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S.C. SUPREME COURT

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN C. STANKO,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to allow counsel, during voir dire, to ask potential jurors about their feelings and viewpoints concerning the defense of insanity when insanity was raised as an affirmative defense and the question was asked to reveal juror bias?

2. Did the trial judge commit reversible error at sentencing by failing to instruct the jury on the statutory mitigating circumstance provided by S.C. Code Section 16-3-20(C)(b)(7): "The age or mentality of the defendant at the time of the crime?"

STATEMENT OF FACTS

In August of 2005, a Georgetown County Grand Jury returned a six count indictment (05-GS-22-918) charging Stephen Stanko with murder, assault and battery with intent to kill, criminal sexual conduct first degree, two counts of kidnapping and armed robbery. The victims were Stanko's girlfriend, Laura Ling, and her fifteen year old daughter. The daughter was the sole eye-witness and testified at trial.

The State sought the death penalty relying on numerous aggravating circumstances. (Notice of evidence in aggravation). The defense noticed the State of Stanko's intention to assert an insanity defense. On August 7 through August 11, 2006, Judge Deadra L. Jefferson presided at Stanko's jury trial. During voir dire, the judge made no mention of the insanity defense and refused to allow defense counsel to question potential jurors about their views of the insanity defense. Stanko pursued an insanity defense at trial.

During the guilt/innocence phase, the defense presented the testimony of five medical experts: Dr. Bernard Albiniak, Dr. James Thrasher, Dr. Marc Einhorn, Dr. Joseph C. Wu, and Dr. Thomas Sachy. Dr. Albiniak, an expert in physiological psychology, testified that Stanko's frontal lobe function was sub-normal. (ROA p. 1463, lines 11-22). Dr. Thrasher, an expert in forensic psychiatry, testified that Stanko had both a structural brain abnormality and decreased functioning in the frontal lobe. (ROA p. 1514, lines 3- p. 1515, lines 1-7). Dr. Thrasher concluded that Stanko was insane at the time of the offenses. (ROA p. 1522, lines 15-18). Dr. Einhorn, an expert in neuropsychology, at the request of another expert witness, Dr. Sachy, ruled out impairment of the higher cortical functioning. (ROA p. 1612, lines 4-21). Dr. Wu, an expert in psychiatry and in the acceptability, usefulness, administration and interpretation of PET scans, testified that the PET scan

imaging of Stanko's brain revealed an abnormal decrease in function in addition to the decreased size of the frontal lobe as detected by Dr. Gur.

Dr. Sachy was the final defense expert witness. Dr. Sachy testified as an expert in forensic psychology and neuropsychiatry. He recounted the famous case of Phineas Gage, a railway worker who suffered a traumatic injury to his brain in an explosion. Although Gage survived, his behavior changed dramatically following the injury. A once quiet and godly man, after the injury Gage became loud, profane, combative and began abusing alcohol. (ROA p. 1722, lines 5-25). Dr. Sachy testified that Phineas Gage's case was one of the first known cases linking damage to the frontal lobe of the brain with behavioral "dyscontrol." (ROA p. 1721, lines 12- p. 1722, lines 1-3).

Dr. Sachy concluded that, as a result of a defect in Stanko's frontal lobe, Stanko was insane at the time of the offenses. (ROA p. 1731, line 25 – p. 1732, lines 1-14). Dr. Sachy testified, "He [Stanko] crosses the line into insanity when his violent, aggressive impulses gain complete dominance of his brain. He cannot be controlled by that emergency brake. Adrian Raine said this is the emergency brake of the brain. He doesn't have a good - - or maybe he doesn't even have an emergency brake." (ROA p. 1798, lines 23- p. 1799, lines 1-4).

Dr. Sachy attributed Stanko's brain defect to complications at birth at Guantanamo Naval Base. (ROA p. 1755, lines 19 – p. 1759, lines 1-21). Dr. Sachy testified, "Something happened to his brain at birth. There is no doubt about that. The doctors document it. I believe that his brain did not form correctly from that point on. And one of the proofs of that is the side portions of his brain didn't grow right, there's more water in his brain than there should be because there's less meat in his brain." (ROA p. 1822, lines 19-25).

In reply, the State's experts testified that Stanko was sane at the time of the offense. (ROA p. 1874, line 16 – p. 1880, line 24; ROA p. 1889, lines 13-15). The jury returned verdicts of guilty on all counts. During the sentencing phase, the Defense introduced additional expert testimony in regard to Stanko's mental state at the time of the offense.

At the close of all evidence the judge instructed the jury on two statutory mitigators: (1) the murder was committed while the defendant was under the influence of mental or emotional disturbance; and (2) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. The judge did not instruct the jury that they may consider the age or mentality of the defendant at the time of the crime a mitigating factor. The jury found aggravating circumstances and recommended a death sentence. The judge affirmed their verdict and sentenced Stanko to death. This appeal follows.

ARGUMENT

1. The trial judge erred in refusing to allow counsel, during voir dire, to ask potential jurors about their feelings and viewpoints concerning the defense of insanity when insanity was raised as an affirmative defense and the question was asked to reveal juror bias.

A capital defendant's right to voir dire, while grounded in statutory law, is also rooted in the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Morgan v. Illinois, 504 U.S. 719, 729, 503(1992). "Voir dire examination serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory strikes." Mu'Min v. Virginia, 500 U.S. 415, 431, (1991). South Carolina Code Section 14-7-1020 provides that the court shall examine jurors to determine bias or prejudice. South Carolina Code Section 16-3-20(D) provides, "Notwithstanding the provisions of Section 14-7-1020, in cases involving capital punishment a person called as a juror shall be examined by the attorney for the defense."

The scope and duration of such examination is committed to the sound discretion of the trial judge. State v. Atkins, 293 S.C. 294, 360 S.E.2d 302 (1987); State v. Patterson, 290 S.C. 523, 351 S.E.2d 853 (1986). In State v. Smart, 278 S.C. 515, 299 S.E.2d 686, 523 (1982) the Supreme Court wrote, "The function of voir dire examination, however, is to determine specific and real bias or interest in jurors and not to develop personality profiles. The capital defendant is clearly entitled to the former but has no claim of right to the latter." In Smart, jurors were asked questions about their hobbies, sports, favorite movies and television shows without a showing that such questions were designed to reveal bias as to a specific issue in the case. Discussing the issue in Smart, the authors of the Criminal Law of South Carolina wrote, "Generally, any questions must go to some relevant point in dispute.

As both guilt and punishment are at issue in a capital case, questions as to the bias and prejudice of any juror regarding either of these issues are relevant." McAninch & Fairey, The Criminal Law of South Carolina 152 (4TH Ed. 2002).

During voir dire counsel for Stanko, through questioning, tried to determine if a juror would consider an insanity defense. (ROA p. 283, lines 1- 17; p. 284, lines 20-23). The State objected. (ROA p. 283, lines 7-8). The question was designed to reveal juror bias toward an insanity defense, a specific issue in the case. The State objected. (ROA p. 283, lines 7-8). The judge sustained the objection. (ROA p. 283, lines 9-10; p. 284, lines 3-14). She stated, "I was sustaining the State's objection. I think that you can ask general questions. You cannot ask specific questions that relate directly to the facts and circumstances of this case. It would be improper. And that is why when I asked about aggravating and mitigating circumstances, I deliberately from the list did not include anything that bore directly on the facts of this case." (ROA p. 284. lines 3-11). In questioning the jurors, the judge provided examples of statutory aggravating and mitigating factors, excluding any reference to the statutory mitigators[1] dealing with mental and emotional disturbances and mental impairment. (ROA p. 279, lines 1-14).

Trial counsel argued that an insanity defense was not a mitigating or aggravating circumstance. (ROA p. 285, lines 10-11). Counsel then stated, "Am I to understand, Ma'am, the bench is saying that if a juror later on in the trial may determine that she could never have considered a defense of insanity, that that's proper before the court?" (ROA p. 285, lines 15-19). The judge observed that the defendant is entitled to specific

[1] South Carolina Code Section 6-3-20(C)(b).

questions only if the failure to ask the questions would render the trial fundamentally unfair. (ROA p. 285, lines 20-25).

In State v. Wise, 359 S.C. 14, 596 S.E.2d 475, 479 (2004), the Court, discussing the individual voir dire issue, wrote, "To be constitutionally compelled, it is not enough that a question may be helpful. Rather, the trial court's failure to ask or allow a question must render the defendant's trial fundamentally unfair." The judge's refusal to allow defense counsel to ask jurors if they would consider an insanity defense rendered Stanko's trial fundamentally unfair. The question was not asked in order to determine if the juror would consider insanity mitigating. Instead, the question was asked to determine if the juror could consider the insanity defense. If the juror could never consider insanity as a defense, then they would not be qualified to serve as a juror.

A juror must be excused if her opinions would prevent or substantially impair the performance of her duties as a juror in accordance with her oath and instructions. Wainwright v. Witt, 469 U.S. 412, (1985). The test of a juror's qualification under South Carolina Code Section 16-3-20 is ability to both reach a verdict of either guilt or innocence and, if necessary, to vote for death sentence. State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984). A juror's inability to return a verdict of guilty renders her incapable of fulfilling her basic responsibilities as a juror. State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004); State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1999). Likewise, a juror's inability to return a verdict of not guilty by reason of insanity renders her incapable of fulfilling her basic responsibilities as a juror.

In State v. Green, 301 S.C. 347, 392 S.E.2d 157, 159 (1990), the South Carolina Supreme Court, citing Turner v. Murray, 476 U.S. 28 (1986) wrote, "In order to protect the

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." The issue in Green was whether the trial judge erred in refusing to disqualify a juror who exhibited racial bias during the voir dire process. The Court found error in the judge's failure to disqualify the juror. The Court, however, found that the defendant received a fair trial despite the trial court's error. Green used a peremptory strike to have the juror excused and neither of the two jurors seated after Green exhausted all of his peremptory strikes was challenged for cause. Unlike in Green, the trial judge's ruling deprived Stanko of the right to a fair trial by an impartial jury.

Just as the capital defendant is entitled to question jurors in regard to racial bias, so too should the capital defendant be entitled to question jurors in regard to an insanity defense. Counsel for Stanko was prohibited from ascertaining juror bias as to an insanity defense. The trial judge's refusal to allow the line of questioning prevented the court from determining if all of the jurors were qualified and prevented counsel from intelligently exercising peremptory strikes, the precise dual purposes for which voir dire was meant to address. Mu'Min v. Virginia, 500 U.S. 415, 431, 509 (1991).

The trial judge should have allowed defense counsel to question jurors about their potential bias in regard to the insanity defense. The defense of insanity is a controversial legal issue and some members of the jury may simply be unable to follow the law in regard to the defense. An excused juror's response during voir dire illustrates the point. When asked if he had a fixed opinion about the facts of the case, the juror responded, "My personal opinion is that if someone is pleading insanity that means they are looking for a way out." (ROA p. 889, lines 9-11). The juror admitted that he could not put his bias

against the insanity defense aside and apply the law. (ROA p. 890, lines 15-22). The juror was properly excused. This particular juror advised the judge of his bias against the insanity defense without specific questioning. It is unclear how the juror knew that insanity would be an issue in the case, although the juror admitted to listening to talk radio. (ROA p. 888, lines 11-18). Defense counsel should have been permitted to question all potential jurors to determine if they had bias against the insanity defense as this juror did.

Bias toward the insanity defense was well noted following the trial of John Hinckley, Jr. for his attempted assassination of President Ronald Reagan. Public pressure from the verdict of not guilty by reason of insanity persuaded Congress and most states, including South Carolina, to enact major reforms in the law governing the insanity defense. Despite reform, the insanity defense is still a controversial legal issue.

Other jurisdictions have found error in the trial court's refusal to ask defendant's requested voir dire questions in regard to insanity. In People v. Stack, 112 Ill.2d 301, 493 N.E.2d 339, 343 (1986), a non-capital case, the trial court refused to ask several questions proposed by defense counsel including: "Do you have any feeling or viewpoint concerning the defense of insanity in a criminal case? If so, what?" Finding error, the Illinois Supreme Court wrote, "Just as the State is allowed to probe the venire for jurors who would not follow the law of capital punishment, the defendant should be allowed to identify and challenge those jurors who would refuse to follow the statutory law of the insanity defense. As noted by the appellate court, 'parties have the right to have jurors examined concerning their attitudes toward the insanity defense when such is involved in a case.'" Stack at 343, citing People v. Robinson, 58 Ill.Dec. 23, 429 N.E.2d 1356 (1981); People v. Witted, 34 Ill.Dec. 393, 398 N.E.2d 68 (1979); see United States v. Allsup, 566 F.2d 68 (9th Cir. 1977);

Washington v. State, 371 So.2d 1108 (Fla.App. 1979); State v.Olson, 156 Mont. 339, 480 P.2d 822 (1971); State v. Sanders, 161 W.Va. 399, 242 S.E.2d 554 (1978)(reversed on other grounds); but see State v. Logan, 394 Md. 378, 906 A.2d 374 (2006).

In Stack the Illinois Supreme Court found that the inquiry into the defense of insanity was appropriate because ". . . the jury was going to be asked to apply an extraordinarily controversial legal requirement against which many members of the community may have been prejudiced." Stack at 344. The court further noted, "Inquiry into the feeling or viewpoint of the venire regarding such controversial legal propositions is consistent with a *bona fide* examination conducted so that the parties can intelligently exercise their prerogatives to challenge. Furthermore, a defendant's Sixth and Fourteenth Amendment rights to an impartial jury (U.S. Const. amends. VI, XIV) are diminished when jurors are prejudiced against an appropriate verdict of not guilty by reason of insanity." Stack at 344. In People v. Moore, 6 Ill.App.3d 568, 286 N.E.2d 6, 8 (1972), the court wrote, "Where insanity is to be an issue the parties have a right to examine jurors concerning their attitude on an insanity defense." Moore at 8, citing 50 C.J.S. Juries s 275. In People v. Robinson, 102 Ill. App.3d 884, 429 N.E.2d 1356 (1981), the court wrote, " . . . it is undisputed that parties have the right to have jurors examined concerning their attitudes toward the insanity defense when such is involved in a case . . ."

In United States v. Allsup, 566 F.2d 68 (9th Cir. 1977), the United States Court of Appeals wrote, "Allsup had the right to have prospective jurors questioned about their ability objectively and fairly to evaluate the evidence of insanity or lack of mental capacity. (Cf. United States v. Jackson, (7th Cir. 19760 542 F.2d 403, 413; Brundage v. United States, (10th cir. 1966) 365 F.2d 616, 618)." The District Court of Appeal of Florida, Fourth

District found that it was error to prohibit voir dire examination of jurors concerning the insanity defense. Washington v. State, 371 So.2d 1108 (Fla.App. 1979). The Montana Supreme Court found that the refusal to permit voir dire examination concerning the insanity defense constituted a violation of due process. State v. Olson, 156 Mont. 339, 480 P.2d 822 (1971). The Supreme Court of Appeals of West Virginia found that, upon request, the judge should have asked jurors if they have a bias or prejudice against psychiatrists or persons suspected of having a mental defect. State v. Sanders, 161 W.Va. 399, 242 S.E.2d 554 (1978)(reversed on other grounds).

The trial judge should have allowed defense counsel to question jurors about their potential bias in regard to the insanity defense. Stanko's convictions and death sentence should be reversed and the case remanded for a new trial.

2. The trial judge committed reversible error at sentencing by failing to instruct the jury on the statutory mitigating circumstance provided by S.C. Code Section 16-3-20(C)(b)(7): "The age or mentality of the defendant at the time of the crime."

"Steven was insane" when he committed his offenses, the defense told the jury in their opening statement at Stanko's trial. (ROA p. 1224, line 17). Although Stanko has a genius-level IQ of 143 [ROA p. 1476, lines 11-23; ROA p. 1771, lines 14 and 15], these particular crimes – unlike his many financial scams – were not those of wit and deception. One witness pointed out the obvious: they were not particularly "well thought-out." (ROA p. 1800, lines 19-22). The State contended that Stanko was simply a borderline sociopath who pragmatically chose to eliminate those people in his life in a position to expose his various schemes. (ROA p. 1919, lines 1-10).

Stanko's trial proved to be a contest between defense and prosecution experts. Defense experts testified that Stanko was insane at the time of the offenses due to a brain defect. Prosecution experts countered that Stanko's brain was perfectly normal and that his misdeeds were the product of controllable behavioral problems.

Specifically, defense experts in psychology and psychiatry (including neuropsychology and neuropsychiatry) disclosed that "50 to 80%" of the frontal lobe of Stanko's brain was missing. (ROA p. 1664, lines 13-19). They advanced two theories to explain how this might have occurred: oxygen deprivation at birth, in which case the frontal lobe never fully developed, or a blow to the head in the early teens, in which case it atrophied. Regardless, the effect on Stanko's behavior was the same.

The frontal lobe separates human beings from the so-called "lower" animals, such as reptiles, who either fight or flee when threatened. To varying degrees it controls atavistic,

pre-conscious impulses originating deep within the primeval regions of the brain. In terms of evolution, this capacity is a fairly recent development. (ROA p. 1450, lines 8-10). One defense expert described the frontal lobe as "[t]he emergency brake for the brain." (ROA p. 1728, lines 6-7). It governs in some fashion "our ability to have empathy for another human being" and "our moral values." (ROA p. 1506, line 25 – p. 1507, line 10).

Ruled by a defective brain, Stanko attempted to make his way through life by mimicking "what normal people do," but in his case this meant manipulation and "lies upon lies." (ROA p. 1535, lines 3-13). Facing extreme circumstances, this abnormality also meant that he was powerless to control the violent impulses welling up from the core of his brain. (ROA p. 1603, lines 1-14; ROA p. 1764, lines 25 – p. 1766, line 2).

The frontal lobe also appears to govern the capacity to distinguish right from wrong. (ROA p. 1450, lines 15-25; ROA p. 1729, line 25 – p. 1730, line 2). Two defense psychiatrists testified that because of his brain defect, Stanko was quite insane at the time he committed his offenses. (ROA p. 1522, lines 15-18; ROA p. 1731, line 25 – p. 1732, line 14).

On reply, the State's experts testified that Stanko's brain – including his frontal lobe – was with normal limits. (ROA p. 1920, lines 5-10; ROA p. 1927, lines 10-21; ROA p. 1937, line 7 – p. 1938, line 5; ROA p. 1974, line 18 – p. 1975, line 1). Their psychiatrist stated that Stanko was neither "[l]egally insane" nor mentally ill, merely narcissistic and antisocial. (ROA p. 1874, lines 16 – p. 1880, line 24; ROA p. 1889, lines 13-15).

Based on the defense evidence, the trial judge instructed the jury on the defense of insanity. (ROA p. 2185, line 23 – p. 2187, line 9). At the State's request, she also charged guilty but mentally ill. (ROA p. 2032, lines 25 – p. 2036, line 6; ROA p. 2188, lines 3 – 11).

(Defense counsel objected to the GBMI instruction. ROA p. 2047, line 24 – p. 2048, line 3; ROA p. 2054, line 12 – p. 2056, line 14.)

On motion of both parties, the guilt/innocence evidence was incorporated at sentencing. (ROA p. 2429, line 23 – p. 2430, line 7). The State's additional sentencing evidence depicted Stanko as an incorrigible con-artist who scammed money by pretending to be, among other things, a lawyer, a real estate developer and a car salesman. (ROA p. 2432, line 11 – p. 2433, line 3; ROA p. 2443, line 14 – p. 2445, line 19; ROA p. 2453, lines 9 – p. 2454, line 8; ROA p. 2469, lines 7-18; ROA p. 2476, line 19 – p. 2477, line 12; ROA p. 2543, line 13 – p. 2544, line 2). He convinced one gullible woman he had a degree in chemical engineering and also owned a lucrative chain of Hooters restaurants. (ROA p. 2564, line 3 – p. 2565, line 5). ("God chose me to bring him down," she believed. ROA p. 2590, lines 10 – 13.)

The defense experts reiterated their opinion that Stanko's crimes were the product of his faulty brain and questioned the methodology of the State's experts who found him merely antisocial. (ROA p. 1879, line 22 – p. 1880, line 5; ROA p. 2037, line 22 – p. 2038, line 1). One defense psychiatrist characterized Stanko's behavior as a "textbook" example of the effect of frontal lobe damage. (ROA p. 3181, lines 17-24). (Sadly, Stanko's parents, both of whom were living in the area, did not attend his trial and refused to help shed any light on his condition. ROA p. 2922, line 23 – p. 2923, line 1; ROA p. 3288, lines 10-14; ROA p. 3296, lines 12-17.)

Midway through the State's case at sentencing, defense counsel informed the judge "that one of the mitigating statutory circumstances ... is the state of mind." (ROA p. 2536,

lines 14 – 16). The judge subsequently informed the parties that she intended to charge the following two statutory mitigators:

> S.C. Code Section 16-3-20(C)(b)(2): "The murder was committed while the defendant was under the influence of mental or emotional disturbance," and
>
> Section (C)(b)(6): "The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired."

(ROA p. 3348, line 15 – p. 3349, line 9; ROA p. 3363, lines 3-5). She omitted the mitigator found at Section (C)(b)(7): "The age or mentality of the defendant at the time of the crime." Defense counsel did not object to its absence. (ROA p. 3354, lines 16 – 17; ROA p. 3365, lines 15 – 21).

The judge accordingly charged only the two statutory mitigating circumstances she had indicated at the charge conference. (ROA p. 3506, lines 3 – 8). Once again, defense counsel took no exception. (ROA p. 3513, lines 3 – 5).

The proper procedure for the submission of statutory mitigators to the jury in the sentencing phase of a capital trial is set forth in State v. Victor, 300 S.C. 220, 387 S.E.2d 248, 250 (1989):

> Once a trial judge has made an initial determination of which statutory mitigating circumstances are supported by the evidence, the defendant shall be given an opportunity on the record: (1) to waive the submission of those he does not wish considered by the jury; and (2) to request any additional mitigating statutory circumstances supported by the evidence that he wishes submitted to the jury.

The judge must submit any statutory mitigating circumstances supported by the evidence. S.C. Code Section 16-3-20(C); see, also, State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002).

The evidence in this case supported an instruction on all three statutory mitigators provided by Section 16-3-20(C)(b)(2), (6) and (7). See, for example, State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), and State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). Defense experts testified at both phases that Stanko was literally out of his mind at the time of his offenses.

In State v. Evans, 371 S.C. 27, 637 S.E.2d 313, 314-15 (2006), the Court stated that, "absent a request by counsel to charge a mitigating circumstance at trial, the issue whether the mitigator should have been charged is not preserved for review." This procedural requirement specifically applies "to mitigators stemming from mental disorders." *Id.*

Although defense counsel told the judge that "state of mind" was at issue earlier during sentencing, they did not specifically request an instruction on the "age or mentality" mitigator at the charge conference, nor did they object to its omission from the judge's final instructions. In the event the Court determines counsel's request was premature and thus procedurally-barred, Stanko would be entitled to pursue this issue at post-conviction relief as an allegation of ineffective assistance of counsel. See, for example, State v. Evans.

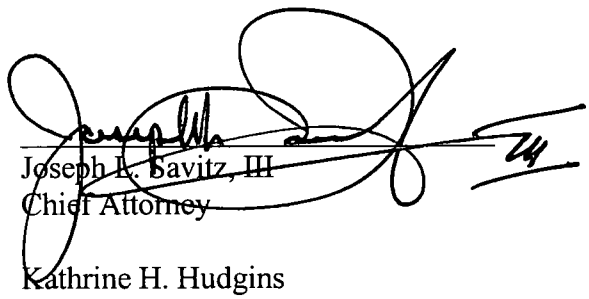
In either case, the omission was error. The Court has wisely rejected the State's attempts to have it weaken or dilute the requirement of charging all three mitigators where supported by evidence the defendant was intoxicated or deranged. See State v. Stone and State v. Rogers, 338 S.C. 435, 527 S.E.2d 101 (2000).

For this reason, the Court should vacate Steven Stanko's death sentence and remand for resentencing.

CONCLUSION

As to the first argument, the Court should reverse Stephen Stanko's convictions, vacate his death sentence and remand for a new trial. As to the second, it should vacate his death sentence and remand for resentencing.

Respectfully submitted,



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This 13th day of August, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

August 13, 2007

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IN THE SUPREME COURT

Appeal from Georgetown County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN C. STANKO,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of August, 2007.

Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of August, 2007.

Karen D. Elliott (L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017 .