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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2025-001185

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

MARK HAMILTON,

Appellant.

RECORD ON APPEAL

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91-10-00-6008

WITNESSES

JAMES P. SIEMERS AND/OR

JULIE J. ARMSTRONG

DET. T. A. HONAN, CCSO

OCA#: 91-082477B

ARREST WARRANT NO.

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

- ① Not Guilty " "
- ② Guilty of Murder " ✓ "
- ③ Guilty of Manslaughter " "

Foreman of Petit Jury

Date:

DOCKET NO. 92-GS-10-1680

The State of South Carolina,

County of CHARLESTON

COURT OF GENERAL SESSIONS

MARCH

TERM 1992

THE STATE

vs.

MARK HAMILTON

DOA: OCTOBER 23, 1992

AK#: D223087

Indictment for

MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on MARCH 2ND, 1992
the Grand Jurors of CHARLESTON County present upon their oath:
THAT MARK HAMILTON, ACTING IN CONCERT WITH ANOTHER, DID IN CHARLESTON COUNTY
ON OR ABOUT THE 22ND DAY OF OCTOBER, 1991, feloniously, wilfully and with
malice aforethought kill one Ralph Boyce Sineath, Jr. by means of hitting,
kicking, and beating him with tree limbs, a pole and pieces of wood about the
head and body, and that the said victim died as a proximate result thereof,
such being in violation of S.C. Code of Laws Section 16-3-10.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

David G. Schwache
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SENTENCE

GENERAL SESSIONS COURT

MURDER

CASE NO. 92-1680 GS-10
TICKET/WARRANT NO. 0223087
TICKET WARRANT NO. _____

The defendant, MARK HAMILTON is committed to the State Dept.
of Corrections / County Detention Center for a term of the balance of your natural life days/months/years and/or to pay a fine of
\$ _____; provided the sentence be suspended upon the service of life days/months/years
and/or payment of \$ _____ plus pay/waive costs and assessment as applicable*, the balance
suspended with probation for _____ months/years.

Special conditions: _____

Restitution (YES/NO)\$ _____ /3% _____ Total \$ _____

Weekly/Monthly \$ _____

to Clerk for _____

Public Defender Funds _____

Date: June 16, 1993

Richard B. [Signature]
Resident/Presiding Judge, Ninth Judicial Circuit

Fine _____ \$ _____
Law Enforcement and Hall
of Fame _____ \$ _____
Community Corrections
Assessment/Waive Indigent _____ \$ _____
25% of Fine or \$14.00 _____ \$ _____
DUI Test, if Applicable _____ \$ _____
10.00 G.S. Assessment _____ \$ _____
1/2 County, if Applicable _____ \$ _____
Total Fines and Costs _____ \$ _____

INFORMATION ON DEFENDANT

Age: 19 S.S. No. _____

M ☒ F _____ Married _____ Single _____

Date of Birth: _____

Attorney: JOHN CRUMRINE

.....
ALL PAYMENTS MUST BE MADE BY CASH.
MONEY ORDER OR CASHIER CHECK. WE
CANNOT ACCEPT PERSONAL CHECKS.
.....

Clerk of County/Deputy Clerk

White copy _____ to Clerk
Canary _____ to Detention Center
Pink _____ to Probation
Green _____ to Solicitor
Gold/Red _____ to Defendant

CLERK OF COURT
2144 MELBOURNE AVE.
CHARLESTON, SC 29405
740-5700

1 matter of fact he doesn't have to participate in the trial
2 at all, nor does his attorney. And if he decided not to do
3 it, put up any witnesses, it could not be held against him,
4 because a person is always presumed to be innocent. I
5 wanted to explain that to you. Tell you a little bit about
6 the formality.

7 Now, we are about to begin a trial, as I told you,
8 the State charges Mark Hamilton with the crime of murder and
9 to this indictment he pleads not guilty. And what I want to
10 do is to try to draw a jury that is totally impartial. That
11 is, will live up to your oath and bring in a verdict that
12 speaks the truth. The word verdict comes from a Latin
13 phrase which merely means to speak the truth. And so when I
14 ask you some questions, there are no right or wrong answers,
15 it is information that we want so that both sides can pick a
16 jury that would be totally impartial. So if I ask you any
17 questions that apply to you just stand up and tell me about
18 it. Any member of the jury panel related by blood,
19 connected by marriage or connected in any business or social
20 way with Mark Hamilton, if so, please stand, that is the
21 young fellow who just stood up.

22 (No response.)

23 THE COURT: Now, Mr. Hamilton in this indictment, and
24 incidentally this is not evidence. It is just a piece of
25 paper that gets it in the court, and on the back of it is

1 where a jury will write their verdict. It is alleged in
2 this indictment that on or about the 22nd day of October,
3 1991, that was a year, almost two years ago, that he
4 feloniously, willfully and with malice aforethought, that is
5 that he murdered one Ralph Boyd Sineth, Jr. And it alleges
6 that he did this by hitting and kicking and beating him with
7 tree limbs, a pole and pieces of wood about the head and
8 body. And that the victim died as a result of that. As I
9 told you he pleads not guilty. So the questions that I am
10 going to ask you pertain to this. There might have been
11 something on TV, in the newspaper or on the radio, and so it
12 is important that I do not --- it is important that jurors
13 don't pay any attention to what they read, or see on TV, or
14 listen to on the radio because very often, even though news
15 people try to get the facts, very often it is the facts as
16 they see them. So I always ask my jury to lay aside
17 anything they heard on the radio or saw on TV and just
18 listen to what is in the courtroom. So the questions I am
19 going to ask you about the media are very important. So
20 listen to me carefully. Has any member of the jury panel
21 heard anything on the radio or watched it on TV or read it
22 in the newspaper about this, if so please stand. I am going
23 to go down by rows. And I am going to ask you to give me
24 your name, and then tell me if you will very briefly what
25 you know about this case, or what you think you know about

1 this case in the media. And I am going to start on each
2 row, and I will go from left to right.

3 MS. EDWARDS: Leigh Edwards.

4 THE COURT: I don't want to know what your thoughts
5 are about what you read, I just want to know the medias that
6 you read it in.

7 MR. CRUMRINE: Your Honor --

8 THE COURT: What number was that?

9 MR. CRUMRINE: Before we go into that, I have a
10 matter for the court.

11 THE COURT: All right, sir. Hold just a minute. No.
12 38. Ms. Edwards. Counselor, approach the bench.

13 (Whereupon, a bench conference was held at this
14 time.)

15 THE COURT: I am not going to make all of you stand
16 up. There has been some things reported in the TV and I am
17 going to do it this way. I am going to do it by rows, so
18 everybody sit down except my first one. And then as that
19 person sits down, then the next one in the row stand up and
20 give me your name. Your name is?

21 MS. EDWARDS: Leigh Edwards, 38.

22 THE COURT: What media did you get the information
23 you received?

24 MS. EDWARDS: TV.

25 THE COURT: You saw it on TV?

1 MS. EDWARDS: I watched the TV, what happened, I was
2 aware that he ---

3 MR. CRUMRINE: Your Honor.

4 THE COURT: I understand.

5 MR. CRUMRINE: We did not want any details.

6 THE COURT: Have a seat. I am not asking you for the
7 details. My question at this time, as I told you, it is
8 very important that each juror understands that a person is
9 presumed to be innocent and it is not necessarily true what
10 you might have seen on TV or read in the newspaper or heard
11 on the radio, because very often different reporters or news
12 editors put it from what they observe. And so each juror
13 who sits on this jury, that juror has got to take only what
14 is in this court, the testimony that comes from the
15 courtroom. Now, let me ask you this question. Is there
16 anything you saw on TV or read in the newspaper or heard on
17 the radio that you feel would --- don't tell me what it is,
18 do you feel would keep you from giving either the State or
19 the Defendant a fair and impartial trial?

20 MS. EDWARDS: No, sir, I didn't follow it closely. I
21 was aware of what happened as the story was told, but I
22 don't know the facts around it. I don't know how many
23 people were involved or that kind of thing.

24 THE COURT: All right, thank you Ms. Edwards. And
25 next.

1 MS. MCFARLAND: Elaine McFarland.

2 THE COURT: Ms. McFarland. No. 81. And what media
3 did you see or hear it?

4 MS. MCFARLAND: I just heard a little bit on the
5 news. I really didn't keep up with it or anything like
6 that.

7 THE COURT: Anything that you might have heard or
8 seen on the media that would keep you from giving both sides
9 a fair trial?

10 MS. MCFARLAND: No, sir.

11 THE COURT: Thank you very much. My next one. Your
12 name.

13 MS. GALLOWAY: Ruth Galloway.

14 THE COURT: No. 43, and which media did you ---

15 MS. GALLOWAY: I have read it from the news print.

16 THE COURT: You read the News and Courier. Is there
17 anything that you read from the News and Courier that you
18 feel would interfere with your ability to render a fair
19 trial for both sides?

20 MS. GALLOWAY: No, sir.

21 THE COURT: All right. Thank you very much.

22 MS. MARVEL: Nancy Marvel, No. 76.

23 THE COURT: What media?

24 MS. MARVEL: I saw the initial report on TV and only
25 remember the name of the victim and not the name of the

1 accused.

2 THE COURT: Anything that you obtained from the media
3 that would keep you from giving both sides a fair trial?

4 MS. MARVEL: No, sir.

5 THE COURT: Thank you very much Ms. Marvel.

6 MS. DUCKWORTH: 151, Grace Duckworth. I also heard
7 it on the television and basically what was said today is
8 all that I am aware of. And I did not follow it.

9 THE COURT: And you didn't follow it. Is there
10 anything that you feel would interfere with you giving both
11 the State and the Defendant a fair and impartial trial?

12 MS. DUCKWORTH: No, sir.

13 THE COURT: Thank you very much Ms. Duckworth. And
14 the next one.

15 MS. GIBBS: Demetrial Gibbs, No. 44.

16 THE COURT: All right.

17 MS. GIBBS: On the news.

18 THE COURT: You saw it in the newspaper?

19 MS. GIBBS: TV.

20 THE COURT: And is there anything that would keep you
21 from giving both sides a fair trial?

22 MS. GIBBS: No, sir.

23 THE COURT: All right. Thank you very much. The
24 next one.

25 MS. MIDDLETON: No. 73, Annette Middleton.

1 THE COURT: And Ms. Middleton, what media did you get
2 it from?

3 MS. MIDDLETON: The news.

4 THE COURT: Is there anything that you read in the
5 newspaper that would prevent you from giving both sides a
6 fair trial?

7 MS. MIDDLETON: No, sir.

8 THE COURT: Thank you very much. And the next one.
9 Now, let me start on the second row.

10 MR. LEVIN: Harvey Levin, No. 70.

11 THE COURT: Where did you obtain any information
12 from?

13 MR. LEVIN: I read about it in the paper and I
14 followed it on the TV.

15 THE COURT: Anything that you feel would keep you
16 from giving both sides a fair trial?

17 MR. LEVIN: Yes, sir.

18 THE COURT: You feel --- I am going to lay you aside
19 for just a moment. Have a seat. Next one.

20 MR. NOLTE: Raymond Nolte, No. 96.

21 THE COURT: What media did you get it out of?

22 MR. NOLTE: Both the TV and the newspaper. It was
23 pretty well covered throughout this period.

24 THE COURT: And do you know of anything that would
25 keep you from giving both the State and the Defendant a fair

1 and impartial trial?

2 MR. NOLTE: I am not sure. I would hope not, but I
3 am not really sure.

4 THE COURT: I am going to lay you aside for the time
5 being. And the next one.

6 MS. TAYLOR: Laura Taylor, No. 132. I read about it
7 in the newspaper and I saw it on the TV but I didn't follow
8 it closely.

9 THE COURT: Anything that would keep you from giving
10 both sides a fair trial?

11 MS. TAYLOR: No.

12 THE COURT: All right. Thank you very much. Now,
13 when I am asking you that question, giving both sides a fair
14 trial, what I am really asking is perhaps do you feel
15 uncomfortable serving on the jury, do you feel like you are
16 prejudiced to either side, for or against the Defendant or
17 State. What I am trying to get is a jury that will lay
18 aside what you might have heard on TV or read in the
19 newspaper. And as I told you just listen to what comes in
20 this courtroom. So don't be embarrassed if you tell me that
21 you are uncomfortable serving on the jury. And who was the
22 next one after Ms. Taylor? Anybody else on that row? Let's
23 start with the third row.

24 MS. BROWN: Deborah Brown. I saw it on the TV and
25 in the newspaper.

1 THE COURT: You watched it. Anything you obtained
2 that you feel would keep you from giving both sides a fair
3 trial?

4 MS. BROWN: No, sir.

5 THE COURT: All right. Thank you very much. And the
6 next one.

7 MS. MILLER: Sandra Miller, No. 88.

8 THE COURT: No. 88, Ms. Miller.

9 MS. MILLER: I saw it on the news and TV.

10 THE COURT: Anything that you know of that would
11 either make you uncomfortable serving on a jury or keep you
12 from giving both sides a fair trial?

13 MS. MILLER: Yes, sir.

14 THE COURT: All right. I am going to lay you aside
15 for just a minute. Thank you very much.

16 MR. WEINER: James A. Weiner, No. 42. And I saw it
17 on TV.

18 THE COURT: Is there anything that you saw that would
19 either make you feel uncomfortable serving on a jury or feel
20 that might prejudice you either way, for or against either
21 side?

22 MR. WEINER: No, sir.

23 THE COURT: And the next one.

24 MR. SANDERS: Daniel Sanders, 114. I saw it on the
25 newspaper and heard it on the radio.

1 THE COURT: Anything you saw that you feel would make
2 you uncomfortable or prejudice you in any way for either
3 side?

4 MR. SANDERS: No, sir.

5 THE COURT: Thank you very much. The next one.

6 MS. HOWARD: Joy Howard, No. 56.

7 THE COURT: Ms. Howard.

8 MS. HOWARD: I saw the TV reports.

9 THE COURT: And do you feel that would keep you from
10 giving either side a fair trial?

11 MS. HOWARD: No, sir.

12 THE COURT: Thank you so much. And the next one.
13 Anyone else on that row? The next row. All right. Your
14 name.

15 MS. JONES: Mary Jones, No. 62.

16 THE COURT: And where did you read it or see it?

17 MS. JONES: The TV media and also reading the Post
18 and Courier.

19 THE COURT: Post and Courier. Is there anything that
20 you read or heard on TV or received in any way you feel
21 would prejudice in any way or keep you from giving either
22 side a fair trial?

23 MS. JONES: None, Your Honor.

24 THE COURT: Thank you so much. And your name?

25 MS. BALLEs: Catherine Balles.

1 THE COURT: Ms. Balles.

2 MS. BALLEES: I saw it on television, Your Honor. I
3 didn't pay attention to the name, but this would be no
4 problem with me serving.

5 THE COURT: Thank you so much. The next one. The
6 next row, if you will.

7 MS. KRESKO: Julie Kresko.

8 THE COURT: Yes, ma'am.

9 MS. KRESKO: I know a man that owns an apartment
10 complex and manages it, in the area, in a project area and
11 he told me about it right after it happened.

12 THE COURT: And I am just going to lay you aside for
13 the time being. Thank you very much. The next one.

14 MS. WILLIAMS: June Williams.

15 THE COURT: 158, Ms. Williams.

16 MS. WILLIAMS: I heard about it on the TV and saw
17 headlines in the paper. I haven't really paid that much
18 attention to it.

19 THE COURT: Anything you know of that would keep you
20 from giving both sides a fair trial?

21 MS. WILLIAMS: No, sir.

22 THE COURT: Thank you very much. Anybody else on
23 that row? Your name.

24 MS. PEARCE: Frances Pearce. I heard about it.

25 THE COURT: Reading it in the newspaper and hearing

1 about it on TV?

2 MS. PEARCE: Yes, sir.

3 THE COURT: Is there anything you know of that would
4 keep you from giving both sides a fair trial?

5 MS. PEARCE: No, sir.

6 THE COURT: Thank you very much. And the next row.

7 MS. ROUSSEL: Ann Roussel, No. 112.

8 THE COURT: What media?

9 MS. ROUSSEL: Newspaper, television.

10 THE COURT: Is there anything that makes you
11 uncomfortable or feel would prejudice either side?

12 MS. ROUSSEL: No, sir.

13 THE COURT: Thank you very much. Anyone else on that
14 row?

15 MR. REID: Wilmont Reid, No. 105.

16 THE COURT: Mr. Reid.

17 MR. REID: Television and I know some people in the
18 neighborhood.

19 THE COURT: You know some people in the neighborhood?

20 MR. REID: Yes, sir.

21 THE COURT: Okay. Do you know of anything now that
22 would prejudice you either way that would make you feel
23 uncomfortable in serving?

24 MR. REID: Yes, sir.

25 THE COURT: All right. I am going to lay you aside.

1 Thank you very much. Anyone else on that row?

2 MS. BRAINOVICH: Josephine Brainovich. I saw it on
3 the TV news.

4 THE COURT: Anything you know of that would make you
5 uncomfortable or keep you from giving either side a fair
6 trial?

7 MS. BRAINOVICH: No.

8 THE COURT: All right. Thank you very much. Last
9 row, your name?

10 MR. ISAAC: Edward Isaac, No. 58.

11 THE COURT: And tell me about it.

12 MR. ISAAC: I saw it on TV and the newspaper.

13 THE COURT: Anything you know of that would keep you
14 from giving both sides a fair trial?

15 MR. ISAAC: No, sir.

16 THE COURT: Thank you very much. Anyone else? Last
17 row. Your name.

18 MR. ANDERSON: William Anderson, No. 5. I read it in
19 the newspaper and TV. And I am a personal friend of a
20 member of the Sineth family.

21 THE COURT: Do you feel that --- you're a personal
22 friend of the alleged victim's family?

23 MR. ANDERSON: Yes, sir.

24 THE COURT: All right. Do you have any objection if
25 I excuse Mr. Anderson?

1 MR. CRUMRINE: No, sir, Your Honor.

2 THE COURT: I am going to excuse you from the case.
3 I know you would try to be fair but I have got plenty of
4 jurors. Keep your seat though, because I am going to give
5 you some instructions on what to do in just a few minutes.
6 All right. I am going to ask you some more questions --
7 forgive me, I didn't see you standing.

8 MR. BUTLER: Herbert Butler. I saw it on the
9 television, read it in the newspaper. I didn't follow it
10 up.

11 THE COURT: Anything you know of that would keep you
12 from giving both sides a fair trial?

13 MR. BUTLER: No, sir.

14 THE COURT: Thank you very much. Anyone else? I am
15 going to ask you some more questions, and if it applies to
16 you just stand up and tell me about it. Any member of the
17 jury panel or any member of your immediate family related in
18 any way with the Solicitor or any member of his staff or
19 office, or in the case of any temporary or rather part-time
20 solicitors, is there any member of the jury panel ever used
21 the solicitors or the assistant solicitors in the past as
22 attorneys or are presently using them? Sometimes attorneys
23 quit from practicing law to being solicitors. Anybody
24 connected in any way with the Solicitor's Office? All
25 right. How about stand up and give me your name please?

1 MR. GALLAGHER: Lawrence Gallagher. I am just a
2 friend of an investigator that works in the Solicitor's
3 Office.

4 THE COURT: The fact that you are a friend of the
5 investigator, have you discussed the case with the
6 investigator?

7 MR. GALLAGHER: No, sir.

8 THE SOLICITOR: We have five investigators.

9 THE COURT: Which investigator?

10 MR. GALLAGHER: John Burnett.

11 THE COURT: Mr. Burnett. Well, they got five
12 investigators, I don't know whether you knew it or not but I
13 thank you very much for that information. Would that keep
14 you from giving both sides a fair trial?

15 MR. GALLAGHER: No, sir.

16 THE COURT: Thank you very much. Now, I am going to
17 let the Defendant's attorney stand up and introduce himself.
18 He is Mr. Crumrine, and he represents the Defendant. Why
19 don't you introduce yourself counselor?

20 MR. CRUMRINE: Yes, sir. I am John Crumrine. I
21 practice law over on James Island at the Wappoo Center, and
22 I have been practicing about 14 years.

23 THE COURT: Thank you very much. You are a sole
24 practitioner?

25 MR. CRUMRINE: Yes, sir.

1 THE COURT: Thank you. Any member of the jury panel
2 or any member of the immediate family related by blood or
3 connected by marriage to Mr. Crumrine or any member of his
4 office, or have ever used him as an attorney in the past, or
5 presently using him, if so please stand.

6 MR. SUMTER: Gary Sumter.

7 THE COURT: What's the connection?

8 MR. SUMTER: He represented my wife.

9 THE COURT: He represented your wife?

10 MR. SUMTER: Yes, sir.

11 THE COURT: For you or against you? What kind of
12 case?

13 MR. SUMTER: Accident.

14 THE COURT: The fact that he represented you in an
15 accident case, would that keep you from giving both sides a
16 fair trial?

17 MR. SUMTER: No, sir.

18 THE COURT: I didn't think so. Thank you very much.
19 I am going to tell you some witnesses who might testify in
20 this case and I want to know if you are connected in any way
21 either you or your immediate family, connected in any way
22 with any of these witnesses. Detective Jellico with the
23 Charleston County Sheriff's Office, Detective Zayac. Yes,
24 sir, your name.

25 MR. REEVES: Robert Reeves. Good friend of Jellico.

1 THE COURT: The fact that you are a good friend of
2 his, would that keep you from giving both sides a fair
3 trial?

4 MR. REEVES: No, sir.

5 THE COURT: Thank you very much.

6 MR. MCKNIGHT: I know Detective Jellico.

7 THE COURT: And your name, please.

8 MR. MCKNIGHT: Michael McKnight.

9 THE COURT: Would that keep you from giving both
10 sides a fair trial?

11 MR. MCKNIGHT: I wouldn't think so.

12 THE COURT: Well, you have to be a little more
13 positive. I understand your answer, because it is kind of
14 like asking you what you are going to do before you do it.
15 But as I told you earlier you need to lay aside any relation
16 you might have with any of the parties or what you read or
17 saw on TV, and just listen to the testimony and bring in a
18 verdict that spoke the truth, regardless of who it might
19 help or hurt. Do you feel like you could do that?

20 MR. MCKNIGHT: Yes, sir.

21 THE COURT: Thank you very much. Sgt. Wright, Deputy
22 Michael Conkey, Deputy N.K. Morris, Deputy Ellen Mayer, Sgt.
23 K. Buhle, Katrina Crommedy, Vernell Rivers, Celesia Mazyck,
24 Cecelia Richardon, Dr. James Downs, he is a medical
25 examiner, Spcial Agent Steven Derrick. Your name?

1 MS. SINGH: Avitar Singh. I am a pathologist and I
2 know Dr. James Downs.

3 THE COURT: Would that keep you from giving both
4 sides a fair and impartial trial?

5 MS. SINGH: No, sir.

6 THE COURT: Thank you very much. Special agent
7 Steven Derrick with SLED, that is the South Carolina Law
8 Enforcement Division, Detective Honan with the Charleston
9 County Sheriff's Office. Jamie Hamilton, Richard Pryer,
10 Richard Sampson, it is either Derrill or Darrell Edwards,
11 Nathaniel Criswell, or Tash Sullivan. Or Detective Zayac.
12 I notice a lot of policemen are testifying in this case. Is
13 there any member of the jury panel who feels that you would
14 give more weight to a policeman's testimony as opposed to a
15 nonpoliceman, just because they are policemen, if so please
16 stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 knows of any reason why they could not give both the State
20 and Mr. Hamilton a fair and impartial trial, if so please
21 stand. All right, sir, your name?

22 MR. BLANTON: Tony Blanton.

23 THE COURT: Why don't you just have a seat and we
24 will talk a little later. Your name?

25 MR. ANDERSON: William Anderson.

1 THE COURT: I have already excused you. All right.
2 Thank you. Your name?

3 MS. SANTOS: Rachel Santos, 115.

4 THE COURT: Have a seat and we will talk about it in
5 a few minutes. Any member of the jury panel or any member
6 of your immediate family employed or connected in any with
7 any law enforcement agency or commission, if so please
8 stand. Your name?

9 MS. ROUSSEL: Ann Roussel, No. 112. That is law
10 enforcement anywhere?

11 THE COURT: Anywhere.

12 MS. ROUSSEL: My brother is a New Orleans Police
13 Officer.

14 THE COURT: Would that keep you from giving both
15 sides a fair trial?

16 MS. ROUSSEL: No, sir.

17 THE COURT: You feel that it would affect your
18 ability to render a fair verdict?

19 MS. ROUSSEL: No, sir.

20 THE COURT: All right, I didn't think so. I
21 misunderstood you. And your name.

22 MR. WEINER: James Weiner, No. 142. I've got a
23 brother that works for the Akansas State DOD.

24 THE COURT: Would that keep you from giving both
25 sides a fair trial?

1 MR. WEINER: No, I know him.

2 THE COURT: Thank you very much. I will take the
3 lady with the purple blouse.

4 MS. FRANKS: Mary Franks. My nephew is a policeman
5 in the City, but it won't stop me from, you know.

6 THE COURT: Thank you very much. And your name?

7 MS. BRAINOVICH: Josephine Brainovich. I have a
8 cousin who is a Charleston Police Officer.

9 THE COURT: Would that keep you from giving both
10 sides a fair trial?

11 MS. BRAINOVICH: No, sir.

12 THE COURT: I didn't think so. I hope you-all will
13 be patient with me asking all of these questions, I know the
14 attorneys are probably tired of them. But I want to find
15 out all there is that I can learn in this short time about
16 you. Now, I don't want to know what your decision was if
17 you made a statement to anybody, on this particular
18 question. A lot of times when people read things in the
19 newspaper or watch them on TV, they express their opinions
20 about whether somebody might be guilty or not guilty. You
21 don't have to be embarrassed if your question is in the
22 affirmative, on this particular question. I don't want to
23 know what you said, but is there any member of the jury
24 panel from what you might have read in the newspaper or
25 radio or watched it on TV or heard something, is there any

1 member of the jury panel who has expressed to some other
2 person your opinion as to whether or not the Defendant might
3 have been guilty or not guilty, if so please stand. All
4 right.

5 MR. NOLTE: Raymond Nolte.

6 THE COURT: I got you down, I want to talk to you in
7 a little bit.

8 MR. LEVIN: Harvey Levin.

9 THE COURT: I want to talk to you. Anybody else?
10 The Defendant is charged with murder. To have a murder, you
11 first have to have an assault which the victim then dies.
12 If someone shoots or hits somebody and they don't die, they
13 would be charged with assault and battery of some type
14 depending upon the seriousness of it. What is present or
15 not present. So we are talking about violent crime. And
16 there are all kinds of violent crimes such as armed robbery,
17 assault and battery of a high and aggravated nature, assault
18 and battery with intent to kill, and other type things.
19 What I am really trying to find out is if any member of the
20 jury panel or any member of your immediate family, or close
21 personal friend have been a victim of a violent crime, such
22 as assault, these other things that I have discussed. So I
23 am going to ask you if any member of the jury panel or any
24 member of your immediate family or close personal friend
25 have been a victim of violent crime, if so please stand. I

1 will start with this lady in blue here, your name.

2 MS. MARVEL: Nancy Marvel No. 76.

3 THE COURT: Ms. Marvel, and can you tell me briefly?

4 MS. MARVEL: A close friend was murdered by her
5 husband.

6 THE COURT: A close friend was murdered by her
7 husband?

8 MS. MARVEL: Yes, sir, it has been 30 years.

9 THE COURT: Do you feel that in anyway would affect
10 your ability to render a true verdict in this case?

11 MS. MARVEL: No, sir.

12 THE COURT: Tell me.

13 MR. NOLTE: It was a close friend that was murdered
14 about 30 years ago.

15 THE COURT: On that particular point, do you feel
16 that would interfere with your ability to render a fair
17 verdict?

18 MR. NOLTE: No, sir.

19 THE COURT: I appreciate that very much. Your name?

20 MS. MILLER: Sandra Miller.

21 THE COURT: Ms. Miller.

22 MS. MILLER: It was my son, he was assaulted.

23 THE COURT: Your son was assaulted. I want to remind
24 you and the rest of the jurors that Mr. Hamilton sitting
25 there is presumed to be innocent. The fact that that

1 occurred to your son wouldn't have anything to do with Mr.
2 Hamilton, of course, but do you feel that it would render
3 your ability to render a fair verdict compromise in any way?

4 MS. MILLER: Yes, sir I do.

5 THE COURT: In other words, you feel the mere fact
6 that it happened with your son would interfere with your
7 ability to render a fair verdict in this particular case?

8 MS. MILLER: I think it would, sir.

9 THE COURT: I am going to excuse you Ms. Miller. All
10 right and your name.

11 MR. WILKIN: Harold Wilkin, 145. I was mugged
12 downtown, I personally was mugged.

13 THE COURT: All right. As I was just telling the
14 previous lady, that wouldn't have anything at all to do with
15 Mr. Hamilton but do you feel like it would interfere with
16 your ability to render a fair verdict?

17 MR. WILKIN: No, I don't believe so.

18 THE COURT: All right. Thank you very much.

19 MS. KRESKO: Julie Kresko. My husband was stabbed,
20 and I have a friend that was raped.

21 THE COURT: And the fact that that occurred wouldn't
22 have anything to do with Mr. Hamilton, would that keep you
23 from giving both sides a fair trial?

24 MS. KRESKO: No, sir.

25 THE COURT: Thank you very much. And your name.

1 MS. DAVIS: Pearl Davis, No. 34. I have a brother
2 that was murdered in '76, by his spouse.

3 THE COURT: By his spouse?

4 MS. DAVIS: Yes, sir.

5 THE COURT: That wouldn't have anything to do with
6 Mr. Hamilton but do you feel that would interfere with your
7 ability to render a fair verdict?

8 MS. DAVIS: No, sir.

9 THE COURT: Thank you very much. Any member of the
10 jury panel know of any reason, other than those which you
11 have already expressed, why you could not give each side a
12 fair and impartial trial?

13 (No response.)

14 THE COURT: For those of you who might not have read
15 about this in the newspaper, in order to ask you this last
16 question that I can think of, I want to tell you that this
17 case involves the death of a young white male, his name as
18 you probably already know because I gave you the victim's
19 name was Ralph Sineth, Jr. It is alleged in this indictment
20 that he was killed by several young black males in the
21 Waylyn District of the north area in 1991. There were
22 several people charged in the case, that is Richard Lamont
23 Sampson was charged. Darrell Edwards was charged, Alvin
24 Zellers was charged and of course Mark Hamilton. This
25 happens to be Mr. Hamilton's trial. I don't like to talk

1 about any race prejudice at all. I realize that sometimes
2 people might feel uncomfortable serving on a trial of this
3 type. And I want you to be honest with me which I know you
4 will be, is there any member of the jury panel who feel they
5 would be uncomfortable serving on this trial because of the
6 relationship of the races, as far as the death is concerned,
7 if so please stand.

8 (No response.)

9 THE COURT: Thank you very much. Members of the jury
10 panel, I am going to excuse you. I need to get some
11 information from the other jurors. And I am going to excuse
12 you and I am going to ask you to be back at 3:00 except
13 these people whose name I am going to call and I am going to
14 ask you just to stay right here in the jury room, I am going
15 to call you back in my chambers so I can talk to you a
16 little bit one on one. I want these people to stay in the
17 courtroom, Mr. Levin, if you will. Mr. Nolte, Ms. Miller.
18 Ms. Jones, Ms. Kresko, Mr. Reid. Mr. Blanton and Ms.
19 Santos.

20 THE SOLICITOR: Your Honor, I believe you
21 subsequently excused Ms. Miller on another question.

22 THE COURT: I excused Ms. Miller and Mr. Anderson.
23 All right. The ones I want to stay here for just a few
24 minutes, I promise it won't take long are Harvey Levin,
25 Raymond Nolte, Julie Kresko, Wilmont Reid, Tony Blanton and

1 Rachell Santos. Everyone else excused, please be back in
2 this courtroom at 3:00.

3 MR. CRUMRINE: Your Honor, could we have them
4 admonished not to discuss the case?

5 THE COURT: Before you go out the courtroom, I will
6 be telling you about this all week. Even though you might
7 not be on this jury, might not be drawn on a jury, when you
8 go out, somebody might be talking about it in the hall. And
9 you wouldn't want to be prejudiced by listening to it, or
10 affected in any way. I will put it that way. When you go
11 home, don't talk about it with your spouses or your
12 girlfriends or boyfriends, or anyone. In other words, I
13 want you just to discuss it in this courtroom and the jury
14 room when we get done with the case, those of you who serve.
15 So when you go out don't talk about the case with anyone,
16 not even among yourselves, and just incidentally, don't read
17 anything about it in the newspaper or watch it on TV while
18 you are at lunch. Be back in the courtroom at 3:00 with
19 those admonitions. Thank you.

20 (Whereupon, the jury panel was excused for the
21 morning.)

22 THE COURT: Give me the first one and bring them in.
23 Mr. Levin.

24 HARVEY LEVIN, being first duly
25 sworn, testified as follows:

1 QUESTIONING BY THE COURT:

2 Q Give us your name?

3 A Harvey Levin.

4 Q Now, tell me what you got to say. I had asked the
5 question what you read on TV and what you might have seen in
6 the newspaper, and how it affected you. So if you will I
7 would like you to tell me, first I believe you told me you
8 followed it on TV and you followed it in the newspapers and
9 perhaps I could start off by is there anything you know
10 about the case or feel that you know about the case that
11 would prejudice you for or against the State or the
12 Defendant?

13 A Only what I read in the newspaper.

14 Q All right. What you read in the newspaper, do you
15 feel that you could lay that aside, because as I told all of
16 you, very often news men or women, any member of the news
17 media very often write or testify from their feelings and
18 perhaps not from facts as it might be presented in the
19 courtroom. What is it that makes you uncomfortable, if you
20 are uncomfortable about anything on this particular case?

21 A I discussed this case with people at work, and with
22 friends, and I actually feel that I made a decision as to
23 the guilt or innocence of the people accused, in my mind.

24 Q In your mind. And do you feel that that decision you
25 have made, you made from discussions and what you read in

1 the newspaper or on TV?

2 A Right, what I followed since the case occurred,
3 presented in the newspaper, I have followed it pretty well.

4 Q Do you feel you could lay that aside and listen to
5 the testimony and change your opinion, what ever it might
6 be?

7 A I don't know if I could do that or not.

8 Q You just don't know.

9 THE COURT: Any questions?

10 THE SOLICITOR: I don't have any questions.

11 THE COURT: Now, I am not going to let you go too far
12 but ---

13 MR. CRUMRINE: Your Honor, we don't have enough thus
14 far, I would like to ask some more. I feel like we have
15 already reached a ---

16 THE COURT: You made up your mind, counselor, which
17 way he was going to vote and I didn't even ask him.

18 BY THE COURT:

19 Q All right. Are you uncomfortable serving on this
20 jury?

21 A Yes, sir.

22 THE COURT: All right. I am going to excuse you
23 without objection. Now, I want you to come back at 3:00 so
24 I will be able to tell you --- as a matter of fact, you
25 don't have to come back. You call the clerk's office. I am

1 going to excuse you from this case. Thank you. Bring me
2 the next one, please.

3 RAYMOND NOLTE, being first duly
4 sworn, testified as follows:

5 QUESTIONING BY THE COURT:

6 Q I am going to ask you some questions. You told me
7 you read it in the newspaper and followed it on TV?

8 A Yes, sir.

9 Q Did you discuss it with people?

10 A Yes, sir.

11 Q Who for instance? I don't care about their names.

12 A A lot of my friends.

13 Q Close friends?

14 A Yes, sir.

15 Q And I assume in reading the newspaper you had made a
16 kind of a decision whether he is guilty or not guilty, is
17 that correct?

18 A I believe so. I believe the newspaper account has
19 made that decision.

20 Q You feel that the newspaper made the decision for
21 you?

22 A The evidence seems to me was there.

23 Q What you heard?

24 A What I have heard.

25 Q All right. Do you feel like you could lay that

1 aside, what you might have read in the newspaper or what you
2 saw on TV?

3 A I think like I told you I wish I could and I hope I
4 can but it just seems to me like I feel uncomfortable being
5 on a jury of this kind, having read so much about the case.
6 And I don't think I can be fair, possibly I couldn't be
7 fair. I don't know.

8 THE COURT: Any objection if I excuse this juror?

9 MR. CRUMRINE: No, sir, Your Honor.

10 THE COURT: I am going to excuse you from this case
11 and appreciate you being frank with me. And I am going to
12 ask you to be back here 9:30. I might get you on another
13 case. Have a good afternoon. And don't discuss this with
14 anyone. Bring me Ms. Kresko.

15 JULIE KRESKO, being first duly
16 sworn, testified as follows:

17 QUESTIONING BY THE COURT:

18 Q I don't remember all of the information that you had
19 given me, so I want you to give it to me kind of softly
20 because I can hear you real well.

21 A I didn't really give a whole lot of information but,
22 when I first moved here to Charleston, I started teaching
23 aerobics at a health club, and one of my friends was a
24 fitness trainer for a man that owns an apartment complex and
25 he just told us a lot of stories all of the time and he did

1 tell us about this one particular story. I don't really
2 know any names, I can't make an honest judgement on the
3 exact names of people, who did it or anything.

4 Q You discussed it with him?

5 A Right.

6 Q And did you read anything in the newspaper or watch
7 it on TV?

8 A I saw it on television, and heard about it at the
9 airport, and he also said that some people came up to him,
10 and I am not sure if it is this particular case, but with
11 weapons and they wanted to create a gang to get back.

12 Q If you don't remember any details and you don't even
13 know if it was this particular case, is there anything you
14 might have heard from him about this particular case that
15 you feel that you would have some difficulty reaching a fair
16 verdict for either side?

17 A Since I don't know the defendants, I feel I could
18 make a fair decision.

19 Q All right. That is good honest answer. And I am
20 going to send you to your lunch and ask you to be back in
21 the courtroom at 3:00.

22 A Okay.

23 MR. CRUMRINE: Your Honor, could I be allowed to make
24 some additional voir dire?

25 THE COURT: No, sir.

1 BY THE COURT:

2 Q Well, when you say, let me just see if I can sum up
3 what you told me. You told me you had discussed a case with
4 him, not this particular case, about someone who came up and
5 wanted to start --- with weapons and wanted to start some
6 kind of gang or something, it didn't have anything as far as
7 you know to this particular case.

8 A I don't know that that was this particular case. He
9 did mention this particular case.

10 Q And you discussed it with him. And did you tell me
11 that you didn't remember the details?

12 A Right. I just remember him talking about it because
13 I have never really known anybody that was really in the
14 midst of that environment, that saw everything out of his
15 window.

16 Q Is there anything that you heard, you say he saw
17 something out of his window?

18 A Not in this particular case but all of the time he
19 saw people acting out of accordance with the law.

20 Q Is there anything you heard from him, or watched on
21 TV or heard on the radio, whether about this particular case
22 or any case, and especially about this case, that would keep
23 you from giving both sides a fair trial?

24 A No, sir. Just because I don't know the people, he
25 never mentioned any names or anything like that. Except in

1 this particular case the only name he mentioned was the
2 victim.

3 Q The victim?

4 A Right.

5 Q Did you know the victim in any way?

6 A No, sir.

7 Q All right.

8 THE COURT: How about put her in my office for just a
9 minute. Just step right around there. What kind of
10 questions you want to ask her?

11 MR. CRUMRINE: Your Honor, I might have
12 misunderstood, but I thought what she was saying was that
13 her friend was trying to get together a gang for some sort
14 of reprisal.

15 THE COURT: Now, do you know?

16 MR. CRUMRINE: I can't tell. That was my impression
17 that her friend wanted to get together a gang.

18 THE COURT: She said some guy. I will ask her that
19 question.

20 MR. CRUMRINE: I may be completely mistaken.

21 THE COURT: Bring her in.

22 BY THE COURT:

23 Q I might have misunderstood you. Was it your friend
24 that was trying to get together some kind of gang?

25 A No, sir, people in the neighborhood knew him because

1 he was --- he sort of stuck out in the crowd, he was the
2 manager and owner of this apartment complex and they came to
3 him.

4 Q And wanted to do what?

5 A To get back at the gang that had started whatever, I
6 can't remember what particular case this was in. But they
7 wanted to start a war.

8 Q Somebody came to the manager and wanted to act as a
9 group to correct a situation, not necessarily this case.

10 A Correct.

11 Q And you tell me that wouldn't affect your ability to
12 render a fair verdict?

13 A No, sir.

14 THE COURT: Be back at 3:00.

15 MR. CRUMRINE: Yes, sir, Your Honor, I would move to
16 strike her for cause. She said that her friend had
17 mentioned the victim in this case, Sineth. She is not sure
18 whether this vigilante group was being gathered or her
19 friend was being asked to head this up in order to reprise
20 this particular incident or another, but she is aware he has
21 discussed the Sineth case, that her friend has strong
22 feelings about the case and that the whole neighborhood has
23 strong feelings, and that this vigilante spirits out there,
24 she could be very well afraid of reprisal herself if she was
25 to be on a jury that would cut him loose.

1 THE COURT: I didn't understand it that way at all.
2 I deny your motion. Bring me the next one.

3 WILMONT REID, being first duly
4 sworn, testified as follows:

5 QUESTIONING BY THE COURT:

6 Q Mr. Reid, I don't recall what question you answered
7 that made me bring you back, but I will kind of start off
8 again. Did you read about this in the newspaper?

9 A Yes, also saw it on television.

10 Q Did you know any of the parties?

11 A No, but I knew some people in the neighborhood that
12 have since moved. But we spoke and made comments on it when
13 it happened.

14 Q And I am not going to ask you whether you were for or
15 against the Defendant or the State. Is anything you have
16 read, TV or discussed with anybody, or had even a feeling
17 that you feel would keep you from giving this young man a
18 fair and impartial trial or the State a fair and impartial
19 trial?

20 A Yes, sir, I do.

21 Q And what is that?

22 A Some things that we spoke about, I don't think it
23 will change my decision.

24 Q In other words you feel like, and I am not asking you
25 what your decision is, you feel like regardless of what the

1 testimony is, you feel you have made up your mind in the
2 case, and for either the Defendant or the State, you
3 couldn't change it?

4 A Yes, sir.

5 THE COURT: Have any objection if I excuse this
6 juror?

7 MR. CRUMRINE: I have no objection Your Honor.

8 THE COURT: All right. And I appreciate your being
9 honest with me. If you will get back here tomorrow morning
10 at 9:30. Don't talk to anybody about the case. Give me the
11 next one.

12 TONY BLANTON, being first duly
13 sworn, testified as follows:

14 QUESTIONING BY THE COURT:

15 Q I don't remember what question I asked you, that made
16 me want to discuss it with you a little more. I want to
17 remind you and you need to talk towards them because I can
18 hear you, what we are trying to get is a juror who is totally
19 impartial, that would just listen to the testimony
20 regardless of what they might have discussed with anyone
21 else, or read in the newspaper and watching TV, if they
22 would concentrate on what went on in the courtroom and bring
23 in a verdict on whatever that was. And my question is did
24 you watch it on TV and read it in the newspaper?

25 A No, I didn't, sir.

1 Q Did you discuss it with someone?

2 A No, I know nothing about the case. My thought on the
3 matter is solely religiously based.

4 Q What religion?

5 A Jehovah's Witness.

6 Q I don't know too much about your religion, but I have
7 got a lot of frieneds of mine who are Jehovah's Witnesses.
8 And I believe one of the things that you espout is that you
9 don't want to judge people?

10 A That is true to some degree.

11 Q Tell me why you don't want to serve on the jury, tell
12 me what is it about your religion that won't let you serve
13 on the jury.

14 A The matter is solely a conscience matter, depending
15 on whether I could serve on the jury. Some cases I will not
16 have a problem serving on the jury but, a case of this
17 magnitude, I really don't feel comfortable at all. I don't
18 think I can render a decision.

19 Q I can understand that. I also appreciate you telling
20 me that you feel you can serve on some cases, because I
21 have had some Jehovah's Witnesses before me who said they
22 couldn't serve on any jury. And I tried to explain to them
23 that you are not judging something, that is my job. You are
24 just deciding where the truth lies.

25 A It is a conscience matter. My conscience would allow

1 me to serve on some, but not this one.

2 THE COURT: Have any objection if I excuse him?

3 THE SOLICITOR: Your Honor, there is just one
4 question I wish you would ask.

5 THE COURT: Step into my room, just a minute. I just
6 want to clear it with the attorneys before I ask you this
7 question.

8 (Whereupon, a bench conference was held at this
9 time.)

10 BY THE COURT:

11 Q I just wanted to clear it with the attorneys before I
12 asked you this question. There are different kinds of
13 trials as you know, there is what we call a death penalty
14 trial, in which jurors decide if a person is found guilty
15 first, then they decide whether he should live or die. I
16 noticed that it was reported in the morning paper that this
17 was that type case, that it is a capital murder case but it
18 is not. This is a case in which the State is not asking for
19 the death penalty, nor could I give him the death penalty.
20 So my question now is, is it still a case of such magnitude
21 that you would be uncomfortable serving on?

22 A Yes, sir.

23 Q Just because it is murder?

24 A Yes, sir.

25 THE COURT: All right. I understand. I am going to

1 excuse you and still ask you to be back tomorrow morning.

2 Bring me Ms. Santos.

3 RACHEL SANTOS, being first duly
4 sworn, testified as follows:

5 QUESTIONING BY THE COURT:

6 Q I don't really recall, and when I ask you a question
7 I want you to look at the attorneys, because they are the
8 ones who are interested in what your answers are. And I
9 don't know why I even brought you back on what question I
10 asked you. So, I believe you told me that you had watched
11 it on TV and read it in the newspaper did you?

12 A No, I didn't hear anything about the case.

13 Q Did you discuss it with someone?

14 A No, my objection is just a conscience one. I don't
15 think my conscience would allow me to serve on a criminal
16 case.

17 Q Let me just ask you this, what religion are you?

18 A Jehovah's Witness.

19 Q Okay. I just had one. Okay. And he was telling me,
20 that it is just a matter of conscience. Some Jehovah's
21 Witnesses would serve on some type juries, but some would
22 serve on other types, they would feel that they just could
23 not do it. I always thought, I have talked to a lot of
24 them, that a lot of them feel they can't judge someone. And
25 I remind them that I do the judging, all they got to find is

1 the truth, either way. So I ask you this question. There
2 are two different types of murder cases. One is where the
3 State is asking for the death penalty, this is not one of
4 them, even though it might have been reported this morning
5 in the newspaper that it was, it is not. Knowing that, did
6 you think it was a death penalty case?

7 A I didn't know.

8 Q Didn't know.

9 A Huh-uh.

10 Q In other words, are there some types of criminal
11 cases you could serve on?

12 A I just feel that with it being a matter of a murder.

13 Q But suppose he was charged with some other thing like
14 selling drugs or stealing, shoplifting, drunk driving those
15 type things, could you serve on something like that?

16 A I believe so.

17 Q You could. In other words, because of the magnitude
18 of the case you would be uncomfortable serving?

19 A Yes, sir.

20 Q All right. Maybe I will have one for you tomorrow
21 morning at 9:30 that you could serve on. I am going to
22 excuse you from this case and ask you to be back in the
23 courtroom at 9:30.

24 THE COURT: Do you have any other motions as far as
25 the jury is concerned or anything I have done so far.

1 MR. CRUMRINE: Nothing so far. We have a motion to
2 sequester the jury.

3 THE COURT: Let me hear your motion.

4 MR. CRUMRINE: Yes, Your Honor, the first motion is
5 to sequester the jurors, and I realize that this is solely
6 within Your Honor's discretion according to the case law of
7 the State. We have a case which I am sure is now obvious to
8 the court, that has had an extreme amount of newspaper and
9 television news coverage, and almost every one in the
10 community has been exposed to. This is just one of those
11 cases the press won't seem to leave alone. And there have
12 been editorials criticizing the Solicitor's handling at
13 points and there have been ---

14 THE SOLICITOR: Not on this one.

15 MR. CRUMRINE: I believe maybe not this Solicitor,
16 but anyway, we had a great deal of media coverage and it has
17 been highly inaccurate, as Your Honor knows this morning
18 they were reporting this to be a death penalty case.

19 THE COURT: I don't know that. Somebody told me they
20 saw it in the newspaper.

21 MR. CRUMRINE: I think it was on the news. Your
22 Honor, we feel because of the extreme coverage, we feel that
23 it will be impossible for jurors not to be bombarded rather
24 by radio, television, or news print or by people discussing
25 the case in public, it is just a case which, you know, from

1 the stand point, many people have discussed it, there have
2 been vigilante type action, apparently. I have Your Honor,
3 copies of most of the newspaper articles piece, here. I
4 believe the Solicitor is not going to objection.

5 (Court's Exhibit No. 1, marked for identification.)

6 MR. CRUMRINE: Your Honor, we would like to
7 suppliment the record of the newspaper accounts with some
8 testimony from Mr. Pennington, who is handling one of the
9 co-defendants for a period of time any way.

10 THE COURT: I would be glad to put anything on the
11 record. Come around Mr. Pennington.

12 ASHLEY PENNINGTON, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. CRUMRINE:

15 Q Will you please state your name for the record?

16 A Ashley Pennington.

17 Q And what is your position Mr. Pennington?

18 Q I am the Executive Director of the Charleston County
19 Public Defender's Office.

20 Q And in that occupation, have you had an occasion to
21 represent Richard Sampson?

22 A Yes, that is correct. I was initially appointed when
23 the case first occurred.

24 Q He is a co-defendant of Mr. Hamilton, is he not?

25 A Yes, he is.

1 Q Having been involved in the representation of Mr.
2 Sampson, have you had occasion to follow the news media
3 coverage of this particular case?

4 A Yes, in fact because I knew that I was going to be
5 involved in the case, I paid particular attention to each of
6 the newspaper articles that came out and on occasion would
7 also catch televised media.

8 Q And look at Court's Exhibit 1 here, and tell me
9 whether you are familiar with any of these newspaper
10 articles?

11 A Yes, these appear to be copies of the various
12 articles that I have run across. In the beginning of the
13 case in October of '91, I also was saving copies of these
14 news articles for my file.

15 Q For the record, the last one is March 5th, 1992?

16 A Yes, sir.

17 Q Can you tell the Court whether since that time Mr.
18 Sampson has plead guilty, Mr. Edwards has plead guilty?

19 A That is correct. As I understand it both of those
20 defendants, who I did not represent have been to Court and
21 have plead guilty to various charges.

22 Q Did you have occasion to follow any newspaper
23 coverage of those guilty pleas?

24 A Yes, I reviewed them and I also heard news
25 discussions of those things on the televised media.

1 Q All right. And in recent days, are you familiar with
2 any newspaper coverage of Mr. Zellers being rearrested on a
3 criminal sexual conduct charge?

4 A Yes, sir, I have seen that both in terms of
5 television as well as newspaper media.

6 Q And aside from the printed media which we have just
7 reviewed, you said you are familiar with the television
8 media coverage of this alleged crime?

9 A Yes, sir, I have. I have followed it and I have seen
10 it on TV.

11 Q Could you, in your experience in handling other
12 cases, characterize that coverage for the Court as far as
13 how extensive that coverage was?

14 A Well, I have been responsible for capital murder
15 cases for the last several years in Charleston County. This
16 has been one of the top news stories that have been reported
17 both in terms of television news and in terms of local
18 newspaper news in the last two to two and a half years.

19 Q All right. And being a defense attorney in charge of
20 Mr. Sampson's case, do you have an opinion as to whether it
21 is likely that a juror would be exposed to media coverage
22 during this trial if they were not sequestered?

23 A The only thing that I can say is that it has been
24 regularly reported in all of the media, so that if someone
25 regularly watched television news or regularly read the

1 newspaper, they would have been exposed to it.

2 MR. CRUMRINE: I have no other questions.

3 THE SOLICITOR: I have no questions.

4 THE COURT: Let me ask you this question.

5 QUESTIONING BY THE COURT:

6 Q I don't see, you know, media coverage in the
7 courtroom, TV in the courtroom for that matter has been ---
8 well, it is all over the state now and I don't see the media
9 in the courtroom today. I wonder why if it is so much
10 coverage, why they aren't here today.

11 A I have no idea why they are not here today.

12 Q Well, what could I accomplish by sequestering the
13 jurors?

14 A Judge, I don't know.

15 Q Because all of us when we try cases, when you try
16 cases, we always tell the jury not to read any newspapers or
17 whatever. As a matter of fact I asked that jury voir
18 dire --- I didn't ask them and I intended to ask them, and I
19 will when they come back. Is there any member of the jury
20 panel that feels they couldn't do without watching TV or
21 reading the newspaper during the course of the trial. The
22 trial is going to last, how long would you say Solicitor?

23 THE SOLICITOR: It has taken a little longer in voir
24 dire. I think we will go until probably Thursday morning.

25 THE COURT: What do you say, about the same thing?

1 MR. CRUMRINE: Yes, sir.

2 THE COURT: It is a three day trial.

3 BY THE COURT:

4 Q Do you feel that --- you don't feel that if I
5 instruct the jury not to read a newspaper or watch TV, do
6 you feel they wouldn't do it?

7 A No, Judge, in fact I have had very good success with
8 jurors being careful and reporting when they have been
9 exposed to news media or exposed to third parties coming in
10 and discussing it. So that I don't have a strong feeling
11 one way or the other about the issue of sequestration. This
12 is just a case in which the voir dire, I think is a big
13 issue because I think that there has been a lot of both
14 print and televised media coverage over the many months and
15 jurors may have learned facts that would be relevant to the
16 case. So that my concern runs to what they know about the
17 case coming into it rather than what interference they would
18 have after the fact.

19 Q Well, then that could have been cured by transferring
20 the case to another county, not another county, another
21 jurisdiction.

22 THE COURT: Did you discuss the matter of moving the
23 case?

24 MR. CRUMRINE: Yes, Your Honor, I discussed it with
25 my client and he prefers to be tried here in his home county

1 with a jury of his impartial peers.

2 BY THE COURT:

3 Q Well, then tell me why you are testifying?

4 A Because I was called.

5 THE COURT: The reason I say that is I know him, he
6 is a good lawyer, but he is saying in essence, he is not
7 concerned about what they might learn after the trial
8 starts, because he has had good success with jurors not
9 discussing it. And he is more concerned about what they
10 might have learned before they got here or might have been
11 exposed to, isn't that about what you said?

12 THE WITNESS: Yes, sir.

13 THE COURT: And the only way that could be cured
14 would be by asking to move the trial on the grounds you
15 couldn't get a fair trial in Charleston County. And then
16 you tell me, and I understand his reasoning, that he wants
17 to be tried in Charleston County. So I ask him and he just
18 frankly said because he was asked to testify. What is your
19 theory?

20 MR. CRUMRINE: Your Honor, I called Mr. Pennington
21 for the purpose of showing the extent of the media coverage.

22 THE COURT: There is no question about that.

23 MR. CRUMRINE: I may have tried to put some icing on
24 that as well, which wasn't there, but the basic fact is that
25 this has had extensive media coverage and that it is my

1 belief that there is --- will be impossible to keep the
2 jurors from being exposed to radio and TV.

3 THE COURT: He tells me he has had good success.

4 MR. CRUMRINE: He may have had some good success, but
5 he hasn't tried every case around, he is not aware of
6 sometimes probably when there has been some problems.

7 THE COURT: None of us really know what goes on in a
8 jury room.

9 MR. CRUMRINE: People don't always walk up and tell
10 you when something has occurred. He has been exposed to
11 some that have had the honesty to come forward and expose
12 that.

13 THE COURT: I am going to deny your motion but I am
14 going to ask the jury one more question. I will ask them
15 when they come back is there any member of the jury panel
16 who feels they couldn't give up TV and newspaper during the
17 trial.

18 MR. CRUMRINE: Could we ask them also about the radio
19 because you're held prisoner if you listen to it. If it
20 comes on you can't help it.

21 THE COURT: I don't know if it is or not because I
22 don't have any newspaper or TV in the courtroom.

23 MR. CRUMRINE: I understand they have made a motion
24 to be present.

25 THE COURT: Somebody wanted a still photographer

1 which hasn't been ruled on. They didn't ask the
2 administrative judge, and they have to as you know. They
3 have to make preparation ahead of time, so as far as I am
4 concerned, there are not going to be any cameras in the
5 courtroom.

6 MR. CRUMRINE: Your Honor, could we have them asked
7 as well about radio and about refraining in any discussion
8 with family members?

9 THE COURT: You bet. I will take care of that. I
10 deny your motion. I think you can get a fair trial. Thank
11 you Mr. Pennington.

12 MR. PENNINGTON: Thank you.

13 THE COURT: I will hear any other motions.

14 MR. CRUMRINE: Your Honor, we would also move to
15 sequester witnesses. This is a case that happened about 20
16 months ago, and it is depending fully on eye witness
17 testimony.

18 THE COURT: Any objection?

19 THE SOLICITOR: As long as it is reciprocal to the
20 Defendant.

21 THE COURT: If you have any witnesses, exchange them
22 with the Solicitor and let the bailiff take care of it.
23 How do you handle it?

24 THE SOLICITOR: That gets to be a problem because
25 there is no facility for the witnesses to be sequestered and

1 we try to work out of the snack bar.

2 THE COURT: You talk it over during lunch and tell me
3 how you want to handle it.

4 THE SOLICITOR: I would ask that the chief
5 investigating officer be allowed to remain.

6 THE COURT: He will be your one that stays there.

7 MR. CRUMRINE: Your Honor, can I also ask that the
8 Defendant's mother, she is not an eye witness, she is a ---
9 well she is a witness to what occurred at the hospital and
10 the wound. I ask that she be present.

11 THE COURT: Is she going to testify?

12 MR. CRUMRINE: Yes, sir, but she is not a witness to
13 the actual incident. She is a witness to maybe what
14 happened at the hospital afterwards.

15 THE COURT: If you are going to use her as a witness,
16 if you are going to sequester the State's witness, unless
17 the Solicitor agrees to it, if she is going to testify to
18 anything material, except as far as him being a good boy or
19 something of that nature, I would let her stay in for that.
20 But if she is going to testify to any facts in the case that
21 are in controversy, why don't you talk with the Solicitor
22 during the lunch hour and see if you can't work it out.

23 MR. CRUMRINE: Yes, sir.

24 THE COURT: I would like to see his mother stay in
25 the courtroom, if at all possible so you might keep that in

1 mind.

2 THE SOLICITOR: Yes, sir. I don't know what she is
3 going to testify to.

4 THE COURT: Why don't you tell him what she will
5 testify about and maybe you can work it out.

6 MR. CRUMRINE: Yes, sir.

7 THE COURT: She ought to be if at all possible
8 allowed to stay. And it might not be a fact in controversy.
9 What else?

10 MR. CRUMRINE: We also have a motion to exclude any
11 evidence containing blood, hair or body tissue.

12 THE COURT: We talked about that and the Solicitor
13 said you had a chance to look at all of the exhibits.

14 MR. CRUMRINE: Yes, sir.

15 THE COURT: So what do you have that you think the
16 State might use that would contain anything objectionable?

17 MR. CRUMRINE: Your Honor, there are several sticks
18 and poles.

19 THE COURT: Wait a minute. Tell me what you think
20 might be inflammable, if you want to use those words. I
21 assume the Solicitor is going to say this is part of the
22 murder weapon.

23 THE SOLICITOR: Yes, sir.

24 THE COURT: And certainly those would be admissible.

25 MR. CRUMRINE: Your Honor, they are said to contain

1 blood.

2 THE COURT: Who said so? The Solicitor said he
3 couldn't find any.

4 MR. CRUMRINE: Your Honor, I believe he said ---

5 THE COURT: Did you look at them?

6 MR. CRUMRINE: Yes, sir.

7 THE COURT: What did you see about them? You tell me
8 what you saw about them, if you object to them.

9 MR. CRUMRINE: As far as the actual, physical, I
10 don't see any blood. It is reported that the medical
11 examiner said he found blood on the poles, one of the poles
12 or the sticks used.

13 THE COURT: Could you find it?

14 MR. CRUMRINE: No, sir, I am not an expert, and I
15 just don't think it is proper to put items before the jury
16 for their handling and such, that are said to have blood on
17 them and hair. I think that it would tend to prejudice
18 them, they have pictures of these items I believe and they
19 can be described adequately. We are prepared to stipulate
20 that one or more of them were used in the attack and death
21 ensued from wounds from one or more of the items in order to
22 prevent the jury having to look at, handle and be exposed to
23 these items which are said to contain blood, and hair and
24 the tissue of the deceased.

25 THE COURT: I deny your motion. It would be just

1 like you introducing a gun that is alleged to kill somebody.
2 I deny your motion. What is next?

3 MR. CRUMRINE: Your Honor, next we move in limine to
4 exclude any photographic evidence that would be unduly ---
5 would unduly ---

6 THE COURT: Inflame the jury. Why don't you just ---
7 you have already looked at the photographs that the
8 Solicitor said he is going to use. So point out to me the
9 photograph that you say would inflame the jury.

10 MR. CRUMRINE: He eliminated some of them, I am down
11 to three.

12 THE COURT: Pass them up. The first one shown is
13 State's Exhibit 10.

14 THE SOLICITOR: These haven't been marked by this
15 court reporter. Those were previously introduced in either
16 a preliminary hearing or a juvenile bind over hearing.

17 THE COURT: How can I identify it? I'll put my
18 initials 1, my initials 2 on the other one and my initials
19 3 on the other one. Okay. On No. 1 what is it that you
20 object to? It shows, looks like a body.

21 MR. CRUMRINE: Yes, sir.

22 THE COURT: What does that show Solicitor?

23 THE SOLICITOR: It does show the position of the body
24 which is indicative of the evidence at the scene but it also
25 indicates in the medical examiner investigator's hand there

1 is a wallet which was removed from the victim's person.
2 There is some testimony that would relate to demands for
3 money from the victim and the victim saying I don't have
4 any, I don't have any. He had \$4 in that wallet. There was
5 also some previous motions that were made relative to drug
6 transactions or possible drug transactions that this
7 Defendant was trying to buy cocaine or crack with it, and
8 all he had was \$4 in that wallet.

9 THE COURT: Well --

10 THE SOLICITOR: There is more to go with whatever
11 testimony there is, Your Honor.

12 THE COURT: Just don't introduce it until I rule on
13 that one. That is No. 1.

14 MR. CRUMRINE: Can I state the part of this that I
15 find objectionable?

16 THE COURT: Of course.

17 MR. CRUMRINE: There is some testimony or evidence as
18 I understand from witnesses who say that the Defendant was
19 asking for mercy, that he had to go to the bathroom, and
20 apparently the evidence tends to show that upon being
21 killed, his bladder was evacuated or whatever. But the
22 picture does show that and I think that is real inflammable.

23 THE COURT: I don't see it.

24 MR. CRUMRINE: There is a discoloration on his blue
25 jeans, Your Honor, where it is visible to me that that

1 occurred.

2 THE COURT: Look at the discoloration on the bottom
3 of each of the officers, same color. I couldn't tell it by
4 no stretch of the imagination.

5 MR. CRUMRINE: They may feel sorry for the officers
6 to kneel there, Your Honor.

7 THE COURT: In any event, I deny your motion on that
8 grounds. But let's just wait until we hear the testimony
9 and I will rule on that one. The next one I have is No. 2.
10 What is that? What is your objection?

11 MR. CRUMRINE: Your Honor, I believe that that and
12 the next photograph show the arm of the deceased as he is
13 lying after he has been moved by the officers or medical
14 examiner. They are offered apparently to show the wounds to
15 the arms of the deceased. They have many blown up sketches
16 depicting those and we believe that those would be the best
17 evidence of it and the photographs would tend to arouse the
18 passions and prejudices of the jury and it is just not
19 necessary.

20 THE COURT: You say he has shown the same photograph
21 more than once?

22 MR. CRUMRINE: No, sir, they are photographs of both
23 of his arms, one showing the right arm more and one showing
24 the left arm more. But I believe it would arouse the
25 jury's passion and prejudices to have to look at the

1 deceased as opposed to the drawings that have been performed
2 by the medical examiner.

3 THE COURT: The Solicitor says a picture is worth a
4 thousand words. How are you going to know what happened to
5 him if you can't show it. That is not gorry looking. That
6 just shows kind of like, if the Defendant did it, where the
7 blows landed. I mean, what is your position Solicitor?

8 THE SOLICITOR: Yes, Your Honor, that shows defensive
9 wounds as the victim attempted to ward off the blows. These
10 are the --- that is not even the cause of death, the blows
11 to the arms. The cause of death, the pictures I am not
12 planning to use and I don't know whether you have to make a
13 comparison of what is coming in and what is not coming in,
14 the actual blows to the head are the cause of death. And
15 the State is not going to introduce those, but we will
16 attempt through other testimony and other exhibits to show
17 the actual injury to the other parts of the body including
18 the head.

19 THE COURT: I have got what I marked NO, which means
20 the Solicitor is not going to use them, No. 1 and 2 and I
21 put my initials. And that shows you the comparison of the
22 ones that the State does not intend to use. He says he
23 wants to use these to show defensive wounds. I don't think
24 they are inflammable. I think they are showing what ever is
25 there. You have got to show something, if you are going to

1 use demonstrative evidence. I deny your motion on these
2 unless something comes up later on. All right. I will give
3 you these back Solicitor. What else?

4 MR. CRUMRINE: Your Honor, we have a motion to
5 exclude medical testimony which may unduly arouse the
6 passions and prejudices of the jury specifically relating to
7 anything dealing with him eliminating his bladder upon being
8 killed which is just not important to the case, and I think
9 that it is the type of thing which would tend to bring in
10 the sympathy of the jury. And we are prepared to
11 stipulate ---

12 THE COURT: I don't know how to rule on something I
13 haven't heard.

14 THE SOLICITOR: Your Honor, there is going to be
15 testimony from several eye witnesses to the incident that as
16 the victim was being beaten, he was begging them to stop.
17 And indicating please stop beating me, I have to pee. I
18 mean that is all sort of tied in together there, in terms of
19 him begging to stop and it shows the circumstances in the
20 nature of the attack on the victim and I think it clearly
21 goes to the charge.

22 THE COURT: Go ahead.

23 MR. CRUMRINE: Your Honor, I think that that type of
24 testimony coupled with the medical examiner saying that he
25 lost control of his bodily functions at death would add

1 nothing to any probative, any issue that is relevant here
2 and would unduly incite the passions and prejudices. They
3 are going to feel sorry for the fellow having that happen to
4 him at death. And we would ask the Court to exclude any
5 testimony from the medical examiner about his loss of bodily
6 functions upon dying. It really adds nothing to this case.

7 THE COURT: I will let you make your objection at the
8 time, but if there is testimony that he was begging for his
9 life or begging to go to the bathroom, and if there is
10 testimony to the effect that the Defendant kept beating him,
11 wouldn't that tend to show malice, intending to keep on
12 doing that, wouldn't it?

13 MR. CRUMRINE: Your Honor, I would agree with that
14 part but showing that he actually lost control of his bodily
15 functions at death would not add anything to that.

16 THE COURT: Well, it shows he didn't stop. Wouldn't
17 that show continuing malice?

18 MR. CRUMRINE: No, sir, Your Honor, I don't believe
19 so. I think it just shows that upon being hit that he lost
20 control of his bodily functions.

21 THE COURT: Well, in any event, I am going to deny
22 it at this time but I will let you renew your motions
23 anytime you want to.

24 MR. CRUMRINE: Next Your Honor, I have a motion to
25 establish the Defendant's prior record. We filed a Rule 5

1 motion.

2 THE SOLICITOR: What have you got that might be
3 crimes of moral turpitude in the event he takes the stand?

4 THE SOLICITOR: I don't have any Your Honor. He has
5 a failure to stop for a blue light.

6 MR. CRUMRINE: That is fine with me.

7 THE COURT: He said he would take your word for it.

8 MR. CRUMRINE: Also I put in there any alleged bad
9 acts that they intended to try to introduce. They also
10 don't have anything of that nature.

11 THE SOLICITOR: That is correct, at this time. Now,
12 there is an issue concerning a break, a fracture of the
13 victim's hand that we are trying to determine exactly.

14 THE COURT: We will take that up at a later time.
15 What is next?

16 MR. CRUMRINE: I have a motion to suppress the alleged
17 statements made by my client.

18 THE COURT: I will hear that. Are you talking about
19 a Jackson v. Deno?

20 THE SOLICITOR: Yes.

21 THE COURT: I will hear that at a later time.

22 THE SOLICITOR: There will need to be two witnesses
23 at that Jackson hearing. I am not planning to call those
24 witnesses until Wednesday.

25 THE COURT: All right. We have got plenty of time.

1 MR. CRUMRINE: Your Honor, that is all the motions.
2 Going back to the one of sequestration of the jury, I failed
3 to mention one of the basis for additional support for that
4 and that would be Form 3 of the South Carolina Rules of
5 Civil Procedure. But it provides for it in there. And I
6 would like to remind the court of that authority for doing
7 so.

8 THE COURT: I realize counselor, but I think Mr.
9 Pennington pretty well said it in a nutshell. Generally
10 lawyers aren't concerned too much about what goes on during
11 the trial. They are more concerned about what the jurors
12 have been saturated with. When he wants the trial in
13 Charleston County and doesn't want to move it, that kind of
14 removes --- ordinarily would be accomplished. I don't think
15 you'll accomplish a thing in the world by sequestering the
16 jurors in this particular case. But I appreciate that
17 information. Anything else?

18 MR. CRUMRINE: I believe that is it Your Honor.

19 THE COURT: Have a good lunch, see you at 3:00.

20 (Whereupon, a lunch recess was taken until 3:00.)

21 (State's Exhibit Nos. 1 - 29, marked for
22 identification.)

23 THE COURT: Members of the jury panel, there is a
24 question I forgot to ask you and I hope you will forgive me.
25 You know it is so important, and everybody is going to

1 cooperate, it is so important that both the State get a fair
2 trial, and the Defendant get a fair trial. And when I ask
3 you all of these questions I am only trying to assure
4 everyone that I am trying to get jurors that will just live
5 up to that oath, bring in a verdict that speaks the truth,
6 regardless of who it might help or hurt. I am going to ask
7 you this question and if it applies to you just stand up and
8 tell me about it. During the week you are going to be
9 listening to the testimony and I am going to be sending you
10 home at night and I am going to be asking you not to
11 discuss it with anyone. As a matter of fact I am going to
12 ask the jurors that sit in the jury room back there not to
13 even discuss it among themselves. And some jurors might say
14 judge, why can't we talk about it, we got to decide the
15 issues. And of course the answer is you can't really
16 discuss anything until you hear the whole story. So when I
17 send you home or you go to lunch, or you talk to your
18 husband, or your wife or your boyfriend or girlfriend or
19 friends, I am going to ask you not to be discussing it. I
20 am going to ask, jurors, also, that they not watch any news
21 that has anything to do with this case. Of course, the only
22 way you can really do that is to say for just a couple of
23 days I promise you I won't watch TV, and I won't read the
24 newspaper. And I won't turn the radio on. If you just say
25 that real fast, my children would go crazy. But is there

1 anybody that feels that they couldn't live up to that and
2 say this week, I promise during this trial if I am sitting
3 on this jury, I won't pay any attention to the
4 communications at all? Anybody feel that they couldn't do
5 that? Last week, I took the grandchildren down to Disney,
6 and I didn't read the newspaper or watch TV for a week and
7 you would be surprised how restful it is. Anything further
8 from the State?

9 THE SOLICITOR: That is all from the State.

10 THE COURT: The Defense?

11 MR. CRUMRINE: That is all for the jury Your Honor.

12 We have a motion regarding the press coverage.

13 THE COURT: I will take care of that at a later time.
14 Give us a jury. Do you have any objection to the clerk
15 drawing the names out of the cylinder?

16 THE SOLICITOR: No, sir, Your Honor.

17 MR. CRUMRINE: No, sir, Your Honor.

18 THE COURT: All right, sir.

19 (Whereupon, jury selection was had at this time.)

20 THE COURT: Any motions before I discharge the jury?

21 THE SOLICITOR: Nothing from the State.

22 MR. CRUMRINE: Nothing from the Defendant.

23 THE COURT: I am going to send you to your room just
24 a minute, members of the jury who were drawn here. And when
25 you come back, Ms. Jones, I understood you to say you were

1 an interpretor were you not?

2 MS. JONES: Yes, I am Your Honor.

3 THE COURT: What kind?

4 MS. JONES: I am a hearing impaired interpretor. I
5 work with children that has a hearing problem and I go into
6 some of the classrooms to the high school and interpret sir.

7 THE COURT: Have you ever served on a jury before?

8 MS. JONES: No, I haven't Your Honor.

9 THE COURT: Well, you will make me a good foreman,
10 because I will be able to teach you like I want you to do.
11 So when you come out of your jury room, I want you to take
12 that seat where this lady is and you always keep that seat.
13 Now, Ms. Brown, you are my first alternate and if something
14 occurs to one of the jurors, you will take their place you
15 understand. You are going to stay in the courtroom until
16 the very end. And Ms. Marvel, you are going to be my second
17 alternate. The rest of you I am going to excuse you until
18 9:30 tomorrow morning. Feel free to stay in the courtroom,
19 if you would like to. I am going to send you to your room
20 for just a moment or two. Just follow my drill sergeant
21 there.

22 (Whereupon, the jury exited the courtroom.)

23 MR. CRUMRINE: We had originally made the motion to
24 sequester the jurors due to the extreme amount of media
25 coverage of this case. And I am informed that Judge Rawl

1 has approved the use of the courtroom by the media. We
2 received no notice of a motion to have them included in here
3 during this trial and what I would ask Your Honor, is to
4 reconsider the motion to sequester the jury, or in the
5 alternative to prohibit the media coverage from inside the
6 courtroom, due to the fact that it is likely to increase the
7 amount of coverage on the TV and in the newspapers, and to
8 cause more interest to be drawn to this. And there is a
9 greater potential for prejudice.

10 THE COURT: Counselor, I deny your motion. The media
11 they can stay in here if they want to, if they had a pad
12 back there, they could draw everything, and it really
13 wouldn't be any different. The only difference is the
14 pictures and the camera. And after a while, you won't even
15 notice that camera over there. They have a set of rules to
16 go by, and if during the trial for any reason, you find that
17 it is interfering with anything, you feel free to ask for a
18 recess. I will be glad to consider it. In the meantime I
19 want to get all of the press that is back there, and have
20 them come in the courtroom for just a minute. Mr. Bailiff.
21 Mr. Brown, you are going to operate the camera?

22 MR. BROWN: Yes, sir.

23 THE COURT: And how many people are back in the other
24 room, and how far are they away? How about come up here
25 just a minute. My bailiff said something about when you cut

1 the cameras off in here that you got to cut something off
2 back there. What did you mean?

3 MR. BROWN: The recording itself is controlled from
4 the deck.

5 THE COURT: Wouldn't make a difference. I don't have
6 any objection to the recording, whatever goes on here. If
7 they were in the courtroom they could listen to what is said
8 and make notes on it. The rules don't preclude them from
9 recording what is going on back there.

10 MR. BROWN: I have informed them of the discussion
11 that you and I had, so they are aware.

12 THE COURT: So in other words, what is going to
13 happen is you will be able to take all of the proceedings of
14 the witnesses, and when the jury goes out, your camera will
15 be off and you will cut it back on when the witness takes
16 the stand?

17 MR. BROWN: Actually, what I will do is turn the
18 camera away from whatever is going on.

19 THE COURT: Anything further, counselor? Other than
20 your previous objections which I ruled on.

21 MR. CRUMRINE: No, sir, Your Honor.

22 THE COURT: Ready to go forward?

23 MR. CRUMRINE: Yes, sir.

24 THE COURT: What about the witnesses?

25 THE SOLICITOR: I have agreed to let the mother

1 remain in the courtroom. I have my first witness to call
2 present in the courtroom. I have my investigating officer.
3 So we will be able to crank right up.

4 THE COURT: Have you got your witnesses sequestered?

5 THE SOLICITOR: They will be out of the courtroom and
6 Mr. Burnett will help me coordinate.

7 THE COURT: Be sure to give them my instructions
8 about not discussing the case among themselves. Once they
9 have testified, Solicitor, if you think you are going to use
10 them again on reply or anything, you need to take that into
11 consideration.

12 MR. CRUMRINE: Your Honor, there are potential
13 witnesses we have. We have instructed none of them to be
14 present at this time, only to stay within telephone reach.

15 THE COURT: Anything else?

16 THE SOLICITOR: None from the State.

17 THE COURT: All right. Bring the jury in for me
18 please.

19 (Whereupon, the jury entered the courtroom.)

20 THE COURT: Let me see, I want my alternates to be at
21 this end if you will for me. My two alternates, how about
22 swap ends for me. I always like my alternates to be at this
23 end. Mr. Clerk, swear the jury.

24 (Whereupon, the jury was sworn in at this time.)

25 THE COURT: Thank you very much. Now, members of the

1 jury, how many of you have never served on a jury before?
2 Good many of you. Let me tell you what is about to happen.
3 As I have told you earlier, the State charges Mark Hamilton
4 with the crime of murder. And to this indictment which is
5 not evidence, it is just a piece of paper which goes to your
6 jury room that we write the verdict on and which contains
7 the charges, to this indictment he pleads not guilty. And
8 what we are just about to go through, what you are going to
9 have to complete is to determine whether or not the State
10 meets their burden of proof, that is to prove him guilty
11 beyond a reasonable doubt. Because a person charged with a
12 crime no matter how serious it might be is always presumed
13 to be innocent. So you start this case with Mr. Hamilton
14 sitting at that table, he is just as innocent as you and I
15 until the State, if indeed they can, satisfies you of his
16 guilt beyond a reasonable doubt. What is a reasonable
17 doubt? Use those words reasonable doubt just like you would
18 in your every day affairs. It says that a reasonable doubt
19 is a doubt which would make a reasonable person hesitate to
20 act.

21 Now, what is going to occur is the Solicitor is going
22 to get up and he is going to make some reasonably brief
23 opening remarks. And tell you what this case is all about.
24 In other words, he is going to tell you in essence, what he
25 intends to prove. Following that, Mr. Hamilton's attorney

1 can get up if he wants to, doesn't have to. He can get up
2 at this time or even later on if he wants to or wouldn't
3 have to do anything. But if he wants to he can get up and
4 make some opening remarks to you, and when that is
5 completed, then the State puts up their witnesses. And
6 those witnesses will be sworn, have a seat here at this
7 stand and each side gets a right to examine those witnesses.
8 When the State has put up all of their testimony, then the
9 defense. If they want to, I keep saying if they want to
10 because remember I told you they didn't have to prove
11 anything. If they want to they can put up witnesses and if
12 so, then those witnesses will be examined by each side. And
13 when that is completed, then each side gets a right to
14 summarize their case to you. Sometimes you have heard that
15 on TV called argument to a jury. In other words, they tell
16 you what they think is the situation and why their side
17 should prevail. And when that is completed, then I am going
18 to give you some instructions on the law. Because that is
19 what I am supposed to do. I am going to preside in this
20 case and I am going to tell you what the law is. The most
21 important people in this particular case to render a
22 decision is you. The reason for that is the fact that our
23 South Carolina Constitution makes you, the jury, the sole
24 judges of the facts in the case. So you are going to have
25 to listen to this testimony and decide what portion to

1 believe or what portion not to believe. In other words, I
2 can't tell you in any way how I feel about who you ought to
3 believe or not to believe. That is your job. All I am
4 going to do is tell you what the law is. And so you see you
5 will take the law as I give it to you, and apply it to the
6 facts as only you can find, and deliberate to reach a
7 verdict in this case.

8 Now, throughout the trial one of the attorneys might
9 get up and say I object. And I will send you to your room
10 and you might feel like a jack in the box sometimes, up and
11 down, up and down. And the reason for that is I will be
12 ruling on a matter of law because remember I told you that
13 was my job. Suppose one of them got up and said I object
14 Judge, I don't think that testimony ought to come in. And
15 you listen to it, and later on I said, well you can't come
16 in. See you would have already heard it and that is why I
17 send you out. It is important that you don't discuss this
18 case, remember I told you not to discuss this case, not even
19 among yourselves, until you have heard all of the testimony.
20 Each side has a right, a chance to summarize their case to
21 you and I tell you what the law is and then you can discuss
22 it. And remember I told you that the reason for that is you
23 can't really discuss anything until you hear both sides. So
24 listen carefully and then we will go forward with the case.

25 Now, for any reason Madam Foreman, anybody wants to

1 here.

2 THE WITNESS: I'm sorry, what was the question?

3 BY THE SOLICITOR:

4 Q Were you able to, based upon the items that were
5 brought to the Medical Examiner's Office, and your
6 observations of the injuries to Mr. Sineth, to make any
7 observations concerning the injuries and the correlation to
8 any of those items?

9 A Yes, sir, we were able to look at those and in
10 several cases we were able to form an opinion about whether
11 or not those weapons were consistent.

12 Q And how were you able to make that determination and
13 what was your determination based on a reasonable degree of
14 medical certainty?

15 A We examined the size and shape of the various
16 injuries against the size, shape, weight, physical
17 characteristics of the various weapons. In some cases we
18 were able to say that we felt that this particular weapon
19 was consistent with an injury, and in other cases we were
20 able to say that perhaps it was one of two or three
21 different weapons.

22 Q And have you prepared any charts or diagrams to
23 assist you in explaining that to the Court and to the jury?

24 A Yes, sir.

25 THE SOLICITOR: We can run through that.

1 THE COURT: I don't want to go through the rest of
2 that. Counselor, what is wrong with that?

3 MR. CRUMRINE: Your Honor, at the time this
4 identification was made, he wasn't qualified to do that. He
5 had not completed that area of study, he was studying that
6 at the time in school. He is up here testifying that we
7 were able to do this, that is hearsay.

8 THE COURT: When he said we, he is talking about the
9 people that examined with him. But this doctor is
10 testifying from his own knowledge.

11 MR. CRUMRINE: He is testifying that we, there is
12 more than one person assisting him in this.

13 THE COURT: You can cross examine him at a later
14 time. But let me tell you as I see it, and you can correct
15 me if I am wrong, he said that it was consistent, these
16 injuries are consistent with that type and he said further
17 more in some cases I understood that he was able to fit that
18 type weapon, if you want to call it a weapon, to the wound.
19 So this goes to the weight, does it not? What would you
20 want him to be, a wood expert?

21 MR. CRUMRINE: This is a scientific testimony, it is
22 an expert witness, yes, if he is going to say that. He said
23 perhaps. And that is not to a reasonable degree of medical
24 certainty. Perhaps.

25 THE COURT: I didn't hear that.

1 MR. CRUMRINE: Yes, sir, and it falls far short, it
2 was a leading question to a reasonable degree of medical
3 certainty, but he added perhaps. There is just no way you
4 can look at these sticks and say that it came from one thing
5 or the other.

6 THE COURT: What is your opinion about those weapons
7 and about the wounds, Doctor?

8 THE WITNESS: I feel that there is one particular
9 injury on the arm that is highly consistent and in my
10 opinion was caused by one of those weapons.

11 THE COURT: When you say highly consistent, do you
12 mean --- Solicitor, you better phrase your question now.

13 THE WITNESS: I was able to take a tracing of this
14 particular injury, and a tracing of a portion of a
15 particular stick and overlay the two and they matched with
16 enough accordance to satisfy me that one was caused by the
17 other.

18 THE COURT: What about that?

19 MR. CRUMRINE: To satisfy him, but he wasn't
20 qualified to do that at the time. I mean everybody can look
21 at the sketch and say ---

22 THE WITNESS: Sir, I was qualified.

23 THE COURT: Hold a minute, Doctor.

24 MR. CRUMRINE: This is scientific.

25 THE COURT: Just put what you want to on the record.

1 THE COURT: Solicitor.

2 THE SOLICITOR: I have no objection to that. On
3 occasions when judges have done that in the past, they
4 included in their closing charge that they may use that to
5 refresh their own memories but not to try to convince the
6 other jurors as to what was testified to.

7 THE COURT: All right. Bring me the foreman.

8 (Whereupon, the foreman entered the courtroom.)

9 THE COURT: Madam Foreman, you ask me the question if
10 the jury is allowed to take notes. I will allow it, you can
11 discuss it. I will allow you to take notes, but if you do I
12 would give all of you pads. We are pretty far in the trial
13 now. And also if they take notes, they would only be
14 allowed to refresh themselves and not discuss their notes
15 with anyone else. So you let me know whether or not you
16 want 12 pads and pencils.

17 THE FOREMAN: Okay, sir.

18 THE COURT: Let the bailiff know for me.

19 THE FOREMAN: Thank you, sir.

20 (Whereupon, the foreman returned to the jury room.)

21 THE COURT: Bring your witness around.

22 ELLEN MAYER, being first duly
23 sworn, testified as follows:

24 THE CLERK: State your name and spell your last for
25 the record.

1 THE WITNESS: Ellen R. Mayer, M-A-Y-E-R.

2 DIRECT EXAMINATION BY THE SOLICITOR:

3 Q And you are employed with the Charleston County
4 Sheriff's Department?

5 A Yes, sir.

6 Q And in what capacity?

7 A I am a deputy sheriff with the department, been their
8 eight years.

9 Q Were you so employed on the day of October the 22nd,
10 1991?

11 A Yes, sir.

12 Q What were your duties on that date?

13 A I was assigned to the Transportation Unit of the
14 Sheriff's Office, and was standing by at the Charleston
15 County Hospital with a patient.

16 Q With a patient. While you were there, did you have
17 occasion to receive a call?

18 A Yes, sir, from my supervisor.

19 Q Who was your supervisor?

20 A Sgt. Gail Hilton.

21 Q As a result of that call, what did you do?

22 A I was advised to meet an ambulance coming in with a
23 black male subject later identified as Mark Hamilton, and
24 was told to stand by, take him into custody and stand by
25 until either a road officer or a detective unit could meet

1 me at the hospital.

2 Q And did you do that?

3 A Yes, I did. He was brought in on a stretcher and
4 placed in the surgery room of the county hospital, at which
5 time I identified myself with the Sheriff's Office, advised
6 him that he was under arrest at that time, and placed cuffs
7 on him and cuffed him to the hospital bed so that he could
8 not leave.

9 Q Did you ask him questions at that point?

10 A No, sir I, did not ask him anything.

11 Q Did you Mirandize --- did you give him the warnings
12 known as the Miranda warning at that time?

13 A No, sir, I didn't ask him any questions.

14 Q Okay. So you weren't engaged in any conversation
15 with him?

16 A No, sir, I just stood by.

17 Q At the time that you placed the cuffs on him, did he
18 make any statements to you that were not the result of an
19 interrogation or questioning?

20 A Yes, sir, he was a little upset, and he said to me
21 that he hadn't done anything, and went on to say that ---
22 and this was all on his own, he said that the other boys was
23 ganging that white boy and he said he got between them and
24 told them to run. He said I don't know who they were, I see
25 him around but I don't know their names. I was just trying

1 to help him, I didn't do anything to be locked up.

2 Q Okay. Now, at that point you were not asking any
3 questions at all?

4 A No, sir, I was just standing there.

5 Q Okay. And what happened after that point? You
6 indicated that you were to wait for an officer to arrive?

7 A Yes, sir, Detective Zayac, Tim Zayac arrived,
8 probably somewhere in the neighborhood of 15 minutes or so
9 after Mr. Hamilton was initially brought in. At that time,
10 he identified himself, told the subject that he was under
11 arrest for murder, and then gave him his Miranda at the
12 time. And I witnessed that.

13 Q You witnessed the Miranda?

14 A Yes.

15 THE SOLICITOR: Thank you. Answer any questions Mr.
16 Crumrine might have.

17 CROSS EXAMINATION BY MR. CRUMRINE:

18 Q Deputy Mayer.

19 A Yes, sir.

20 Q How are you?

21 A Fine.

22 Q When you were contacted by is it Sgt. Hilton?

23 A Yes, sir.

24 Q What did he tell you about the individual coming
25 there?

1 A She told me that the subject was being brought in. I
2 was not aware of any of the nature of the charges on him. I
3 had no knowledge of the incident because I had been at the
4 County Hospital for some time prior to receiving the phone
5 call and I had absolutely no knowledge of the charges that
6 were on him. I was just told to stand by, take him into
7 custody, and hold him until another officer could relieve me
8 at the scene.

9 Q You were not told the nature of the offense?

10 A No, sir, I had no knowledge of any charges or the
11 incident.

12 Q You were told to place him under arrest though?

13 A Take him into custody and place him under arrest so
14 he could not leave.

15 Q All right. And you were trained at the Justice
16 Academy, were you?

17 A Yes, sir.

18 Q And do they teach you up there that when you place
19 someone under arrest, take them into custody that you always
20 read them their Miranda rights?

21 A My knowledge of Miranda is that if you intend to
22 interrogate, for interrogation purposes or asking any
23 questions then Miranda is given. I had no intention of
24 doing that nor did I ask him any questions.

25 Q My question was did they teach you always to do that

1 as soon as you arrest or put someone into custody?

2 A As I said my knowledge of Miranda is if you intend to
3 interrogate or ask any questions then the Miranda is given.

4 Q Is that a no?

5 A I had no intention of asking him questions, so I did
6 not feel it was necessary.

7 Q I understand that. But what I was asking you is if
8 they teach you always to do that?

9 THE COURT: To do what?

10 MR. CRUMRINE: To read them the Miranda rights.

11 THE WITNESS: If you were going to question the
12 individual at arrest, then you give them Miranda.

13 BY MR. CRUMRINE:

14 Q All right. This lengthy conversation that you
15 described, was without any questions interviewing in
16 between?

17 A No, sir, he was very vocal at that time. As soon as
18 I told him that he was in custody and did not ask him any
19 questions, this was all spontaneous, this is what he was
20 rambling on about. He was also after Detective Zayac read
21 him his rights and told him he was under arrest, he also was
22 yelling he wanted his mom. You know, but it was all
23 spontaneous. He was in a great deal of pain at the time
24 because of the injury to his thigh, and there was a lot of
25 other things that he said, you know, along the lines of

1 being in pain, and you know.

2 Q Do you know if they had given him any pain
3 medication?

4 A No, sir, at that time they had just sent someone in
5 to look at his leg, and it is usually a hurry up and wait
6 game.

7 Q Could you tell if he was intoxicated?

8 A I was not that close to him, sir. All I know is that
9 he had an injury to his thigh, left thigh.

10 Q Can you tell if he was in shock?

11 A My medical knowledge is limited. All I can tell you
12 is that he did have a cut on his left thigh.

13 Q And basically all you are saying is that he denied
14 being involved and that he didn't know the other
15 individuals?

16 A That is what he spontaneously said. I asked him no
17 questions, sir.

18 Q All right. When Detective Zayac got there, Miranda
19 rights were the first thing he did.

20 A He introduced himself, told him he was under arrest
21 for murder and then gave him his Miranda.

22 Q Did he question him?

23 A He attempted to. I left at that time because I
24 needed to go check on my patient. My patient was in lock
25 up, but I still needed to go check on my patient.

1 MR. CRUMRINE: I have no other questions.

2 THE COURT: All right. You can come down. Anything
3 else?

4 THE SOLICITOR: No, sir, Your Honor.

5 THE COURT: You can come down.

6 THE SOLICITOR: Your Honor, at this time the State is
7 going to move to allow that testimony to be heard by the
8 jury.

9 THE COURT: What is your position?

10 MR. CRUMRINE: Your Honor, I don't have any argument
11 on that point.

12 THE COURT: All right. Call your next witness.

13 THE SOLICITOR: The State would call Tim Zayac.

14 TIM ZAYAC, being first duly
15 sworn, testified as follows:

16 THE COURT: Give us your full name and spell your
17 last.

18 THE WITNESS: Tim P. Zayac, Z-A-Y-A-C.

19 DIRECT EXAMINATION BY THE SOLICITOR:

20 Q And you are employed at the Charleston County
21 Sheriff's Department?

22 A Yes, sir, I am.

23 Q Back on October 22nd, 1991 in what capacity were you
24 employed with the Sheriff's Department?

25 A I was assigned to the Detective's Office, with the

1 crimes against persons team.

2 Q And were you involved in the investigation into the
3 death of Gary Sineth?

4 A Yes, I was.

5 Q What were your responsibilities in that case?

6 A I was dispatched to the Charleston County Memorial
7 Hospital by Sgt. Garrison, I believe, in reference to
8 meeting with a suspect who was being detained or under
9 arrest at the time in the emergency room and I was to
10 interview that subject.

11 Q Okay. And did you do that?

12 A Yes, I did.

13 Q And where did you go?

14 A To the Charleston County Memorial Hospital, to the
15 emergency room.

16 Q And at that point, when you arrived there, what did
17 you do?

18 A I observed Deputy Mayer, who was watching one Mark
19 Hamilton, who was already handcuffed to the stretcher in one
20 of the surgical sections of the emergency room. I have
21 dealt --- I have talked to Mark before when I was a
22 patrolman on the street. We knew each other.

23 Q Go ahead.

24 A And I identified myself, and I advised him of his
25 rights under Miranda and asked him what happened.

1 Q And when you say you advised him of his rights under
2 Miranda, how did you do that?

3 A I will just say what I told him. You have the right
4 to remain silent. Anything you say can and will be used
5 against you in a court of law. You have the right to an
6 attorney, if you cannot afford to hire an attorney, one will
7 be appointed to you free of charge. If you decide to answer
8 questions without having an attorney present, you may stop
9 answering questions at any time. And this fact cannot be
10 used against you. And he acknowledged that he understood
11 those rights as stated to him.

12 Q Okay. And did he appear to be under the influence or
13 unable to understand what you had just explained to him?

14 A No, sir. In fact one of the first questions I asked
15 him after that was how are you doing and he stated with the
16 exception of the cut on his leg, he was all right.

17 Q Did you ask any questions at that point?

18 A I basically asked him what happened. I think that is
19 how I phrased it, what happened.

20 Q What was his response?

21 A Mark advised me that he was walking down Ranger Drive
22 towards Alabama when he saw as he put it a white guy run by
23 or being chased by three black guys. He said that he tried
24 to help the white guy, but then the white guy pulled out a
25 knife and cut him in his leg. After he was cut in the leg

1 he said that he basically laid down in the street. That the
2 three black guys that were chasing him, caught the white guy
3 and beat him with sticks. After beating the white guy with
4 sticks, he said the three black guys ran away. He said
5 then, that a white jeep I believe occupied, from what he
6 said, was he cousin drive up, his cousin wouldn't take him
7 anywhere. And then as he put it an old white woman yelled
8 out that the police and EMS are coming.

9 Q Did he indicate whether he knew any of the other boys
10 involved in the chase?

11 A I asked him if he knew any of the individuals that
12 beat the white boy and he stated no. He also stated he
13 didn't know why they beat him.

14 Q Did you ask him specific names at that point?

15 A Yes, sir, I did. I asked him --- I am going to have
16 to refer to my notes. I initially asked him if he knew
17 Darrell Edwards, Lamont or Mont and Alvin Zellers. He
18 stated that he knew them, and I then asked him if they were
19 the ones that beat the white boy with the sticks and he
20 stated no.

21 Q Did you ask him at any time to put that into a
22 written statement?

23 A After he --- after we discussed the whole thing, I
24 asked if he would give a written statement and he said no.
25 That is basically when I stopped talking to him.

1 THE SOLICITOR: Thank you. Answer any questions Mr.
2 Crumrine might have.

3 CROSS EXAMINATION BY MR. CRUMRINE:

4 Q Detective Zayac.

5 A Yes, sir.

6 Q Could you tell Mark was in pain at the hospital?

7 A He was in some pain, yes.

8 Q Some pain?

9 A To the extent I don't know.

10 Q Did you see his wound?

11 A Yes, I did.

12 Q It was an extreme wound, wasn't it?

13 A It was a large gash to the left calf I believe.

14 Q And you think that that is the type of wound that
15 would produce just a slight pain?

16 A Sir, I don't know how much pain, I mean he didn't
17 look like he was in agony. He was able to talk to me. His
18 frame of mind seemed in tact. He was able to keep sentences
19 that made sense to me.

20 Q And can you tell us why you were talking to him
21 rather than a doctor patching him up?

22 A He was in the process of being admitted, the nurses
23 were coming in and out, you know. Throughout the entire
24 evening they were intermittently treating him and doing
25 other things.

1 Q You guys still had him handcuffed outside, though
2 right, the treatment area?

3 A He was inside the treatment area, inside the surgical
4 section of the emergency room, on a girney.

5 Q And the doctors were waiting for you to finish
6 questioning him so they could treat him?

7 A No, sir. The doctors --- I personally did not
8 prohibit or stop the doctors or the nurses from attending to
9 Mr. Hamilton at all.

10 Q Can you tell he was in shock?

11 A I don't know. He didn't appear to be in shock to me.

12 Q Can you tell he was intoxicated?

13 A No, sir.

14 Q Do you have any --- you said you had some previous
15 knowledge of Mr. Hamilton. Are you aware that his
16 intelligence level is boarderline?

17 A The dealings I have had with Mark Hamilton, when I
18 worked patrol, I worked in the north area, the lower north
19 end. I would be at Alex's at 3:00 in the morning doing
20 paperwork and drinking coffee and he would come in
21 occasionally and purchase a hamburger and we knew each other
22 from, you know, encounters such as that. I never got into
23 any major indepth conversations or anything.

24 Q Could you tell he was of boarderline intelligence?

25 A No, I could not.

1 Q Did you know that he had only been up through the 8th
2 grade?

3 A No, sir, I did not.

4 Q Do you know if Mark knew the nature of the charges
5 against him at the time?

6 A I advised him he was under arrest for murder.

7 Q Mark called for his mom in there, didn't he?

8 A I don't believe Mark called for his mother. After I
9 was done talking to him, I was standing there, I am not sure
10 but I believe his mother was an employee of the hospital and
11 she came down to the emergency room.

12 Q Do you deny that he called for his mother after you
13 arrived for you to read him his rights?

14 A I don't remember him calling for his mother. I am
15 not going to deny it, I just don't remember it.

16 Q Do you believe that Mark had time to consider the
17 nature of his charges, and all the legal rights that you
18 read him and the ramifications?

19 A Yes, as I advised him why he was under arrest, and
20 then advised him of his rights. He acknowledged that he
21 knew his rights that I just advised him of. And then
22 basically I asked what happened and what he told me made
23 sense. He didn't question the rights, he didn't ask me any
24 legal type questions, like what kind of penalties am I
25 facing, things like that.

1 Q Okay. Do you know if he had pain medication by the
2 time you talked to him?

3 A I have no idea. I do not know.

4 Q So, you don't know whether he was under the influence
5 of pain medication or still in pain?

6 A As I previously mentioned, I don't know if he had any
7 pain medication. As for pain, he looked somewhat
8 discomfoting, however he was able to talk in a rational
9 type conversation with me.

10 Q It did appear to you that he didn't want his
11 statement in a written form, didn't it?

12 A After he verbally told me what happened, I then asked
13 if he would give a written statement and he said no.

14 Q All right. And from that didn't it appear that he
15 didn't want any statement to be used against him?

16 A When he said no, I discontinued any conversation with
17 him. I stopped the interview at that point. Whether he
18 wanted to continue, I don't know. He stated I do not want
19 to give a written statement, I just stopped.

20 Q My question is that didn't it appear to you that he
21 didn't think the oral statement could be used against him
22 but a written statement could?

23 A No, sir, I didn't get that impression.

24 Q And in his statement, he doesn't ever admit being
25 part of this assault, is that correct?

1 A That is correct.

2 Q And he basically just didn't want to let you know
3 that his people he knew were involved, is that right?

4 A He didn't tell me that they were involved. His
5 reason, I don't know his reason. When I asked him
6 specifically the names, he said that they were not involved
7 in the beating.

8 Q Did he say anything incriminating?

9 A Not when I interviewed him. During the course of his
10 treatment, I maintained myself in the emergency room, he
11 made statements to the medical officer and while being sewed
12 on and treated, he made other statements.

13 Q What statements were those?

14 A When the medical officers came in and started looking
15 at the wound, the doctor asked what happened, this is after
16 I interviewed him. Mr. Hamilton told the doctor that some
17 boys were chasing a white boy and were trying to rob the
18 white boy, where as before he told me he didn't know why
19 they were chasing him. During the course of his treatment
20 on and off, he became very violent, and had to be restrained
21 by the security of the hospital and during that point, he
22 started yelling, let me check my notes for the names. I
23 didn't kill anybody, Juney and Alvie beat the boy being the
24 individuals that I already asked if they were involved in
25 the beating.

1 Q So to the doctor also, he didn't say anything
2 incriminating to him?

3 A No, sir.

4 Q Let me see your notes there, please. Detective
5 Zayac, about when did you make those notes?

6 A I jotted these down this morning as I was reviewing
7 my incident report.

8 Q All right. Did you write any notes down at the time
9 when this questioning was to have been taking place?

10 A Yes, sir, I did.

11 Q And do you know where those notes are?

12 A I may have turned them into the case agent, but I
13 don't know.

14 Q And do they reflect the actual responses given at
15 that time?

16 A They would have yes, sir.

17 Q And your notes from this morning are based on your
18 memory of what those notes contained?

19 A These notes here are taken directly out of my
20 incident report, reviewing the incident report. That is
21 where I took them.

22 Q Did you read Mr. Hamilton his rights off of a card, a
23 Miranda card?

24 A No, sir, I did it from memory, like I just did here.

25 Q And you testified that you didn't leave any of them

1 out using memory at that time?

2 A No, sir, what I stated just now is what I stated to
3 him.

4 Q Don't they provide you with cards to have the
5 defendant acknowledge his rights on?

6 A Like sign them?

7 Q Yes.

8 A Not that I am aware of with the Sheriff's Department.

9 Q You have never seen a Miranda card?

10 A I have seen a Miranda card but not with one that
11 there is a signature block for the individual you are
12 Mirandizing to sign. Now, we do have an advisement of
13 rights form at the Sheriff's Office, a page typed form, but
14 I didn't have any of them at the time, when I was
15 interviewing Mr. Hamilton down at the hospital.

16 MR. CRUMRINE: I have no other questions.

17 REDIRECT EXAMINATION BY THE SOLICITOR:

18 Q Detective Zayac, did you promise anything or threaten
19 any punishment in order to get him to say those things to
20 you?

21 A No, sir.

22 Q Did he seem to understand what you were asking him
23 and advising of him?

24 A Yes, sir, he did.

25 THE SOLICITOR: That is all the questions I have.

1 THE COURT: Thank you. I find the State satisfied
2 me, at least by the preponderance of the evidence that the
3 officer gave the Defendant his Miranda rights, that he
4 understood them, that he made a statement, that no threat or
5 reward of any kind was given for him to give that statement.
6 And that the statement was free and voluntary and of course
7 it would be up to the jury to decide what weight they are
8 going to give it.

9 MR. CRUMRINE: Your Honor, can I be heard on that
10 briefly?

11 THE COURT: Of course.

12 MR. CRUMRINE: Your Honor, the testimony from Officer
13 Mayer was that my client asked for his mother after being
14 read his rights. There is a case law to the effect that
15 that ---

16 THE COURT: This officer didn't testify to that.
17 This officer testified that he might have, but he doesn't
18 recall hearing him say that.

19 MR. CRUMRINE: I said Officer Mayer testified to
20 that, Your Honor. And there is case law to the effect that
21 if they ask for their mother that that invokes the right. I
22 make a motion to suppress on that basis.

23 THE COURT: Now, don't forget the previous officer
24 who testified said something to the effect that he asked for
25 his mother to begin with. But if you recall this officer

1 wasn't present. You are asking me to disallow the
2 statements because he had been under custody of the first
3 officer?

4 MR. CRUMRINE: Your Honor, it is my understanding of
5 the first officer's testimony that it was after Officer
6 Zayac read him his rights that he asked for his mother.
7 That is my understanding, and I believe that that coupled
8 with the fact that my client did not want to sign a written
9 statement, and the whole totality of the circumstances
10 there, existing with him being handcuffed, with him being in
11 pain not having medical attention at the time would lead to
12 grounds for keeping the statement out. An additional
13 ground, also Your Honor, would be that I was not provided
14 any of the notes taken about this statement under Rule 5. I
15 made a motion for all notes and any statements taken from my
16 client, and we are dealing right now with recollections
17 written down from a report, and I think I have the second
18 ground, which would be necessary to keep it out as well.

19 THE COURT: As I recall this officer said that he
20 made some notes, he doesn't know where those notes are.
21 That he made an incident report and what he read from today
22 or the notes that he had today were taken from his incident
23 report. I deny your motion to keep this from the jury. I
24 think the totality is that he did understand his rights and
25 the statement was free and voluntary. Of course it will be

1 up to the jury, who they want to believe.

2 THE SOLICITOR: Your Honor, for the record the
3 incident report, which Detective Zayac mentioned as making
4 these notes he is using today, was in fact part of the
5 discovery package which was provided first to the attorney
6 initially representing the defendant and then we did a
7 complete new work up package of this information for Mr.
8 Crumrine probably about a month ago. And it would have been
9 included as part of that.

10 MR. CRUMRINE: So the record is clear, I received the
11 supplemental incident report of Officer Zayac which
12 involves four pages and it does not include any hand written
13 notes taken at the time of the statement given.

14 THE COURT: This officer said he doesn't know where
15 his notes are counselor.

16 MR. CRUMRINE: I understand that, Your Honor. I am
17 objecting to it being introduced without them having
18 provided those notes. It doesn't appear that they have made
19 search for those notes, that it was supposed to be in the
20 case file. And I don't know also where they are and I would
21 like to have a chance to look at them.

22 THE COURT: What have you got to say about that
23 Solicitor.

24 THE SOLICITOR: Your Honor, again, those are case
25 notes, and I assume and perhaps we should ask the officer,

1 how he came up with his incident report, which I assume
2 contained the exact same information.

3 MR. CRUMRINE: I object to him ---

4 THE COURT: Do you know where the notes are and what
5 you did with the notes and was the incident made from your
6 notes or memory or just tell us what you can about it?

7 THE WITNESS: Sir, the incident report was made with
8 the use of the notes taken from my interview at the
9 hospital. As to the whereabouts of the notes now, I thought
10 I gave them to the case officer, but I am not sure. I don't
11 know where the notes are.

12 THE COURT: All right sir.

13 THE SOLICITOR: And Your Honor, please the Court.

14 REDIRECT EXAMINATION BY THE SOLICITOR:

15 Q The incident report that you referred to earlier,
16 when was that prepared?

17 A 10/22/91.

18 Q That is the same day as the incident?

19 A Yes, sir.

20 Q And is there anything that was in your notes that
21 would lead a jury or a judge to believe that would be
22 exculpatory to show that in fact the Defendant was not a
23 participant in the crime, or be of assistance to his
24 defense?

25 A No, sir, not that I am aware of.

1 MR. CRUMRINE: Your Honor, if I could, before that
2 just interpose an objection to the State's request to
3 charge, they have placed one in here dealing with legal
4 provocation, and I would ask you to charge my request to
5 charge instead, my request No. 3 on the manslaughter. And
6 it goes into what constitutes just provocation and I object
7 to his, and I request my No. 3.

8 THE COURT: You state here that provocation must
9 produce in the mind a person's ordinarily constitutes the
10 highest degree of exasperation, rage, anger, et cetera. I
11 got a good charge on provocation in my general charge and it
12 is taken from State v. Davis, but I don't know of any South
13 Carolina case which cites those words that you have given
14 me. Where did you get them?

15 MR. CRUMRINE: Your Honor, that is quoted as being
16 from State v. Davis as it is printed in the criminal law of
17 South Carolina by William McAnich and Gadsden Ferry. And it
18 is taken directly from quotes, or identified as being
19 quotes.

20 THE COURT: From them. Have you read Davis to see if
21 they are correct?

22 MR. CRUMRINE: Your Honor, being that it is an 1800
23 case, I did not have that available to me last night.

24 THE COURT: In any event, I have got a good charge on
25 it. I will not charge it exactly like that. I think you

1 will be satisfied.

2 MR. CRUMRINE: Your Honor, I have request No. 1 which
3 deals with being responsible only to the natural probable
4 consequences of the acts actually agreed upon by
5 co-defendants and we request that that be charged.

6 THE COURT: Is that an exact quote? Because I don't
7 recall the words actually agreed on by the co-defendants.
8 Because as you and I both well know it can be the
9 consequences of their actions. In other words, they may not
10 agree together to murder him, when they started off, but if
11 it is a natural consequence of the acts, the hand of one is
12 the hand of all. What is your position on that, Solicitor?

13 THE SOLICITOR: Your Honor, the case he is citing
14 that from actually has the criminal charge of conspiracy and
15 it dealt with the judge's charge on conspiracy.

16 THE COURT: It doesn't apply to this type of case. I
17 got a charge, I think a good charge on that. I will not
18 charge self-defense.

19 MR. CRUMRINE: Your Honor, I submit it would apply to
20 the accomplice theory as well as the co-conspirator and
21 request it on that basis.

22 THE COURT: All right sir, I deny that. Anything
23 further?

24 MR. CRUMRINE: We requested a charge on self-defense,
25 not as it pertains to my client, but as to the general laws

1 so the jury will have a frame work in which to consider the
2 actions of Mr. Sineth, whether it was imperfect self-defense
3 and in fact disproportionate and unlawful response to a
4 simple assault so they can correctly evaluate what occurred
5 from that point on.

6 THE COURT: No, sir, I deny that.

7 MR. CRUMRINE: I requested a somewhat different
8 reasonable doubt charge in light of Gains v. Louisiana
9 stating simply that a reasonable doubt is a doubt arising
10 from the evidence or lack of evidence, which is based on
11 reason. I think it is the most simple and straight forward
12 statement of that concept.

13 THE COURT: Our latest case from the Supreme Court
14 says that it would be safer if I merely instruct the jury
15 that a reasonable doubt is a doubt which would make a
16 reasonable person hesitate to act. And I have got my charge
17 that Justice, late Chief Justice Ness instructed at the
18 University of South Carolina which I have already recited to
19 you in chambers. I will be glad to give them that. And I
20 don't have any objection to the charge you have requested.
21 But what is your position, Solicitor? It says this, a
22 reasonable doubt is a doubt arising from the evidence or
23 lack of evidence which is based on a reason.

24 THE SOLICITOR: It really doesn't help define.

25 THE COURT: It tells the jury to use the word

1 reasonable doubt as they would in their every day affairs.

2 THE SOLICITOR: Yes, sir, and that is understandable.

3 The holding of Cage was that. It is best to leave that
4 undefined, but leave it to the plain or ordinary meaning
5 that the jurors would normally give to those two words.
6 Reasonable doubt.

7 THE COURT: I tell you, counselor, I will give them a
8 charge on reasonable doubt and if you don't like it, you can
9 tell me about it at the end.

10 MR. CRUMRINE: All right.

11 THE COURT: I will try to give you the benefit of
12 every doubt.

13 MR. CRUMRINE: We also requested a charge on
14 aggravated assault, assault and battery of a high and
15 aggravated nature, simple assault as being lesser events
16 which would have taken place according to the testimony.

17 THE COURT: The Solicitor agreed to manslaughter.
18 Unless he agreed to anymore I am not going to charge it.

19 THE SOLICITOR: Is he asking for a charge on that or
20 is that a form of the verdict, I guess that is the question?

21 MR. CRUMRINE: I am asking for the charge and the
22 form of the verdict as to aggravated assault and as to
23 simple assault. The evidence from the two witnesses that
24 seem the clearest indicates that the only thing that
25 occurred to Mr. Sineth at the time where my client was

1 injured, was that he had been slapped, that he had been
2 pushed down and kicked at. And I submit that that could be
3 seen as a simple assault or an aggravated assault, and at
4 that point my client was no longer involved in this, and
5 that a separate assault and retaliation happened not at his
6 instance.

7 THE SOLICITOR: Your Honor, I would object to those
8 charges. I don't think under the facts as presented ---

9 THE COURT: I don't think so either, counselor. You
10 are going to get murder and manslaughter. Anything further?

11 MR. CRUMRINE: Yes, sir, I request what I call a
12 telfare charge, in the case on identity and the opportunity
13 of witnesses to observe.

14 THE COURT: I will give you some identification.

15 MR. CRUMRINE: A Jackson v. Deno charge.

16 THE COURT: Yes, sir, I will give you that.

17 MR. CRUMRINE: And a circumstantial evidence charge.

18 THE COURT: I didn't hear any circumstantial
19 evidence. I thought all of it was direct testimony.
20 Solicitor, do you know of any circumstantial evidence?

21 THE SOLICITOR: In terms of this Defendant's
22 involvement, I'm not aware of any. I think circumstantially
23 these logs are linked to the location based on them being
24 found there and being described as similar to the ones that
25 were used. But other than that, as to the guilt of this

1 Defendant's involvement in the death, it was all direct
2 testimony.

3 MR. CRUMRINE: Your Honor, intent is only able to be
4 proven by circumstantial evidence and therefore this case
5 centers on the intent whether it was malice aforethought or
6 the heat of passion, the circumstances as they transpired.
7 Yes, sir, there are direct eye witnesses but they witnessed
8 events which they are trying to prove the circumstances.

9 THE COURT: Unless the Solicitor is going to agree to
10 it, I will not charge circumstantial evidence. Anything
11 further?

12 MR. CRUMRINE: That is it, Your Honor.

13 THE COURT: Do you require the Solicitor to open?

14 MR. CRUMRINE: I would like him to, Your Honor.

15 THE COURT: Only on the law.

16 THE SOLICITOR: Yes, sir.

17 THE COURT: Anything further?

18 MR. CRUMRINE: No, sir.

19 THE COURT: Bring the jury.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Just before you went to lunch, the State
22 had completed their case, and rested their case. And since
23 that time the Defendant and his attorney have decided not to
24 put up any evidence, and for him not to testify. And I want
25 to remind you of what I had told you earlier, he doesn't

1 have to do that. I told you he was sitting at that table,
2 just as innocent as you and I unless the State can satisfy
3 you of his guilt beyond a reasonable doubt. So I will be
4 telling you not even to consider the fact that he doesn't
5 put up any evidence or testify. So at this time, the
6 Defendant's attorney will make his summation, then or rather
7 the Solicitor is going to make some brief opening remarks on
8 the law, followed by the Defendant's attorney and then
9 followed by the Solicitor and then I will give you some
10 instructions on the law. During this time I don't allow
11 anyone to come in or go out of the courtroom. I think it is
12 important that you pay close attention to what the attorneys
13 have to say in defense of their side of the case. But
14 during that time after each one of them makes their remarks,
15 I will let anyone come in or go out and of course if any of
16 you-all need to take a break, all you got to do is tell the
17 Foreman and you tell me Madam Foreman, and we will take a
18 break. All right, Solicitor.

19 THE SOLICITOR: May it please the Court, Mr.
20 Crumrine, Madam Foreman, ladies and gentlemen of the jury,
21 as the Court has indicated we have reached the point in the
22 trial where all of the testimony is in, all of the evidence
23 is in, and now the attorneys, we have a chance to appear
24 before you and sort of summarize the evidence that we have,
25 and then compare it to the law that the judge is going to

1 charge. The judge is the judge of the law in this case, so
2 he will tell you the law and you accept it as he gives it to
3 you. But obviously during the course of our presentations
4 to you we are going to talk about it a little bit. So if we
5 say anything that is different than what the judge tells
6 you, you take it the way the judge gives it to you.

7 There is a couple of basic issues here, and one is
8 the indictment has charged the Defendant with the offense of
9 murder. In South Carolina there is a lesser offense known
10 as manslaughter. When you go into the jury room in just a
11 little while, you will take the indictment, you will take
12 the pieces of evidence, you will take the exhibits into the
13 jury room and you will have to make one of three decisions.
14 Guilty, which would be guilty of murder, guilty of
15 manslaughter or voluntary manslaughter, or not guilty.
16 Those are the issues that you have to determine. Now, my
17 presentation to you at this point is limited to the law of
18 this case. And when I am able to come back in front of you
19 I will be able to compare and plug in the facts of the case
20 and the testimony into the law as I believe the judge will
21 charge you. But the basic issue to be resolved here is
22 guilty of murder, guilty of manslaughter or not guilty at
23 all.

24 Now, I believe the judge is going to charge you the
25 classic definition of murder. And that is the taking of

1 someone's life, another person's life committed with malice
2 aforethought. I also believe that he will charge you the
3 classic definition of manslaughter which is the taking of
4 another's life during sudden heat of passion, with
5 sufficient legal provocation. It is not enough to have
6 sudden heat of passion or as Mr. Crumrine addressed to you
7 in his opening statement to you, heat of the moment. That
8 is not what differentiates murder from manslaughter. It is
9 sudden heat of passion with sufficient legal provocation.

10 Now, what that means is that something must have
11 happened to give, in this case Mr. Hamilton, the legal right
12 to participate and be a participant in the acts that were
13 committed upon Mr. Sineth. Something that legally gives him
14 the right. Listen for that during the closing argument you
15 will hear from the Defense attorney. And I will address
16 that with you when I come back. But you need to understand
17 during the course of this that the other thing that the
18 judge will charge you, which is most important to this case
19 where you have four individuals, in essence ganging up on
20 Mr. Sineth, is the legal concept that the hand of one is the
21 hand of all. And the law of this state is it is possible
22 for two people to be guilty of murdering someone with one
23 gun and one bullet if the acts that happened are the
24 legal --- are the natural and probable consequences of the
25 acts they agreed to do together.

1 So, with these concepts in mind now, that the hand of
2 one is the hand of all in this case, with these four
3 individuals ganging up on Mr. Sineth, and his death, then
4 you have to look for what sufficient legal provocation was
5 there, for those four individuals to do that.

6 I challenge you to listen for that during the Defense
7 counsel's closing argument, and I will be back in front of
8 you in a few moments to address that further with you.

9 Thank you.

10 MR. CRUMRINE: Please the Court.

11 THE COURT: Counselor.

12 MR. CRUMRINE: Madam Forelady, ladies and gentlemen
13 of the jury, we appreciate your patience in listening to all
14 of the evidence and the arguments. I tell you that lawyers
15 are a superstitious bunch when it comes to jurors. We worry
16 about everything down to what kind of tie we might wear in
17 front of you and how you might react to it and how that
18 might affect our client's case. It is all rather silly, but
19 especially in matters as serious as this, that we worry
20 about what you-all think. And of course you-all are
21 supposed to be like an IQ bank of 12 people bringing in all
22 of your experience in life and your intelligence, and being
23 some computer that we can put cold hard facts into, and have
24 you come out with a correct answer at the end. You are
25 supposed to be uninfluenced by the personalities, about how

1 well someone presents evidence versus someone else or how
2 they argue versus someone else. But it is something that we
3 worry about. And I worry about, to some extent, all of the
4 objections and how they might affect you and your perception
5 of my client's case. And the Judge told you at the
6 beginning that it is just a necessary thing that lawyers
7 have to do. And when we have an objection legally,
8 technically too is some evidence, please don't take it that
9 I am being an obstructionist or tedious about something.
10 There are important reasons for doing it, so please just
11 wipe that out of your decision making. Don't let anything
12 that I might have done to alienate you in any way.

13 Early on we asked you a bunch of questions about what
14 you might have heard about this case, and anything that
15 might have also swayed you beforehand. And I knew we
16 selected you-all because we were confident that you-all
17 promised to put those things out of your mind and listen to
18 only what came from the witness stand. So I would ask you
19 to ignore all of that also. One more thing I want you to
20 work real hard on putting out of your mind and coldly
21 evaluate the facts that are before you, and that is that
22 when I am through the Solicitor gets the last argument. And
23 he does his job, he will have you looking at what happened
24 and have you feeling very sorry for the victim as we all do,
25 Mr. Sineth. And when I am through, it just sort of wipes

1 out everything I have said after he does that and I ask you
2 when you go back to your jury room to first take a moment
3 and try to clear all of that out and zone in on what the law
4 is and what the facts are of this case.

5 The Solicitor referred to the legal concepts that we
6 have here and the choices you are going to have when you go
7 back there. Murder, the unlawful killing of another with
8 malice aforethought. He had the malicious intent to begin
9 with. In this case I want you to look at the facts and
10 circumstances. I will address the facts in a moment, I want
11 to hit on the law, but if someone planned on killing another
12 person in broad day light on a busy corner with a bunch of
13 witnesses around. Was this a planned murder, malice
14 aforethought, was this something that happened because of
15 the incidents as they unfolded. Was this maybe
16 manslaughter. Manslaughter is the unlawful killing of
17 another. It is the same up to that point, and those are all
18 words but it is so important as to what they mean when you
19 reflect on about the killing of another during sudden heat
20 of passion. Somebody's feelings are so charged up because
21 of the circumstances, that would prevail them right then.
22 And the Solicitor is right, it doesn't end there. It is the
23 heat of passion upon sufficient legal provocation. That
24 doesn't mean that they had a legal right to do it.
25 Otherwise it would be self-defense or some other defense.

1 Just because somebody makes you sufficiently mad you can't
2 kill them. Okay. Legal provocation doesn't mean they had
3 to provoke you to a legal point where you were entitled to
4 kill them. It is a term of art and that is the crucial key
5 in there, just legal provocation.

6 The Judge is going to have a charge on that and tell
7 you what that means. But basically, I submit to you what
8 just legal provocation means is that what happened was
9 sufficiently bad that an ordinary person's passion would
10 have been uncontrollable. That they couldn't control
11 themselves, because something so wild had happened. And the
12 classic example is having caught somebody in bed with your
13 wife, you know, it is like somebody's passion, that is the
14 classic heat of passion. Something terrible happened that
15 inflamed the ordinary senses to the point where they
16 couldn't control themselves.

17 So when they talk about just legal provocation, that
18 doesn't mean they had a legal right to do it. It means
19 there was something bad enough that an ordinary person would
20 have been hysterical and out of control.

21 Those are the only choices that you are going to have
22 back there, besides not guilty. He is not charged with the
23 aggravated assault or simple assault, which I am submitting
24 to you that Mr. Hamilton is guilty of. And I am submitting
25 to you that what happened out there, under the facts as you

1 heard them from the witness stand is that these fellows were
2 out there, carrying on, meeting up with girls in the street,
3 acting foolish, that they saw a fellow, they went to pick on
4 him. The comment made, slap him, it wasn't let's kill him
5 or anything of that nature.

6 What was the original intent, malice aforethought,
7 did they intend to go kill him. He said slap him and they
8 chased him. His friend slapped him and they chased him
9 down, and two out of three witnesses, and I submit to you
10 the two that were most clear in their testimony, and the
11 ones that related the story the best said that the only
12 thing that had happened to Mr. Sineth, before my client was
13 cut and out of this incident, was that he had been slapped,
14 that he had been pushed down, or fallen down in the ditch,
15 and he had been kicked at. And I ask you to go through your
16 memory and remember what they said. It was Katrina Crommedy
17 and Vernell Rivers, her aunt. They both said the same
18 thing. They are older, and they testified most straight
19 forward. And so what had happened under those facts, I am
20 submitting to you is that there was a simple assault, a
21 bullying in the neighborhood, at the insistence of my
22 client, which is a reprehensible thing to do, it is terrible
23 and I don't expect you to forgive him for that. But that is
24 all that they set out to do, that was the intent. Until
25 something changed the whole situation.

1 Even the third witness, upon my cross examining her,
2 that she hung her head and mumbled and all of that but she
3 came out and said also, that the fellow pulled the weapon
4 before anybody pulled out sticks. I think the first time
5 she ran through it, there were sticks and this and that and
6 it wasn't clear. But on questioning her carefully, she said
7 that there were no sticks invovled in this incident until
8 after my client was cut as well. My client was cut. I am
9 submitting to you the facts show that an attack of a
10 different nature occurred after that. That the witness said
11 that my client went up and sat on the other side of the
12 street. Mr. Sampson came along afterwards, the one that
13 plead guilty to murder, the one that continued to beat him
14 came over and saw my client's leg and started screaming, you
15 cut my buddy, he went over and picked up a stick and he was
16 the one that actually killed Mr. Sineth. My client didn't
17 ask him to do it. There is no testimony that he encouraged
18 him to do anything else, it was out of his control.

19 You saw his leg, you have the pictures of his leg,
20 you know where I think where his concern was at that point.
21 His leg was laying open. You heard the deputies testify,
22 and they certainly have no reason to help my client, that it
23 was so bad that there was twitching muscles and that it was
24 a horrible thing. And it was so far, I submit to you, that
25 it gave rise to the emotions of Mr. Sampson and to the

1 others, that is one clear testimony that we have of that and
2 the other two involved, that they saw this horrible sight
3 and something that was a disproportionate response by Mr.
4 Sineth, laying open my client's leg and that they went
5 crazy.

6 And it wasn't my client's fault that they went crazy.
7 He didn't ask them to. He had no concern except for getting
8 care for his leg and surviving at the time.

9 This is the box cutter held by Mr. Sineth. This is
10 no small little box cutter, it is a big commercial box
11 cutter that he was using in this attack. The blade was
12 found separate from probably getting knocked out by one of
13 the sticks. The Medical Examiner testified that the wounds
14 on his arm were consistent with being swung out in order to
15 make someone drop it. I submit to you all of the kicking,
16 who fights by kicking. I trust most of you aren't involved
17 in fights, but who fights by kicking. I submit they were
18 kicking at this box cutter. They picked on the fellow, he
19 picked up the box cutter, they were kicking at it, two of
20 the individuals are cut on their legs. Mr. Edwards and my
21 client. Is that a coincidence that they happened to be cut
22 on their legs? They are probably trying to kick out this
23 box cutter from Mr. Sineth's hand and when my client was
24 sliced by him, that is when the others saw the wound, and
25 the nature of the whole incident changed.

1 At that point my client had no control of it. The
2 blade is in here, you are welcome to look at that. Some
3 testimony is it is a partial blade at first and I just
4 explored that a little bit, not because it is that relevant,
5 but just to show you another part of what happened in this
6 trial. This is 20 months after the event. Evidence,
7 sometimes stories get better, sometimes they change, people
8 aren't that accurate. But you all need to be sure beyond a
9 reasonable doubt as to the evidence produced and there are
10 changes that happen. People forget the blade wasn't broken,
11 who knows why they said that. People's testimony changes
12 and I submit it becomes better sometimes.

13 But we only have three witnesses to this event. Two
14 of them are very clear and the other one made it clear after
15 cross examination that Mr. Hamilton was not involved in the
16 incident where Mr. Sineth was killed.

17 There is also a concept that the Solicitor put on the
18 board, the hand of one is the hand of all. That only
19 applies, the Judge is going to tell you the whole charge.
20 That is kind of a catchy phrase that you use. The hand of
21 one is the hand of all only if you-all are setting about
22 with the same intention. Yes, if they were all setting out
23 to kill this fellow, then the hand of one is the hand of
24 all. But that is not what occurred here. You can't have a
25 completely different intention to be held responsible. Only

1 if it is a foreseeable result of what occurred. It is not a
2 foreseeable result of a simple assault that someone is going
3 to pull a deadly weapon. Because somebody hits you or kicks
4 you or pushes you down you can't pull out a gun and shoot
5 them, you can't take a knife and slice them up. You can use
6 reasonable force for your defense.

7 And I want you to take into account the actions by
8 Mr. Sineth. I am not trying to attack him at this stage.
9 We all feel sorry for him but is it foreseeable that knife
10 is going to use such a disproportionate response. And it
11 certainly wasn't from my client. He suffered because of it
12 and the others when they saw that, they took their own
13 actions.

14 What other evidence do we have. We had five sticks
15 and poles all together, and nobody has ever said that anyone
16 individually had one or the other of these. And I put up a
17 lot of objections because I object to them bringing in all
18 of the debris from the street and saying this was used and
19 maybe this was used. Nobody ever said that any one of these
20 was one --- two of them said they were consistent with it.
21 But the Medical Examiner also admitted that, you know, there
22 could be many others consistent with it. After he went
23 through all of that, identifying this, and describing
24 finding a hair on it, a dark hair of a male caucasian, that
25 they microscopically looked at that. And the stipulation is

1 read and I don't know the full import of that that landed on
2 you, but microscopically the hair was inconsistent with the
3 victim in this case. It wasn't his hair. But the Medical
4 Examiner has all of that when he is looking at it and he is
5 so sure this is the one. We really don't have a problem.
6 Maybe it was used. And it is really not important to our
7 defense, except that they just, with the lack of other
8 evidence, bring in all of these sticks and try to stack up
9 all of this evidence. There has been no evidence, been no
10 comparison that they actually found blood, compared blood on
11 any of these, and that there were any fingerprints. There
12 is no real evidentiary value except that they found them out
13 there, they don't know who was to have used what. But the
14 only evidence you have is that my client didn't have a
15 stick. He was out of it from the initial time.

16 And under the law, the State has the burden, we don't
17 have to present any evidence. We are supposed to be able to
18 rely on the lack of evidence or the State's evidence when we
19 come into court and rely on that. We are not presenting any
20 testimony, we shouldn't have to. My client is clothed in
21 innocence and you have to look at him that way, unless they
22 brought in witnesses that said he was involved, in an
23 unlawful killing with malice aforethought, or unless they
24 brought in evidence showing that he was involved in a
25 killing in the heat of passion, where there was just legal

1 provocation.

2 I submit to you that under the evidence they haven't
3 done that. What they presented is that Mark was involved in
4 a bullying, and he directed someone to slap him, so he is
5 responsible for that. And he kicked at him. And it might
6 be an aggravated assault, he is not charged with that here,
7 that is not a choice that you have. The State's burden is
8 beyond a reasonable doubt.

9 This isn't a civil court where you tip the scales of
10 justice ever so slightly in that person's favor. This is
11 one where they have to tip the scales to the exclusion of
12 every reasonable doubt that you have. Just the fact that
13 there could be conflicting evidence raised is a doubt. Look
14 at the circumstances, think of the witnesses, that highly
15 charged atmosphere of that incident. Think of how highly
16 charged it is for the other individuals who plead guilty to
17 the manslaughter and one to murder on this case for seeing
18 their friend cut. It was a highly charged situation.

19 I submit that out of all of the little evidence that
20 there is certainly reasonable doubt. We ask you to resolve
21 that in my client's favor and to find him not guilty of
22 these charges.

23 I am going to sit down, the Solicitor gets the last
24 argument, he gets the first argument, the last argument
25 because he has got the burden of proof. Please make sure

1 that you remember the arguments when you go back there that
2 I made, and that you give my client the benefit of the
3 reasonable doubt. Thank you.

4 THE SOLICITOR: Madam Forelady, ladies and gentlemen
5 of the jury, when I was explaining the hand of one is the
6 hand of all concept earlier, I believe the judge's charge on
7 the law is going to be that all persons concerned in the
8 commission of a crime, who either are directly or actively
9 committed the act constituting the offense or who knowingly
10 with criminal intent aid or abet in its commission, or
11 whether present or not, who advise and encourage its
12 commission are regarded by the law as principles in the
13 crime and are equally guilty thereof. I think the testimony
14 has been clear that what happened as the young girls, the
15 aunt and the niece were leaving the other aunt's house and
16 coming down, is they came upon four individuals. And the
17 testimony is clear that as Gary Sineth was walking towards
18 Rex Avenue on Louise that he was spotted by the Defendant
19 Mark Hamilton. And the first comment overheard by those
20 young girls is are you down to slap him. That is to Alvin.
21 That is coming from the Defendant encouraging Alvin. Then
22 he yells out to Darrell, or Juney who was further ahead of
23 him at the intersection of Rex and Louise stop the man. The
24 Defendant again encouraging another person to act. He is
25 the field general out there in this neighborhood. He has

1 now ordered two individuals what to do, stop the man, slap
2 the man. What does Darrell do, what does Juney do, he slaps
3 him, knocks him down. Witnesses say he stumbled into this
4 lot first. Does he pull the box cutter then, no. Does he
5 pull the box cutter when he is stopped, no. He then runs.
6 He runs away from them and the whole situation could have
7 stopped right then if Darrell, with Mark, with Alvin, Lamont
8 had stopped but no they chase him. And they chase him down
9 Rex through a yard here at the corner and they get him here
10 at the spot where he ultimately died, and cornered him
11 again. And these were the odds he is faced. Four against
12 one. And he starts to get kicked and he starts to get
13 beaten and he starts to get hit.

14 The defense would probably have you believe that Mr.
15 Sineth fell down and hit his head on these limbs. But the
16 testimony is clear that he was beaten, and beaten severely
17 about the arms, about the back, and the testimony shows that
18 he was beaten about the head. And you have the testimony
19 --- you have some conflicts in the State's testimony, I will
20 give you that, because you have the girls who were
21 following, Katrina and Vernell were following. Of course
22 they are having to make this cut here, make this corner here
23 and come around this building here to get a view of what is
24 going on. And they say they are out of range for a while,
25 they say ten seconds, 15 seconds or so. You have the 11

1 year old girl at the time who says that all of them had
2 sticks. And it was at that point that the box cutter was
3 produced.

4 Now, the law of self-defense is clear in this state
5 that if we are considering the acts of Mr. Sineth that day
6 in terms of this box cutter, the law of self defense would
7 require him to make use of something like this, four basic
8 concepts. One is that he was not at fault in bringing on
9 the difficulty. Absolutely the case, absolutely true. Gary
10 Sineth was doing nothing more than walking through a
11 neighborhood in which he lived, when he was set upon first
12 by Juney who stopped him and slapped him and by Mark the
13 Defendant, Hamilton, and Alvin Zellers who chased him and
14 finally Lamont Sampson who beat him with a stick.
15 Absolutely not at fault in bringing on the difficulty.

16 Second, Mr. Sineth would have had to actually
17 believed he was in imminent danger of losing his life or
18 sustaining serious bodily injury or actually was in such
19 danger. He had been slapped, he had been pushed down, he
20 had been chased, he had been cornered and in the testimony
21 of the young 11 year old, Celesia Mazyck, was that these
22 sticks were already in their hands before this was ever
23 produced.

24 Third, whether an ordinary man would have believed he
25 was in such danger. Is it reasonable to believe that you

1 might be in danger of great bodily injury after you have
2 done everything you can to remove yourself from the
3 situation, and it won't go away, it continues to follow you,
4 it hounds you. You are being hunted down on the streets
5 that you have the right to walk on, any person has the right
6 to walk on.

7 And fourth, that the Defendant had --- that Mr.
8 Sineth had no reasonable means to avoid the danger of losing
9 his own life, or sustaining bodily injury except to act as
10 he did. He had already run, he was out in the public in a
11 place where every one of us has the right to be. What was
12 left for him. As he is cornered along a fence line, after
13 being chased from one location to another, hit, slapped,
14 pushed down, now being kicked in a ditch, in a ditch. Where
15 else are people going to be cut kicking somebody who is in a
16 ditch. Where is he going to be striking them, exactly where
17 the Defendant was cut, and you will have the pictures back
18 there of Darrell Edwards, exactly where Darrell Edwards was
19 cut, on the leg. You have a one foot drop from where it
20 first is indicated that Mr. Sineth, the victim, was
21 standing. At one point is knocked down and having to fend
22 off for himself in a sitting position in a ditch.

23 Now, I challenge you-all to listen to the Defendant's
24 closing argument to establish where the sufficient legal
25 provocation comes in. I submit to you, you didn't hear it.

1 And it is also the law of the State that sudden heat of
2 passion, that a death in sudden heat of passion without
3 sufficient legal provocation, is murder. The law does not
4 reduce from murder to manslaughter every homicide committed
5 in the heat of passion. It must be passion justly excited
6 by a legal provocation. This wasn't the situation where a
7 husband came home and found his wife in bed with another
8 man. This wasn't an argument concerning whether or not the
9 victim of a case had sexually abused a relative. It is not
10 that type of case at all. And there simply is not, under
11 the facts of the case and the testimony that has been given
12 to you, the exhibits that will go back in, anything to show
13 sufficient legal provocation.

14 The defense in this case is designed to do one thing.
15 And what it wants you as the jurors to conclude as you sit
16 in judgement of this case, as the conscience of the
17 community is to make a determination that the king of the
18 neighborhood, Mark Hamilton, who can order his friends to
19 stop this and do that, stop him, slap him, hit him, that he
20 can do that, that he has a right to do that. And if he
21 does, and the victim, his intended victim is chased down and
22 stopped, and reacts as any person would under the same
23 circumstances in self-defense, that that can then reduce his
24 own culpability, and make something that once was murder
25 into manslaughter, that is what they want you to do. Ladies

1 and gentlemen, every person who lives in Charleston County,
2 regardless of their color, regardless of their sex, has the
3 right to walk the streets, the streets belong to the law
4 abiding. And the question now is do we turn it over to
5 those who want to break the law. Do we want to give control
6 of the streets that we should be able to walk to people who
7 want to yell out orders to their friends so that they can
8 attack us and gang us ---

9 MR. CRUMRINE: Objection, Your Honor.

10 THE COURT: Just a minute. Yes, sir.

11 MR. CRUMRINE: He is arguing that their decision will
12 be to turn over the streets to the people if they do not
13 find this ---

14 THE COURT: I will allow a lot of leeway, just as I
15 allowed you. The jury will take care of it. Go ahead.

16 THE SOLICITOR: Do we allow a criminal Defendant to
17 reduce their own punishment because they claim that once
18 they have been cut in the leg, because they gave the order
19 to commit the assault that began it all, the right to reduce
20 their own punishment. That is the decision.

21 Ladies and gentlemen of the jury, you have been very
22 attentive to the proceedings, you have listened to the
23 testimony. You will have these exhibits in there with you.
24 I only ask on behalf of the State of South Carolina, that
25 you fully consider each and every one of these pieces of

1 evidence and the testimony that has been provided to you
2 and that we call this exactly what it is, murder. Thank
3 you.

4 THE COURT: Let's take just a few minutes. Let me
5 know when you are ready.

6 (Whereupon, the jury exited the courtroom.)

7 MR. CRUMRINE: Before they come in could I ask for a
8 curative charge as well that the Solicitor addressed the
9 jury and told them that they were the conscience of the
10 community in this case. And I object to that comment, as
11 well as to his referring to them as turning criminals loose
12 on the street if they make the wrong decision here. It is
13 my position they are not sitting as the conscience of the
14 community here, but as the judges of the facts of this case,
15 and I think that the one is asking them to use something
16 other than just the reasoning and the logic and the law and
17 the facts of this case, and that it is appealing --- it is
18 telling them that they are going to be turning criminals
19 loose if they make the wrong decision here.

20 THE COURT: All right.

21 MR. CRUMRINE: I would ask for a mistrial and a
22 curative charge in the alternative.

23 THE COURT: All right, sir. I am going to deny that.
24 As I told you earlier, I allowed a lot of leeway. I have
25 heard those words used many times by other Solicitors. I

1 never have had that particular phrase, I haven't read of a
2 case reversed by using those words. What is your position
3 on that Solicitor?

4 THE SOLICITOR: I am sure I have read that before
5 somewhere myself, that is why I used it. I believe you will
6 probably have in your charge that they essentially have no
7 friends to reward, no enemies to punish. Something to that
8 effect.

9 THE COURT: Yes, sir. Let me know whenever they are
10 ready.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: Madam Foreman, ladies and gentlemen of
13 the jury, it now becomes my duty to charge you, which merely
14 means to instruct you on the law that applies to this case.
15 This is a case in which the State charges Mark Hamilton with
16 the crime of murder. And to this indictment he pleads not
17 guilty. And what we just went through, and what you are
18 about to determine is whether or not the State meets their
19 burden of proof, that is to prove him guilty beyond a
20 reasonable doubt.

21 Now, at the end of my charge I will be telling you
22 that you have three forms of verdict. And the fact that I
23 say one before the other has no bearing whatsoever, I just
24 want to alert you what I am going to tell you. I will be
25 telling you that you can find him not guilty of anything.

1 You can find him guilty of murder. Or you can find him
2 guilty of manslaughter which is a lesser included offense of
3 murder. But as I said the fact that I said one before the
4 other has no bearing. But I will be giving you some
5 additional information about that in just a moment too.

6 Now, I charge you and instruct you that it is an
7 important rule of law that a person charged with a crime is
8 always presumed to be innocent. The presumption begins from
9 the moment he is arrested and continues throughout all of
10 the proceedings unless and until the State meets that burden
11 of proof to prove him guilty beyond a reasonable doubt.
12 Because if you have a reasonable doubt, it would be your
13 duty to find him not guilty. And of course reasonable doubt
14 can exist from evidence in the case or lack of evidence, you
15 alone are going to make that determination as to whether or
16 not reasonable doubt exists.

17 What's reasonable doubt. It is said that reasonable
18 doubt is a doubt which would make a reasonable person
19 hesitate to act. Just use those words reasonable doubt like
20 you would in your every day affairs. Now, it is also said
21 that a reasonable doubt is a doubt arising from the evidence
22 or lack of evidence which is based on reason.

23 Now, our South Carolina Constitution makes you the
24 jury, the sole judges of the facts in this case. And if
25 throughout the trial I made a statement or asked a question

1 or ruled in favor of one side or another or for that matter
2 had some look on my face and you think I want to take over
3 your job as judges of the facts, please disregard it. I
4 would not have intended to do so nor could I do so. You are
5 the judges of the facts.

6 As judges of the facts you must of necessity
7 determine the credibility or believability of the witnesses
8 who testified. Well, how do you do that. You do it every
9 day, you don't even think about it. Supposed you can't see
10 out that window and somebody comes in the door and says it's
11 raining outside. Well, you take what you knew about the day
12 before you came in here, how that person said it, what they
13 said and you feed it into your mind like a computer and you
14 make up your mind whether to believe it or not. That is
15 what we call using your common sense. Because when you come
16 into the courtroom you don't leave your common sense at
17 home. You can in this case apply the same little guide
18 lines that you use every day, in determining what weight you
19 are going to give what someone tells you, what weight you
20 are going to give a statement that they tell you.

21 Some of those things that you use every day and don't
22 even think about it is for instance the manner, the
23 appearance of the witness on the stand. Sometimes we refer
24 to that as the demeanor. Was a witness' testimony
25 forthright or was it hesitant. Was the testimony of the

1 witness consistent, or did it contain some discrepancies.
2 Were there prior inconsistent statements, did the witness
3 have something to gain or something to lose from testifying
4 as he or she did. All of these are just little guidelines
5 that you can use if you want to. But you wouldn't determine
6 the credibility of a witness by counting the number of
7 witnesses on either side. Because you could believe
8 everything that a witness testified to or nothing. You
9 could believe a small portion and disregard the larger or
10 vice versa. You could believe one witness against many or
11 many against one. Always keep in your mind that there are
12 two things that you want to remember in this case. First,
13 you always give the Defendant the benefit of every
14 reasonable doubt. Secondly, you don't have to punish
15 anyone, and you don't have to reward anyone. You just have
16 to do what you said you would do when you held up your hand
17 and that was that you bring in a verdict that spoke the
18 truth. And when you have done that, you don't have to
19 apologize to anyone.

20 Now, that same constitution which made you the judge
21 of facts, made me the judge of the law. And if you heard
22 differently or thought differently about the law that I am
23 telling you at this time and will tell you, or if you think
24 the law is different from what you think it ought to be,
25 just take the law as I give you, apply it to the facts as

1 only you can find, deliberate and reach a verdict in this
2 case. Well, what is the law that I need to tell you to
3 apply to the facts that only you can find. Well, first I
4 want to remind you of something that I told you earlier, and
5 I will instruct you that the Defendant did not take the
6 stand or put up any witnesses. And he had a perfect right
7 to do that. Remember I told you a person is always presumed
8 to be innocent. So neither the Defendant, nor the attorney
9 had to take part in any of the proceedings, and the fact
10 that he did not testify or put up any witnesses cannot and
11 must not be used against him. So, when you go back in your
12 jury room, don't even take into consideration that the
13 Defendant did not testify or put up any witnesses, but just
14 determine whether or not the State met their burden of
15 proof.

16 Now, I want to tell you there are some statements
17 that are testified to that the Defendant allegedly made.
18 And so I want to tell you that no statement, or alleged
19 statement, can be considered against any Defendant if it was
20 made through force or under duress, or compulsion of any
21 kind. Or if it was induced by any promises of leniency or
22 reward of any kind. In other words, any alleged statements
23 actually made by the Defendant constitutes no evidence
24 against him, unless it was freely, and voluntarily made,
25 without any threats or inducements, of fear or hope. And

1 further that the Defendant understood the contents of any
2 statement that he might have made. So I tell you that it is
3 your duty to determine from all of the evidence before you
4 whether the State has established that any such statement
5 was made freely and voluntarily. So I tell you that as to
6 any alleged statements introduced in evidence in this case,
7 it must be disregarded by you and not considered against the
8 Defendant, if the statement was against the Defendant,
9 unless the State has satisfied you from the testimony beyond
10 a reasonable doubt, that it was not only actually made by
11 the Defendant, but that it was not extorted by force or
12 fear, or induced by promises, but that it was free and
13 voluntary in every respect. And of course in order to
14 constitute any evidence, any alleged statement would also
15 have to be believed by you the jury either in whole or part.

16 Now, if you find that any alleged statement was made
17 free and voluntary then of course it should be considered by
18 you along with any other evidence in the case, and give
19 whatever weight you feel it deserves under the facts and
20 circumstances of this case.

21 There has been some discussion or statements made by
22 some of the parties about different types of testimony. And
23 there are two types of evidence, which can be considered in
24 a case. That is direct evidence or circumstantial evidence.
25 And by the term direct evidence, the law means that the

1 testimony of persons who have perceived its existence by
2 their senses. That is a person sees something and comes in
3 and tells you about it. Or he hears something and he comes
4 in and here and tells you about it. That is what we call
5 direct evidence. Another type of evidence is called
6 indirect evidence. Some times it is called circumstantial
7 evidence. It just means a proof of some other fact or facts
8 taken either singularly or collectively the existence of the
9 particular fact in question can be inferred as a necessary
10 consequence. Now, crimes can be proved by circumstantial
11 evidence or by direct evidence or by a combination of the
12 two. And let me give you an example. If you look out that
13 window and you saw water coming from the sky, you would know
14 it was raining. That is direct evidence. You saw it. But
15 you can't see out that window and if someone comes in and is
16 wearing a raincoat and an umbrella and a hat and water is
17 dripping off of him, you saw that, but you didn't see it
18 rain. But you can infer it from having seen this water
19 dripping off of the raincoat, and that is called
20 circumstantial evidence. And circumstantial evidence is
21 permissible provided it meets certain legal tests. To the
22 extent that the State relies on circumstantial evidence, it
23 must prove all of the circumstances relied on, beyond a
24 reasonable doubt. It must be wholly and in every particular
25 perfectly consistent with one another. They must point

1 conclusively, that is to a moral certainty, to the guilt of
2 the accused, to the exclusion of every other reasonable
3 hypothesis. In other words, the circumstances must be
4 absolutely inconsistent with any other reasonable hypothesis
5 other than the guilt of the accused. And the consideration
6 of circumstantial evidence you must seek some reasonable
7 explanation other than the guilt of the accused and if such
8 reasonable explanation can be found, then you could not
9 convict on circumstantial evidence. But as I told you
10 crimes can be proved by direct evidence or circumstantial
11 evidence or a combination of the two.

12 Now, there is some testimony about some
13 identification of what some of the parties might have done
14 or not done. And in any case, and I want to tell you that
15 one of the issues in this case is the identification of the
16 Defendant as the perpetrator of the crime. And of course
17 the State has to prove identity beyond a reasonable doubt.
18 As I told you the Defendant doesn't have any obligation to
19 prove that he was not the perpetrator. You must be
20 satisfied beyond a reasonable doubt of the accuracy of the
21 identification of the Defendant by any of the witnesses
22 before you can convict him. If you are not convinced beyond
23 a reasonable doubt that the Defendant was the person who
24 committed the crime, then of course you could not find him
25 guilty.

1 Now, identification, of course identification
2 testimony is just the expression of belief or impression by
3 a witness. And of course, its value depends on the
4 opportunity the witness had to observe the Defendant at the
5 time of the offense, and thereafter make a reliable
6 identification, and of course in appraising identification
7 witnesses you should consider everything about the case.
8 That is, the capacity, and the opportunity that the witness
9 had to observe the offense, or offender. And how many times
10 was he seen, how much time was available, all of these
11 things, just consider everything in determining the
12 identification of the Defendant and what participation he
13 made in this crime, if any.

14 Now, the Defendant is charged with murder. So I need
15 to tell you what murder is. Murder is defined in our
16 statute as the killing of any person with malice
17 aforethought, either expressed or implied. Murder is the
18 killing of one person by another with malice aforethought
19 either expressed or implied. So in order to convict of
20 murder, the State must not only prove that the deceased was
21 killed by the Defendant, but must also prove beyond a
22 reasonable doubt that the killing was done with malice
23 aforethought. So what is malice.

24 Malice is the law of homicide. In the law of
25 homicide is a term of art, that is to say it is a technical

1 term importing wickedness and excluding just cause or
2 excuse. It is something that springs, as one of the
3 attorneys said from acts of depravity, from a heart devoid
4 of social duty, from a heart bent on fatal mischief. It can
5 be defined as hatred, or ill will, or the wrongful intent to
6 injure another person. And of course the words expressed or
7 implied doesn't mean two kinds of malice. But merely the
8 manner in which the only kind of malice known to the law may
9 be shown to exist. That is either by direct evidence or by
10 necessary inference from facts and circumstances, which are
11 proved. Personal ill will is not necessary for the proof of
12 malicious conduct. Malice as an ingredient of the offense
13 may be inferred from the wrongful doing of an unlawful act
14 without just cause or excuse. And both wilfulness and
15 malice may be inferred when the unlawful act is done by
16 wanton and reckless spirit, so as to show a mind disposed
17 of mischief. However, I charge you that such inference is
18 merely an evidentiary fact to be considered by you, along
19 with all of the other facts and circumstances of the case.
20 Remember always, as I told you, that the burden of proof is
21 upon the State to prove every element of the offense, and
22 that of course includes the burden of proof to prove malice
23 beyond a reasonable doubt.

24 Now, the law does not require that malice exists for
25 any particular length of time before the commission of the

1 act in question but it must be aforethought. That is to say
2 it must be a combination of the previous evil intent and the
3 act producing the fatal result.

4 I also charge you Madam Foreman, and ladies and
5 gentlemen that the law of South Carolina is that if a crime
6 is committed by two or more persons who are acting together
7 in the commission of an offense, the act of one is the act
8 of all, or all if there is more than two. Two persons or
9 more persons can be guilty of murder when only one had a
10 pistol and only one shot the pistol. I give you that as an
11 example, of course because those are not the facts in this
12 case. But I gave it to you because if both or all are
13 together, acting together and assisting each other in the
14 commission of an illegal offense, the law says that under
15 those circumstances the act of one is the act of all. Or
16 sometimes says the hand of one is the hand of all. So I
17 charge you that persons engaged in the commission of an
18 unlawful act are responsible for all the other acts done by
19 their confederates which follow incidently in the execution
20 of the common design. Even though what was done was not
21 intended as the part of any original design or plan. The
22 fact that one does not contemplate taking human life does
23 not relieve him or her of the responsibility if the killing
24 is done in furtherance of the plan, and was a proximate
25 result of its excuse.

1 It is not necessary for all of those who unite in the
2 commission of a crime to agree on each particular act. When
3 individuals associate themselves in an unlawful enterprise,
4 any act done of the parties pursuant to the enterprise is in
5 the law the act of all of them.

6 Now, under the theory that a greater crime can
7 include a lesser offense, included in the crime of murder is
8 also the crime of manslaughter. So I need to tell you what
9 manslaughter is. You remember I told you that murder is
10 defined as the unlawful killing of any person with malice
11 aforethought, either expressed or implied. The crucial
12 feature distinguishing murder from manslaughter is the
13 presence of malice aforethought. Manslaughter is the
14 unlawful killing of a person without malice, expressed or
15 implied. It is the killing of a human being, in sudden heat
16 and passion upon sufficient legal provocation. Now, sudden
17 heat and passion does not necessarily mean that it would be
18 such as would entirely dethrone the reason of a person. But
19 it must be such as would be calculated to disturb and sway
20 the reason of an ordinary person and shut out the power to
21 cool reflection, to create in that person's mind an
22 uncontrolled impulse to do injury. That is the heat of
23 passion which will reduce a killing from murder to
24 manslaughter.

25 Now, there is another element which enters into

1 manslaughter and that is there must be sufficient legal
2 provocation. No mere words, however insulting or offensive
3 will justify a person taking the life of another, so as to
4 reduce the crime from murder to manslaughter. However, a
5 sufficient legal provocation arises so as to reduce the
6 killing from murder to manslaughter where for instance a
7 person pulls a person's nose or slaps him in the face or
8 spits on him or strikes him, and if the blow is then struck
9 or the shot fired, which is not in this case, while under
10 the influence of a passion from that person having done
11 that, then the law says that it is not murder but
12 manslaughter.

13 Now, while it need not, that is whatever the person
14 did, it need not dethrone reason entirely or shut out
15 knowledge and vocation, it must be such as would naturally
16 disturb and sway the reason and render the mind of an
17 ordinary person incapable of cool reflection. And produce
18 what, according to human experience may be called as I said
19 earlier, an uncontrolled impulse to do violence. That would
20 reduce murder to manslaughter. But of course if the blow
21 was struck or the shot fired after a person has time to cool
22 down, he comes back and then resents any indignity by
23 killing his adversary, the law says that is not
24 manslaughter, it is murder.

25 Now, the law says that if one person --- that if one

1 kills another with a deadly weapon, the implication of
2 malice may arise but that is just an implication. It would
3 just be testimony that you could use and give it whatever
4 weight you felt it deserves under the facts and
5 circumstances of this case. If you feel something was a
6 deadly weapon, what is a deadly weapon.

7 A deadly weapon as the term is used in law, means any
8 weapon, instrument or object that is capable of being used
9 to inflict great bodily harm, that is what we mean by deadly
10 weapon.

11 Now, there are three forms of verdict in this case,
12 Madam Foreman, ladies and gentlemen of the jury. And the
13 fact, as I told you earlier that I say one before the other
14 has absolutely no bearing whatsoever. I am going to send
15 you in your room in just a moment or two and I am going to
16 send you the exhibits, and I am going to send this
17 indictment. This is not evidence, it is just a piece of
18 paper which contains these charges and on the back of it
19 where it says verdict, I have written the three forms of
20 verdict that you can consider. First, if you find the State
21 has failed to satisfy you of his guilt beyond a reasonable
22 doubt under the facts as you find them and the law as I have
23 given you, I just wrote the words not guilty, you just put a
24 check mark where it says not guilty and then you would sign
25 your name. And by signing your name Madam Foreman, you

1 indicate that all 12 of you have agreed, because all 12 of
2 you must agree. I am going to take my alternates and put
3 them in another room temporarily. On the other hand, if you
4 find that the State has satisfied you that he is guilty of
5 murder, then you just put a check mark where it says guilty
6 of murder, and you sign your name. And likewise, that would
7 mean all 12 of you have agreed. And if on the other hand
8 you find the State has failed to satisfy you of the guilt of
9 murder, then you can consider manslaughter. And if you find
10 the State satisfied you of his guilt of manslaughter, you
11 would likewise put a check and sign your name. And if you
12 find that he is guilty but there is some question of whether
13 it is murder or manslaughter, you always give it the benefit
14 of every reasonable doubt, you find guilty of the lesser
15 offense, but of course as I said you can find him not guilty
16 of anything.

17 I am going to send you to your room for just a
18 moment, to see if I have forgotten anything, or if I need to
19 make a correction, if I have I will bring you right back.
20 If I haven't, I am going to send you this exhibit in, this
21 verdict form, I will send you all of the exhibits and you
22 may begin your deliberation. When you reach a verdict put a
23 check mark in the appropriate place, sign your name and
24 knock on the door and we will receive your verdict. And
25 when you are back there, if you need anything to make you

1 comfortable, just ask the bailiff. You may follow the
2 bailiff.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: Any corrections or additions by the
5 State?

6 THE SOLICITOR: Only Your Honor, that we wish that
7 the examples on the manslaughter charge hadn't been given.
8 We discussed those earlier.

9 THE COURT: I gave those, but then I added this,
10 while it may not be the reason entirely, those are such
11 words that I thought an example might clear it up for the
12 jury. But I note your dissatisfaction.

13 THE SOLICITOR: Thank you.

14 THE COURT: Any exceptions or additions of the
15 Defendant?

16 MR. CRUMRINE: Your Honor, if you could note my
17 dissatisfaction as well that my manslaughter charge wasn't
18 read as I presented it. And further, Your Honor, when
19 describing it you had said that the sudden heat of passion
20 needed to be of a degree of heat of passion that did not
21 dethrone reason entirely. And then you went in and said
22 there is another element besides that and went back to the
23 just provocation and came back to the dethrone reason. And
24 it sounded like just another element besides having a strong
25 heat or passion. I thought it was confusing.

1 THE COURT: I note it. Anything else?

2 MR. CRUMRINE: I renew my motion to have a
3 self-defense charge given just so they would have a frame
4 work to consider the victim's actions, and the
5 disproportionate self-defense that we said created the just
6 provocation in the co-defendant's mind.

7 THE COURT: I note know that. Anything else?

8 MR. CRUMRINE: That is it Your Honor. Thank you.

9 THE COURT: Thank you. Tell the jury to begin
10 deliberations.

11 (Whereupon, the jury began their deliberations at
12 4:15 p.m.)

13 THE COURT: Madam alternates, I am going to put you
14 in another room. And anytime that the other jury gets any
15 information, you will get it. Anytime I bring that jury
16 out, you will come out right along with them. And if you
17 need any refreshments or anything, if you just tell the
18 bailiff and they will get it and then I will be giving you
19 some information later on, we will decide what to do. So
20 just follow the bailiff.

21 (Whereupon, the alternates exited to a separate
22 juryroom.)

23 (Whereupon, the jury returned to the courtroom at
24 5:27.)

25 THE COURT: You sent me a little note, and it says

1 may we please see a copy of the transcript if possible.
2 Well, we are not equipped to give instant transcripts,
3 although in some courts you can give reasonable instant
4 transcripts. But I just wanted to tell you that if there is
5 some portion of the trial that you would like for the court
6 reporter to play back to you, it takes a while to find it,
7 but we can do that for you. So you might go on back to your
8 room and if you decide you want to hear any particular
9 testimony, tell us about it and we will try to find it and
10 allow you to listen to it. Okay. Thank you very much.

11 (Whereupon, the jury retired to their jury room to
12 continue deliberations at 5:29 p.m.)

13 (Court's Exhibit No. 4, marked for identification.)

14 THE COURT: Court is in recess.

15 (Whereupon, the jury entered the courtroom at 5:40
16 p.m.)

17 THE COURT: Now, Madam foreman, ladies and gentlemen
18 of the jury, apparently you have asked all of the jury if
19 they have any questions, so I have three sets of questions.
20 So if there are any other questions after this, I would like
21 you to boil them all down, just put them --- you write them
22 down like what everybody wants. One of the jurors has
23 written down clarification of the law again. Well, that is
24 asking me to give you a charge on everything. And so what I
25 am going to do is, I am going to attempt to give you a

1 clarification on the questions that somebody addressed
2 specifically. And then if you go back in the room and you
3 find you still got a problem, you can always send me a note,
4 and I will be glad to give it to you. The first question is
5 after summation, that is after the attorneys have made their
6 summation to you, can a witness be recalled. The answer is
7 no. The next question is were the weapons, looks like
8 sticks or something, et cetera picked up before Mark was cut
9 or after. Another question, were they picked up along the
10 way in the chase. That is a question of fact, and you would
11 have to use your own memory. And the memory of all of you,
12 to make a decision. I can't intimate in any way what that
13 might be. But as I told you earlier, if there is any
14 testimony that you want to hear, if you will tell us, we
15 will find it and play it back for you. Then the next
16 question is review once a crime is initiated everybody is
17 responsible for the results. That was a portion of the
18 charge on murder and manslaughter. And then there is
19 another question, please review the law as it applies in
20 this case, including the hand of one is the hand of all.
21 That is included in murder and manslaughter. And finally
22 someone asked me please define the difference between murder
23 and manslaughter, which I will do at this time. Murder
24 which he is charged with, which also includes the lesser
25 offense of manslaughter, is defined in our statute as the

1 killing of any person with malice aforethought, either
2 expressed or implied, which I will explain to you in a
3 moment or two. Murder is the killing of one person by
4 another with malice aforethought, either expressed or
5 implied. So to convict of murder is the State must not only
6 prove that the deceased was killed by the Defendant, but
7 must also prove beyond a reasonable doubt that the killing
8 was done with malice aforethought. So what is malice.
9 Malice in the law of homicide, that is in the law of a
10 killing, is a term of art. That is to say, it is a
11 technical term and it imports wickedness. It excludes just
12 cause or excuse. It is something that springs from
13 depravity, from a heart devoid of social duty. A heart that
14 is bent on mischief so to speak. It can be defined as
15 hatred or ill will, or the wrongful intent to injure
16 somebody or kill somebody. Now, the words that I used,
17 expressed or implied, doesn't mean two different kinds of
18 malice. It just means the manner in which the only kind of
19 malice known to the law may be shown to exist, that is you
20 prove malice by direct evidence or circumstantial evidence,
21 indirect evidence. And I explained to you those two types
22 of evidence. Personal ill will is not necessary for the
23 proof of malicious conduct. Malice is an ingredient of this
24 offense. It can be inferred or may be inferred the wrongful
25 doing of an unlawful act without just cause or excuse. And

1 both willfullness and maliceness or malice may be inferred
2 from an unlawful act that is done by a wanton and wreckless
3 spirit so as to show a mind disposed of mischief. And
4 malice can be inferred from the use of a deadly weapon, and
5 I explained to you what a deadly weapon was. It is anything
6 that is used to injure another person. It can be inferred
7 but that inference is just an inference. And you can give
8 whatever testimony that might be about any use of any
9 weapons whatever weight you feel it deserves under the facts
10 and circumstances. And I told you about the inference.
11 However, I charge you that such inference is merely an
12 evidentiary fact to be considered by you, along with all of
13 the other facts and circumstances of the case. Remember
14 always as I told you the burden of proof is upon the State
15 to prove every element of the offense and that includes ---
16 the burden is upon the State to prove malice beyond a
17 reasonable doubt.

18 Now, I told you what malice was. Now, the law
19 doesn't require that malice exist for any particular length
20 of time before the commission of the act in question. But
21 it must be aforethought. In other words it must be before
22 it is done. That is to say that it must be a combination of
23 the previous evil intent and the act producing the fatal
24 result.

25 Now, addressing the other question you asked about

1 the hand of one is the hand of all, I charge you also, Madam
2 Foreman, ladies and gentlemen of the jury, that the law of
3 South Carolina is that if a crime is committed by two or
4 more persons, who are acting together in the commission of
5 an offense, the act of one is the act of both or all if
6 there is more than two. And I gave you an example, I said
7 two persons can be guilty of killing another, of murder when
8 only one of the two had a pistol and didn't shoot him. I
9 give you that for an example, because it is not the facts in
10 this case. In other words, if both are together in that
11 example, acting together and assisting each other in the
12 commission of the offense, the law says that under those
13 circumstances the act of one is the act of all. That is,
14 the hand of one is the hand of all. So I tell you that
15 persons engaged in the commission of an unlawful act, are
16 responsible for all of the other acts done by their
17 confederates, which follow incidently in the execution of
18 the common design. Even though what was done was not
19 intended as a part of the original design or the original
20 plan. The fact that one does not contemplate taking human
21 life does not relieve him or her of the responsibility if
22 the killing was done in the furtherance of the plan and was
23 a probable result of its execution. It is not necessary for
24 all of those who unite in the commission of a crime to agree
25 on each particular act. When individuals associate

1 themselves in an unlawful enterprise, any act done of the
2 parties pursuant to the enterprise is in the law, the act of
3 all of them.

4 Now, I need to define what is manslaughter. You
5 remember I told you that murder was the unlawful killing
6 with malice aforethought, either expressed or implied. The
7 crucial feature, that is the difference distinguishing
8 murder from manslaughter is the presence of malice
9 aforethought and murder and not present in manslaughter.
10 Because manslaughter is the unlawful killing of a person
11 without malice expressed or implied. In other words,
12 manslaughter is the killing of a human being in sudden heat
13 and passion upon a sufficient legal provocation. I think
14 one of the attorneys, I forget which one gave you an
15 example. Now, sudden heat and passion does not necessarily
16 mean that it should entirely dethrone the reason, but it
17 must such as it would be calculated to disturb and sway the
18 reason of an ordinary person, and shut out the power to cool
19 reflection and create in that person's mind, so to speak an
20 uncontrollable impulse to do injury. That is the degree of
21 heat and passion which would reduce a killing from murder to
22 manslaughter. In other words if a person does something to
23 you, it just creates an urge to injure.

24 In other words, an uncontrolled impulse to do injury,
25 that is a degree of heat and passion that will reduce a

1 killing from murder to manslaughter.

2 Now, there is another element into manslaughter.

3 That is there must be sufficient legal provocation.

4 Remember I told you that manslaughter is the killing of a
5 human being in sudden heat and passion upon a sufficient
6 legal provocation. And I told you what heat and passion
7 was. Now, what is legal provocation. And I told you that
8 no mere words however insulting or offensive will justify a
9 person taking the life of another so as to reduce a crime
10 from murder to manslaughter. A sufficient legal provocation
11 might arise so as to reduce the killing from murder to
12 manslaughter, and I gave you some examples. This is a
13 little extreme, for instance, if I walked up to you and
14 slapped you or spit on you or struck you in any way, or
15 injured you for that matter and you just lost your temper so
16 to speak and you just was consumed with passion, the impulse
17 to do bodily harm and you did it while in that condition,
18 then it would be manslaughter and not murder. Because
19 malice would not be present.

20 And I also told you that you can find him not guilty
21 of anything. But if you find that he is guilty and you have
22 a doubt as to whether it is murder or manslaughter, you
23 always give him the benefit of that doubt, and find him
24 guilty of the lesser offense of manslaughter.

25 Any other questions you can think of?

1 (No response.)

2 THE COURT: Go to your room and if you think of
3 anything else, let me know.

4 (Whereupon, the jury retired to their jury room to
5 resume deliberations at 5:55 p.m.)

6 THE COURT: Any exceptions or additions from the
7 State?

8 THE SOLICITOR: I think that might be the problem
9 because those examples deal with the offensive conduct in
10 the case you are doing, you are the one doing it to one of
11 the jurors, but it doesn't indicate whether or not the
12 possibility that you might have had some legal right under
13 the law in terms of self-defense to do that. And clearly I
14 think that is the issue here that Mr. Sineth in responding
15 to the way he was dealt with by the Defendant and
16 co-defendants was clearly acting under the law of
17 self-defense and his ability to respond, legally thereto.

18 THE COURT: But you didn't want me to give a charge
19 on self-defense. And the Defendant wanted me to, I will be
20 glad to do it if you want me to, if you think it will clear
21 it up.

22 THE SOLICITOR: Only if your new charge with
23 self-defense includes the State's request to charge that
24 comes from the State v. Norris case where it talks about in
25 that case, the father who ended up being the deceased was

1 responding to an unlawful sexual assault upon his daughter,
2 and it indicates in there that that which is perfectly
3 justifiable on the part of the deceased, cannot be any legal
4 provocation to the swayer. And I think that is part of the
5 issue here and the problem where they are hung up.

6 THE COURT: What have you got to say about that?

7 MR. CRUMRINE: Your Honor, I would still like to have
8 the self-defense charge. I think it might clarify things
9 for the jury somewhat and allow them to put it in
10 perspective. As far as the overall charge, Your Honor, on
11 the murder charge I object to the wording that the malice is
12 the wrongful intent to hurt, I think in the murder charge it
13 is the wrongful intent to commit serious bodily injury or
14 death. So I object to that. And I also think that the
15 manslaughter charge, I have the same problem I had last
16 time, that you explained sudden heat and passion as being
17 what just provocation is. Then you go into just provocation
18 and define that by example. Sufficient legal provocation is
19 that which would incite the ordinary senses of a person to
20 the level of sudden rage or resentment. It is just to me
21 confusing. I submitted a charge I think encompasses it
22 better.

23 THE COURT: Well, if I start on self-defense now I
24 would have to charge a self-defense on assault and battery.
25 Here is my charge. The law recognizes the right of every

1 person to defend himself from bodily harm. And to do this
2 he may use such force as is necessary. In other words,
3 self-defense is a complete defense and will entitle one
4 charged with the unlawful --- well, no that is unlawful
5 killing of another. I would charge the law recognizes the
6 right of every person to defend themselves from bodily harm,
7 and to do this he may use such force as is necessary. The
8 right of self-defense rests upon necessity, actual or
9 reasonable. And these are what must be present. Not at
10 fault in bringing about the difficulty. Let me let you read
11 it. Come on up here.

12 (Whereupon, a bench conference was held.)

13 (Court's Exhibits 5-8, marked for identification.)

14 (Whereupon, the jury returned to the jury room at
15 7:20 with a verdict.)

16 THE COURT: Mr. Clerk.

17 THE CLERK: Madam Forelady, have you reached a
18 verdict?

19 MS. JONES: We have Your Honor.

20 THE COURT: All right. It appears to be in order.
21 You may publish the verdict.

22 THE CLERK: Thank you, Your Honor. Have the
23 Defendant please stand. We have Indictment No.
24 92-GS-10-1680, State v. Mark Hamilton, indicted for murder.
25 Verdict, guilty of murder, signed Mary L. Jones, Forelady,

1 dated June 16th, 1993. Madam Forelady, ladies and gentlemen
2 of the jury, if this be your verdict, please signify by
3 raising your right hand.

4 (Whereupon, all jurors raised their right hand.)

5 THE COURT: Appears to be in order. Anything before
6 I discharge the jury?

7 MR. CRUMRINE: Yes, Your Honor. We would ask that
8 they be individually polled. I noticed that two or three
9 jurors did not raise their right hand.

10 THE COURT: Thank you, very much. Now, Madam
11 Foreman, ladies and gentlemen of the jury, with the
12 exception of the alternates, I just brought you in here so
13 that you would be with the other jurors. The Clerk is going
14 to ask you a question or a combination of questions. He is
15 going to ask you this question. First he is going to call
16 your name, and when your name is called, I am going to ask
17 you to stand up. Then he is going to ask you a question,
18 was this your verdict and is it still your verdict and then
19 sit down and he will call the next one please. Thank you.

20 THE CLERK: Thank you, Your Honor.

21 (Whereupon, the jury was polled and the verdict still
22 stands.)

23 THE CLERK: Your Honor, the jury has been polled and
24 the verdict still stands.

25 THE COURT: Thank you, very much. Would you like to

1 make your motions tomorrow morning, counselor?

2 MR. CRUMRINE: Your Honor, I am prepared to make them
3 now.

4 THE COURT: I will be glad to hear your motions.
5 Madam Foreman, ladies and gentlemen of the jury, I want to
6 tell you on behalf of the citizens of Charleston County how
7 much I appreciate your service on this jury. I realize it
8 must have been distasteful to find a verdict against anyone,
9 any of your fellow citizens, but I watched you very
10 carefully. You paid careful attention to the testimony, I
11 didn't see anybody that looked like they were laboring to
12 listen to the testimony. You were polite to the attorneys,
13 when they summarized their case to you, you listened
14 carefully to the law, and you reached a verdict. and there
15 might be some that disagree with your verdict, but if
16 someone does remember that is one opinion, you all are 12
17 opinions. And you followed the system, and having followed
18 the system, and you look at the people in the courtroom, go
19 out in the community or you look at yourself in the mirror
20 you can say I followed the system. And so you don't have to
21 apologize to anyone. I am going to allow you to go, but I
22 must ask that you be back in the courtroom at 9:30. I will
23 see you here tomorrow morning at 9:30. Tonight I am going
24 to hear motions at this time, and then whatever the outcome
25 is I will do my sentencing at this time. I will be glad to

1 have you keep your seats there, you can go into the
2 courtroom and have a seat, or you can leave through this
3 door with the bailiffs, whichever one you prefer. Whatever
4 you do, just do it quietly and do it now. Anyone who would
5 like to leave, do it now.

6 (Whereupon, the jury was dismissed from further
7 service in this case.)

8 THE COURT: I will be glad to hear your motions,
9 counselor.

10 MR. CRUMRINE: Yes, Your Honor. Your Honor, first I
11 would like to renew my prior motions for mistrial based upon
12 the errors I had specified earlier. And I would be glad to
13 go back through them if Your Honor needs me to.

14 THE COURT: It is not necessary, they are on the
15 record. I note them.

16 MR. CRUMRINE: Thank you, Your Honor. Next Your
17 Honor, I would move --- I realize that they say we don't
18 have a JNOV anymore, but I understand I am still supposed to
19 make a motion for a judgment not with standing the verdict,
20 particularly as to the issue of whether this was a murder or
21 manslaughter. We would ask Your Honor to consider giving
22 judgment to the Defendant notwithstanding the verdict to the
23 jury or in the alternative for a new trial.

24 THE COURT: Anything further?

25 MR. CRUMRINE: That is it, Your Honor.

1 THE COURT: All right. I deny your motion, I thought
2 it was a jury question to begin with. I still think it is a
3 jury question, both as to murder and manslaughter. And I
4 can't find any fault with the verdict and I will sentence
5 him at this time.

6 (Whereupon, the Defendant approached the bench.)

7 THE COURT: As you know, I don't have any authority
8 to change the sentence mandated by the Supreme Court. I
9 will be glad to hear anything that you would like to say.

10 MR. CRUMRINE: Your Honor, there is not much that can
11 be said under the circumstances. Mark is a young fellow, he
12 is now 19. He has limited intellectual capabilities
13 according to the psychologist's reports. And you know, I
14 know that he is sorry for what happened to Mr. Sineth,
15 regardless of whatever participation that really occurred
16 with him. He comes from a good family, his mother is here
17 with him. A lot of his family has been in the back, had a
18 chance to meet them, and I think it is just a tragedy.

19 THE COURT: Anything further?

20 MR. CRUMRINE: No, sir, Your Honor.

21 THE COURT: All right. Under general law, the
22 sentence of the Court is you Mark Hamilton be confined to
23 the South Carolina Department of Corrections for the balance
24 of your natural life. Good luck.

25 THE SOLICITOR: Thank you, Your Honor.

D223087

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Hamilton
Applicant,

-VS-

State of South Carolina
Respondent.

§ IN THE GENARAL SESSIONS COURT
§ Indictment No. 92-GS-10-1680

§

§ AMENDMENT: MOTION & REQUEST FOR
RESENTENCING

§

§

§

§

2023 JAN 30 PM 12:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY WSS

FILED

NOW COMES, above caption applicant, Mark Hamilton, Pro Se respectfully moving this Honorable-Court to "Amend the Pleading" to inscribe within the following case-law, as applicant on the 3rd of December in 2019 filed "Motion and Request for ReSentencing", through this Honorable Court for a Resentencing Hearing under the case-laws pronoucement[s] setforth therein Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 [2014] -AND- Miller v. Alabama, 132 S.Ct. 2455 [2012].

AMENDMENT

ADD: In State v. Slocumb, No.27877 [April 03, 2019], the South Carolina Supreme Court may extend 2nd enlarge the Protection and Guaranteed by the Eight Amendment, therefore constraining the State Court from denying Slocumb relief. ["The Court acknowledged that Slocumb's 130-years sentence was infact two "de facto" life sentences on a juvenile. He was 13-years old when the first crime occured".]

AMENDMENT-Cont.

Without further input from the United States Supreme Court as to how the Eight-Amendment applies to situations where a juvenile non-homicide offender commits multiple crimes against multiple victims at multiple points in time, the state court declined to intervene.

[-END OF AMENDMENT]

Respectfully Submitted,

/s/ Mark Hamilton
Mr. Mark Hamilton / Pro Se
-APPLICANT-

SWORN AND SUBSCRIBED TO BEFORE ME
on the 27th day of January, 2023.

Lamar Conwell
-NOTARY PUBLIC FOR SOUTH CAROLINA-

My Commission Expires
September 25, 2023

RECEIVED

JAN 27 2023

PCI MAILROOM

FILED
2023 JAN 30 PM 12:55
JULIE J. ARMSTRONG
CLERK OF COURT
RY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) Warrant No(s): D223087
) Indictment No. 92-GS-10-1680
)

STATE OF SOUTH CAROLINA

vs.

MARK HAMILTON

Defendant

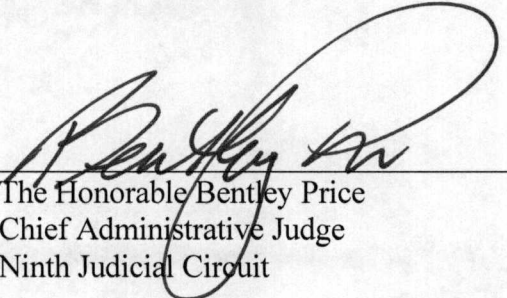
ORDER APPOINTING COUNSEL

FILED
2023 AUG 22 AM 9:25
JULIE J. ARISTIDE
CLERK OF COURT
BY pt

On June 27, 2023, Chief Justice of South Carolina appointed Cameron J. Blazer to serve as counsel for the above-named person.

ORDERED, ADJUDGED AND DECREED that Cameron J. Blazer of The 9th Circuit Public Defender's Office be and is hereby appointed as the Defendant's Public Defender and to act as his attorney of record until conclusion of his case.

AND IT IS SO ORDERED.


The Honorable Bentley Price
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

Dated: 8/21/23

DOCKET NUMBER
1992-GS-10-01680

GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA,

Plaintiff,

VS.

MARK HAMILTON,

Defendant.

APRIL 8, 2025

MOTION HEARING

B E F O R E:

The Honorable Deadra L. Jefferson, Presiding Judge.

C O U R T:

South Carolina Circuit Court 9

T R A N S C R I B E D B Y:

Barbie Teboe, Transcriber

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Attorney for the Defendant

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P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:44 a.m.)

THE COURT: This is the State of South Carolina versus Mark Hamilton, 1992-GS-10-1680.

(Court and clerk confer regarding video feed.)

THE COURT: All right. He was convicted on the offense of murder --

(Pause.)

THE COURT: -- on June 16th of 1993, and sentenced to life. He had successive appeals, which were affirmed, as well as post-conviction relief action that was affirmed and denied back in -- around 1998. He made a pro se request for re-sentencing, which was filed December 3rd of 2019. And he saw that pursuant to Aiken V. Byars.

(Pause.)

THE COURT: And on August 22nd of 2023, Judge Price appointed Ms. Blazer to represent Mr. Hamilton. Ms. Shealy is appearing for the State.

This --

MS. SHEALY: Your Honor --

THE COURT: I'm sorry.

MS. SHEALY: I'm just going to point out for the Court, Will Hampton is here, and he'll actually be doing the presentation, but I'm here with him.

THE COURT: And Mr. Hampton is with --

1 MS. SHEALY: The Solicitor's Office.

2 THE COURT: Okay.

3 MS. SHEALY: He's one of our newer attorneys.

4 THE COURT: Okay. Thank you.

5 MR. HAMPTON: Good morning, Your Honor.

6 THE COURT: Good morning.

7 Ms. Blazer, is there anyone assisting you?

8 MS. BLAZER: No, ma'am, Your Honor. Thank you.

9 THE COURT: You're welcome.

10 (Pause.)

11 THE COURT: Originally, Judge Price was assigned to hear
12 this case by Justice Beatty on June 27th of 2023. The case
13 was subsequently assigned to this Court on March 1st of 2024.

14 (Pause.)

15 THE COURT: And the State filed this response to the
16 defendant's motion and requested re-sentencing on March 12th
17 of 2025. And the Defense filed its response on April 3rd of
18 2025.

19 (Pause.)

20 THE COURT: At the time of Mr. Hamilton's conviction, he
21 was 17 years old. He was indicted on March 2nd of 1992. And,
22 again, he was sentenced June 16th of 1993, by Circuit Judge,
23 at that time, Luke M. Brown.

24 (Pause.)

25 THE COURT: And he's had two Post-conviction Relief

1 Actions, both of which were denied in 1998 and 2004.

2 (Pause.)

3 THE COURT: It is State's position, based on their filing
4 of 3/12/25, that Mr. Hamilton is not entitled to an Aiken
5 hearing, because under the sentencing scheme when he was
6 convicted and sentenced there was a possibility for parole in
7 South Carolina. It was not as the current statute, which has
8 been amended, which is life without parole. And that he was
9 eligible for parole after a period of 20 years. And they're
10 seeking a dismissal.

11 In Response, which was filed on April 3rd of 2025 --

12 (Pause.)

13 THE COURT: And I don't think I'm reading anything in the
14 defendant's response that contests the applicability of the
15 statute.

16 Am I incorrect, Ms. Blazer? You're arguing that he
17 should just be released because of a host of factors that have
18 taken place, subsequent to his conviction?

19 MS. BLAZER: Well, I think the argument, Your Honor, is
20 that -- you're right, in terms of how Aiken V. Byars is
21 framed, and how the statute, as of 1991 was framed, he is
22 parole eligible. And so the State's argument appears on its
23 face to have merit.

24 With that said, my argument rests on the notion of what a
25 de facto life sentence is, and the --

1 THE COURT: Because -- has he had parole hearings?

2 MS. BLAZER: Yes, ma'am. He's had seven.

3 THE COURT: How many --

4 He has had seven?

5 MS. BLAZER: Yes, ma'am.

6 THE COURT: When was his last parole hearing?

7 MS. BLAZER: March 12th.

8 THE COURT: And has the Parole Board in any way ruled
9 that he's ineligible for parole? Or have they -- has his
10 parole simply been denied based on --

11 MS. BLAZER: There is --

12 THE COURT: -- the factors that they apply?

13 MS. BLAZER: So there is a pro forma response that each
14 parolee receives, and there is no mechanism for the Parole
15 Board to say you are not eligible. They simply reject or
16 accept the parole.

17 THE COURT: Uh-huh.

18 MS. BLAZER: They -- he's certainly been given the parole
19 hearings, which reflects a belief by the lawyer at parole that
20 he is eligible to have a hearing.

21 THE COURT: Well, I think that, you know, laws cannot be
22 retroactive in their application if they enhance a penalty.
23 So they would have to apply the law that was in place at the
24 time he was convicted; correct?

25 MS. BLAZER: Right. Yes, ma'am.

1 THE COURT: Which made him parole eligible?

2 MS. BLAZER: That's right.

3 THE COURT: Okay. And so when is his next parole
4 hearing?

5 MS. BLAZER: Two years from this most recent one.

6 THE COURT: And so when was his most recent one?

7 MS. BLAZER: March 12th of this year.

8 THE COURT: So he had a parole hearing March 12th?

9 MS. BLAZER: Yes, ma'am.

10 THE COURT: And that was denied?

11 MS. BLAZER: Yes, ma'am.

12 (Pause.)

13 THE COURT: And he has been continuously incarcerated
14 since his conviction?

15 MS. BLAZER: Yes, ma'am. That's just shy of 34 years.

16 THE COURT: Okay. So I think from a procedural
17 standpoint, I need to hear from the State on their motion --

18 MS. BLAZER: Yes, ma'am.

19 THE COURT: -- to dismiss, and then I'll allow you to
20 respond.

21 Yes, sir.

22 MR. HAMPTON: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. HAMPTON: May I approach? I have a copy of our
25 motion, as well as all of the case law that we have.

1 THE COURT: I have it.

2 MR. HAMPTON: Okay. Thank you.

3 Your Honor --

4 THE COURT: Yeah. I have it -- you mean -- you're
5 referring to your memo, correct?

6 MS. BLAZER: Yes. I just have a copy of all the case
7 laws.

8 THE COURT: Yeah. I have your memo. Yeah.

9 MR. HAMPTON: Okay. Good morning.

10 This is a -- this is regarding a murder which occurred in
11 1991. Mark Hamilton, along with three other co-defendants,
12 attacked the victim as he was walking in his own neighborhood
13 to his friend's house. And trial testimony in 1993 shows that
14 Mark Hamilton was an instigator in the incident.

15 As Your Honor has already previously stated, the Statute
16 in 1991 states a person who was convicted of or pleads guilty
17 to murder must be punished by death or by imprisonment for
18 life. It is not eligible for parole until the service of 20
19 years. As Your Honor stated previously, again, that penalty
20 has changed, however, the 1991 statute applies in this matter.

21 The defendant's Motion for Re-sentencing comprises from
22 his two filings in 2019 and 2023 on the basis of case law from
23 *Miller versus Alabama* and *Aiken V. Byars*. And these provided
24 protections for juvenile offenders and any possible violations
25 of the Eighth Amendment. And the Supreme Court of South

1 Carolina in Aiken laid out a five-factors test which could be
2 determined and see if their transient immaturity should be
3 considered to a sentence of life without the possibility of
4 parole. *Aiken versus Byars* also made the determination this
5 applied retroactively as well. *Miller versus Alabama*, from
6 the Supreme Court of the United States, was ruled in 2012;
7 Aiken versus Byars in 2014.

8 And then, subsequently, in 2016, *Montgomery versus*
9 *Louisiana* extended the analysis of *Miller* and has been upheld
10 in case law in the South Carolina Court of Appeals.

11 Your Honor, I would like to read a quote from *Montgomery*
12 *versus Louisiana*, which states:

13 "Giving Miller retroactive effect, moreover, does not
14 require states to relitigate sentences, let alone convictions.
15 In every case where a juvenile offender received mandatory
16 life without parole, the State may remedy a Miller violation
17 by permitting juvenile homicide offenders to be considered for
18 parole, rather than by re-sentencing them. Allowing those
19 offenders to be considered for parole ensures that juveniles
20 who crimes reflected only transient immaturity and who have
21 since matured, will not be forced to serve a disproportionate
22 sentence in violation of the Eighth Amendment. Extending
23 parole eligibility to juvenile offenders does not impose an
24 onerous burden on the states, nor does it disturb the finality
25 of state convictions. Those prisoners who have shown an

1 inability to reform will continue to serve life sentences.
2 The opportunity --"

3 THE COURT: But that's not the position South Carolina
4 has taken; is it? They've taken the position that everyone
5 who was convicted under the new version of the statute is
6 entitled to an *Aiken versus Byars* hearing.

7 MR. HAMPTON: That's correct, Your Honor.

8 THE COURT: Uh-huh.

9 MR. HAMPTON: And I was just reading that quote in
10 reference to defendants who were sentenced with life without
11 parole hearings and if they are given the opportunity for
12 parole, then it could be --

13 THE COURT: I think from a procedural standpoint and
14 common parlance, that boat has sailed. South Carolina Supreme
15 Court has made a decision: Everybody who was sentenced as a
16 juvenile to life without parole is entitled to an *Aiken versus*
17 *Byars* hearing.

18 MR. HAMPTON: That's correct. And it's -- it would be a
19 mandatory life without parole hearing.

20 The ruling from *Montgomery* has been applied by the courts
21 in South Carolina with some distinctions. And the Court of
22 Appeals in South Carolina ruled in *State V. Finley* that
23 although *Finley* received a mandatory life sentence for murder
24 as a juvenile offender, the circuit court sentence afforded
25 *Finley* parole eligibility after the service of 30 years

1 imprisonment. They were citing the 1992 Statute, which only
2 differs from the 1991 with a mitigating circumstance unrelated
3 to this motion.

4 Again, quoting Finley, "This sentence differs
5 significantly from those at issues in Graham, Miller, and
6 Byars, in which the juvenile offenders receive sentences of
7 life imprisonment without the possibility of parole."

8 In addition, Your Honor, South Carolina cases outlined in
9 the State's brief which include *State V. Spartan* in which Your
10 Honor's ruling was upheld, cited *State V. Finley*, the Court of
11 Appeals of South Carolina affirmed Your Honor's ruling. These
12 cases reach the same logical nexus, and that is, if a
13 defendant receives parole eligibility after a certain number
14 of years, then the defendant is not entitled to an Aiken
15 hearing.

16 As outlined in our State's motion to dismiss, Honor,
17 there are two major issues, really, regarding the defendant's
18 case today, in regards to the case law. Per the South
19 Carolina punishment for murder statute in 1991, the defendant
20 did not receive a mandatory life without parole sentence,
21 which does not make him eligible for an Aiken hearing. And
22 this is, of course, consistent with case law in the United
23 States and the Supreme Court of the United States. And even
24 if this motion was entertained that this defendant -- even if
25 the notion was entertained that this defendant received a

1 mandatory life without parole sentence, the defendant has been
2 given multiple opportunities in front of the Parole Board to
3 be considered for his release.

4 As defense counsel stated, the defendant has been given
5 seven parole hearings upon his parole eligibility, which began
6 in 2012, and with the last parole hearing, of course, taking
7 place on March 12th, which is the same date of the State
8 filing this Motion to Dismiss.

9 It's my belief that the South Carolina Department of
10 Probation has complied with the requirements of the law and
11 used the factors given to them to make a determination of the
12 defendant's potential release at each hearing.

13 Your Honor, just to summarize, it's the State's position
14 that even if the case law and the State's Motion to Dismiss
15 existed at the time that the defendant committed this crime,
16 the 1991 statute and sentencing scheme mandates the punishment
17 of murder -- the mandates of punishment would not afford the
18 defendant an Aiken hearing. Thank you.

19 THE COURT: You're welcome.

20 Ms. Blazer?

21 MS. BLAZER: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 MS. BLAZER: May it please the Court.

24 I think that the State -- I don't actually disagree with
25 a lot of the things that the State said, but I think that the

1 State is failing to engage with what I think is the central
2 question here, which is whether South Carolina's parole system
3 remedied the *Miller* issues, as contemplated by *Montgomery*,
4 which was decided two years after *Aiken versus Byars*.

5 So *Aiken versus Byars* was, you know, sort of progressive
6 from the State of South Carolina, because they did not wait
7 for the United States Supreme Court to determine the question
8 of retroactivity. The South Carolina Supreme Court said,
9 "It's clearly retroactive, and we need to get moving on this."

10 Later, *Miller versus Montgomery* was decided by the United
11 States Supreme Court and was responding to other states'
12 failure to make the recognition that *Aiken versus Byars* had
13 made. And I agree with the State that *Montgomery's* central
14 premise is that there are ways other than a complete
15 resentencing to give life to the premise of *Miller versus*
16 *Alabama*, and one of those ways is parole eligibility.

17 And on its face, it would appear that South Carolina has
18 a remedy for all of these people who were sentenced as
19 children to life with -- to life in prison, because they are
20 parole eligible if they were sentenced prior to truth in
21 sentencing. But the reality is, that the South Carolina PPP
22 itself has told courts of this -- the Court of Appeals as
23 recently as 2023, that they are not obligated to give life to
24 *Miller versus Alabama*. That's a sentencing issue.

25 And that is why my motion -- or my Response to the

1 State's Motion -- relies heavily on *Buchanan versus State*
2 *Department of Probation*, 442 S.C. 393. Mr. Buchanan sought
3 ALC review of his denial of parole. I believe that Mr.
4 Buchanan was up for his 18th time being considered for parole
5 at the time that he sought ALC review. ALC review is
6 constrained by the Rules of Administrative Law, and the ALC
7 court found that the Parole Board, acting under the
8 regulations applicable to the Parole Board, had done its job,
9 had given life to the regulations and the rules set forth by
10 the South Carolina Department of Probation Pardon and Parole
11 and was therefore not subject to reversal. The South Carolina
12 Court of Appeals, when confronted with the -- Buchanan's
13 appeal from the ALC ,agreed but held -- or I don't guess this
14 isn't exactly a holding, but an observation that they made.

15 We are concerned regarding the perfunctory manner in
16 which Buchanan's request for parole was denied. Although
17 Buchanan and other juveniles similarly situated are
18 technically eligible for parole, the continual denial of
19 parole based on the same factors, all unchangeable and related
20 to their offenses, gives no guidance to these inmates about
21 what can be done to improve their chances of parole, and is,
22 in essence, equivalent to being ineligible for parole.

23 Additionally, I think it's important -- and I'll grant
24 that the State did quote the whole portion of *Montgomery*, that
25 I think is important, but I want to highlight that *Montgomery*

1 says that a parole system that allows a person sentenced to
2 life in prison as a juvenile to be eligible for release based
3 on evidence that they have escaped the transient immaturity of
4 youth, is not a premise contained in the principles that the
5 Parole Board in South Carolina is governed by. Those
6 principles are repeated on pages six and seven of my Motion,
7 and nowhere within the factors that the Board may consider in
8 determining whether to grant parole is anything related to the
9 transient immaturity of youth.

10 And so while we do not contest that Mr. Hamilton has been
11 afforded seven hearings to establish whether he can be
12 released, our contention is that those hearings, by definition
13 of the Parole Board's applicable standard, cannot -- provide
14 the Parole Board no opportunity to consider exactly those
15 issues that *Miller versus Alabama* said were so important.

16 THE COURT: But wouldn't he have to challenge that to the
17 administrative law court?

18 MS. BLAZER: Well, we --

19 THE COURT: Isn't there a mechanism for that?

20 THE COURT: No. No. I don't believe that the -- I
21 mean, because I think Buchanan shows that you can't challenge
22 the way that the -- through ALC, the way that the PPP
23 regulations are set forth. You know, that's the sort of
24 premise of administrative law, is that you've got to trust the
25 administrative board to do their jobs effectively. And I

1 think what the issue is, is if you look at the statutes
2 governing the Parole Board, PPP has done what they're supposed
3 to do because they've given life to what the statutes say
4 they're supposed to do. And that's where this donut hole that
5 Mr. Hamilton falls into is created. PPP is not-- the Parole
6 Board is not acting in opposition to its own statute that
7 creates it. But South Carolina, by having that as the
8 standard for PPP, has created only the illusion of a parole
9 system that would solve --

10 THE COURT: But there are people who have gotten parole
11 from murder sentences.

12 MS. BLAZER: Yes, ma'am.

13 THE COURT: Lots of them.

14 MS. BLAZER: Yes, ma'am.

15 THE COURT: Uh-huh.

16 MS. BLAZER: Yes, ma'am. And --

17 THE COURT: But that would seem to preempt your argument
18 that parole under these -- this instance, is simply
19 perfunctory, it's just going through the motions. I don't
20 think that's what the Parole Board does. I think they have a
21 charge that's been given to them by the legislature. And when
22 I say "charge," I mean responsibility.

23 MS. BLAZER: Uh-huh.

24 THE COURT: They have a set of guidelines that they
25 follow, and I think they take that responsibility very

1 seriously. And I'm aware -- because they send me notices.

2 MS. BLAZER: Yes, ma'am.

3 THE COURT: There are people that they parole from --

4 MS. BLAZER: Yes, ma'am.

5 THE COURT: -- what we would consider significant,
6 serious, violent offenses. So people get parole, you know,
7 all the time, from murder sentences who were convicted under
8 the old version of the statute. Because the way the old
9 statute was written was there was no -- you know, when the
10 statute was modified, it created a base of 30 years up to
11 life, with discretion in between that range. The old statute
12 was life or death.

13 MS. BLAZER: Yes, ma'am.

14 THE COURT: There was no in-between.

15 MS. BLAZER: Yes, ma'am.

16 THE COURT: But it did give you the possibility of parole
17 after 20 years.

18 I guess my -- what authority does this Court have over
19 Parole Board or any -- to consider the constitutionality,
20 because that's basically what you're raising --

21 MS. BLAZER: Yes, ma'am.

22 THE COURT: -- of the parameters of the actions of a
23 Parole Board? Isn't there another mechanism for that to be
24 challenged? I don't know that this Court has the authority to
25 look at what a Parole Board does or the parameters of their

1 decisions or the factors they employ. And I have to admit,
2 I'm remiss as to exactly every category they consider, but I
3 would imagine that many of the factors that we would find in
4 *Aiken versus Byars* and this progeny are considered by a Parole
5 Board. Maybe not in the same verbiage, but I'm certain they
6 probably consider it.

7 MS. BLAZER: I mean, I have all the -- 16 of them listed
8 in my brief --

9 THE COURT: You do.

10 MS. BLAZER: -- and I don't think that they align with
11 *Aiken V. Byars* or *Miller versus Alabama*.

12 But to answer your question about this Court's authority
13 over the Parole Board, I agree with you. You do not have the
14 authority, I don't believe, to direct PPP to change its --

15 THE COURT: And does he have a procedural mechanism to
16 challenge that? Can't you appeal -- I mean, like if you're
17 denied parole, what is the next --

18 MS. BLAZER: That would be the ALC. And that was the --

19 THE COURT: That's what I thought.

20 MS. BLAZER: Yes, ma'am. And that was the mechanism that
21 *Buchanan* sought to use in the Court of Appeals. And the Court
22 of Appeals found that it was constrained by the limitations of
23 administrative law to say, we can't give you any relief, but
24 we're really concerned about what's happening here.

25 THE COURT: So the remedy would be with the legislature,

1 who promulgates the regulations?

2 MS. BLAZER: Well --

3 THE COURT: Or does the legislature delegate that
4 authority to SCDPPS?

5 MS. BLAZER: I believe that's delegated to DPPS.

6 THE COURT: But there's a mechanism to --

7 MS. BLAZER: Right. But --

8 THE COURT: -- challenge that, right?

9 MS. BLAZER: The -- no --

10 THE COURT: And has exercised that?

11 MS. BLAZER: An ALC challenge?

12 THE COURT: Uh-huh.

13 MS. BLAZER: No, ma'am.

14 THE COURT: And, why? I'm curious.

15 MS. BLAZER: Because Buchanan would suggest that it's
16 for -- closed and was decided in 2023 right before his most
17 recent parole.

18 I agree with you that the legislature could solve this
19 problem tomorrow. I think when the legislature has chosen not
20 to solve the problem, this Court does have the authority to
21 recognize that there is a constitutional deficit here. It
22 does not require the Court to direct PPP to change its
23 approach, it simply -- the Constitution and this Court's
24 inherent authority allows you to recognize that the systems in
25 place --

1 THE COURT: Why wouldn't number 7 embrace the Aiken
2 factors, which is the inmate's physical, mental, and emotional
3 health?

4 MS. BLAZER: Because they don't reflect the question of
5 the inmate's physical, mental and emotional health or --

6 THE COURT: "The inmate's understanding of the cause of
7 his or her past criminal conduct."

8 MS. BLAZER: None of that goes to what his -- the
9 state -- his state of existence and being were, as of 1991 as
10 a child, which is what *Aiken V. Byars* and *Aiken V. Byars'*
11 *Resentencing* is focused on. They don't focus on -- they
12 certainly -- a factor at sentencing, when somebody is
13 resentenced, 20, 30, 40 years after their initial prosecution,
14 there is no doubt that a court weighs --

15 THE COURT: Why wouldn't number 15 embrace that, which is
16 the Actuarial Risk and Needs Assessment outlined in Section
17 2421-10(f)(1), which evaluates based on criminal involvement,
18 relationships/lifestyle, personality/attitudes, family, social
19 exclusion, and mental health. Would that not be --

20 MS. BLAZER: I --

21 THE COURT: a retroactive look at --

22 MS. BLAZER: No, ma'am.

23 THE COURT: Because when you're looking at an actuarial
24 table, you're looking at propensity basis.

25 MS. BLAZER: Right. But that's forward-looking

1 propensity, not going back to 1991 and asking --

2 THE COURT: Well, he couldn't have criminal involvement
3 post-actively; he's been in jail. So why would that not
4 encompass --

5 MS. BLAZER: But it is a prospective look at what his
6 actuarial risk of committing new crime is based on these other
7 factors, as they exist today, not as they existed in 1991.
8 It -- as I mentioned in my brief --

9 THE COURT: And then it has a catch-all: "Other factors
10 considered relevant in a particular case by the board."

11 So why wouldn't that catch-all be encompassed --

12 MS. BLAZER: We have no idea.

13 THE COURT: -- any of the Aiken factors?

14 MS. BLAZER: We have no idea what was -- I mean --

15 THE COURT: But he's free to argue that, isn't he, to
16 them, that --

17 MS. BLAZER: And --

18 THE COURT: That at the time of my conviction, I was
19 particular age, and --

20 MS. BLAZER: Yes.

21 THE COURT: -- this falls under the catch-all. And I
22 would, you know --

23 MS. BLAZER: Yes.

24 THE COURT: -- and basically --

25 MS. BLAZER: And 17 --

1 THE COURT: -- fall on my sword and ask you to consider
2 these factors.

3 MS. BLAZER: Yes. And seven times, the Parole Board has
4 said that the underlying offense is the number one reason that
5 they're rejecting his application. There's a -- again,
6 there's a -- as I mentioned in my Response, there's -- I
7 believe that I'm correct that there are six potential factors
8 that the -- or choices that the Parole Board has to choose
9 from in this form letter that they send out to people when
10 they are denied parole, and -- or granted it, I suppose -- and
11 of those six, my argument is that at least three of them
12 are -- make reference -- and this is found on page 8 of my
13 briefing -- make reference to factors that are immutable as of
14 the time of the crime. So the nature and seriousness of the
15 current offense, the indication of violence in this or a
16 previous offense, and the use of a deadly weapon in this or a
17 previous offense.

18 THE COURT: You said page 8 of your Response?

19 MS. BLAZER: Yes, ma'am. Bottom of the second -- the
20 first paragraph on page 8.

21 (Pause.)

22 THE COURT: But the fact that they selected that doesn't
23 necessarily mean that they did not give weight to the other
24 catch-all factors you all argued in balancing their decision.
25 That doesn't --

1 MS. BLAZER: It doesn't mean that they didn't, but we
2 have no evidence that they did.

3 THE COURT: But, I mean -- but they don't have to
4 articulate that. I --

5 MS. BLAZER: But if they --

6 THE COURT: It would seem to me, if you argued something,
7 that they considered it.

8 MS. BLAZER: I don't know, though.

9 THE COURT: And whatever they -- whatever decision they
10 made, they felt that those factors were outweighed by the
11 others.

12 MS. BLAZER: I don't -- you know, I don't believe that
13 you can assume that because I said that they should think
14 about something that they did. I wish that that were true,
15 but I don't think that it is.

16 THE COURT: I find them -- you know, and I don't -- can't
17 say that I know any members personally. I've known people in
18 the past, in my -- before I was on the Court -- that served on
19 the Parole Board, and I found them to be very thoughtful
20 individuals who really took their responsibility very
21 seriously and did not act in what we would consider a knee-
22 jerk way. I don't think they perceive their duty as
23 perfunctory. And I found that none of them were swayed by
24 public opinion. But again, this was before I was on the
25 bench. I can't say that I've known anybody, you know, since

1 then or that I've had any interaction. Like I said, I just
2 get notices --

3 MS. BLAZER: Right.

4 THE COURT: -- that people are up for parole, and they
5 ask if I have an opinion or -- and I never do.

6 MS. BLAZER: And --

7 THE COURT: Because I feel like that's their function,
8 and I just don't take a position on it. I feel like that --

9 MS. BLAZER: Yes, ma'am.

10 THE COURT: -- in most instances, the jury's already
11 spoken, or if it's a guilty plea, I've already done what I
12 think is appropriate. And -- well, in both cases, I've
13 already done what I think is appropriate, based on the
14 totality of what's been presented to the Court. And then it's
15 in their --

16 MS. BLAZER: Right. And --

17 THE COURT: -- court, so to speak, to, you know, look at
18 all the other factors and make those decisions.

19 MS. BLAZER: And as I said earlier, I am not suggesting
20 that the Board acted outside of the boundaries of the
21 regulations set for them by PPP. In fact, what I am arguing
22 is that the Board's own lawyer, who argued *Buchanan* to the
23 Court of Appeals, argued, "The change in the law as it relates
24 to juvenile sentencing has not been extended beyond sentencing
25 in South Carolina," beyond sentencing, "maintaining *Miller* and

1 Aiken require the factors of youth be considered only by the
2 sentencing court, not by the Board."

3 And I think you -- the Court is -- needs to --

4 THE COURT: Did you actually go to his last parole --

5 MS. BLAZER: Yes, ma'am. I was present.

6 THE COURT: And you argued under the catch-all his age at
7 the time of the offense?

8 MS. BLAZER: I did.

9 THE COURT: What else did you argue to them?

10 MS. BLAZER: I argued all of those -- the same Miller
11 juvenility factors that I argued in this Motion.

12 THE COURT: And they didn't tell you it wasn't
13 applicable, and they didn't --

14 MS. BLAZER: No, ma'am.

15 THE COURT: -- have to consider it, and you couldn't
16 argue on his behalf?

17 MS. BLAZER: No. And in fairness, again, to the Board,
18 the structure of parole hearings is not like this. It is not
19 a completely open hearing. Victims are sequestered from
20 defendants. And the portion of the event where the Board
21 discusses their choice is not something that we're privy to,
22 the portion of --

23 THE COURT: Well, that's no different than a jury.
24 You're not --

25 MS. BLAZER: Right.

1 THE COURT: privy --

2 MS. BLAZER: Right.

3 THE COURT: -- I mean, and you're not privy to what the
4 Court's thinking either.

5 MS. BLAZER: Right. But all I'm saying is that, to the
6 extent that there wasn't -- would be any way of knowing what
7 the board's thinking was, that is not something that a
8 defendant is privy to when they appear before the Parole
9 Board.

10 And I will confess I've only attended three parole
11 hearings, so I am not a parole expert. But in all of those
12 cases, my experience is, you're sort of in a little black hole
13 talking to a group of people. You're not even in the same
14 room with them. You're excused, and then sometime later, you
15 receive a pro forma piece of paper that tells you what the
16 outcome of that hearing has been.

17 THE COURT: Has that been since COVID that that's been
18 like that?

19 MS. BLAZER: No. Before that.

20 THE COURT: Oh. Okay.

21 MS. BLAZER: Yeah. Like, the only one pre-COVID that I
22 went to was done up off of Grey --

23 THE COURT: Greystone.

24 MS. BLAZER: Is it Greystoke? Uh-huh. Greystone.
25 Greystoke is the -- Tarzan.

1 THE COURT: Greystone Boulevard.

2 MS. BLAZER: Greystone Boulevard. Yes, ma'am.

3 So the only one like that that I went to -- yes, there
4 were sequestered rooms. We appeared -- and, I believe, via a
5 closed-circuit television, we spoke to the Parole Board. And
6 it used to be that the defendant had -- if you -- if the
7 defendant was going to be represented by counsel, counsel had
8 had to actually travel to the prison facility where the person
9 was and appear closed-circuit there. They stopped -- they
10 slowly stopped doing that and allowed us to appear in -- at
11 Greystone. And then post-COVID, they've allowed us to do it
12 in this WebEx format.

13 But again, with no -- I'm not criticizing the Parole
14 Board --

15 THE COURT: No. I didn't take it that way.

16 MS. BLAZER: -- members.

17 THE COURT: What I'm -- my inquiry is more about the
18 opportunity under the catch-all to -- because I think all
19 statutes have catch-alls -- well, statutes that have catch-
20 alls, they have them for a reason. That means, in other
21 words, all other stuff we haven't thought about, here's your
22 opportunity to present anything else you think could be
23 relevant to our determination.

24 And I'm not certain that I'm convinced that, because they
25 don't mention it, that they didn't consider it, and that he

1 didn't have the opportunity to present it. Because I know
2 you're a zealous advocate. And I'm certain that you presented
3 all that to them.

4 MS. BLAZER: And the --

5 THE COURT: And just because they made a decision that
6 was, sort of, not the desired result --

7 MS. BLAZER: Sure.

8 THE COURT: -- I don't think that means that they didn't
9 consider it.

10 MS. BLAZER: I agree that it doesn't mean that they
11 didn't. I -- you and I are in agreement about that. And, I
12 guess -- I did not brief this, but I'll say that, you know,
13 in -- as you know, I spent some time as a Federal Public
14 Defender. And there -- one key difference about sentencing
15 law in federal court is that, in federal court, we were
16 governed by 18 U.S.C. Section 3553(a).

17 THE COURT: Yeah. The guidelines.

18 MS. BLAZER: Yeah. Well, not so much the guidelines.
19 The part that I'm focused on is 3553(a), which sets forth the
20 factors that every sentencing judge is required to consider,
21 and not only to consider, but to express on the record how
22 they considered. And the purpose of that is to ensure that
23 everybody knows why something happened. And so, again, it's
24 not the fault of the Parole Board that that is not how they
25 are structured. But in the absence --

1 THE COURT: But is any parole board structured that way?

2 MS. BLAZER: Oh, I don't know. I've not done any 50-
3 state analysis of what other Parole Boards do, but I think in
4 the absence of a -- either a set of factors that mimic clearly
5 the Miller factors, or some greater transparency about what is
6 considered and either accepted or rejected as an argument in
7 favor of parole, this Court is empowered to determine that
8 this system, as it presently exists, has not met Mr.
9 Hamilton's constitutionally promised right of a fair
10 opportunity to be treated as the juvenile he was in 1991.

11 THE COURT: What happened with the other three -- his
12 other three co-defendants?

13 MS. BLAZER: Yes, ma'am. Mr. Zellers was 14 at the time
14 of the offense. He was waived up by Judge Mallard, I believe,
15 as was -- not Mr. Sampson.

16 What was your --

17 THE DEFENDANT: Darrell Edwards.

18 So Mr. Edwards and Mr. Zellers were 14 and 16,
19 respectively. Mr. Hamilton was 17, and Mr. Sampson was 19.
20 Mr. Zellers and Mr. Edwards were waved up. Mr. Zellers was
21 ultimately found not guilty. Mr. Edwards was permitted to
22 plead to voluntary manslaughter and has since been released
23 from prison.

24 THE COURT: What was his sentence?

25 THE DEFENDANT: Thirty.

1 MS. BLAZER: It -- I believe it was 30. Yes, ma'am.

2 THE COURT: And so he's already maxed out --

3 MS. BLAZER: Yes, ma'am.

4 THE COURT: -- and he's been released?

5 MS. BLAZER: Yes, ma'am.

6 And then Mr. Sampson had been -- both Mr. Edwards and Mr.
7 Sampson had been threatened with the death penalty, and both
8 pled.

9 THE COURT: Well, that's --

10 MS. BLAZER: No.

11 THE COURT: That happens.

12 MS. BLAZER: It's just as a fact for the record.

13 THE COURT: Well, it's not a threat. It's just reality.

14 This is what we're going to -- and under the under the laws
15 that existed then, there certainly were statutory, aggravating
16 circumstances --

17 MS. BLAZER: Right.

18 THE COURT: -- which, they could have pursued it.

19 MS. BLAZER: Right. You know, what would have been
20 terribly unfortunate for them, is that it would be another --
21 I don't know, 16 years before the United --

22 THE COURT: Or 20.

23 MS. BLAZER: -- States Supreme Court had determined that
24 that was unconstitutional, as to both -- as to, at least, Mr.
25 Edwards.

1 THE COURT: But it probably would have happened. I mean,
2 as we know, life sentences -- I mean, not life sentences --
3 executions in South Carolina take at least 20 years.

4 MS. BLAZER: And I'm not --

5 THE COURT: I've sentenced two people to death, and they
6 have -- they aren't close to reaching any -- I mean --

7 MS. BLAZER: Well, that's --

8 THE COURT: One of them was --

9 MS. BLAZER: -- certainly true these days.

10 THE COURT: One of them was --

11 Oh, it's true. It was true when I was a law clerk. One
12 of the people Judge Field sentenced just got executed, maybe
13 two years ago. And he's been gone now a year. He was 103
14 years old. And he sentenced him before he -- long before he
15 ever retired at 72. It takes a long time. So the law may
16 have changed in in that interim.

17 MS. BLAZER: And that's really, sort of, neither here nor
18 there to my argument. But --

19 THE COURT: Well, but --

20 MS. BLAZER: You asked what happened to them. Mr.
21 Sampson ultimately pled to murder.

22 THE COURT: So there were -- because let me keep track.

23 MS. BLAZER: Yes, ma'am.

24 THE COURT: I thought there were four total.

25 MS. BLAZER: Yes.

1 THE COURT: So we have Mr. Hamilton.

2 MS. BLAZER: Mr. Hamilton was --

3 THE COURT: Mr. Edwards --

4 MS. BLAZER: Mr. Edwards was 16. He --

5 THE COURT: Mr. Zellars, who was 14, who was found not
6 guilty.

7 MS. BLAZER: Yes. And Mr. Sampson, who pled -- who was
8 19, and pled to life. He and Mr. Hamilton have their parole
9 sentences at the same time every two years.

10 THE COURT: So Mr. Sampson is likewise eligible for
11 parole?

12 MS. BLAZER: He is also eligible for parole.

13 THE COURT: And has he ever been granted -- well --

14 MS. BLAZER: No.

15 THE COURT: -- I guess not.

16 MS. BLAZER: No, ma'am.

17 THE COURT: Because you said he's still --

18 MS. BLAZER: No, ma'am.

19 THE COURT: And I would assume -- were deals offered to
20 everybody?

21 MS. BLAZER: I -- I mean, yes.

22 THE COURT: I'm just curious.

23 MS. BLAZER: Yes. Yes. In the sense that I believe Mr.
24 Sampson's deal was to plead to life.

25 THE COURT: Uh-huh.

1 MS. BLAZER: And --

2 THE COURT: Because I would assume they felt he was most
3 culpable.

4 MS. BLAZER: Yes. And at his plea hearing, he accepted
5 the greatest level of culpability.

6 And I think that Mr. Edwards was offered the voluntary
7 offer. And my understanding from John Crumrine, who
8 represented Mr. Hamilton, is that there was an offer made to
9 him. But Mr. Crumrine is in the process of retiring and did
10 not still have his records from all of that, so we couldn't go
11 back through and recreate.

12 THE COURT: Which is reasonable. I mean, most people --

13 MS. BLAZER: Yeah.

14 THE COURT: -- keep their records for about seven years,
15 and then they start purging. You just don't have the room to
16 keep it.

17 And I would assume, just based on experience, that Mr.
18 Edwards -- what -- they may have considered him less culpable
19 -- not least, but less. And he probably might have been
20 cooperating --

21 MS. BLAZER: That may be true.

22 THE COURT: -- to receive that type of a plea.

23 MS. BLAZER: That may be true, Your Honor.

24 THE COURT: Uh-huh. And then Mr. Zellers, who was 14 and
25 waved up by Judge Mallard, was found not guilty?

1 MS. BLAZER: Yes, ma'am. He was represented by Bruce
2 Durant, of all people.

3 THE COURT: That must have been before Bruce went over to
4 the Solicitor's Office.

5 MS. BLAZER: It must have been for the five minutes Bruce
6 was not being prosecutor.

7 THE COURT: Alrighty. So then what -- I am assuming,
8 though, that Mr. Zellers and Mr. Hamilton were not tried
9 together --

10 MS. BLAZER: They were not.

11 THE COURT: -- because they had separate trials.

12 MS. BLAZER: They were not.

13 THE COURT: Yeah. Okay. All right. You may continue.
14 Anything further you'd like to share with the Court?

15 MS. BLAZER: I -- let me make sure I've covered all the
16 things I wanted to cover.

17 (Pause.)

18 MS. BLAZER: Yeah. I think I just want to reiterate that
19 our argument is -- acknowledges many of the legal strictures
20 that the State's motion put forth, but suggest to this Court
21 that you have the authority to find that, without being --
22 without exerting control over the Parole Board, that Mr.
23 Hamilton should be resentenced, because the existing structure
24 of the Parole Board does not adhere to the premise in
25 *Montgomery versus Louisiana* of creating a system where a child

1 sentenced to life has the opportunity to be considered for
2 parole when that child, as an adult, can show that his crime
3 was the product of transient immaturity.

4 THE COURT: Would the State like to respond?

5 MR. HAMPTON: Yes. Briefly, Your Honor.

6 THE COURT: Take your time.

7 MR. HAMPTON: Just for the simple fact that this
8 defendant is not entitled to an Aiken hearing basis on the
9 1991 statute and case law. It was not a true life sentence.

10 And also, to bring up again the case of *State V. Finlay*,
11 of what Your Honor cited and a ruling in *State V. Sparkman*.
12 It was -- there are some similarities between that case and
13 the one we have today. It was a 1992 statute. The defendant
14 was 17 at the time, and he was given 30 years, and the
15 assumption that an aggravating circumstance was found, and the
16 Court denied him a -- or did not say it was a violation of
17 *Miller* and the Eighth Amendment.

18 THE COURT: I need you to address, just for the
19 completion of the record, the unique -- I need you to address
20 Ms. Blazer's argument that the parole system is perfunctory,
21 that -- my words not hers -- that is merely -- it is really
22 not giving Mr. Hamilton a meaningful opportunity at parole.
23 Which, I really don't think I have any jurisdiction over that
24 process. The legislature, in their wisdom, has delegated that
25 to the Department of Probation, Department of Parole, and has

1 allowed them that regulatory authority.

2 But what she is arguing is that -- I think I'm already
3 standing, basically, which is arguing about. I need you to
4 address that for the completeness of the record.

5 MR. HAMPTON: Yes, Your Honor.

6 In response to defense counsel's argument and speaking
7 about *Buchanan versus South Carolina Department of Probation*,
8 I believe this was touched on briefly, but I think the most
9 important quote in this case is at the end of Subsection (a),
10 that, essentially, after they express their concerns, they
11 then state in their Determination, "Our role is one that is
12 limited to operating within the framework set by statutory law
13 and by our Supreme Court's precedence. It may well be good
14 policy for the legislature to review and to revise the parole
15 system to assure the factors of youth are a part of
16 considering parole in these cases, rather than permitting the
17 seemingly perfunctory review now standardly given, but that is
18 the legislature's decision, not ours."

19 Your Honor, I think it's clear from this case that the
20 Court of Appeals does have concern but they make it clear that
21 it is up to the legislature. And just to go back on our --
22 the previous position of -- the current position of the State,
23 that this person is not entitled to an Aiken hearing which --
24 and my understanding is handled by the Courts, essentially
25 does not provide him -- would not allow him opportunity to be

1 extended these factors unless the legislature did so.

2 THE COURT: Okay. Now, if I were to -- because I need to
3 think a little bit. If I were to deny the motion, are there
4 witnesses you would want to present?

5 MS. BLAZER: If you were to deny the State's motion?

6 THE COURT: Uh-huh.

7 MS. BLAZER: No. In speaking to Mr. Hamilton, he
8 expressed to me that he has put his family through more in the
9 last 34 years than he would like to, and he has asked me not
10 to call any of them as witnesses. So he will be the only
11 person present.

12 THE COURT: So why don't we just, in the interest of time
13 and not having him transported again, why don't we just play
14 it out. And then if I grant the State's motion, no harm, no
15 foul.

16 MS. BLAZER: I --

17 THE COURT: If I grant your motion then --

18 MS. BLAZER: So --

19 THE COURT: -- then we won't have to do it twice.

20 MS. BLAZER: I am not -- you're going to be shocked to
21 know, I'm not comfortable with that.

22 THE COURT: I don't think you really have an option.

23 MS. BLAZER: I understand, but I'm going to --

24 THE COURT: Yeah.

25 MS. BLAZER: But I'd like to express why I'm not

1 comfortable with that.

2 THE COURT: I'm listening.

3 MS. BLAZER: Mr. Hamilton and I have discussed the --
4 again, his decision not to have his family appear. But in
5 anticipation of the Court's decision in this case, I have not
6 sought a psychological evaluation yet, because it would have
7 been fruitless if this Court was going to deny his entitlement
8 to a hearing. I think we need an opportunity to seek that if
9 the Court is going to set another hearing, because I do think
10 that there are some --

11 THE COURT: Well, you -- we can always supplement the
12 record. You can always have that done subsequently and then
13 have that person testify.

14 MS. BLAZER: Well, I think he would still have to be
15 transported for that done that.

16 THE COURT: It doesn't matter.

17 MS. BLAZER: Okay. Well, I -- you're -- what the
18 Court's --

19 THE COURT: But then we'd be -- I don't -- it'd take a
20 whole lot less time just to hear from the psychologist than
21 to --

22 MS. BLAZER: If the Court is --

23 THE COURT: -- or a psychiatrist, than to hear --

24 MS. BLAZER: Sure. And if the Court is inclined to hear
25 argument on sentencing but also supplement the record in the

1 event of a ruling in our favor --

2 THE COURT: Yeah. I'm always open to that.

3 MS. BLAZER: -- that -- I would be comfortable with that.

4 THE COURT: Yeah. Uh-huh.

5 So you're saying the only witness you would have, would
6 be your client and then a forensic psychologist or
7 psychiatrist -- well, not forensic psychologist, but a
8 forensic psychiatrist or a psychologist to supplement the
9 record?

10 MS. BLAZER: Yes, ma'am.

11 THE COURT: Okay. I could live with that.

12 Does State have any exception?

13 MS. SHEALY: I just want to make sure I understand. Are
14 we talking about putting him up for a *Aiken versus Byars*
15 hearing?

16 MS. BLAZER: If he was just --

17 MS. SHEALY: Is that the purpose --

18 MS. BLAZER: -- to address the Court?

19 Yes. He's here to address the Court as to -- if the
20 Court is inclined to push forward with a, sort of, conditional
21 sentencing hearing, based on not --

22 THE COURT: I just think it's time saving. We've
23 allocated the time. It's no prejudice to the State if I grant
24 your motion.

25 MS. SHEALY: Yes. But --

1 THE COURT: But if I don't, then I've saved the time and
2 taken the testimony, and then I'm halfway to where I need to
3 be.

4 MS. SHEALY: Okay. I -- let me ask it this way, are you
5 intending to offer features of his youth through him? Are you
6 going -- are you intending to --

7 MS. BLAZER: I would need to supplement the record after
8 today and seek a 608 Order for the purpose of having him
9 evaluated by a psychologist or psychiatrist who could speak to
10 those features, as is commonplace in *Aiken V. Byars* cases.

11 MS. SHEALY: So I'm just a little bit confused about what
12 the purpose is --

13 THE COURT: I'm just giving her the opportunity to call
14 any witnesses she would have called had we gone forward with
15 the full *Aiken versus Byars*. If she is not -- if she has not
16 had the psychological evaluation, we would just supplement the
17 record with that if it became necessary. But if she had
18 anybody here present today, that she would have called had
19 your motion been denied, I don't see any problem with taking
20 that witness testimony is what I'm saying.

21 MS. SHEALY: Can you --

22 THE COURT: So whomever she would have called.

23 MS. SHEALY: That would be the only person that you would
24 intend to put up today, or you're not going to put him up
25 today?

1 MS. BLAZER: Well, I think the Court would want me to
2 have him address the Court --

3 THE COURT: Because he's here.

4 MS. BLAZER: -- today, because he's here.

5 There -- you know, candidly, Your Honor, when we had a
6 telephone conference on the 11th, I think.

7 THE COURT: I don't remember. All my days run together.

8 MS. BLAZER: I don't remember when the date was.

9 THE COURT: I'm sorry. I've got a lot on my plate.

10 MS. BLAZER: Same, Your Honor.

11 If, at the time, I did intend to call John Crumrine and
12 David Schwacke.

13 THE COURT: Uh-huh.

14 MS. BLAZER: David Schwacke was actually the prosecutor
15 who handled the trial, as you've seen the trial testimony.

16 THE COURT: Uh-huh.

17 MS. BLAZER: And as you know, retired many years later as
18 a public defender. And he and I had spoken at some length
19 about this matter. And he allowed me to present a statement
20 on his behalf in my -- in what I gave to the Parole Board.
21 But without invading Mr. Schwacke's privacy, I am not
22 comfortable asking him to testify, given his health issues.

23 THE COURT: Uh-huh.

24 MS. BLAZER: So the only other ask I would make is if I
25 might be able to supplement the record with an affidavit from

1 Mr. Schwacke?

2 THE COURT: I think you're going to have to have
3 testimony. Because they --

4 MS. BLAZER: Will the Court --

5 THE COURT: -- have to be able to cross-examine him.

6 MS. BLAZER: And I expected that would be your answer.
7 If that is going to be necessary, may I supplement it -- at
8 the time that we do the psychiatrist, may I bring Mr. Schwacke
9 for that purpose? He -- I anticipate he will articulate about
10 two sentences.

11 THE COURT: And then would the State be calling any
12 witnesses? Or the State just merely want to cross-examine the
13 witnesses presented by Mr. Hamilton?

14 MS. SHEALY: We would definitely want to cross-examine
15 the witnesses. We may also -- depending upon what the
16 testimony is going to be, will we be receiving a report then?
17 Or you're going to --

18 MS. BLAZER: Yeah.

19 MS. SHEALY: -- have us evaluate it?

20 MS. BLAZER: Yeah.

21 MS. SHEALY: So I can answer that better, Your Honor --

22 THE COURT: Are you going to need to get him somebody
23 on -- are you going to need to retain an expert?

24 MR. HAMPTON: Potentially.

25 THE COURT: That's what -- yeah, that's what my next

1 question was.

2 MS. SHEALY: Yes.

3 MS. BLAZER: And, you know, Your Honor, that's -- the
4 only sort of time line question I would have. I don't -- as
5 you know, OID does not have endless sums of money, and I would
6 not --

7 THE COURT: Well, you know I'm the biggest steward of
8 their fund.

9 MS. BLAZER: I'm painfully aware, Your Honor.

10 THE COURT: So you're preaching to the choir.

11 MS. BLAZER: I'm painfully aware.

12 THE COURT: Yeah.

13 MS. BLAZER: And so I would not want --

14 THE COURT: It's limited, yeah, but I mean, I think we're
15 probably looking at -- I mean, we have people who -- that's
16 their niche. They do Aiken versus Byars --

17 MS. BLAZER: Yes. And unfortunately --

18 THE COURT: And how much are those? I don't remember.

19 MS. BLAZER: Very expensive. Mr. --

20 THE COURT: That's what I thought. Yeah.

21 MS. BLAZER: Dr. Knight, who is the, sort of, gold
22 standard of these evaluations, is extremely expensive because
23 she does an extremely detailed and thorough investigation that
24 goes beyond merely interviewing. But it is a --

25 THE COURT: Who else does some?

1 MS. BLAZER: I'm not familiar with anybody who does them
2 at -- with her --- with the level of quality she does. And in
3 fact, I don't regularly engage her services in other cases,
4 because she's more thorough than I usually need. But this is
5 exactly the kind of case that, if we were going to proceed to
6 a sentencing, her level of attention to detail is necessary.

7 THE COURT: Because really, now that I through it, the
8 other -- let's see. I hadn't done a Aiken versus Byars in a
9 while, but if I'm relying on my recollection, it seems that
10 who we usually rely on is that evaluation is the testimony you
11 really look to when you're making an assessment of the
12 factors. I don't know that a defendant's testimony is
13 particularly useful for that purpose.

14 MS. BLAZER: No, I mean his, his articulation would be
15 similar to what he would have argued. You know, he did not
16 speak at his sentencing. This is more akin to he's present to
17 speak as he would have at a sentencing, not to argue --

18 THE COURT: But it's unlikely that he --

19 MS. BLAZER: -- I was 17, I was this, I was that.

20 THE COURT: Yeah. It's unlikely he would have spoken at
21 his sentencing.

22 MS. BLAZER: Right.

23 THE COURT: I don't know too many people that speak at
24 their sentencing, because usually the lawyers advise them not
25 to.

1 MS. BLAZER: At trial. That's true, Your Honor.

2 THE COURT: Yeah.

3 MS. BLAZER: But --

4 THE COURT: Well, even at a plea I rarely have people
5 speak on their own behalf. I don't know. Yes.

6 MS. SHEALY: Your Honor, and obviously we still assert
7 that an Aiken versus Byars --

8 THE COURT: I know.

9 MS. SHEALY: -- is not called for.

10 THE COURT: Yeah. I was just trying to be mindful of
11 time and resources --

12 MS. SHEALY: While he was here.

13 THE COURT: -- and the fact that he was transported. But
14 the more I sort of think through procedurally, really is very
15 little he would have to offer.

16 So you would need to have an evaluation. You've already
17 indicated he doesn't plan to call any of his family members.

18 MS. BLAZER: Right.

19 THE COURT: So who -- and then you would want to call Mr.
20 Crumrine and Mr. Schwacke?

21 MS. BLAZER: If possible.

22 THE COURT: Which, we'd have to coordinate their
23 schedules, because they retired. And, you know, for retired
24 people, every day is Friday.

25 MS. SHEALY: And Mr. Crumrine is retired to where his

1 grandchildren are in Beaufort. So it's even --

2 THE COURT: Well, that's not too bad. That's 66 miles.

3 MS. SHEALY: Yeah.

4 THE COURT: It's a pretty ride.

5 MS. SHEALY: It is.

6 THE COURT: He's accommodating. He -- I'm sure he would
7 accommodate us.

8 Why don't we then -- we'll just -- since really the
9 testimony that we need -- and I commend you for being mindful
10 of resources at OID and -- not -- yeah. Indigent Defense.
11 I'm sorry. My acronyms. in the gym. Defense, I'm sorry my
12 acronyms -- I got to make sure.

13 Because it would -- it really would not have made sense
14 to have expended those kind of resources if there's a legal
15 issue that this all hinges on.

16 So -- and I'm correct in my assumption that State would
17 not be calling any witnesses, unless, of course, you would
18 have a contravening expert that may have a different opinion
19 on some of the issues.

20 MS. SHEALY: Yes. I don't want to limit myself to
21 that --

22 THE COURT: Well, no. I wasn't --

23 MS. SHEALY: -- necessarily right now, just in case, I
24 have somebody that was present during the --

25 THE COURT: Yeah.

1 MS. SHEALY: -- matter that could describe his -- you
2 know, the way he was back then. It's of interest to me that
3 there's no plan to use anyone in his family, because they
4 would be the one -- the forwarders of --

5 THE COURT: Well --

6 MS. SHEALY: -- what he was like as a child, et cetera.

7 THE COURT: I can kind of see the logic, though, of him
8 feeling like he's put his family through enough.

9 MS. SHEALY: I understand that. I do understand that.

10 MS. BLAZER: And I certainly intend to have his family
11 participate in the psychiatric evaluation.

12 THE COURT: And I'm certain, though, that even though he
13 said that, Ms. Liz is going to reach out to them and see what
14 they think. Yeah. Because while, you know, lawyers take
15 their clients (indiscernible) and advice, they'll, you know,
16 they still have to do what's in their client's best interest,
17 whether their clients agree or not. I cannot imagine that she
18 would not reach out to them anyway and see what they say.

19 So yeah, probably it's more practical then, for us just
20 to recess this and then let me think and make a decision. And
21 then we'll see where we are. And then if I decide that a
22 Aiken versus Byars is appropriate, then we could talk -- we
23 could -- I -- and I think I shared this all with you when we
24 had status conference, is I don't want this lingering. I --
25 you know, it had already been lingering for a minute, and it

1 needed to come to some resolution. So the fact that we've had
2 this hearing, I think I'm comfortable in us knowing that we
3 are going to stay on task and get it done.

4 And then if I agree with the State and I deny the Motion,
5 then you can proceed with an appeal and --

6 MS. BLAZER: Right.

7 THE COURT: -- go from -- and then, if not, then we'll
8 have -- we'll pick another date, and I -- and then I will
9 touch bases with you-all about, you know, how long you need to
10 do that, how long it's going to take to get in -- about, you
11 know, sort of our time line and keep us all on task to do what
12 we need to do to come to a final resolution.

13 MS. BLAZER: Am I right that the Court would like me to
14 hold off on the 608 Order until you make a decision?

15 THE COURT: I would wait --

16 MS. BLAZER: Yes, ma'am.

17 THE COURT: -- until I --

18 MS. BLAZER: Okay.

19 THE COURT: Because there's no point -- I'm thinking
20 we're -- you know, we're looking like in the \$10,000 - \$15,000
21 range.

22 MS. BLAZER: Yes, ma'am.

23 THE COURT: And there's no need to expend those resources
24 when it may not be needed. And there are other folk that --

25 MS. BLAZER: Okay.

1 THE COURT: -- need those resources.

2 MS. BLAZER: All right.

3 THE COURT: Yeah.

4 MS. BLAZER: I'll hang back till I get the Court's
5 decision.

6 THE COURT: So if you-all could provide me, though, with
7 proposed orders.

8 Is five days too short a time frame? Or is -- or can
9 you-all --

10 MS. SHEALY: Judge, I am --

11 MS. BLAZER: That's too short for you, I'm sure.

12 MS. SHEALY: Yes. I'm starting a trial on Monday. If we
13 could have a little bit longer than that.

14 THE COURT: Ten?

15 MS. SHEALY: Excuse me?

16 THE COURT: Ten?

17 MS. SHEALY: I think 10 will do it.

18 THE COURT: And you should make any findings of fact and
19 conclusions of law consistent with the record. I find
20 proposed orders to be helpful because they really force a
21 person to focus and summarize even more so than you would in a
22 closing kind of an argument. So if you all could provide
23 those to me.

24 And those need to be sent to DjeffersonSC@SCcourts.org.

25 MS. BLAZER: Yes, ma'am.

1 THE COURT: Again, that's DjeffersonSC@SCcourts.org in
2 Word format.

3 MS. BLAZER: In Word format? Yes, ma'am.

4 THE COURT: Uh-huh.

5 And, of course, you know, copy each other on it and all
6 that.

7 MS. BLAZER: Of course.

8 MS. SHEALY: Yes.

9 THE COURT: All right, guys, you-all have a good day.

10 MS. BLAZER: Thank you, Your Honor.

11 MS. SHEALY: You, too.

12 THE COURT: Thank you.

13 MR. HAMPTON: Thank you, Your Honor.

14 THE COURT: You're welcome. We'll see.

15

16

17

18 (At 10:47 a.m., the hearing concluded.)

19

20

21

END OF TRANSCRIPT.

22

23

24

25

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Charleston

I, BARBIE TEBOE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, relative appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 8th day of April, 2025.

I further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 2, 2025

A handwritten signature in cursive script that reads "Barbie K. Teboe". The signature is written in dark ink and is positioned above a horizontal line.

Barbie Teboe,
Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

MARK HAMILTON,

Defendant.

In the Court of General Sessions
Ninth Judicial Circuit

**ORDER DENYING DEFENDANT'S
MOTION FOR RESENTENCING**

Indictment Number:
1992-GS-10-1680

Presiding Judge:
Counsel for the State:
Counsel for Defendant:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Jennifer Shealy, Esq.
Cameron Blazer, Esq.
April 8, 2025
WebEx

This matter came before the Court on April 8, 2025 pursuant to the Defendant's Motion for Resentencing pursuant to the South Carolina Supreme Court's ruling in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Appearing for the State of South Carolina was Jennifer Shealy, Esq. and William S. Hampton, Esq. Appearing for the Defendant Mark Hamilton¹ was Cameron Blazer, Esq. After reviewing the record, considering the briefs submitted by the parties, and the arguments of counsel, Defendant's Motion for Resentencing is heard and DENIED.

FACTUAL BACKGROUND

The Defendant, Mark Hamilton, is presently confined to Perry Correctional Institution in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Defendant was indicted on March 2, 1992 for Murder

¹ The Defendant Mark Hamilton is housed at Perry Correctional Institution in Pelzer, S.C. within the S.C. Department of Corrections and was transported for the hearing.

(Indictment #:1992-GS-10-1680). The indictment arises from events occurring on October 22, 1991, where the Defendant (then seventeen (17) years of age) and a group of four (4) teenagers were on Ranger Drive in North Charleston where they got into an altercation with Ralph “Gary” Sineath. Mark Hamilton was one of the four (4) teenagers charged. During the fight, Gary Sineath defended himself and pulled out a box cutter, slashing Hamilton’s leg to the bone. When emergency responders arrived on scene, Hamilton was bleeding profusely and Sineath was dead, having been beaten by one or more of the other boys with sticks and lumber.

John D. Crumrine, Esq. was appointed to represent Hamilton, who was being tried as an adult under the “hand-of-one-hand-of-all” theory of accomplice liability. The case went to trial, and Hamilton was convicted of Murder.² Thereafter, on June 16, 1993, the Honorable Luke N. Brown, Jr. sentenced Hamilton to a term of imprisonment “for the balance of your natural life.” Hamilton became eligible for parole after twenty (20) years, and has had seven (7) parole hearings since 2014.

On January 30, 2023, the Defendant filed a Motion for Re-Sentencing pursuant to Aiken v. Byars.³ On August 22, 2023, the Court appointed Cameron Blazer, Esq. to serve as counsel for Mr. Hamilton. The State of South Carolina filed a response in opposition to Defendant’s Motion for Re-Sentencing on March 12, 2025, arguing that the Motion should be dismissed with prejudice, and should be resolved on the pleadings with no hearing. The Defendant filed a Response to State’s Motion to Dismiss on April 3, 2025. The Court conducted a hearing on April

² The statute in effect at the time of the Murder, S.C. Code Ann. § 16-3-20(A) (Supp. 1991), provided for parole eligibility after twenty (20) years. See State v. Atkins, 303 S.C. 214, 99 S.E.2d 760 (1990).

³ Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). On June 27, 2023, Judge Bentley Price was vested with exclusive jurisdiction over Petitioner’s Motion for Resentencing, by Order of the Honorable Donald W. Beatty. On March 1, 2024, this Court was vested with exclusive jurisdiction by Order signed the Honorable Donald W. Beatty. This matter was scheduled expeditiously based on the availability of counsel.

8, 2025, to determine whether the Defendant meets the requirements articulated by the South Carolina Supreme Court and is thereby subject to a re-sentencing pursuant to Aiken v. Byars.

LAW

The Eighth Amendment of the United States Constitution states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend. VIII. In 2012, the United States Supreme Court held that the Eighth Amendment's prohibition on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. Miller v. Alabama, 567 U.S. 460, 479, 132 S. Ct. 2455, 2469 (2012). In reaching this decision, the Court reasoned that juveniles are constitutionally different from adults for purposes of sentencing because they have "diminished culpability and greater prospects for reform." Id. at 471, 132 S. Ct. at 2464. First, "children have a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk-taking." Id. at 471, 132 S. Ct. at 2464 citing Roper v. Simmons, 543 U.S. 551, 569 125 S. Ct. 1183 (2005). "Children are [also] more vulnerable . . . to negative influences and outside pressures including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." Id. citing Roper, 543 U.S. at 569, 125 S. Ct. at 1219. And lastly, "a child's character is not as "well formed" as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." Id. citing Roper at 543 U.S. at 570, 125 S. Ct. at 1183. A judge or jury must therefore consider mitigating circumstances before imposing the harshest penalty possible for juveniles. Id. at 489, 132 S. Ct. at 2475.

Subsequent to the Court's ruling in Miller v. Alabama, the South Carolina Supreme Court addressed the applicability of Miller to juveniles who received a life sentence without parole in

South Carolina. This case, Aiken v. Byars, upheld the principles enunciated in Miller by holding that "any juvenile offenders who receives a sentence of life without the possibility of parole, whether the sentence is mandatory or permissible, is entitled to the constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." Aiken, 410 S.C. at 544, 765 S.E.2d at 577. The Court further held that Miller applies retroactively to all juvenile offenders sentenced to life without parole and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Id. at 542, 765 S.E.2d at 578. Courts are, thus, required to provide juvenile offenders in South Carolina with individualized hearings where the mitigating hallmark features of youth are fully explored before a life sentence without parole is imposed. Id.

The U.S. Supreme Court has held that a Miller violation may be remedied by resentencing or by extending parole eligibility to previously ineligible juvenile offenders. See Montgomery v. Alabama, 136 S. Ct. 718, 736 (2016). "A state may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them" thereby ensuring that "juveniles whose crimes reflected only transient immaturity – and who have since matured – will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." Id. The South Carolina Supreme Court held that the appropriate remedy for juvenile offenders sentenced to life without parole is a re-sentencing hearing whereby the offender may present evidence specific to their attributes of youth. See Aiken, 410 S.C. at 544, 765 S.E.2d at 577.

ANALYSIS

The Defendant in the instant case was sentenced in 1993 at the age of sixteen (16) to confinement for a period of life with parole eligibility pursuant to S.C. Code Ann. § 16-3-

20(A)(Supp. 1991). Defendant currently seeks re-sentencing of his life sentence in accordance with Aiken v. Byars. In support thereof, Defendant asserts that he falls within the class of juvenile offenders referenced by the Court in Aiken because he was sixteen (16) years old at the time of his crime and sentenced to a term of life imprisonment. Defendant argues that his sentence is, therefore, unconstitutional under Miller v. Alabama and Aiken v. Byars.

The State disputes that Defendant is entitled to re-sentencing under Miller and Aiken on the basis that the Defendant is categorically different from the defendants in these cases since he is eligible for parole and has been since January 18, 2012. It is the State's contention that the holdings of Miller and Aiken solely apply to those juveniles sentenced to life without the possibility of parole. In support of this contention, the State cites to Montgomery v. Alabama in which the U.S. Supreme Court held that a Miller violation may be remedied by re-sentencing the juvenile offender or by extending parole eligibility to the offender. See Montgomery, 136 S. Ct. at 736 ("Giving Miller retroactive effect does not require states to re-litigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole rather than by resentencing them."). Because Montgomery provides that states may, in their discretion, remedy Miller violations by extending parole eligibility to juvenile offenders, the State argues that Miller and Aiken do not apply to juveniles who received life sentences with eligibility for parole as Defendant did here.

Defendant concedes that his sentence differs from those of the defendants in Miller and Aiken, but argues that any distinction between his sentence (life with parole eligibility) and those at issue in Miller and Aiken (life without the possibility of parole) is technical in nature. Moreover, Defendant asserts that there is no "material difference" between his sentence and a life sentence

without parole because his eligibility for parole does not adequately protect the constitutional protections provided by Miller and Aiken. Defendant contends that all juvenile offenders are entitled to a meaningful review of the impact of age and maturity on their crimes and their potential for rehabilitation pursuant to Miller and Aiken, but maintains that he did not receive this type of meaningful review at his parole hearings. Accordingly, Defendant seeks a specialized hearing before this Court in order to evaluate his sentence in light of Miller and Aiken. In essence, the Defendant is asking this Court to grant him an Aiken hearing for the specific purpose of granting him parole thereby usurping the role of the parole board and their decision-making authority which is delegated to them by statute. This Court finds this request exceeds its authority as well as the purpose and goal of the Aiken decision. This Court does not find any support in the Defendant's reading of the Aiken precedent as a guarantee of the grant of parole versus parole eligibility.

The Court has fully and carefully considered the documents and exhibits submitted to the Court and the arguments of counsel at the April 8, 2025, hearing. Upon careful and deliberate consideration, the Court hereby denies Defendant's request for re-sentencing pursuant to Aiken v. Byars. The Court finds that the Defendant does not fit within the ambit of juvenile offenders eligible for re-sentencing under Miller and Aiken. The Defendant here was sentenced to life with parole as a juvenile whereas the defendants before the Court in both Miller and Aiken were sentenced to life without parole as juveniles. See Miller, 567 U.S. at 465, 132 S. Ct. at 2460 ("The two fourteen-year old offenders [. . .] were convicted of murder and sentenced to life imprisonment without the possibility of parole."); Aiken, 410 S.C. at 536, 765 S.E.2d at 573 ("The [defendants] were all convicted for homicides committed while they were juveniles. All were sentenced to life without parole according to existing sentencing procedures."). Aiken provides that its holding and that of Miller apply retroactively "to those similarly situated" to the defendants in those cases. 410

S.C. at 537, 765 S.E.2d at 573. That is to say, only those defendants sentenced to life without parole as juveniles are eligible for re-sentencing under Miller and Aiken. Because the Defendant here is parole-eligible, the Court finds that the Defendant is not "similarly situated" to those in Miller and Aiken, and is, thus, not a proper candidate for re-sentencing in accordance with the guidelines set forth by these cases. In so ruling, the Court notes this interpretation of Aiken is supported by Montgomery v. Alabama wherein the U.S. Supreme Court held that giving Miller retroactive effect does not require courts to re-litigate sentences in every case where the defendant received life without parole. See Montgomery, 136 S. Ct. at 736. A court may instead elect to extend parole eligibility to juvenile offenders rather than re-sentence them. See id.

The Court finds that the instant case is categorically different from Miller and Aiken; and that, consequently, it lacks authority to reconsider Defendant's sentence under these cases. Moreover, because Defendant is presently parole-eligible, he already enjoys one of the potential remedies afforded to juvenile offenders by the U.S. Supreme Court. See Montgomery, 136 S. Ct. at 736 ("A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by re-sentencing them."). Once a defendant is parole eligible, it then becomes the duty of the South Carolina Board of Pardons and Paroles, not this Court, to consider the cases for pardon, parole, and any other form of clemency provided by law. See S.C. Code Ann. § 24-21-13(B)(Supp. 2024). In performing this duty, the parole board considers a number of criteria, including the circumstances surrounding the offense and the potential for rehabilitation.⁴

⁴ Alternatively, even if the Court were to accept the Defendant's argument and grant a re-sentencing hearing there is no guarantee that any potential change of sentence would make any appreciable difference in his parole eligibility, consideration for parole or guarantee the grant of parole. In effect, he would maintain his current posture regarding his consideration for parole.

Defendant contends that the criteria listed above fails to consider the factors of youthfulness and immaturity set forth by Miller, and that as a result, Defendant has been denied "meaningful review" of his sentence as afforded to him by Miller. This contention is solely based upon the fact that Defendant has had seven (7) parole hearings since he first became parole eligible in 2012, and has been denied parole each of the seven (7) times. In asking this Court to evaluate the criteria utilized by the parole board in making these decisions, the Defendant is, in effect, asking this Court to review the decisions made by the board as well as the decision-making process itself. The Defendant is in effect asking this Court to usurp the board's statutory decision-making authority and substitute it with its own. Such a request is improper as this Court is without the jurisdiction to sit in judgment of the decisions of the parole board. "The parole board has the sole authority to determine parole eligibility separate and apart from a court's authority to sentence a defendant." Cooper v. S.C. Dep't of Prob., Parole, and Pardon Serv., 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008).

An inmate who wishes to appeal a decision of the parole board must seek review from the Administrative Law Court rather than the Circuit Court.⁵ See Cooper, 377 S.C. at 497, 661 S.E.2d at 110 ("The ALJD has subject matter jurisdiction to hear appeals from the final decision of [the Department] in a non-collateral or administrative matter."); Al-Shabazz v. State, 338 S.C. 354, 376, 527 S.E.2d 742, 754 ("An inmate may seek review of the Department's final decision of an ALJ in a non-collateral or administrative matter under the APA."). However, "parole is a privilege, not a right," and, thus, not all of the Department's decisions are subject to review. See Cooper, 377

⁵ "The name was changed from the Administrative Law Judge Division to the Administrative Law Court by Act No. 202, effective April 26, 2004." James v. S.C. Dep't of Prob., Pardon and Parole Serv., 376 S.C. 392, 656 S.E.2d 399 n. 3 (Ct. App. 2008) (citing Civil Action No.: 2001-CP-32-0711 Carolina Water Serv., Inc. v. Lexington County Joint Mun. Water & Sewer Comm'n, 367 S.C. 141, 625 S.E.2d 227 (Ct. App. 2006)).

S.C. at 496, 661 S.E.2d at 496; Furtick v. S.C. Dep't of Prob. Pardon and Parole Serv., 352 S.C. 594, 597, 576 S.E.2d 146, 148 (2003). The South Carolina Supreme Court has repeatedly recognized that an inmate has a right to administrative law review of an agency's final decision denying parole eligibility, but does not have the same right to review of a temporary denial of parole. See, e.g., Furtick, 352 S.C. at 598, 576 S.E.2d at 148-49 (holding that "the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process."). "The distinction is that review or consideration for parole is a right granted by statute whereas parole is only a privilege." Steele v. Benjamin, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004).

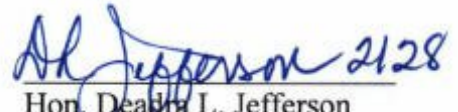
The Defendant has been denied parole by the board seven (7) times since he first became parole eligible in 2012, however, the board has never permanently denied Mr. Hamilton parole. Further, a denial of parole, in and of itself, does not mean that the Defendant has been denied a meaningful review. In fact, the parole board is required, by law, to review Defendant's case every twelve (12) months after a negative parole determination. S.C. Code Ann. § 24-21-620 (Supp. 2002). The Defendant is nevertheless asking this Court to review the board's negative parole determination in his case on the basis that the criteria promulgated by the legislature and utilized by the parole board does not comply with Miller, and is, therefore, unconstitutional. This Court recognizes that it has the authority to interpret the statute setting forth the parole criteria, but finds that the Defendant here is effectively asking the Court to usurp the authority of the parole board to make parole determinations, and instead substitute its own judgment as to whether Defendant should have been granted parole. This Court will therefore not render an opinion as to the appropriateness of the parole board's decision. Such a determination is not dispositive as to the applicability of Aiken to the Defendant's sentence. The Court does, however, acknowledge the

jurisdiction of the Administrative Law Court to determine whether the parole board's decision was made without consideration of the appropriate criteria, and would encourage the Defendant to seek such relief there if he so desires.

CONCLUSION

Based on the foregoing, the Court finds that the Defendant has failed to establish the required criteria and is, therefore, not entitled to re-sentencing under Aiken v. Byars. **THEREFORE**, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Defendant's Motion for Re-Sentencing is heard and DENIED.

AND IT IS SO ORDERED.


Hon. Deandra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

June 4, 2025
Charleston, South Carolina

FILED
2025 JUN -5 PM 3:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY 