solicitor's Office. The *Deskbook* was updated by Mrs. Fox, edited by Solicitor Hembree, and reviewed by many members of the Fifteenth Judicial Circuit Solicitor's Office from that time through the 2007 update. They are to be commended for their hard work and their dedication to South Carolina's prosecutors.

In 2008, the Commission accepted the responsibility of maintaining and updating the *Deskbook*. We have rewritten some portions, reformatted the *Deskbook*, and updated the *Deskbook* to reflect the 2009 Session of the South Carolina General Assembly, as well as the cases issued by United States Supreme Court and the South Carolina appellate courts through the end of March 2010. It is our hope that the updates and the changes we have made, and will make in the future, will make the *Deskbook* even more useful to you.

The 2010 edition of *The South Carolina Prosecutor's Deskbook* replaces all previous versions (printed and on CD). It is being electronically published, on CD, and its pdf format will allow you to not only search for text, but also copy text for insertion into other documents. The electronic publication will also allow for updates and inclusion of additional forms, sample pleadings, and appendices.

I want to thank you for your service as a South Carolina prosecutor. Please contact me at (803) 343-0765 if you have any suggestions for the *Deskbook* or if I can ever be of assistance.

Sincerely,

A handwritten signature in black ink that reads "William D. Bilton".
William D. Bilton
Executive Director

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should not have allowed solicitor to argue defendant's "flight" from courtroom was evidence of guilt because this is not same as flight from scene of crime).

B. ARRAIGNMENT

An arraignment is a proceeding in which the defendant is brought before the judge having jurisdiction to try the offense, and the prosecutor advises the defendant on the record of the offense for which he has been indicted and directs the defendant to plead guilty or not guilty. This is usually done immediately before a jury is chosen to hear the trial of the case.

A defendant does not have a constitutional or statutory right to be arraigned and cannot argue that the State's failure to arraign him invalidates his conviction. The failure to arraign does not result in a due process violation as long as it appears that the defendant had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution. *Garland v. Washington*, 232 U.S. 642, 34 S. Ct. 456 (1913); *State v. Ariail*, 311 S.C. 35, 426 S.E.2d 751 (1993).

Arraignment is a mere formality, and a waiver of being arraigned need not be established as being knowingly and intelligently made. *State v. Ariail*, *supra*.

The solicitor should be prepared anyway with the appropriate verbiage in case the defendant requests to be arraigned before trial.

C. JURY SELECTION: PREEMPTORY CHALLENGES and BRUTON ISSUES

Constitutional Guarantee

The Constitution does not give a defendant the right to either a perfect jury or a "handpicked" jury, but only to a fair and impartial jury. *State v. Stanko*, 376 S.C. 571, 658 S.E.2d 94 (2008); *Smith v. State*, 375 S.C. 507, 654 S.E.2d 523 (2007).

Trial by Jury Rule 14, SCRCrimP

In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved.

Number of Jurors

A jury is composed of 12 members, but at any time before verdict, the parties may agree in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 if one or more jurors are excused for just cause after the trial begins.

Waiver of Right to Trial by Jury

A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge. Rule 14, SCRCrimP.

Acceptance of a jury trial waiver must be based upon a written record clearly demonstrating that the waiver is made knowingly and voluntarily. This can be done only through a searching interrogation of the accused by the trial court itself. Therefore, before accepting a proffered jury trial waiver in a criminal proceeding, the trial court must conduct its own direct and independent interrogation of the defendant. *State v. Arthur*, 296 S.C. 495, 374 S.E.2d 291 (1988).

Although the trial court must strive to ensure that a defendant's waiver of a jury trial is knowing and voluntary, the court should never inject its personal opinion into that decision. *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004).

The fact that a defendant cannot waive the right to trial by jury without the State's and judge's consent does not create a constitutional impediment, since the result of their refusal to consent is that the accused is subject to trial by an impartial jury, a right to which he is constitutionally guaranteed. *State v. Whitted*, 279 S.C. 260, 305 S.E.2d 245 (1983).

A capital defendant's right to a jury selected from a representative cross-section of the community is not compromised by the exclusion from the panel of those opposed to the death penalty. *State v. Kornahrens*, 290 S.C. 281, 350 S.E.2d 180 (1986), *cert. denied*, 480 U.S. 940, 107 S. Ct. 1592 (1987).

Grand Jury (Alleged Racial Discrimination in Selecting and Seating Grand Jury)

A defendant must establish the presumption of racial discrimination based on the statistical data available. The test is found in *State v. George*, 331 S.C. 342, 503 S.E.2d 168 (1998), *citing Castaneda v. Partida*, 430 U.S. 482, 97 S. Ct. 1272 (1977); *Sheppard v. State*, 357 S.C. 646, 594 S.E.2d 462 (2004).

Jury List

The trial court can make a defendant disclose his witness list before trial for the purposes of jury selection only. *State v. Powers*, 331 S.C. 37, 501 S.E.2d 116 (1998).

VOIR DIRE

Upon motion of a party, the trial court must examine all potential jurors under oath to find out if any juror:

1. is related to either party,
2. has any interest in the case,
3. has expressed or formed any opinion, or
4. has any bias or prejudice.

S.C. Code Section 14-7-1020

The objecting party must present competent evidence to get a juror excused for cause. *Id.*

The scope of *voir dire* and the manner in which it is conducted is left to the sound discretion of the trial court. *State v. Stanko, supra.*

Apart from capital cases, South Carolina judges traditionally conduct the examination of prospective jurors. S.C. Code Section 14-7-1020 & 16-3-20(D).

The use of paper strikes (where parties note their selections on paper list of jurors) does not deprive a capital defendant of a fair trial by an impartial jury where he has had ample opportunity to examine jurors in individual *voir dire* previously and has access to juror sheets and information forms. *State v. Bryant*, 372 S.C. 305, 642 S.E.2d 582 (2007).

There is no right of the parties to face potential jurors before exercising preemptory challenges. *State v. Potts*, 347 S.C. 126, 554 S.E.2d 38 (2001). Often, in Magistrate and Municipal Court, jurors are selected from a preprinted list and the jurors are not present.

Jury selection is considered part of trial strategy, and even if counsel does not show he had a trial strategy for jury selection, PCR will not be granted unless the defendant can show the trial outcome would have been different if the attorney had used all available strikes. *Magazine v. State*, 361 S.C. 610, 606 S.E.2d 761 (2004).

Extensive Questioning

Attorneys may submit additional questions for the jury to the trial judge, but the scope of such questions and the manner in which the *voir dire* is conducted is within the judge's discretion. The judge does not need to allow lengthy interviews of jurors for the purpose of developing "personality profiles." *State v. Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982).

Examples:

1. Questions about Race

During *voir dire*, the trial judge may ask if any potential juror has any biases or prejudices that would cause him to favor or disfavor any person associated with this case, based upon that person's race. *State v. Vang*, 353 S.C. 78, 577 S.E.2d 225 (Ct. App. 2003).

However, specific individual questions designed to reveal racial prejudices of the particular juror are required only when "special circumstances" exist. *State v. Cason*, 317 S.C. 430, 454 S.E.2d 888 (1995). A special circumstance exists when race is an integral part of the case, not when the only racial fact in the case is that the defendant and the victim are of different races. *Id.*

The proponent of a specific question regarding race must show that there is reasonable possibility that racial or ethnic prejudice would affect the jury. *Id.* (where, although defendant made offensive statement about victim, no evidence that motive for killing her was her race).

In order to protect a capital defendant's right to an impartial jury, he is entitled to have prospective jurors informed of the race of the defendant and questioned on their racial biases. If a juror is shown through *voir dire* to exhibit bias, the trial judge must exercise his discretion by disqualifying such a juror. A juror must be excused if his opinions would prevent or substantially impair the performance of his duties as a juror in accordance with the oath and instructions. *State v. Green*, 301 S.C. 347, 392 S.E.2d 157 (1990).

2. Hypothetical Questions *State v. South*, 285 S.C. 529, 331 S.E. 775 (1985).

3. Whether the juror would believe testimony of one class of people (e.g., police) over another. *State v. Adams*, 279 S.C. 228, 306 S.E.2d 208 (1983).

Trial judge did not abuse his discretion in refusing defense attorney's request to ask jurors whether they would give up their vote in order to go with the majority, where the jury panel had already been questioned as to their impartiality. *State v. Hill*, 361 S.C. 297, 604 S.E.2d 696 (2004) (death penalty case).

Oath

A juror cannot be dismissed for being unwilling to take a religious oath; he should be allowed to make an affirmation instead. *State v. Floyd*, 353 S.C. 55, 577 S.E.2d 215 (2003).

Reasons for Disqualification S.C. Code Section 14-7-810

1. the juror has been convicted in state or federal court of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty;
2. he is unable to read, write, speak, or understand the English language;
3. he is incapable by reason of mental or physical infirmities to render efficient jury service (legal blindness is not enough); or
4. he has less than a sixth grade education or its equivalent.

Any person called to jury service who knows or has good reason to suspect that he is disqualified under this section, upon questioning by court, must state the disqualifying facts or the reasons for his suspicions and any failure to do so is punishable as contempt of court. The trial judge will make the final determination of the qualifications of a juror.

Challenges for Cause

The following jurors should be excused for cause:

1. clerks /deputy clerks of court, constables, deputy sheriffs, probate judges, county commissioners, magistrates, county officers and those employed within the walls of the courthouse (S.C. Code Section 14-7-820);
2. highway patrol officers (*State v. Cooper*, 291 S.C. 332, 353 S.E.2d 441 (1986)); and
3. biased jurors (S.C. Code Section 14-7-1020; *State v. Green*, 301 S.C. 347, 392 S.E.2d 157 (1990)).

Sufficient reason to excuse juror for cause: juror who states, during lengthy colloquy with judge, that she would be unable to render a guilty verdict under any circumstances. Such a juror is disqualified by law and does not need to be questioned by defense attorney. *State v. Wise*, 359 S.C. 14, 596 S.E.2d 475 (2004).

Insufficient reason to excuse juror for cause: juror is a friend or acquaintance of a victim, witness, officer or attorney in the case. *State v. Jones*, 298 S.C. 118, 378 S.E.2d 594 (1989); *Wilson v. Childs*, 315 S.C. 431, 434 S.E.2d 286 (1993).

Time for Objection

An objection to a juror is deemed waived if not made before the juror is impaneled, including objections that the party knew or would have known if due diligence had been exercised. S.C. Code Section 14-7-1030; *Creighton v. Coligny Plaza*, 334 S.C. 96, 512 S.E.2d 510 (1998).

Number of Preemptory Strikes S.C. Code Section 14-7-1110

The State gets five strikes. In joint trials for felonies, the State gets 10 strikes.

The defendant gets five strikes, *except* he gets 10 strikes when the charge is one of the following:

- murder;
- manslaughter;
- burglary;
- arson;
- criminal sexual conduct;
- armed robbery;
- grand larceny;
- breach of trust over \$1000;
- forgery; and

- perjury.

In joint trials, no more than 20 strikes are allowed in all to the defendants. However, in misdemeanor joint trials, no more than 10 strikes are allowed in all to the defendants.

For alternate jurors, the State gets one strike and the defendant gets two for each alternate.

Failure of a Juror to Disclose Information in *Voir Dire*

To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they have formed an opinion about a case or are aware of any bias or prejudice against a party. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998).

It is expected and required that jurors will answer truthfully and that they will disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. It is therefore imperative that the jurors' answers be truthful and complete. *Id.*

Where the court is informed of a matter that may justify the discharge of a juror, it must take some action and inquire into the matter, at least where juror competency is in question. *State v. Ivey*, 331 S.C. 118, 502 S.E.2d 92 (1998).

The right to a new trial in circumstances relating to improper juror silence during *voir dire* is not absolute: relief is required only when the court finds the concealed information would have supported a challenge for cause, or would have been a material factor in the use of the party's peremptory challenges; the inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred. *Long v. Norris & Associates, Ltd.*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000).

Examples:

1. New trial was required where a juror failed to disclose her work with victim's advocacy program through local solicitor's office, despite having been specifically asked on *voir dire* about having contributed to or supported victims' rights organization. *State v. Woods*, 338 S.C. 561, 527 S.E.2d 128 (Ct. App. 2000), *affirmed*, 345 S.C. 583, 550 S.E.2d 282 (2001).
2. New trial was not required because a juror in capital murder case did not, during *voir dire*, intentionally conceal information concerning his views on death penalty, even though he failed to disclose that he had several years earlier attended death penalty rally. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998), *cert. denied*, 525 U.S. 1077, 119 S. Ct. 816 (1999).
3. Juror's failure to reveal during *voir dire* that she was acquainted with the lead detective is irrelevant to the *Batson* analysis, which focuses upon a party's knowledge of a potential juror and reason for exercising a peremptory challenge. *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999).
4. New trial not required: juror's unintentional failure to disclose attack 40 years ago (no jury member said this juror's comments about never forgetting face of his attacker persuaded them to convict defendant). *State v. Sparkman*, 358 S.C. 491, 596 S.E.2d 375 (2004).
5. New trial not required: where no juror responded to the following questions: (1) whether anyone had any type of personal, business or social relationship with either the defendant or any of the potential witnesses and (2) if anyone for whatever reason could not give both the state and the defendant a fair and impartial trial, defendant was not prejudiced

where juror failed to state that she knew a witness but did not have a social relationship with him. *State v. Guillebeaux*, 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004).

Procedure:

1. Get a copy of the jury panel list and their information sheets from the clerk of court, listing their place of employment, education level, marital status and number of children.
2. Run a rap sheet on each juror, and inform the judge before *voir dire* if there is anyone who should be excused because of his or her prior criminal record.
3. Encourage officers, victims and witnesses to review the list and be present during jury qualification to see whether they recognize anyone and if so, whether they can give a specific reason why a particular person should not be seated on the jury.
4. Keep a record of which jurors were picked on previous juries, and whether those trials resulted in guilty verdicts (can be used as a neutral reason for a strike in *Batson* motion).
5. In the typical jury qualification, the judge or clerk of court will ask each juror to state their name, place of employment, and their spouses' employment. The judge will determine whether anyone is exempt from serving (e.g., over 65, having powers of arrest, or sole caretaker of a child under six) or disqualified to serve. (See disqualifications below.)
6. The judge will usually ask jurors to approach the bench to discuss any matters they wish to keep private – this is usually the time jurors will reveal information about a prior record or ask to be excused. This information may give the attorneys ammunition for challenges for cause or preemptory strikes during jury selection.
7. In the *voir dire* for a particular case, the judge will ask whether there is anyone related by blood or marriage or who has a close personal relationship with either of the parties (this includes witnesses, which is why it is a good idea to argue that the defense should disclose their potential witness list), or if there is anyone who knows of any reason why they cannot be a fair and impartial juror in the trial of this defendant.
8. The judge will ask the State and defense whether they have any additional *voir dire*. If you wish the judge to ask questions beyond the usual boilerplate *voir dire*, submit the questions in writing. However, most judges will not allow questions that look like “personality profiling” of the jury. Sample questions that judges usually allow:
 - a. has anyone been a victim of a crime or is related to someone who has?
 - b. has anyone been arrested for or convicted of a crime or is related to someone who has? (the judge may limit this question to an arrest for the type of crime charged or an arrest by the law enforcement agency involved)
 - c. has anyone been represented by the defense attorney or been represented or prosecuted by the State?
 - d. is anyone a member of a victims' rights group?

The judge will ask each person who responds affirmatively whether they can set this factor aside and decide the case based on the evidence presented.

9. When a juror is called, the State may present, or accept, the juror or excuse the juror, using a preemptory strike.
10. If there is a challenge for cause (a good reason to believe the potential juror could not be impartial), approach the bench out of the jury's hearing and put the issue on the record later. Be careful: if your challenge for cause is not good enough, you will have to put someone on the jury that now knows you did not want him.
11. Keep a good record of which juror was struck by which party, along with a notation of the reason for striking a juror, making sure to be consistent in your strikes.
12. If the defense begins a pattern of striking a certain type of person based on race or gender, you can either immediately make a *Batson* motion (which should keep him from

continuing to make discriminatory strikes), or wait until the jury is selected, keeping track of his strikes in order to argue that any explanations he later gives are merely pretextual. Even if the defense makes discriminatory strikes, do not object if you still like the final composition of the jury.

BATSON v. KENTUCKY

The purposes of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), and its progeny are to protect the defendant's right to a fair trial by a jury of his peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of the justice system by seeking to eliminate discrimination in the jury selection process. *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999).

Batson requires a hearing to allow a party the opportunity to make a *prima facie* showing of purposeful discrimination by challenging the other party's use of a preemptory strike, and if such discrimination is found, the proponent of the strike has the opportunity to present a neutral explanation for the strike. *State v. Jones*, 293 S.C. 54, 358 S.E.2d 701 (1987).

It is unconstitutional to strike a juror on the basis of:

1. race, *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), or.
2. gender, *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 114 S. Ct. 1419 (1994).

BATSON HEARING

There are three steps to a *Batson* hearing:

1. Members of a cognizable racial group or gender are struck and the opposing party requests a hearing.
("The State struck all black males.")
2. The proponent of the strike must offer a facially race or gender-neutral explanation for the strike.
("Juror #3 was struck because he had a 1999 arrest for marijuana.")
3. The opponent of the strike must show that the race- or gender-neutral explanation given was mere pretext.
("The State did not strike Juror #2, a white male, even though he had a conviction for assault." Response: "Assault is not a substance abuse offense, and this is a DUI trial.")

State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999); *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) (adopting the *Batson* procedure set forth in *Purkett v. Elem*, 514 U.S. 765, 115 S. Ct. 1769 (1995)).

In order to raise and preserve a *Batson* issue, the opposing party must move for the hearing after the jury is selected, but before it is sworn. This hearing must be held out of the presence of the jury panel and the jury venire. If the trial judge finds that the opposing party has established a *prima facie* case of purposeful discrimination and that the proponent of the strike has failed to give neutral reasons for the contested strikes, the process of selecting jury shall start over. *State v. Jones*, 293 S.C. 54, 358 S.E.2d 701 (1987).

Step One: The Strike

Members of a cognizable racial group or gender are struck and the opposing party requests a hearing.

Any person, regardless of race or gender, may set forth a *Batson* claim, and the trial court should

hold a *Batson* hearing whenever one is requested. *State v. Chapman*, 317 S.C. 302, 306, 454 S.E.2d 317, 320 (1995) ("striking of any juror can raise the inference of race and/or gender based discrimination"); *State v. Edwards*, 374 S.C. 543, 556, 649 S.E.2d 112, 119 (Ct. App. 2007), *reversed on other grounds*, 384 S.C. 504, 682 S.E.2d 820 (2009) (reversed Court of Appeals' conclusion that proffered reason for defendant's strikes were not race-neutral).

Both the defendant and the State can make a *Batson* motion. *Georgia v. McCollum*, 505 U.S. 42, 112 S. Ct. 2348 (1992); *State v. Hicks*, 330 S.C. 207, 499 S.E.2d 209 (1998).

Step Two: The Explanation for the Strike

The proponent of the strike must offer a facially race- or gender-neutral explanation for the strike.

The explanation need not be clear, reasonably specific, or legitimate; it only needs to be race- or gender-neutral. *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *affirmed*, 327 S.C. 121, 489 S.E.2d 617 (1997).

The reason need not be persuasive or even plausible and may even be silly or superstitious. *Purkett v. Elem*, *supra*; *State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997). However, as set forth below in "Step Three: The Argument of Mere Pretext," circumstances may lead a judge to find an explanation that so fundamentally implausible to be mere pretext. See *State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009).

At the second step of the inquiry, the issue is the facial validity of the explanation. Unless a discriminatory intent is inherent in the explanation, the reason offered will be deemed race- (or gender-) neutral. *Purkett v. Elem*, *supra*.

Although the explanation does not have to rise to the level of justifying the exercise of a challenge for cause, the prosecutor may not merely state that it was his intuitive judgment that the juror would be partial because of the juror's shared race with the defendant or by merely denying that he had a discriminatory motive. *State v. Tomlin*, 299 S.C. 294, 384 S.E.2d 707 (1989).

The trial judge's determination of purposeful discrimination rests largely on his or her evaluation of the challenged attorney's demeanor and credibility. A strike must be examined in light of the circumstances under which it was exercised, including an examination of the explanations offered for other strikes. *State v. Edwards*, 384 S.C. at 509, 682 S.E.2d at 823.

Sufficient Reasons for Strike:

- I. lack of employment or place or type of employment, *see, e.g., State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999);
 - Such a reason is credible because of the concern for a juror's life experiences or sense of social duty. *State v. Green*, 306 S.C. 94, 409 S.E.2d 785 (1991).
 - "[E]mployment, or lack of it, is a well-understood and recognized consideration in the exercise of peremptory challenges." *State v. Williams*, 379 S.C. 399, 665 S.E.2d 228 (Ct. App. 2008).
 - Examples where place of employment found sufficient for strike:
 - a. Juror worked at a business where defense attorney's brother was a manager, *State v. Short*, 333 S.C. 473, 511 S.E.2d 358 (1999); and
 - b. Juror worked as a newspaper editor and might have knowledge of story about the case, *State v. Edwards*, 384 S.C. 504, 510-511, 682 S.E.2d 820,

- 823(2009).
2. relationship with law enforcement, *see, e.g., State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990);
Examples from *State v. Johnson, supra*:
a. potential juror #1's neighbor had been arrested by one of the officers involved in the case;
b. potential juror #2 lived near and frequented an establishment which had had great conflict with the law enforcement of the county;
c. potential juror #3's brother had an indictment against him;
d. potential juror #4 lived in close proximity to the defendant; and
e. potential juror #5 lived next door to and had a close relationship with a man who had recently been convicted of a drug offense.
Other example:
a. Juror's employment with DMV resulting in interaction with law enforcement on a regular basis. *State v. Edwards, supra*;
3. knowledge of and association with the defendant, *State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990), or defense attorney, *State v. Lewis*, 293 S.C. 107, 359 S.E.2d 66 (1987); and
4. past prosecution by that particular Solicitor's office. *See, e.g., State v. Dyar*, 317 S.C. 77, 452 S.E.2d 603 (1994).
5. possible criminal record, *see, e.g., State v. Martinez*, 294 S.C. 72, 362 S.E.2d 641 (1987);
6. prior jury service, *see, e.g., State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999);
7. recipient of prior strike in another trial, *see, e.g., Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994);
8. demeanor, *see, e.g., State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997);
Examples:
a. apparent disinterest in court, *see, e.g., State v. Guess*, 318 S.C. 269, 457 S.E.2d 6 (1995); *United States v. Hendrieth*, 922 F.2d 748 (1991) (rubbing and rolling eyes during *voir dire*);
b. appeared to be slow, *see, e.g., State v. Guess, supra*;
c. appeared to be too intelligent, *see, e.g., State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996);
d. vacillated in response to *voir dire* questions, *see, e.g., State v. Elmore*, 330 S.C. 130, 386 S.E.2d 769 (1988); and
e. trouble with abstract thinking and lacking in understanding of court process, *see, e.g., State v. Tucker*, 334 S.C. 1, 512 S.E.2d 99 (1999).
But see State v. Wright, 304 S.C. 529, 405 S.E.2d 825 (1991), and relevant cases below, where demeanor was not a sufficient basis for a strike.
9. third party's decision to strike *if* that person's clear and reasonably specific reason is provided, *see, e.g., Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994);
Examples:
a. officer's apparent knowledge that a potential juror had an anti-law enforcement bias, *State v. Richburg*, 304 S.C. 162, 403 S.E.2d 315 (1991);
b. trooper's personal contact with venirepersons and belief they may hold anti-law enforcement bias, *State v. Smith*, 321 S.C. 471, 469 S.E.2d 57 (Ct. App. 1996); and

- c. lead detective knew that venireperson was a high-strung, critical person who would be a polarizing force on jury. *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999).
- 10. being late for jury duty, *see, e.g., State v. Wilder*, 306 S.C. 535, 413 S.E.2d 323 (1991) (even though two black men and one white woman were late, solicitor's reason for seating the woman was acceptable where she overcame her lateness by saying that she did not want to be excused and was there to serve at the pleasure of the court.);
- 11. "general instability" (based on the juror's having changed employment several times after short periods of work, having had a child out of wedlock, and still living with her parents), *see, e.g., State v. Robinson*, 305 S.C. 469, 409 S.E.2d 404 (1991), *cert. denied*, 503 U.S. 937, 112 S. Ct. 1477 (1992);
- 12. youth, *see, e.g., Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994);
- 13. inappropriate dress all week, *see, e.g., id.*; and
- 14. acquaintance with one of the attorneys of the principal in the case where the defendant was on trial for accessory before the fact of murder. *State v. Lewis*, 293 S.C. 107, 359 S.E.2d 66 (1987).

Insufficient Reasons for Strike:

- 1. generalization about an entire group, *see Payton v. Kearse*, 329 S.C. 51, 495 S.E.2d 205 (1998);
Examples:
 - a. "redneck," *see Id.*; and
 - b. Democrat, *see Foster v. Spartanburg Hospital System*, 314 S.C. 282, 442 S.E.2d 624 (Ct. App. 1994);
- 2. reason that is not specifically clear and reasonably specific (*e.g.*, desire to seat other jurors who had not yet been presented), *see State v. Grandy*, 306 S.C. 224, 411 S.E.2d 207 (1991);
- 3. third party's decision to strike without a clear and reasonably specific reason provided, *see State v. Marble*, 311 S.C. 23, 426 S.E.2d 744 (1992);
Examples:
 - a. solicitor's investigator said "do not take him" and victim agreed, since there was no assurance that they did not base their decision on the juror's race, *see Id.*; and
 - b. docket clerk had put question marks by the juror's name, which solicitor said he believed indicated that he had a possible criminal record; however, a white juror with questions marks by his name was not struck, *see State v. Adams*, 307 S.C. 368, 415 S.E.2d 402 (1992);
- 4. potential juror's disinterested attitude and demeanor observed throughout three days of courtroom proceedings, which was contrasted with other jurors who appeared to be interested, *see State v. Wright*, 304 S.C. 529, 405 S.E.2d 825 (1991);
- 5. potential juror who "shucked and jived" to the microphone, *see State v. Tomlin*, 299 S.C. 294, 384 S.E.2d 707 (1989); and
- 6. potential juror, a 43-year-old black woman, who the solicitor said "walked slow, talked low and might not be able to withstand the trial" (especially when, rather than inquiring into the legitimacy of this explanation, the trial court suggested that the potential juror had a lack of education, was extremely sluggish and would be a "filler" if seated on the jury). *Id.*

Step Three: The Argument of Mere Pretext

The opponent of the strike must show that the race- or gender-neutral explanation given was mere pretext, either by showing that:

- a. similarly situated members of another race or gender were seated; or
- b. the reason for the strike is so fundamentally implausible as to constitute mere pretext, despite a lack of disparate treatment.

State v. Edwards, 384 S.C. at 508-509, 682 S.E.2d at 822; *State v. Haigler*, 334 S.C. 623, 515 S.E.2d 88 (1999); *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996); *Purkett v. Elem*, *supra*.

A mere conclusory assertion of racial motivation is insufficient. *State v. Flynn*, 368 S.C. 83, 627 S.E.2d 763 (Ct. App. 2006) (where State said it believed black juror was liberal based on her employment, and defendant, white male, offered no evidence of pretext).

The composition of the jury panel is a factor that may be considered when determining whether a party engaged in purposeful discrimination. *State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990).

Examples:

1. The defendant did not make out a *prima facie* case of discrimination where the prosecutor struck four black jurors, because he also seated four black people on the jury and seated two black alternates. *State v. Haigler*, *supra*. See also *State v. Elmore*, 300 S.C. 130, 386 S.E.2d 769 (1989).
2. The State's reason for striking black jurors was a pretext, because it was not applied in a neutral manner, where the reason given for striking the jurors was that they were patients of a doctor who was a defense witness, but a white juror was not struck who was also a patient of the doctor. *State v. Oglesby*, 298 S.C. 279, 379 S.E.2d 891 (1989).

The uneven application of a neutral reason does not automatically result in a finding of discrimination if the strike's proponent provides a race- or gender- neutral explanation for the inconsistency. *State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368 (1995) (where State provided racially neutral explanation for why it did not strike juror with similar characteristics to one previously stricken); *State v. Wright*, 354 S.C. 48, 579 S.E.2d 538 (Ct. App. 2003), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

The State does not have to indicate whether the same standards used to strike black jurors were applied to white jurors who were seated, since the defense has the burden to prove that the State's allegedly neutral reasons were pretextual because they were not applied in a neutral manner. *State v. Johnson*, 302 S.C. 243, 395 S.E.2d 167 (1990) (no evidence presented that white juror seated who had same disqualification as black jurors who were struck).

Once a discriminatory reason has been uncovered, it taints the entire jury selection procedure. Therefore, where more than one reason is offered for a strike, and one of the reasons is found to be pretextual or discriminatory, the proponent of the strike fails to rebut the opponent's *prima facie* case of discrimination. *Payton v. Kearse*, 329 S.C. 51, 495 S.E.2d 205 (1998); *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *affirmed*, 327 S.C. 121, 489 S.E.2d 617 (1997) (where court properly refused to accept black juror's demeanor as racially neutral explanation for defendant's strike, when defense counsel failed to point out any specific examples of why his demeanor was disliked, and that reason was offered as explanation only after previous explanation was rejected as not being racially neutral).

The Burden of Persuasion

The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike. *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996).

In deciding whether the opponent of a strike has carried the burden of persuasion, a court must undertake a sensitive inquiry into the circumstantial and direct evidence of intent. A strike must be examined in light of the circumstances under which it is exercised, including an examination of the explanations offered for other strikes. *State v. Oglesby*, 298 S.C. 279, 379 S.E.2d 891 (1989).

Whether a party's proffered reason for exercising a peremptory strike is discriminatory must be determined by examining the totality of the facts and circumstances in the record. *Riddle v. State*, 314 S.C. 1, 443 S.E.2d 557 (1994), *reversed on other grounds*, *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).

The ultimate question is whether the moving party has met his burden in demonstrating purposeful discrimination. *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996).

Implausible or fantastic justifications may be found to be pretexts for purposeful discrimination. *Purkett v. Elem*, 514 U.S. 765, 115 S. Ct. 1769 (1995); *State v. Edwards*, 384 S.C. at 509, 682 S.E.2d at 822. However, the appellate court will not disturb the trial judge's decision to deny a *Batson* motion unless the ruling is clearly erroneous (even if the court is "skeptical" about a party's reasons for a strike). *State v. Wright*, 354 S.C. 48, 579 S.E.2d 538 (Ct. App. 2003), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

The trial court must often base its decision on credibility determinations. *State v. Green*, 306 S.C. 94, 409 S.E.2d 785 (1991), *cert. denied*, 503 U.S. 962, 112 S. Ct. 1566 (1992).

The "[trial] court's ruling turns on an examination of 'the totality of the facts and circumstances in the record,' including the 'credibility and demeanor' of the strike's proponent, and the plausibility of a neutral, but otherwise unpersuasive, reason." *State v. Casey*, 325 S.C. 447, 452, 481 S.E.2d 169, 172 (Ct. App. 1997) (citations omitted).

However, where the trial court's findings are not supported by evidence in the record, such findings will be overturned. *Id.*

Disclosure of Evidentiary Support for Strikes

The proponent of a strike need not present evidentiary support for the strike. *State v. Casey*, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997) (*e.g.*, juror's NCIC report).

The general rule is that absent statute or court rule, there is no right to discovery in a criminal case. *State v. Childs*, 299 S.C. 471, 473-74, 385 S.E.2d 839, 841 (1989).

Death Penalty Jurors

Vacillating responses to *voir dire* questions will support the use of a peremptory strike, even though merely expressing scruples against the death penalty would not be sufficient to excuse the juror for cause. *State v. Bell*, 305 S.C. 11, 406 S.E.2d 165 (1991), *cert. denied*, 502 U.S. 1038, 112 S. Ct. 888 (1992).

Given the severity of capital punishment, coupled with searching *voir dire* interrogations, it is understandable that juror responses about the death penalty are frequently marked by inconsistency and vacillation. Under such circumstances, the solicitor may view the entirety of a juror's *voir dire* responses in determining whether to accept or reject a prospective juror. Where the responses are susceptible of more than one conclusion, the Supreme Court will not substitute its own opinion for that of the solicitor. *State v. Woodruff*, 300 S.C. 265, 387 S.E.2d 453 (1989); *State v. Patterson*, 302 S.C. 384, 396 S.E.2d 366 (1990), *vacated on other grounds*, 500 U.S. 950, 111 S. Ct. 2253 (1991), *on remand* 307 S.C. 180, 414 S.E.2d 155 (1992).

Examples:

1. The State's exercise of a peremptory strike was valid against a potential juror who was reluctant to answer death penalty questions and had several children the same age as the defendant, but who had ultimately told the judge that she could vote for the death penalty. *State v. Bell*, *supra*.
2. The State's reason for exercising peremptory challenges against three black jurors – reluctance to impose the death penalty – was racially neutral, even though the State did not challenge a white juror who admitted that she would have difficulty in signing a death penalty verdict but who also testified that she was not strongly disposed either for or against the death penalty. *State v. Woodruff*, *supra*. See also *State v. Patterson*, *supra*.

After a Batson Motion is Granted

If the trial judge finds that the defendant has established a *prima facie* case of purposeful discrimination and that the solicitor has failed to give racially neutral reasons for the contested peremptory strikes, the judge must set aside the petit jury and the process of selecting jury will start over. *State v. Jones*, 293 S.C. 54, 358 S.E.2d 701 (1987).

The trial court's findings regarding purposeful discrimination are given great deference and will be set aside on appeal only if clearly erroneous. *State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999).

However, when the record does not support a party's stated reason for a strike, the trial court's findings will be overturned that are based on that reason. *Id.*

It is harmless error for trial judge to seat juror after he finds she was struck in discriminatory manner, rather than just to start jury selection process over. Seating juror who has once been improperly struck in violation of *Batson* is not by itself an impairment or denial of that party's right to preemptory challenges. No prejudice results from the failure to strike the entire jury, when the defendant's right to exercise preemptory strikes was not impaired and the selection process provided him with the same choices he enjoyed the first time, with the exception of that one juror. *State v. Heyward*, 357 S.C. 577, 594 S.E.2d 168 (Ct. App. 2004).

Striking a Juror after Batson motion

A trial judge can prohibit a strike against a potential juror who was previously stricken in violation of *Batson*. *State v. Franklin*, 318 S.C. 47, 456 S.E.2d 357 (1995).

However, where jurors originally stricken in the first jury that the judge quashed after an erroneous *Batson* finding are seated on the subsequent jury, the resulting conviction must be reversed. *State v. Short*, 333 S.C. 473, 511 S.E.2d 358 (1997).

A party may strike the same juror after the first jury has been quashed after a *Batson* finding if he

has new facts supporting the strike. *State v. Franklin, supra*. However, any “new” reason supporting a strike must be analyzed in light of *Payton v. Kearsce*, 329 S.C. 51, 495 S.E.2d 205 (1998), which held that once a discriminatory reason has been uncovered, it taints the entire jury selection procedure.

Where a codefendant gives a reason for striking a juror that is found to be not racially neutral, a defendant cannot try to strike her again for another reason. Once a juror has been unconstitutionally stricken, the jury selection process is tainted. If the trial court chooses to reseal the improperly stricken juror, the striking party cannot use a strike to remove that juror a second time. *State v. Lewis*, 363 S.C. 37, 609 S.E.2d 515 (2005) (where Court deferred to trial court’s opinion that codefendants acted in concert when using strikes first time).

There is no *Batson* violation when a juror against whom a party would have exercised a preemptory challenge is ultimately seated on the jury. The *Batson* right of a juror to equal protection is not abridged if the juror is seated. *State v. Short, supra*; *State v. Adams*, 307 S.C. 368, 415 S.E.2d 402 (1992).

“If a trial court improperly grants the State’s *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice; however, if one of the disputed jurors is seated on the jury, then the erroneous *Batson* ruling has tainted the jury and prejudice is presumed in such cases, because there is no way to determine with any degree of certainty whether a defendant’s right to a fair trial by an impartial jury was abridged, and in that case, the proper remedy is the granting of a new trial.” *State v. Edwards*, 384 S.C. at 509, 682 S.E.2d at 823. See also *State v. Rayfield*, 369 S.C. 106, 631 S.E.2d 244 (2006) (Court admonished prosecutors against frivolous *Batson* motions).

To determine if there has been a constitutional violation in jury qualification, the appellate court will use a three-step analysis:

1. the defendant must show he used all of his preemptory challenges;
2. the court then considers whether the juror was erroneously qualified; and
3. if so, the defendant must show he was deprived of a fair trial.

If the erroneously qualified juror was never seated, then the defendant cannot claim he was deprived of a fair trial by an unbiased jury. *Green v. Maynard*, 349 S.C. 535, 564 S.E.2d 83 (2002), citing, *United States v. Martinez-Salazar*, 528 U.S. 304, 120 S. Ct. 774 (2000).

A footnote in *Green v. Maynard, supra*, states that a claim based on the denial of a strike can still be made if, after being forced to use a preemptory strike on an erroneously qualified juror, a defendant can show he was deprived of a subsequent strike he would have exercised, and to which he would have been entitled, but for the forced strike. Such a claim may be preserved by stating for the record an articulable objection to a subsequently presented juror.

There does not need to be a showing of actual prejudice for an appellate court to find reversible error for the denial or impairment of a party’s right to a preemptory challenge. Of course, before reversible error can be found, the complaining party must establish the denial of his right to exercise a preemptory challenge. *State v. Short, supra*

D. OPENING STATEMENTS

Purpose and Scope of Opening Statements

An opening statement serves to inform the jury of the general nature of the action and defenses

Jennifer Shealy

From: Drew Evans <drew.evans451@gmail.com>
Sent: Wednesday, September 14, 2011 6:17 PM
To: Jennifer Shealy
Subject: Re: Asst. Solicitor Position

No hurry. I appreciate it.

On Tue, Sep 13, 2011 at 4:30 PM, Jennifer Shealy <shealyj@scsolicitor9.org> wrote:

Drew,

I will certainly bring you to her attention. As you probably have noticed, I am swamped right now. Let's talk in a couple of weeks. You take the Bar in July, right?

Jennifer

Jennifer Kneece Shealy

Ninth Circuit Solicitor's Office

O. T. Wallace Building

101 Meeting Street, 4th Floor

Charleston, South Carolina 29401

843.958.1959(tel)

843.958.1905 (fax)

shealyj@scsolicitor9.org

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Tuesday, September 13, 2011 2:12 PM
To: Marian Askins; Julie Gardner Cardillo; Rutledge DuRant; Timmy Finch; Amy Harrell; Debbie Herring-Lash; Elizabeth Gordon; Stephanie Linder; Jennifer Shealy
Subject: Asst. Solicitor Position

Hey All,

I hope everyone is doing well in Charleston. I'm writing to tell everyone that I have thrown my proverbial hat into the ring for an

Petition to Review Assignment of PCR Judge

Assistant Solicitor's position in Charleston after I take and hopefully pass the bar. I had an amazing experience and I wanted to thank all of you for playing a part in that and sort of give you a heads up in case Scarlett started inquiring around the office about me. I hope you can all tell her that I was at least mildly competent (or lie if you cant!).

Thanks again,

Sincerely,

Drew Evans

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Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

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Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Timmy Finch

From: Timmy Finch
Sent: Tuesday, September 13, 2011 2:22 PM
To: 'Drew Evans'
Subject: RE: Asst. Solicitor Position

Will do. Good luck with everything.

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Tuesday, September 13, 2011 2:12 PM
To: Marian Askins; Julie Gardner Cardillo; Rutledge DuRant; Timmy Finch; Amy Harrell; Debbie Herring-Lash; Elizabeth Gordon; Stephanie Linder; Jennifer Shealy
Subject: Asst. Solicitor Position

Hey All,

I hope everyone is doing well in Charleston. I'm writing to tell everyone that I have thrown my proverbial hat into the ring for an Assistant Solicitor's position in Charleston after I take and hopefully pass the bar. I had an amazing experience this Summer and I wanted to thank all of you for playing a part in that and sort of give you a heads up in case Scarlett started inquiring around the office about me. I hope you can all tell her that I was at least mildly competent (or lie if you cant!).

Thanks again,

Sincerely,

Drew Evans

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Amy Harrell

From: Drew Evans <drew.evans451@gmail.com>
Sent: Monday, November 21, 2011 11:21 AM
To: Marian Askins; Rutledge DuRant; Debbie Herring-Lash; Jennifer Shealy; Stephanie Linder; Timmy Finch; Burns Wetmore; Amy Harrell; Elizabeth Gordon; Benjamin Chad Simpson; Julie Gardner Cardillo
Subject: Assistant Solicitor Positions

Hello All,

I hope everyone is doing well.

I just wanted to write to see how everyone is doing and let y'all know that I've been offered a position as Judge Ed Dickson's law clerk in Orangeburg when I graduate. I'm very excited about the opportunity and think it will help me become a better lawyer.

However, this is only a year-long position and I'm still very much interested in becoming an Assistant Solicitor, particularly in Charleston. I had an amazing experience this Summer working with all of you and really appreciate what everyone did to introduce me to your jobs.

I've sent a letter to Scarlett informing her of my plans and my interest in still being considered for any openings in the office and would only ask that you all keep me in mind if anything comes up.

Again, I hope Charleston is treating everyone well and that y'all are holding down the proverbial fort.

Thanks,

Drew Evans

P.S. Also Happy Thanksgiving everyone!!

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Jennifer Shealy

From: Jennifer Shealy
Sent: Wednesday, December 28, 2011 8:43 AM
To: Drew Evans
Subject: RE: Bar Application Affidavit

Absolutely!!! I will get it in the mail today.

I hope you are doing well.

Jennifer

Jennifer Kneece Shealy
Ninth Circuit Solicitor's Office
O. T. Wallace Building
101 Meeting Street, 4th Floor
Charleston, South Carolina 29401
843.958.1959(tel)
843.958.1905 (fax)
shealyj@scsolicitor9.org

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Tuesday, December 13, 2011 2:16 PM
To: Jennifer Shealy
Subject: Bar Application Affidavit

Hey Jennifer,

How are you doing?

As part of our Bar Application we're supposed to get three people to sign an affidavit swearing to our character to practice law. I was wondering if you would mind doing one of mine (assuming you find my character fitting to practice law of course).

I've attached the form. If you could mail the completed form to my Columbia address (1085 Shop Road, Unit 234, Columbia 29201) I'd really appreciate it.

Hope y'all have a Merry Christmas!

Thanks a bunch,

Drew

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

*** eSafe scanned this email for malicious content ***
*** IMPORTANT: Do not open attachments from unrecognized senders ***

Marian Askins

Subject: FW: What's up?

From: Drew Evans [mailto:drew.evans451@gmail.com]

Sent: Thursday, March 15, 2012 3:34 PM

To: Marian Askins

Subject: What's up?

Hey Marian,

Just wanted to write and see how you were doing and how things are going down in Charleston. I had Bridge the Gap last week (during our Spring Break...) and ran into Matt Sparrow who clerked with me this Summer he said he's going to be working with y'all when he passes the bar. I hope I'll be joining him when I finish my judicial clerkship!

Anyway, hope everyone is doing well down there.

Take care,

Drew Evans

--
Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Timmy Finch

From: Drew Evans <drew.evans451@gmail.com>
Sent: Monday, March 19, 2012 4:45 PM
To: Timmy Finch
Subject: Re: What's up?

I'm going to be working for Judge Edgar Dickson in the First Circuit (Orangeburg) (definitely going to be commuting from Columbia though... Orangeburg isn't exactly anyone's weekend social destination). It's David Pascoe's Circuit along with Summerville so hopefully I'll have an "in" there as well as Charleston/Berkeley when my year is up.

Thanks,

Drew

On Mon, Mar 19, 2012 at 8:42 AM, Timmy Finch <fincht@scsolicitor9.org> wrote:

Things are good here. Hope all is well with the judicial clerkship. Who are you clerking for? Where?

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Thursday, March 15, 2012 3:32 PM
To: Timmy Finch
Subject: What's up?

Hey Timmy,

Just wanted to write and see how you were doing and how things are going down in Charleston. I had Bridge the Gap last week (during our Spring Break...) and ran into Matt Sparrow who clerked with me this Summer he said he's going to be working with y'all when he passes the bar. I hope I'll be joining him when I finish my judicial clerkship!

Anyway, hope everyone is doing well down there.

Take care,

Drew Evans

--
Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

--
Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Jennifer Shealy

From: Drew Evans <drew.evans451@gmail.com>
Sent: Tuesday, March 20, 2012 9:02 AM
To: Jennifer Shealy
Subject: Re: What's up?

Thanks so much Jennifer!

On Tue, Mar 20, 2012 at 8:51 AM, Jennifer Shealy <shealyj@scsolicitor9.org> wrote:

I would contact her again, but not right now. She is getting so many requests in now. I would contact her again in May. I will also remind her about you.

Getting a good recommendation from your judge and Pascoe would also be good. Keep that in mind!

Thanks,

Jennifer

Jennifer Kneece Shealy

Ninth Circuit Solicitor's Office

O. T. Wallace Building

101 Meeting Street, 4th Floor

Charleston, South Carolina 29401

843.958.1959(tel)

843.958.1905 (fax)

shealyj@scsolicitor9.org

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Monday, March 19, 2012 4:42 PM
To: Jennifer Shealy
Subject: Re: What's up?

I'm going to be working for Judge Edgar Dickson in the 1st Circuit (Orangeburg)-- David Pascoe's Circuit.

I wrote her a letter in December probably letting her know that I had a clerkship for the next year but was still very interested in being an Asst Solicitor in Charleston.

I guess it wouldn't hurt sending another one or an email just to stay on her radar?

Thanks,

Drew

On Mon, Mar 19, 2012 at 1:27 PM, Jennifer Shealy <shealvj@scsolicitor9.org> wrote:

Drew,

Remind me who you are going to be working for. When was the last time you made an overture towards Scarlett?

Jennifer

Jennifer Kneece Shealy

Ninth Circuit Solicitor's Office

O. T. Wallace Building

101 Meeting Street, 4th Floor

Charleston, South Carolina 29401

843.958.1959(tel)

843.958.1905 (fax)

shealvj@scsolicitor9.org

From: Drew Evans [<mailto:drew.evans451@gmail.com>]

Sent: Thursday, March 15, 2012 3:34 PM

To: Jennifer Shealy

Subject: What's up?

Hey Jennifer,

Just wanted to write and see how you were doing and how things are going down in Charleston. I had Bridge the Gap last week (during our Spring Break...) and ran into Matt Sparrow who clerked with me this Summer he said he's going to be working with y'all when he passes the bar. I hope I'll be joining him when I finish my judicial clerkship!

Anyway, hope everyone is doing well down there.

Take care,

Drew Evans

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

--

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USC School of Law
(843) 270-3656

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Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Jennifer Shealy

From: Jennifer Shealy
Sent: Tuesday, March 20, 2012 8:51 AM
To: Drew Evans
Subject: RE: What's up?

I would contact her again, but not right now. She is getting so many requests in now. I would contact her again in May. I will also remind her about you.

Getting a good recommendation from your judge and Pascoe would also be good. Keep that in mind!

Thanks,

Jennifer

Jennifer Kneece Shealy
Ninth Circuit Solicitor's Office
O. T. Wallace Building
101 Meeting Street, 4th Floor
Charleston, South Carolina 29401
843.958.1959(tel)
843.958.1905 (fax)
shealyj@scsolicitor9.org

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Monday, March 19, 2012 4:42 PM
To: Jennifer Shealy
Subject: Re: What's up?

I'm going to be working for Judge Edgar Dickson in the 1st Circuit (Orangeburg)-- David Pascoe's Circuit.

I wrote her a letter in December probably letting her know that I had a clerkship for the next year but was still very interested in being an Asst Solicitor in Charleston.

I guess it wouldn't hurt sending another one or an email just to stay on her radar?

Thanks,

Drew

On Mon, Mar 19, 2012 at 1:27 PM, Jennifer Shealy <shealyj@scsolicitor9.org> wrote:

Drew,

Remind me who you are going to be working for. When was the last time you made an overture towards Scarlett?

Jennifer

Jennifer Kneece Shealy

Ninth Circuit Solicitor's Office

O. T. Wallace Building

101 Meeting Street, 4th Floor

Charleston, South Carolina 29401

843.958.1959(tel)

843.958.1905 (fax)

shealyj@scsolicitor9.org

From: Drew Evans [mailto:drew.evans451@gmail.com]

Sent: Thursday, March 15, 2012 3:34 PM

To: Jennifer Shealy

Subject: What's up?

Hey Jennifer,

Just wanted to write and see how you were doing and how things are going down in Charleston. I had Bridge the Gap last week (during our Spring Break...) and ran into Matt Sparrow who clerked with me this Summer he said he's going to be working with y'all when he passes the bar. I hope I'll be joining him when I finish my judicial clerkship!

Anyway, hope everyone is doing well down there.

Take care,

Drew Evans

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Jennifer Shealy

From: Drew Evans <drew.evans451@gmail.com>
Sent: Tuesday, May 29, 2012 2:29 PM
To: Jennifer Shealy
Subject: Hey

Hey Jennifer,

How are you? I sent a letter to Scarlett today, as you suggested, telling her that once my Judicial Clerkship ends I am still very much interested in working in the 9th Circuit. I said I knew she wouldn't really have any idea if and when any spots would open up but just to keep me in mind when they do.

How are things in Charleston? I started my Bar Review course a couple of weeks ago so I'm knee-deep in study materials in Columbia for the Summer. I'm sure you remember how much fun it was...

Anyway, I hope you and everyone there are doing well.

Sincerely,

Drew

--
Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Timmy Finch

From: Timmy Finch
Sent: Wednesday, August 01, 2012 11:05 AM
To: 'Drew Evans'
Subject: RE: Hey

Drew,

Glad to hear you are doing well. Everyone here is good (that I can tell). Keep us posted on your successes.

Timmy

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Wednesday, August 01, 2012 10:51 AM
To: Timmy Finch
Subject: Hey

Hey Timmy,

Just writing to see how you were doing. I finished the Bar last Wednesday, hopefully for the ONLY time.

I started my judicial clerkship with Judge Dickson in the First Circuit on Monday. We've been doing common pleas motion hearings all week--interesting stuff but not the most exciting part of my job description. I hope once we start GS it will pick up.

Anyway, I hope you and everyone else in Charleston are doing well.

Sincerely,

Drew

--
Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
USC School of Law
(843) 270-3656

Jennifer Shealy

From: Drew Evans <drew.evans451@gmail.com>
Sent: Tuesday, October 30, 2012 1:06 PM
To: Jennifer Shealy
Subject: Re: Hey Jennifer

Thanks a bunch! I appreciate it!

On Tue, Oct 30, 2012 at 9:34 AM, Jennifer Shealy <shealvj@scsolicitor9.org> wrote:

Congratulations! Enjoy your time with the judge. A clerkship is such a great way to see a bunch of cases, meet a bunch of attorneys and judges, and see trials from a judge's perspective. I forwarded your email to Scarlett.

Take care,

Jennifer

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Tuesday, October 30, 2012 9:09 AM
To: Jennifer Shealy
Subject: Hey Jennifer

Hey Jennifer,

How are you doing?

Just writing to see how it was going. The Bar results came out last Friday and fortunately my name was in the "pass" section so I can check that off the list!

I'm still clerking for Judge Dickson in Orangeburg and it's going really well. We've had a couple of murder trials so far--murder seems to be somewhat of a past time around here...

We've also been assigned William Dickerson's Capital PCR case so we'll be down in Charleston next summer to hear that. I've been slowly reading through the 10 volumes of transcript and it sounds like it was a fascinating case. I'll let you know when it gets closer and maybe I can stop by the office and speak to everyone.

Anyway, I hope everything is going well--and I hope y'all are keeping my buddy Charles Condon busy!

Drew

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson

First Judicial Circuit

(843) 270-3656

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson
First Judicial Circuit
(843) 270-3656

Stephanie Linder

From: Stephanie Linder
Sent: Tuesday, October 30, 2012 4:32 PM
To: 'Drew Evans'
Subject: RE: Hey Stephanie

Woo hoo! Congratulations on passing the bar! I am sure you are so glad that it is behind you.

Glad to hear that your clerkship is going well. You should definitely stop by when you're in Charleston (for the Dickerson case or any other reason).

Things are cruising along here. I am staying busy in state and federal court... trying to wear the white hat and fight for justice... same old, same old...

Thanks for dropping me a line. Hope to see you soon!

Stephanie Bianco Linder

Managing Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
843.958.1925

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Tuesday, October 30, 2012 9:10 AM
To: Stephanie Linder
Subject: Hey Stephanie

Stephanie,

How are you doing?

Just writing to see how it was going. The Bar results came out last Friday and fortunately my name was in the "pass" section so I can check that off the list!

I'm still clerking for Judge Dickson in Orangeburg and it's going really well. We've had a couple of murder trials so far--murder seems to be somewhat of a past time around here...

We've also been assigned William Dickerson's Capital PCR case so we'll be down in Charleston next summer to hear that. I've been slowly reading through the 10 volumes of transcript and it sounds like it was a fascinating case. I'll let you know when it gets closer and maybe I can stop by the office and speak to everyone.

Anyway, I hope everything is going well--and I hope y'all are keeping my buddy Charles Condon busy!

Drew

--

Andrew Evans
1085 Shop Road, Unit 234

Timmy Finch

From: Drew Evans <drew.evans451@gmail.com>
Sent: Tuesday, October 30, 2012 9:10 AM
To: Timmy Finch
Subject: Hey Timmy

Timmy,

How are you doing?

Just writing to see how it was going. The Bar results came out last Friday and fortunately my name was in the "pass" section so I can check that off the list!

I'm still clerking for Judge Dickson in Orangeburg and it's going really well. We've had a couple of murder trials so far--murder seems to be somewhat of a past time around here...

We've also been assigned William Dickerson's Capital PCR case so we'll be down in Charleston next summer to hear that. I've been slowly reading through the 10 volumes of transcript and it sounds like it was a fascinating case. I'll let you know when it gets closer and maybe I can stop by the office and speak to everyone.

Anyway, I hope everything is going well--and I hope y'all are keeping my buddy Charles Condon busy!

Drew

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson
First Judicial Circuit
(843) 270-3656

Timmy Finch

From: Drew Evans <drew.evans451@gmail.com>
Sent: Wednesday, February 27, 2013 4:25 PM
To: Timmy Finch
Subject: How are you?

Hey Timmy,

I just wanted to write and see how you were doing.

We were in Dorchester County last week for General Sessions and I ran into Adam Young who said he's just gone out on his own. I got in touch with Scarlett and she said she might be looking for someone to start in Berkeley County in the next few months and I said I'd certainly be interested.

Judge Dickson and I will be down in Charleston in June doing William Dickerson's PCR Hearing so I'd like to stop by the office and say hey to everyone if y'all aren't too busy.

Anyway, I hope everything in Charleston is going well.

Regards,

Drew Evans

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson
First Judicial Circuit
(843) 270-3656

Jennifer Shealy

From: Drew Evans <drew.evans451@gmail.com>
Sent: Thursday, February 28, 2013 9:00 AM
To: Jennifer Shealy
Subject: Re: How are you?

Thanks Jennifer, I appreciate it!

Drew

On Wed, Feb 27, 2013 at 4:27 PM, Jennifer Shealy <shealyj@scsolicitor9.org> wrote:

Drew,

Absolutely come by. Also, I will remind Scarlett about your interest.

Thanks,

Jennifer

Jennifer Kneece Shealy

Ninth Circuit Solicitor's Office

O. T. Wallace Building

101 Meeting Street, 4th Floor

Charleston, South Carolina 29401

843.958.1959(tel)

843.958.1905 (fax)

shealyj@scsolicitor9.org

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Wednesday, February 27, 2013 4:25 PM
To: Jennifer Shealy
Subject: How are you?

Hey Jennifer,

I just wanted to write and see how you were doing.

We were in Dorchester County last week for General Sessions and I ran into Adam Young who said he's just gone out on his own. I got in touch with Scarlett and she said she might be looking for someone to start in Berkeley County in the next few months and I said I'd certainly be interested.

Judge Dickson and I will be down in Charleston in June doing William Dickerson's PCR Hearing so I'd like to stop by the office and say hey to everyone if y'all aren't too busy.

Anyway, I hope everything in Charleston is going well.

Regards,

Drew Evans

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson

First Judicial Circuit

(843) 270-3656

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson
First Judicial Circuit
(843) 270-3656

Stephanie Linder

From: Stephanie Linder
Sent: Thursday, February 28, 2013 8:28 AM
To: 'Drew Evans'
Subject: RE: How are you?

Expires: Tuesday, August 27, 2013 12:00 AM

That is such great news!

I didn't know about the Berkeley info but I knew some people were leaving here. Scarlett plays everything close to the vest so I did not know if she was hiring or waiting until the new fiscal year.

Definitely let me know when you are down here.

I am happy to speak on your behalf to Scarlett, just let me know.

Talk to you soon!

Stephanie Bianco Linder

Managing Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
843.958.1925

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Wednesday, February 27, 2013 4:24 PM
To: Stephanie Linder
Subject: How are you?

Hey Stephanie,

I just wanted to write and see how you were doing.

We were in Dorchester County last week for General Sessions and I ran into Adam Young who said he's just gone out on his own. I got in touch with Scarlett and she said she might be looking for someone to start in Berkeley County in the next few months and I said I'd certainly be interested.

Judge Dickson and I will be down in Charleston in June doing William Dickerson's PCR Hearing so I'd like to stop by the office and say hey to everyone if y'all aren't too busy.

Anyway, I hope everything in Charleston is going well.

Regards,

Drew Evans

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson

First Judicial Circuit
(843) 270-3656

Petition to Review Assignment of PCR Judge
Appendix, page 158

From: Charles Condon
Sent: Thursday, February 28, 2013 12:53 PM
To: Scarlett Wilson
Subject: Drew Evans- Berkeley County ASOL Position

Hi Scarlett,

I hope you are doing well. Thanks for hiring me for the Berkeley position! I have really enjoyed the job and have found it to be very challenging (in a good way).

I wanted to drop a quick note on a fellow USC Law classmate and friend, Drew Evans. Over the past few years, I have gotten to know Drew very well. He is smart, timely, and a hard-worker. I hope you will consider him for the Berkeley position. I think he would be an excellent fit for the office.

I look forward to seeing you soon. Have a great weekend!

Thanks,
Charles

Charles M. Condon, Jr.
Assistant Solicitor
Ninth Circuit Solicitor's Office
300-B California Avenue
Moncks Corner, SC 29461
Direct Line: (843) 719-4576
condonc@scsolicitor9.org

Scarlett Wilson

From: Mason West
Sent: Monday, April 29, 2013 12:29 PM
To: Scarlett Wilson
Subject: FW: Berkeley ASOL Positions

Dear Scarlett,

Below is a copy of an email conversation I had with Drew back in March. It is the only email I could find. I will make sure to forward you anything else I find.

Thanks,

Mason West

From: Mason West [mailto:emasonwest@gmail.com]
Sent: Monday, April 29, 2013 12:26 PM
To: Mason West
Subject: Fwd: Berkeley ASOL Positions

----- Forwarded message -----

From: Mason West <emasonwest@gmail.com>
Date: Tue, Mar 12, 2013 at 1:57 PM
Subject: Re: Berkeley ASOL Positions
To: Drew Evans <drew.evans451@gmail.com>

Everything is going great man. We are actually going out to eat with Thomas and Emily tonight.

The job is great here. Charles and I both really seem to like it. We are always in court, and things are really fast paced, which is what I like. It would be pretty cool if we could start a posse down here. I know we have an opening coming at the end of this week, but I hadn't heard about a replacement yet. Keep me in the loop.

See you later.

On Tue, Mar 12, 2013 at 11:59 AM, Drew Evans <drew.evans451@gmail.com> wrote:
Hey Mason,

How are y'all doing? Congrats on the baby--are y'all ready?

I've started looking for jobs for when my Clerkship ends and I spoke to Scarlett a couple of weeks ago about the openings in the 9th Circuit. She asked if I would be willing to work in Berkeley County (I assume that means she's going to move some people from there to Charleston and fill the positions in Berkeley). She didn't really give me a timeline but I said I'd really like to work there.

I know you and Charles Condon are in Berkeley County and I was wondering how it was there--hopefully I'll be joining y'all in a few months.

I hope you and Megan are doing well.

Drew Evans .

--

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson
First Judicial Circuit
(843) 270-3656

Scarlett Wilson

From: Drew Evans <drew.evans451@gmail.com>
Sent: Friday, April 26, 2013 12:22 PM
To: Scarlett Wilson
Subject: Re: Assistant Solicitor Positions

Sounds good! See you then.

Drew

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson
First Judicial Circuit
(843) 270-3656

On Fri, Apr 26, 2013 at 11:36 AM, Scarlett Wilson <wilsons@scsolicitor9.org> wrote:

How about Tuesday at 1:00?

SW

Scarlett A. Wilson

Ninth Circuit Solicitor

101 Meeting Street, Suite 400

Charleston, SC 29401

wilsons@scsolicitor9.org

[843-958-1900](tel:843-958-1900)

From: Drew Evans [mailto:drew.evans451@gmail.com]
Sent: Thursday, April 25, 2013 6:55 PM

To: Scarlett Wilson
Subject: Re: Assistant Solicitor Positions

Sounds good! Any particular time?

Sent from my iPhone

On Apr 25, 2013, at 5:30 PM, Scarlett Wilson <wilsons@scsolicitor9.org> wrote:

Tuesday will work.

Scarlett Wilson

On Apr 25, 2013, at 5:15 PM, "Drew Evans" <drew.evans451@gmail.com> wrote:

I can probably get away some day that week. I may also be able to come down next Tuesday if you have any time then--that's our in-chambers week.

Drew

Sent from my iPhone

On Apr 25, 2013, at 4:42 PM, Scarlett Wilson <wilsons@scsolicitor9.org> wrote:

Can you come down to CHS?

Scarlett A. Wilson

Ninth Circuit Solicitor

101 Meeting Street, Suite 400

Charleston, SC 29401

wilsons@scsolicitor9.org

[843-958-1900](tel:843-958-1900)

From: Drew Evans [<mailto:drew.evans451@gmail.com>]

Sent: Thursday, April 25, 2013 4:28 PM

To: Scarlett Wilson

Subject: Re: Assistant Solicitor Positions

Ok great! I can talk most days after 5:00 and I'll be available anytime tomorrow because we don't have court. We'll be down in

Petition to Review Assignment of PCR Judge
Dorchester County at the end of May and I could probably come
down around lunchtime one day that week as well. Appendix, page 164

Drew

Sent from my iPhone

On Apr 25, 2013, at 1:16 PM, Scarlett Wilson
<wilsons@scsolicitor9.org> wrote:

I am not in a rush so let me know when it is
convenient for you to talk with me about all
that is going on in CHS and BK.

SW

PS: I will be on vacation the week of May 13.

Scarlett A. Wilson

Ninth Circuit Solicitor

101 Meeting Street, Suite 400

Charleston, SC 29401

wilsons@scsolicitor9.org

[843-958-1900](tel:843-958-1900)

From: Drew Evans [<mailto:drew.evans451@gmail.com>]

Sent: Thursday, April 25, 2013 9:09 AM

To: Scarlett Wilson

Subject: Re: Assistant Solicitor Positions

I would certainly be interested!

Petition to Review Assignment of PCR Judge

I will have to talk to my fiancée and probably Judge Appendix, page 165
Dickson about it before giving you a solid answer
but I am still very much interested.

Drew

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar W. Dickson

First Judicial Circuit

(843) 270-3656

On Wed, Apr 24, 2013 at 10:26 PM, Scarlett
Wilson <wilsons@scsolicitor9.org> wrote:

Are you still interested in coming down here--
either bk or chs?

On Apr 24, 2013, at 10:23 PM, "Drew Evans"
<drew.evans451@gmail.com> wrote:

Scarlett,

Good to hear from you!

I've interviewed at a couple of
Solicitor's Offices but I haven't
gotten any job offers yet.

I hope you are doing well.

Kind regards,

Drew Evans

Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
Law Clerk for The Honorable Edgar
W. Dickson

First Judicial Circuit

(843) 270-3656

On Tue, Apr 23, 2013 at 6:33 PM,
Scarlett Wilson
<wilsons@scsolicitor9.org> wrote:

Drew,

What's your job status?

SW

Scarlett A. Wilson

Ninth Circuit Solicitor

101 Meeting Street, Suite 400

Charleston, SC 29401

wilsons@scsolicitor9.org

843-958-1900

From: Drew Evans
[mailto:drew.evans451@gmail.com]
Sent: Tuesday, February 19, 2013
11:07 AM
To: Scarlett Wilson
Subject: Re: Assistant Solicitor
Positions

My Clerkship technically ends in August but Judge Dickson has graciously told me from the outset that if I received any offers prior to then he would insist I take them.

I've actually been interviewing sporadically with other offices the last few weeks.

Thanks,

Drew Evans

On Tue, Feb 19, 2013 at 10:44 AM,
Scarlett Wilson
<wilsons@scsolicitor9.org> wrote:

If I were able to hire, when would you be available?

Scarlett Wilson

On Feb 19, 2013, at 10:43 AM,
"Drew Evans"
<drew.evans451@gmail.com>
wrote:

> Scarlett,
>

> I hope you are doing well. I'm writing to say hello and inquire into any Assistant Solicitor positions. I know you do not know if and when any positions will open up but I

respectfully ask to be considered
when they do.

>

> As you may remember, I clerked
with you back in the Summer of
2011 and enjoyed my time there
immensely. I am still very much
interested in a career in criminal law
and criminal prosecution in
particular and know I'd love to begin
my career in Charleston.

>

> As you probably know, Judge
Dickson has been assigned to preside
over William Dickerson's PCR
application and we plan on being in
Charleston in June for the hearing. I
would appreciate the opportunity to
stop by and speak to you if you have
any time that week.

>

> I hope everyone in Charleston is
doing well.

>

> Please find attached updated
copies of my resume and a list of
references.

>

> Please do not hesitate to contact
me if you have any questions or
concerns.

>

> Thank you. Kind regards,

>

> Drew Evans

>

> --

> Andrew Evans

> 1085 Shop Road, Unit 234

> Columbia, SC 29201

> Law Clerk for The Honorable
Edgar W. Dickson

> First Judicial Circuit

> (843) 270-3656

> <Resume.pdf>

> <References.pdf>

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Andrew Evans
1085 Shop Road, Unit 234
Columbia, SC 29201
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W. Dickson

First Judicial Circuit

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