

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
S.C. Department of Probation, Parole and Pardon Services

Samuel L. Johnson, ALJ

Appellate Case No. 2026-001051

Bernard Bagley,

Appellant,

v.

S.C. Department of
Probation, Parole
and Pardon Services,

Respondent.

APPENDIX

Bernard Bagley
#175851/SB21b/KER.CI
4848 Goldmine Hwy.
Kershaw, SC 29067

Pro Se

RECEIVED
JUL 31 2026
SC Court of Appeals

Table of Contents

	Pages
S.C. Court of Appeals Order/Opinion State v. Bagley, 92-UP-165 (Ct.App. 12/10/92)	1-4
Order for Destruction of Arrest Records dated April 4, 2001 for Warrant/GS No. C746073, burglary 1st degree Indictment No. 90-GS-40-5864	5
SCDPPPS Notice of Rejection dated June 19, 2025	6
SCDPPPS Form 1212, Criteria for Parole Consideration	7

CERTIFIED TRUE COPY:

Kenneth A. Nichols
Clerk, S. C. Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

The State, Respondent,

v.

Bernard Bagley, Appellant.

Appeal from Richland County
Dan F. Laney, Jr., Circuit Court Judge

Unpublished Opinion No. 92-UP-165
Heard October 14, 1992 - Filed December 10, 1992

**AFFIRMED IN PART, REVERSED IN PART
AND REMANDED**

John D. Delgado, John A. O'Leary, Cathy L. Hazelwood, and South Carolina Office of Appellate Defense, all of Columbia, for appellant.

Attorney General T. Travis Medlock, Chief Deputy Attorney General Donald J. Zelenka, Assistant Attorneys General Harold M. Coombs, Jr., and Miller W. Shealy, Jr., and Solicitor Richard A. Harpootlian, all of Columbia, for respondent.

=====

PER CURIAM: On August 23, 1990, Bernard Bagley kicked in the door of his mother in law's home and shot and killed his wife, Mary Bagley. He was indicted and tried for murder and first degree burglary in the Court of General Sessions. The jury found him guilty of both charges, and the court sentenced him to two consecutive life terms. Bagley appeals both convictions. We affirm the murder conviction and reverse the burglary conviction and remand.

The Bagleys married in 1986. They lived in Columbia, where Bernard worked as a city police officer. In 1987, the Bagleys separated and Bernard moved to Sumter to become a deputy in the Sumter County Sheriff's Department. Eventually, they reconciled

THE STATE v. BAGLEY

and Mary moved to Sumter, where their daughter was born. However, they continued to have marital difficulties and separated numerous times. In August 1989, Bernard accepted a position with the Durham, North Carolina, Police Department. About a week before the scheduled move, the two quarreled and a fight ensued. The police were called. When they arrived, they placed Mary under arrest for criminal domestic violence and assaulting a police officer. Thereafter, Bernard moved to Durham to join the police force and to enter the North Carolina Criminal Justice Academy. Mary and the baby stayed in South Carolina. Less than two months later, the Bagleys again reconciled and Mary and the baby joined Bernard in Durham.

On Sunday, August 19, 1990, the Bagleys again quarreled. The next morning, while Bernard was at the Academy, Mary took the baby and returned to her mother's home in Eastover, South Carolina. When Bernard discovered that Mary and the baby were gone, he immediately drove to Eastover, took the baby, and returned to Durham. Bernard testified that Mary telephoned on Tuesday to apologize for leaving and asked if he would come back to Eastover to pick her up. Bernard drove to Eastover on Wednesday, and the two returned to Durham late that evening. The next morning when Bernard was at the Academy, Mary again packed her belongings and took the baby to Eastover. Bernard testified that he called the bank where Mary worked in Durham and discovered that she had resigned her job and closed the bank account.

Bernard left the Academy and drove to Eastover. He testified that when he arrived at his mother in law's home in Eastover, he could hear his wife talking on the phone inside the house. He said that Mary was laughing about how she had tricked him to get the baby back. He testified he kicked in the door, confronted his wife about having an affair, told her he would not allow another man to raise his child, and then shot her twice.

Bagley confessed to police on the day of the shooting and admitted at trial that he killed his wife. His primary defense to the murder charge was that he should instead be found guilty of the lesser offense of voluntary manslaughter. He defended against the burglary charge by asserting he did not have the requisite intent to commit a crime when he broke into the house. Bagley attempted to introduce testimony by Dr. Diane Follingstad, a licensed clinical forensic psychologist. The trial judge disallowed the testimony.

I.

Bagley first argues the trial judge erred by not allowing the expert to give her opinion on whether Bagley acted upon sufficient legal provocation when he shot his wife. Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion

THE STATE v. BAGLEY

upon sufficient legal provocation. *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988). If sufficient legal provocation does not exist, the killing, even if committed during the heat of passion, is murder, not the lesser offense of manslaughter. *State v. Norris*, 253 S.C. 31, 168 S.E.2d 564 (1969). The provocation of the deceased must be the direct and controlling cause of the passion, and it must be such as naturally and instantly produces in the mind of a person ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment or terror, rendering the mind incapable of cool reflection. *State v. Davis*, 50 S.C. 405, 27 S.E. 905 (1897).

The proffer reveals the expert would have testified that Bagley has an emotionally dependent personality, represses anger, is overly sensitive, and tends to overreact. Based on Bagley's personality traits and the stress he was under at home and work, the expert would have testified Bagley was not functioning as an ordinary, reasonable person on the day he shot his wife. The trial judge disallowed the testimony on the ground that only provocation that inflames the passion of an ordinary, reasonable person is sufficient to reduce a homicide from murder to manslaughter.

We hold the judge did not err in disallowing the expert's testimony as to manslaughter. The proffered testimony did not tend to prove the circumstances surrounding the shooting would have caused an ordinary, reasonable person to commit the same act Bagley committed. To the contrary, it was calculated to show Bagley's reaction was not that of an ordinary, reasonable person. Therefore, disallowing the expert's testimony did not prejudice Bagley, because the testimony would have tended to disprove, rather than prove, he acted upon sufficient legal provocation.

II.

Bagley next argues that the judge erred by not allowing the expert's testimony regarding his state of mind when he kicked in the door before shooting his wife. Under S.C. Code Ann. § 16-11-311, a person is guilty of first degree burglary if he enters a dwelling without consent and with intent to commit a crime and, among other things, either is armed with a deadly weapon or causes physical harm to a person who is not a participant in the crime. Bagley contends he did not intend to commit a crime when he broke down the door.

In his offer of proof, Bagley's counsel stated the expert would testify that, in her opinion, Bagley did not intend to commit a crime when he broke down the door. The judge disallowed the testimony, ruling, in effect, that psychologists are not allowed to give an opinion of the defendant's state of mind at the time of the

THE STATE v. BAGLEY

crime. The judge erred in disallowing the psychologist's testimony. An expert's opinion as to the defendant's state of mind at the time of the crime is admissible. *State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990), cert. denied, 111 S.Ct. 2913 (1991); *State v. Wilkins*, 305 S.C. 272, 407 S.E.2d 670 (Ct. App. 1991) cert. denied, Davis Adv. Sheet No. 27, Dec. 7, 1991.; see Rule 24(c), SCR CrimP.

Therefore, we affirm Bagley's conviction for murder and reverse his conviction on first degree burglary and remand for a new trial on the burglary charge.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

Randall J Bell, J.

Jasper M Cureton, J.

David S. Keady, J.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

FILED

IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

The State of South Carolina 01 APR -4 PM 3:19

vs.

BARBARA A. SCOTT
C.C.C. & G.S.

Bernard Bagley,
Defendant.

Race: Blk. Sex: M Age: 44

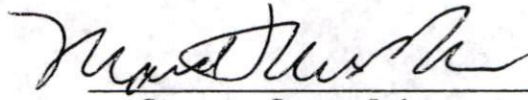
DOB: 1/27/57 SSN: [REDACTED]-1081

Charges were disposed of in the Court of
GENERAL SESSIONS

PLEASE TAKE NOTICE, IT APPEARS that the defendant, Bernard Bagley is entitled to have all records relating to this offense expunged and destroyed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. C746073 Date of Arrest: 8/23/90 Place of Arrest: Richland
County, S.C. Arrest Charge: burglary 1st degree, Indictment No. 90-GS-40-5864.
§17-1-40, the charge was not pressed on or about August 22, 1996.

IT IS ORDERED that all records relating to such arrest and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency (except non-public information retained by SC Law Enforcement Division (SLED) pursuant to the applicable laws of the State of South Carolina).


Circuit Court Judge

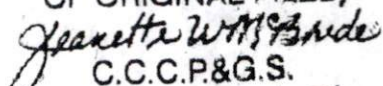
Signed this 4th day of April, 2001.

On Motion of: 
Bernard Bagley, Defendant
175851/ker.c.i.
4848 Goldmine Rd.
Kershaw, S.C. 29067

March 16, 2001

WE CONSENT:


Elizabeth Leuz
Fifth Circuit Solicitor's Office

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Jeanette W. McBride
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

5

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

June 19, 2025

Mr. Bernard Bagley #00175851
Kershaw Correctional Institution
4848 Goldmine Hwy.
Kershaw, SC 29067

RE: NOTICE OF REJECTION

Dear Mr. Bagley:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

01 Nature And Seriousness Of Current Offense
02 Indication Of Violence In This Or Previous Offense
03 Use Of Deadly Weapon In This Or Previous Offense
Vote Count: Unanimous To Reject

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Suber".

Valerie Suber
Associate Deputy Director for Paroles, Pardons and Release Services



South Carolina Department of Probation, Parole and Pardon Services

Criteria for Parole Consideration

Inmate Name
BAGLEY, BERNARD

SCDC#
00175851

SC Board of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates an expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the inmate under review.

In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's
Signature: 

Date: 2/21/2025

Witness
Signature: 

Date: 2/21/2025