

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

VOLUME 2 OF 2

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S.C. SUPREME COURT

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No: 2026-000776

STATE OF SOUTH CAROLINA,

Petitioner,

v.

ERIC ANTON GRAHAM,

Respondent.

APPENDIX

JOANNA K. DELANY
Appellate Defender

Division of Appellate Defense
P. O Box 11589
Columbia, SC 29211

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Sr. Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

PAUL M. BURCH, JR.
Solicitor, Fourth Judicial Circuit
Post Office Box 594
Chesterfield, SC 29709
(843) 672-2373

ATTORNEYS FOR PETITIONER

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Jul 22 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

TOMMY EVANS, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit
110 N. Liberty Street
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT: DEFENDANT’S
EXHIBIT NO. 2 (PHOTOGRAPHS), STATE’S EXHIBITS NOS. 1-29]**

PAUL DUNDEE - DIRECT/BLACKMON

340

1 A I WORK AT IT. I RUN THE BAR.

2 Q ON DECEMBER 7, 1996, DID YOU SEE ALL
3 THREE OF THEM THERE?

4 A I REMEMBER SEEING MR. GRAHAM AND MS.
5 [REDACTED] I'M NOT SURE ABOUT MS. MCDONALD.

6 Q DO YOU REMEMBER TELLING ME ---

7 MR. SMITH: OBJECTION.

8 Q DO YOU REMEMBER PREVIOUSLY TALKING TO ME
9 ABOUT THIS?

10 A YES.

11 Q AND WHAT DID YOU TELL ME ON THOSE
12 OCCASIONS?

13 A THAT I SEEN THEM. I'M NOT SURE ABOUT
14 MS. MCDONALD BEING OUT THERE NOW.

15 Q SAY THAT ONE MORE TIME?

16 A I TOLD YOU I WAS NOT SURE ABOUT WHETHER
17 MS. MCDONALD WAS THERE OR NOT.

18 Q YOU DON'T REMEMBER SAYING THAT YOU SAW
19 ALL THREE OF THEM?

20 MR. SMITH: OBJECTION, YOUR HONOR.

21 Q ARE YOU NOW SAYING YOU DIDN'T SAY YOU
22 SAW ---

23 MR. SMITH: OBJECTION, YOUR HONOR.

24 A I DON'T KNOW WHETHER I SEEN HER OR NOT.

25 MR. SMITH: OBJECTION TO THE FORM OF

HERBERT LEE - DIRECT/BLACKMON

341

1 THE QUESTION.

2 COURT: PLEASE ANSWER IT. BE CAREFUL
3 WITH YOUR QUESTIONS.

4 Q AND WHAT TIME DO YOU THINK YOU SAW THEM
5 THERE?

6 A BETWEEN 12:45 AND 1:00.

7 Q HOW FAR IS THIS PLACE FROM MR. GRAHAM'S
8 HOUSE?

9 A ABOUT THREE MINUTES, FOUR MINUTES.

10 Q IN DISTANCE.

11 A ABOUT A HALF MILE.

12 Q NOTHING FURTHER.

13 MR. SMITH: NO QUESTIONS.

14 COURT: YOU MAY STEP DOWN.

15 SOLICITOR BLACKMON: THE STATE CALLS
16 HERBERT LEE.

17 HERBERT LEE

18 BEING FIRST DULY SWORN, TESTIFIED AS
19 FOLLOWS:

20 DIRECT EXAMINATION

21 BY

22 SOLICITOR BLACKMON

23 MR. SMITH: YOUR HONOR, IF IT PLEASE
24 THE COURT, THE DEFENSE HAS BEEN GIVEN NO
25 NOTICE OF THIS WITNESS, NO OPPORTUNITY TO

HERBERT LEE - DIRECT/BLACKMON

342

1 EXAMINE THIS WITNESS AND I HAVE THE WITNESS
2 LIST OF THE STATE. IT CONTAINS TWENTY NAMES
3 AND THIS GENTLEMAN IS NOT ON IT.

4 COURT: IS THIS SOMETHING IN REBUTTAL
5 TO THE DEFENSE'S CASE?

6 SOLICITOR BLACKMON: YES, SIR.

7 COURT: ALL RIGHT, IF YOU'RE ENTERING
8 AN OBJECTION I'LL OVERRULE IT.

9 MR. SMITH: I'M ENTERING AN OBJECTION,
10 YOUR HONOR.

11 COURT: OVERRULED. BASED ON THIS IS
12 REBUTTAL.

13 Q FOR THE RECORD, COULD YOU STATE YOUR
14 NAME AND WHERE YOU'RE EMPLOYED?

15 A HERBERT LEE. EMPLOYED WITH DARLINGTON
16 COUNTY SHERIFF'S DEPARTMENT.

17 Q IN WHAT CAPACITY?

18 A LIEUTENANT DEPUTY.

19 Q HOW LONG HAVE YOU BEEN THERE?

20 A 25 YEARS, THREE MONTHS.

21 Q WERE YOU THERE ON THE MORNING OF
22 DECEMBER 17, 1996?

23 A I WAS.

24 Q WERE YOU THERE WHEN ERIC GRAHAM CAME
25 INTO THE DETENTION CENTER?

HERBERT LEE - DIRECT/BLACKMON

343

1 A I WAS ON CALL THAT WEEK AND I GOT A CALL
2 FROM A RESIDENCE THAT THEY HAD A SHOOTING.
3 AND ANY TIME I'M ON CALL I RESPOND. I GOT
4 DRESSED AND WENT UP TO THAT RESIDENCE.

5 I GOT THERE JUST BEFORE THE CORONER DID
6 AND WE PROCESSED THE SCENE. AFTER WE
7 PROCESSED -- THEY HAD ERIC HANDCUFFED WHEN I
8 GOT THERE.

9 Q AND WHAT WAS MR. GRAHAM'S ATTITUDE?

10 A HE WAS ON THE FLOOR, CARRYING ON. SO
11 AFTER WE GOT THROUGH PROCESSING THE SCENE WE
12 BROUGHT HIM OUT AND TRANSPORTED HIM TO
13 DARLINGTON COUNTY JAIL, SHERIFF'S OFFICE.

14 Q AND WHAT WAS HIS ATTITUDE WHEN HE
15 ARRIVED THERE?

16 A WELL, HE HAD A NEGATIVE ATTITUDE.

17 Q WOULD YOU PLEASE DESCRIBE HIS NEGATIVE
18 ATTITUDE?

19 A IT WAS SEVERAL OF US IN THE OFFICE ON
20 THE INVESTIGATOR'S SIDE. WE WERE TALKING
21 WITH HIM. THERE WAS ME, INVESTIGATOR
22 THOMPSON, INVESTIGATOR CARTER, AND I THINK
23 INVESTIGATOR MELTON WAS HERE AND A COUPLE OF
24 DEPUTIES, AND THEY WERE TALKING WITH HIM AND
25 HE WAS UP THERE, YO, MAN, YO, MAN. HE KEPT

HERBERT LEE - CROSS/SMITH

344

1 CARRYING ON LIKE THAT. I SAID, IF YOU DON'T
2 KNOW THESE OFFICERS NAMES, I SAID EVERYBODY
3 IN HERE IS A DEPUTY SHERIFF EXCEPT YOU. I
4 SAID YOU CAN SAY OFFICER OR SIR OR SOMETHING
5 LIKE THAT. THAT YO STUFF, WE'RE NOT GONE
6 PUT UP WITH IT. I SAID, YOU GOT YOURSELF IN
7 A LOT OF TROUBLE AS IT IS. I SAID, YOU KNOW
8 I'M NOT GOING FOR THAT STREET STUFF IN HERE.
9 HE CALMED HISSELF DOWN. I WAS GETTING A
10 LITTLE IRRITATED WITH HIM MYSELF, THE WAY HE
11 WAS CARRYING ON. AND HE CALMED DOWN. AND
12 HE STARTED COOPERATING.

13 Q NOTHING FURTHER.

14 CROSS EXAMINATION

15 BY

16 MR. SMITH

17 Q DEPUTY LEE, WERE YOU THE ONLY BLACK
18 OFFICER IN THE ROOM?

19 A I BELIEVE I WAS.

20 Q SO BEFORE YOU ARRIVED THERE WERE NO
21 BLACK OFFICERS IN THE ROOM AT ALL, WERE
22 THERE?

23 A YOU TALKING ABOUT AT THE SHERIFF'S
24 OFFICE?

25 Q YES, SIR. WITH MR. GRAHAM. EVERYBODY

MOTIONS

345

1 WAS WHITE, WEREN'T THEY?

2 A YEAH, I BELIEVE SO.

3 Q THANK YOU.

4 COURT: YOU MAY STEP DOWN. THANK YOU.

5 SOLICITOR BLACKMON: NOTHING FURTHER
6 FROM THE STATE.

7 MR. SMITH: YOUR HONOR, WE HAVE SOME
8 MOTIONS.

9 COURT: LADIES AND GENTLEMEN, I
10 APOLOGIZE FOR HAVING TO DO THIS, BUT WHEN
11 MATTERS OF LAW COME UP I HAVE TO ASK YOU TO
12 STEP OUT. THAT'S THE WAY THE SYSTEM WORKS.
13 (WHEREUPON THE FOLLOWING TAKES PLACE OUTSIDE
14 THE PRESENCE OF THE JURY.)

15 MR. SMITH: YOUR HONOR, IF IT PLEASE
16 THE COURT, AT THIS TIME WE'D, AGAIN, RENEW
17 OUR MOTION FOR A DISMISSAL OF THE CHARGE OF
18 MURDER.

19 YOUR HONOR, EARLIER, WHEN WE TALKED
20 ABOUT THE LAW AND YOUR HONOR IS VERY
21 FAMILIAR WITH THE ELEMENTS OF MURDER,
22 KILLING OF A HUMAN BEING WITH MALICE
23 AFORETHOUGHT, YOUR HONOR HAD TESTIMONY
24 PRESENTED BY DEFENSE WITNESSES AND THERE HAS
25 BEEN NO CONTRADICTION FROM THE STATE AS TO

MOTIONS

346

1 ANY PROVOCATION OR MOTIVE TO INDICATE THERE
2 WAS ANY MALICE IN THIS DEATH.

3 YOUR HONOR, UNDER STATE VERSUS KING,
4 WHERE THERE'S A REASONABLE DOUBT AS TO
5 WHETHER THE DEFENDANT COMMITTED MURDER OR
6 MANSLAUGHTER, THE DOUBT SHOULD BE RESOLVED
7 IN FAVOR OF THE LESSER OFFENSE.

8 YOUR HONOR, THE DIFFERENCE BETWEEN
9 MURDER AND MANSLAUGHTER, UNDER STATE VERSUS
10 NORRIS, THE NECESSITY FOR MALICE
11 AFORETHOUGHT FOR THE FORMER.

12 YOUR HONOR, WE FEEL LIKE THAT THE STATE,
13 IN THIS CASE, THEY CHOSE TO PURSUE AN
14 INDICTMENT ON MURDER. THE FACTS THAT HAVE
15 BEEN PRESENTED IN THIS COURTROOM TO NOT
16 ESTABLISH ANY EVIDENCE TO SUPPORT THE
17 ELEMENTS OF THAT CRIME.

18 WE'D ASK FOR A DISMISSAL OF THIS
19 INDICTMENT, YOUR HONOR, BASED ON THE STATE'S
20 FAILURE TO PROVE THEIR CASE, AND IN THE
21 ALTERNATIVE, YOUR HONOR, WE'D ASK THAT THE
22 COURT CONSIDER, IF NOT DISMISSING THE CASE
23 IN ITS ENTIRETY, TO ONLY CHARGE MANSLAUGHTER
24 BECAUSE OF THE STATE'S FAILURE TO SHOW
25 MALICE.

MOTIONS

347

1 WE DO BELIEVE THAT THE STATE HAS FAILED
2 TO PROVE THE CASE AND WE'D ASK THE COURT TO
3 DISMISS THE INDICTMENT.

4 COURT: I'M PRETTY CLEAR CUT ON THAT.
5 YOU DON'T HAVE TO PROVE MOTIVE.

6 SOLICITOR BLACKMON: AND I DO BELIEVE
7 WE'VE ESTABLISHED MALICE AS IT'S STATED IN
8 STATE VERSUS MOUZON, WITH GENERAL MALIGNANT
9 RECKLESSNESS OF THE LIVES AND SAFETY OF
10 OTHERS. I THINK WE'VE GONE WAY PAST THAT.

11 COURT: I'LL DENY YOUR MOTION BASED ON
12 THAT, MR. SMITH AND, ALSO WHAT'S BEEN
13 PREVIOUSLY STATED DURING THE DIRECTED
14 VERDICT STAGE.

15 OF COURSE, NOW YOU'RE FREE TO ARGUE
16 THAT.

17 MR. SMITH: YOUR HONOR, ONE OTHER
18 THING. YOUR HONOR, WE'D ALSO MOVE FOR A
19 DISMISSAL OF THE MURDER CHARGE IN THAT IN
20 THE ELEMENTS OF THE CRIME THERE HAS TO BE A
21 DEADLY WEAPON. IN THIS CASE THE COURT HAS
22 ALREADY DISMISSED POSSESSION OF THE GUN.
23 AGAINST THE DEFENDANT. THAT HAS BEEN
24 REMOVED FROM THIS CASE. WE WOULD ASK THAT
25 THE COURT DISMISS IT ON THOSE GROUNDS IN

MOTIONS

348

1 THAT THERE IS A FAILURE OF CONNECTION IN
2 THIS CASE.

3 SOLICITOR BLACKMON: MAY IT PLEASE THE
4 COURT, WHAT THE COURT DISMISSED WAS UNLAWFUL
5 POSSESSION OF THE WEAPON. IT IS NOT
6 UNLAWFUL TO POSSESS A WEAPON IN YOUR
7 RESIDENCE, THEREFORE THE WEAPON WAS LEGALLY
8 THERE. THERE IS PLENTY OF EVIDENCE THAT HE
9 SHOT HER WITH THAT GUN. THEREFORE, I THINK
10 A DISMISSAL ON THAT BASIS, HE IS NOT
11 ENTITLED TO THAT.

12 COURT: I DON'T BLAME YOU FOR MAKING
13 THE MOTION BUT I DON'T BELIEVE THAT ONE
14 HOLDS ANY WATER WHATSOEVER. DENIED.

15 MR. SMITH: YOUR HONOR, FOR A POINT OF
16 QUERY, IS THE JUDGE OR THE COURT GOING TO
17 DISCUSS THE LACK OF THAT INDICTMENT IN THE
18 JURY'S CONSIDERATION?

19 COURT: I JUST HELD OFF UNTIL WE GOT TO
20 THE CHARGE STAGE. I WAS JUST GONE TELL THE
21 JURY THAT I DIRECTED A VERDICT ON THAT
22 CHARGE BECAUSE IT'S NOT UNLAWFUL TO POSSESS
23 A PISTOL IN YOUR OWN HOME. AND I'LL REQUEST
24 THE FOREMAN TO CONFORM THE BACK OF THE
25 INDICTMENT WITH THE VERDICT.

MOTIONS

349

1 MR. SMITH: IS THE COURT ALSO GOING TO
2 INSTRUCT THE JURY AS TO THE LESSER CHARGES?

3 COURT: YES, SIR.

4 MR. SMITH: THANK YOU.

5 SOLICITOR BLACKMON: DOES THAT MEAN THE
6 COURT WILL ALSO INSTRUCT INVOLUNTARY?

7 COURT: I'M GONE DO THE COMPLETE
8 CHARGE. I ASSUME YOU'RE REQUESTING THAT,
9 MR. SMITH?

10 MR. SMITH: YES, SIR.

11 SOLICITOR BLACKMON: MAY IT PLEASE THE
12 COURT, , AS TO THE CHARGE ON INVOLUNTARY,
13 IT'S THE STATE'S POSITION THERE WAS NO
14 EVIDENCE ON THAT PRESENTED BY THE DEFENSE.
15 NOTHING WAS EVER ADMITTED EXCEPT FOR THE
16 REFERENCE TO THE ACCIDENT ON THE CORONER'S
17 REPORT. HOWEVER, THE PATHOLOGIST REPORT
18 INDICATES IT'S HOMICIDE AND INDICATED IN HIS
19 TESTIMONY THAT, IN HIS OPINION, THAT IT WAS
20 NOT AN ACCIDENT AND INVOLUNTARY, NECESSARILY
21 IS NEGLIGENCE, WHICH COULD BE CONSTRUED AS
22 AN ACCIDENT OR JUST BREACH OF DUTY.

23 THE STATE FEELS HE WOULD NOT BE ENTITLED
24 TO THAT CHARGE?

25 COURT: YOU HAVE SOME OTHER TESTIMONY

CLOSING ARGUMENT - BLACKMON

350

1 IN THERE, JUST BRIEFLY GOING THROUGH MY MIND
2 -- ONE OF THE LADIE'S TESTIFIED IT WAS AN
3 ACCIDENT.

4 SOLICITOR BLACKMON: YES, SIR.

5 COURT: IT'S NOT THAT STRONG BUT IT IS
6 THERE.

7 COURT: ALL RIGHT, YOU READY?

8 (WHEREUPON THE FOLLOWING TAKES PLACE IN THE
9 PRESENCE OF THE JURY.)

10 COURT: ALL RIGHT, , LADIES AND
11 GENTLEMEN, WE'RE READY TO PRESENT THE
12 ARGUMENT PORTION OF THE CASE. MR. SMITH,
13 YOU REQUIRE THE STATE TO OPEN?

14 MR. SMITH: YES, YOUR HONOR.

15 CLOSING ARGUMENT

16 BY

17 SOLICITOR BLACKMON

18 MAY IT PLEASE THE COURT, LADIES AND
19 GENTLEMEN OF THE JURY, FIRST OF ALL LET ME
20 TELL YOU, WE DO APPRECIATE YOU BEING HERE.
21 THIS WEEK HAS BEEN A LITTLE MORE ADVERSE
22 THAN MOST WEEKS, HAVING TO STOP IN THE
23 MIDDLE FOR A STORM THAT NEVER GOT HERE.

24 THIS IS A SERIOUS CASE AND YOU HAVE A
25 HARD JOB. YOU HAVE THE HARDEST JOB OF

CLOSING ARGUMENT - BLACKMON

351

1 ANYBODY IN HERE. I ARGUE MY POSITIONS, HE
2 ARGUES HIS POSITIONS. THE JUDGE HOLDS US TO
3 THE LAW AND HE'LL INSTRUCT YOU ON THAT TODAY
4 BECAUSE ERIC GRAHAM IS CHARGED WITH THE
5 MURDER OF [REDACTED] [REDACTED]

6 BY DEFINITION, MURDER IS THE UNLAWFUL
7 KILLING OF ANOTHER HUMAN BEING WITH MALICE
8 AFORETHOUGHT. NOW, THE DEFENSE HAS MADE A
9 WHOLE LOT OF BIG DEAL ABOUT MALICE
10 AFORETHOUGHT AND WHAT THAT IS. WELL, MALICE
11 AFORETHOUGHT DOESN'T NECESSARILY REQUIRE A
12 LONG-TERM PLAN, A LONG GRUDGE, A HUGE AMOUNT
13 OF ILL-WILL, SOME KIND OF DEVINE PLAN. YOU
14 CAN HAVE MALICE AFORETHOUGHT, THAT IS AN
15 ESSENTIAL ELEMENT -- YOU CAN HAVE MALICE
16 FROM SOMEONE WHO IS ACTING IN RECKLESS OR
17 SOME MALIGNANT RECKLESSNESS THAT INDICATES
18 HE HAS A TOTAL DISREGARD OF HUMAN LIFE.

19 THE STATE'S POSITION IS THIS. WHEN MR.
20 GRAHAM, TOOK HIS 9MM PISTOL AND STUCK IT TO
21 HER THROAT AND DISCHARGED IT, THAT'S ENOUGH
22 FOR MALICE. THAT IS MALIGNANT RECKLESSNESS.
23 THERE IS NOBODY IN THIS ROOM THAT HAS NOT
24 BEE TAUGHT OR DOES NOT KNOW THAT YOU DO NOT
25 POINT A LOADED GUN AT SOMEBODY UNLESS YOU

CLOSING ARGUMENT - BLACKMON

352

1 MEAN TO SHOOT THEM. AND YOU SURELY DON'T
2 STICK IT TO THEIR THROAT UNLESS YOU MEAN TO
3 USE IT. IT'S RIDICULOUS TO BELIEVE
4 OTHERWISE.

5 LET'S GO TO THE OTHER EVIDENCE. DR.
6 PROCTOR, THE PATHOLOGIST, TESTIFIED THAT HIS
7 FINDING WAS THAT THIS WAS A HOMICIDE. AND
8 WHY DID HE THINK THAT? BECAUSE THIS IS A
9 CONTACT WOUND. THIS ESTABLISHES THAT HE
10 STUCK THAT GUN TO HER THROAT. OTHERWISE,
11 THE ENTRY WOULD HAVE BEEN DIFFERENT. HE
12 STUCK IT TO HER THROAT AND DISCHARGED IT.
13 THE BULLET WENT STRAIGHT UP THROUGH HER HEAD
14 AND STRAIGHT OUT OF THE TOP, AS HE HAS
15 DEMONSTRATED BY THIS PHOTOGRAPH.

16 DR. PROCTOR, TESTIFIED THAT, IN HIS
17 OPINION, THE POSITION OF THIS GUN WAS THIS
18 OR THIS. IT DIDN'T GET THERE BY ACCIDENT.
19 IT DID NOT GET THERE BY ACCIDENT. AND I
20 WOULD FIND IT HARD TO BELIEVE THAT IF, AS
21 THE DEFENSE WOULD HAVE YOU BELIEVE, MS.

22 [REDACTED] GRABBED THE GUN, THAT SHE GRABBED IT
23 AND STUCK IT TO HER OWN THROAT. THAT IS
24 PREPOSTEROUS. THE GUN WAS TOUCHING HER
25 SKIN. IT WAS A CONTACT WOUND. THAT

CLOSING ARGUMENT - BLACKMON

353

1 REQUIRED AN INTENTIONAL MOVEMENT ON HER
2 PART.

3 VELLO PAVEL, THE FIREARMS EXPERT FROM
4 SLED, TESTIFIED IT TAKES 6-3/4 TO 7-1/4
5 POUNDS OF TRIGGER PULL TO DISCHARGE THAT
6 WEAPON. THAT WASN'T A LITTLE SLAP. IT
7 REQUIRED, AS HE TESTIFIED TO, AN INTENTIONAL
8 MOVEMENT.

9 MR. SMITH: OBJECTION, YOUR HONOR. HE
10 DID NOT TESTIFY TO THAT. HE ONLY TESTIFIED
11 TO THE POUNDAGE.

12 COURT: ALL RIGHT. SOLICITOR, KEEP TO
13 THE EVIDENCE. LET ME CORRECT IT THIS WAY.
14 LADIES AND GENTLEMEN, YOU WILL DECIDE THE
15 CASE FROM THE EVIDENCE PRESENTED, NOT WHAT
16 THE ATTORNEYS SAY. THEIR ARGUMENTS ARE
17 ARGUMENTS. THEY'RE NOT EVIDENCE. YOU MAY
18 PROCEED.

19 SOLICITOR BLACKMON: THANK YOU, YOUR
20 HONOR. 6-3/4 TO 7-1/4 POUNDS OF TRIGGER
21 PULL, POUNDS OF PRESSURE TO MAKE THAT
22 TRIGGER PULL. THAT'S EQUIVALENT TO ONE
23 FIVE-POUND BAG OF SUGAR AND TWO ONE-POUND
24 BAGS OF SUGAR STACKED ON TOP OF EACH OTHER.
25 AND I THINK IF EVERYBODY HAS EVER GONE TO

CLOSING ARGUMENT - BLACKMON

354

1 THE GROCERY STORE AND BOUGHT THAT, KNOWS
2 IT'S NOT NECESSARILY LIGHT, IT'S NOT A HAIRY
3 TRIGGER.

4 WHAT ELSE DO WE HAVE? NOBODY WHO HAS
5 TESTIFIED FOR THE DEFENSE WAS IN THAT ROOM
6 EXCEPT [REDACTED] MCDONALD, WHO MADE SEVERAL
7 CONFLICTING STATEMENTS, OTHER THAN THE
8 DEFENDANT, ERIC GRAHAM, AND BIRDIE [REDACTED]
9 WHO IS NOT HERE, BECAUSE OF THE DEFENDANT
10 ERIC GRAHAM.

11 EVERYBODY SAYS THEY WERE JUST HAPPY-GO-
12 LUCKY. THERE WAS NO ARGUMENT. THE STATE
13 NEVER SAID THEY WERE ARGUING. THE STATE
14 SIMPLY SAID HE TOOK A LOADED GUN, FOR
15 WHATEVER REASON, THAT DEFIES LOGIC
16 COMPLETELY, STUCK IT TO HER THROAT,
17 DISCHARGED IT, AND KILLED HER. AND THAT'S
18 WHAT THE EVIDENCE SHOWS. THAT'S WHAT THE
19 EVIDENCE SHOWS THAT IS THERE. NO MATTER
20 WHAT ANYBODY ELSE SAYS, IT'S THERE.

21 NOW, LET'S GO BACK. THE TRACE MAN FROM
22 SLED, MR. POWELL, HE SAID THERE WAS NO
23 GUNSHOT RESIDUE ON MS. [REDACTED] HANDS, THAT
24 HER HANDS HAD NORMAL DIRT, LIKE MINE OR
25 YOURS WOULD HAVE RIGHT NOW, BECAUSE WE

CLOSING ARGUMENT - BLACKMON

355

1 HAVEN'T WASHED THEM IMMEDIATELY. TO HAVE
2 TOUCHED THAT GUN, THE PROBABILITY WOULD HAVE
3 BEEN EXTREMELY HIGH, ACCORDING TO MR.
4 POWELL, THAT SHE'D HAVE SOME TRACES ON THEM,
5 SIMPLY BECAUSE OF THE WAY THE GUN WORKS.
6 AND THERE WASN'T.

7 MR. POWELL ALSO TESTIFIED THAT MR.
8 GRAHAM DIDN'T HAVE ANY GUNSHOT RESIDUE BUT
9 HE DIDN'T HAVE NORMAL DIRT SO SOMETHING HAD
10 HAPPENED TO HIS HANDS. THEY HAD BEEN WIPED
11 OR WASHED.

12 THE DEFENSE WENT TO A GREAT DEAL OF
13 TROUBLE TO EXPLAIN THE BLANKET. MR. POWELL
14 SAID REMOVING THAT BLANKET WITHOUT WIPING
15 HER HANDS WOULD NOT HAVE ALTERED THIS.

16 THERE HAS BEEN A LOT OF TESTIMONY ABOUT
17 MR. GRAHAM BEING UPSET. I'M NOT SHOCKED AT
18 THAT. I'M NOT SHOCKED AT THAT A BIT. I
19 THINK MOST OF US WOULD BE UPSET. BUT THE
20 FACT OF THE MATTER THAT MR. GRAHAM'S HANDS
21 WERE CLEAN. THEY DIDN'T HAVE ANY GUNSHOT
22 RESIDUE. THEY DIDN'T HAVE THE DIRT THAT WAS
23 SUPPOSED TO BE THERE EITHER.

24 THE TESTIMONY THAT HE CRIED AND WAS ALL
25 UPSET AND WAS GRABBING HER AND WAS ON THE

CLOSING ARGUMENT - BLACKMON

356

1 FLOOR, BUT IT DIDN'T ALTER THE FACT THAT MR.
2 POWELL'S TESTIMONY, HAD HIS HANDS NOT BEEN
3 CLEAN, GUNSHOT RESIDUE WOULD HAVE BEEN ON
4 THE BACK. IT DIDN'T ALTER THE FACT THAT HER
5 HANDS WERE DIRTY, HAD NOT BEEN WIPED, HAD
6 NOT BEEN CLEANED. IT'S THERE.

7 COURT: WHILE YOU'RE PAUSING,
8 SOLICITOR, CAN I SPEAK TO BOTH OF YOU A
9 SECOND?

10 (WHEREUPON A BENCH CONFERENCE WAS HELD
11 IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
12 HEARING OF THE JURY.)

13 A FEW THINGS FOR YOU TO REMEMBER, AND IT
14 IS TRUE, AND HE WILL REMIND YOU REPEATED --
15 HE'S REMINDED YOU ALREADY REPEATEDLY -- I
16 HAVE TO PROVE EVERY ELEMENT OF MURDER BEYOND
17 A REASONABLE DOUBT. I HAVE TO PROVE THAT
18 BIRDIE [REDACTED] WAS KILLED. I HAVE TO PROVE
19 THAT ERIC GRAHAM KILLED HER AND THAT THERE
20 WAS MALICE AFORETHOUGHT. BUT THE KEY TO
21 THAT IS TO REMEMBER IT DOESN'T REQUIRE SOME
22 KIND OF HUGE BLOW-UP. IT DOESN'T REQUIRE A
23 HUGE GRUDGE. IT DOESN'T REQUIRE SOME KIND
24 OF LONG, DEVISED PLAN, BUT IT DOES REQUIRE
25 THIS MALIGNANT RECKLESSNESS, TO THE POINT

CLOSING ARGUMENT - SMITH

357

1 THAT IT JUST GENERAL MALIGNANT RECKLESSNESS
2 OF THE LIVES AND SAFETY OF OTHERS. AND I
3 THINK I'VE PROVED THAT.

CLOSING ARGUMENT

BY

MR. SMITH

7 LADIES AND GENTLEMEN OF THE JURY, IT'S
8 THE TIME OF THE CASE WHERE THE ATTORNEYS
9 HAVE A CHANCE TO TALK WITH YOU, TO TRY TO
10 SUM UP WHAT THEY THINK IS IMPORTANT IN THIS
11 CASE.

12 I KNOW IT'S BEEN A LONG WEEK AND I WANT
13 TO THANK YOU FOR THE ATTENTION THAT YOU'VE
14 SHOWN THIS CASE. I NOTICED WHEN I LAID ON
15 THE FLOOR SOME OF YOU STOOD UP AND LOOKED.
16 YOU KNOW, WE NOTICE THINGS LIKE THAT, SO
17 YA'LL HAVE BEEN VERY ATTENTIVE AND WE THANK
18 YOU FOR THAT.

19 I HAVE A TASK OF DEFENDING ERIC GRAHAM
20 AND A DIFFICULT EMOTIONAL SITUATION. IT'S
21 BEEN A VERY TRYING CASE FOR EVERYONE. I
22 KNOW IT HAS FOR EVERYONE OF YOU.

23 AS THE TWELVE JURORS, YOU DECIDE THE
24 FACTS OF THE CASE. YOU'VE GOT TO DECIDE
25 THOSE FACTS BASED ON THE EVIDENCE THAT WAS

CLOSING ARGUMENT - SMITH

358

1 PRESENTED FROM THAT WITNESS STAND.

2 NOW, ERIC HAS ELECTED NOT TO TESTIFY IN
3 THIS CASE AND THE JUDGE IS GONNA TELL YOU
4 THAT HE'S UNDER NO OBLIGATION TO TESTIFY AND
5 YOU CAN'T HOLD THAT AGAINST HIM BECAUSE IT'S
6 THE STATE'S BURDEN TO PROVE THEIR CASE
7 BEYOND A REASONABLE DOUBT.

8 NOW, THIS INCIDENT HAPPENED DECEMBER,
9 1996. WE'RE IN AUGUST OF 1998. THE STATE
10 HAS HAD OVER A YEAR AND A HALF TO GATHER
11 EVIDENCE AND WITNESSES TO BRING IN BEFORE
12 YOU TO ESTABLISH THEIR CASE.

13 WELL, WE HEARD THE OFFICERS GET UP AND
14 THEY ARE TRAINED TO MAKE OBSERVATIONS AND
15 MAKE CASES, TAKE NOTES AND PREPARE THEIR
16 CASE FOR PRESENTATION TO A JURY LIKE
17 YOURSELF.

18 NOW, WHAT DID WE HAVE TO DO? WE HAD TO
19 CALL WITNESSES BACK UP OVER AND OVER FOR
20 THEM TO TELL YOU THINGS AT MS. BLACKMON'S
21 URGING, BECAUSE THEY COULDN'T RECALL, THEY
22 DIDN'T KNOW OR THEY WEREN'T SURE.

23 NOW, MS. BLACKMON SAYS, AND DID IT
24 RATHER GENTLY, ATTACKED WITNESSES THAT SHE
25 SUBPOENAED TO BE HERE, WHEN I PUT THEM UP.

CLOSING ARGUMENT - SMITH

359

1 SHE DIDN'T CALL THEM, THE PEOPLE WHO WERE
2 THERE, THE PEOPLE WHO WERE INVOLVED IN THIS
3 THING. SHE DID NOT CALL THEM. WE PUT THEM
4 BEFORE YOU FOR THEIR TESTIMONY. I SUBMIT TO
5 YOU THE REASON SHE DID NOT CALL THEM IS SHE
6 DID NOT LIKE WHAT THEY WERE GONNA SAY,
7 BECAUSE THEY DON'T GIVE HER WHAT SHE WANTS
8 FOR YOU.

9 SHE WANTS TO TAKE THIS PICTURE AND SHE
10 WANTS TO WAIVE THIS PICTURE IN YOUR FACE OF
11 THIS UNFORTUNATE INCIDENT. SHE WANTS TO GET
12 YOU ANGRY AND RILED AND EMOTIONAL THAT
13 SOMEONE HAS DIED AND THAT IT'S ERIC'S FAULT
14 THAT SHE DIED.

15 MURDER. THE UNLAWFUL KILLING OF ANOTHER
16 WITH MALICE AFORETHOUGHT. MALICE, THAT'S
17 ILL WILL, THAT'S HATRED. THAT'S BAD THINGS.
18 IT'S AN EVIL THING.

19 DID WE HEAR MOTIVE BY THE STATE? NO.
20 EVERY TIME YOU HAVE A MURDER CASE, EVERY
21 TIME YOU'VE EVER SEEN ONE OR READ ABOUT ONE,
22 DID YOU SEE A MOTIVE? YEAH. EVERY TIME.
23 THERE IS NOT ONE.

24 PROVOCATION. DID YOU HEAR ABOUT
25 PROVOCATION? THAT SHE SLAPPED HIM UP BESIDE

CLOSING ARGUMENT - SMITH

360

1 THE HEAD AND HE PULLED THE GUN OUT AND SHOT
2 HER? THAT THEY GOT IN A BIG ARGUMENT?
3 ANYTHING. ANYTHING AS TO WHY THIS HAPPENED.
4 HAVE YOU HEARD ANYTHING? NO. NO. YOU KNOW
5 WHY? BECAUSE IT WAS AN ACCIDENT.

6 THAT'S A TOUGH DECISION YOU'VE GOT TO
7 MAKE, BECAUSE THERE'S SOMEONE GONE. BUT
8 WHEN YOU SIT DOWN AND WEIGH THE EVIDENCE
9 THAT'S BEEN GIVEN TO YOU AND YOU LISTEN TO
10 WHAT THE STATE HAS GIVEN TO YOU, THAT'S ALL
11 YOU'VE GOT. YOU'VE GOT AN ACCIDENT.

12 IT'S A BAD ACCIDENT AND IT'S AN
13 UNFORTUNATE ACCIDENT. THAT'S ALL IT IS.

14 THE WITNESSES FOR THE STATE -- OKAY,
15 DETECTIVE THOMPSON DOESN'T KNOW WHEN HE GOT
16 THERE FOR SURE. MATTER OF FACT, HE THOUGHT
17 HE GOT THERE AT THREE-SOMETHING. AND THEN I
18 POINTED OUT HE TOOK THE STATEMENT BEFORE HE
19 SAID HE GOT THERE, SO HE MUST HAVE GOT THERE
20 EARLIER. HE COULDN'T REMEMBER WHO GAVE HIM
21 THE GUN. HAD TO GO BACK THROUGH THAT.

22 TWICE WE HAD TO GIVE THEM OPPORTUNITIES
23 TO TRY TO PROVE SOMETHING TO YOU. IT'S NOT
24 THE WAY THE SYSTEM WORKS, PEOPLE.

25 A PERSON HAS TO BE PROVEN BY THE STATE

CLOSING ARGUMENT - SMITH

361

1 AND THAT GUILT'S GOT TO BE BEYOND A
2 REASONABLE DOUBT.

3 NO FINGERPRINTS ON THE GUN. THERE IS NO
4 POWDER RESIDUE ON THE HANDS. OH WELL, HE
5 WASHED HIS HANDS. THEY WANT YOU TO
6 SPECULATE AND TRY AND GRAB SOMETHING THAT
7 YOU CAN HOLD ON TO.

8 WE TALKED ABOUT HIS CRYING. THAT'S WHEN
9 I GOT ON THE FLOOR. AND WE HEARD ABOUT HIS
10 EMOTIONAL TEARS FLOWING, COVERING HIS FACE
11 AND BEING HELD DOWN. GRABBED HER. SHOOK
12 HER.

13 EVERYONE WHO TALKED IN THIS CASE SEEMED
14 TO APPROACH MS. [REDACTED] BODY. THERE WERE
15 SEVERAL DIFFERENT POSITIONS THAT BODY WAS
16 IN. SEVERAL. THE STATE WANTS TO TAKE THESE
17 PICTURES AND SAY -- HOW COULD YOU NOT SEE
18 THAT? THESE PICTURES WERE TAKEN SOMETIME
19 AFTERWARDS AND THE PEOPLE YOU HEARD
20 TESTIFYING THAT CAME IN THERE SHORTLY AFTER
21 THIS AND THE BODY WAS IN DIFFERENT
22 POSITIONS.

23 WHEN JOHN GETS UP THERE AND SAYS, I
24 DIDN'T SEE IT AND WHEN BOBBIE JEANS STANDS
25 UP AND SAYS, I DIDN'T SEE IT. EVEN THE

CLOSING ARGUMENT - SMITH

362

1 OFFICERS CAME IN AND DIDN'T SEE IT.
2 REMEMBER THAT? THEY HAD TO LOOK, BECAUSE IT
3 DIDN'T LOOK LIKE THIS. THIS IS AFTER.
4 THESE PHOTOGRAPHS ARE AFTERWARDS.

5 WE'RE HERE TO TALK ABOUT WHAT HAPPENED
6 BEFORE. WHAT HAPPENED BEFORE? WE DON'T
7 KNOW. BECAUSE THE STATE DIDN'T PROVE
8 ANYTHING. BECAUSE WHAT HAPPENED, THEY
9 DIDN'T PROVE ANYTHING.

10 THERE IS NO EVIDENCE THAT WAS PRESENTED,
11 UNLESS YOU TRY TO INTERPRET A DIFFERENT WAY
12 THAT HE STUCK THE GUN TO HER THROAT AND
13 PULLED THE TRIGGER. NO FINGERPRINTS. I
14 GUESS HE CLEANED THE GUN OFF WHEN HE CLEANED
15 HIS HANDS OFF.

16 THE ONLY THING THAT WE KNOW IS WHAT WE
17 HEARD FROM PEOPLE WHO TALKED, WHEN HE WAS
18 UPSET AND HEARD HIM TALKING TO THE OFFICERS.
19 THE GUN FIRED. THEY WERE SITTING BESIDE
20 EACH OTHER ON THE COUCH. WE KNOW THAT. SO
21 THEY WERE CLOSE. THEY FOUND THE BULLET IN
22 THE WALL. IT DIDN'T GO STRAIGHT UP. IT
23 WENT TO THE WALL. THE WALL IS BEHIND THEM.
24 THE BODY ITSELF WAS MOVED SEVERAL TIMES.
25 DURING THIS CASE, WE HEARD THERE. WE HEARD

CLOSING ARGUMENT - SMITH

363

1 DIFFERENT PEOPLE GRABBED THE BODY.

2 LOSING A CHILD IS THE WORST. IT IS THE
3 WORST. WE LOSE PARENTS, WE LOSE BROTHERS
4 AND SISTERS. WE LOSE SPOUSES. BUT WHEN YOU
5 LOSE A CHILD YOU LOSE A PART OF YOURSELF.
6 IT'S SOMETHING THAT YOU NEVER RECOVER FROM.
7 YOU NEVER RECOVER FROM IT. I KNOW.

8 I FEEL FOR THE [REDACTED] FAMILY, FOR THEIR
9 LOSS. IT'S A TRAGIC, TRAGIC LOSS. BUT IS
10 IT MURDER? NO, IT'S NOT MURDER.

11 THE TESTIMONY SAYS THIS COUPLE WAS HAPPY
12 TOGETHER. THAT THAT EVENING THEY WERE HAPPY
13 TOGETHER. THAT THERE WERE NO ARGUMENTS.
14 THAT BIRDIE WAS A PART OF THIS FAMILY. AND
15 THIS EXHIBIT SHOWS HER PICTURE STILL ON THE
16 WALL IN THEIR HOME. SHE WAS A PART OF THEIR
17 FAMILY. SHE STAYED OVER THERE ALL THE TIME.
18 SHE HAD STAYED OVERNIGHT OVER THERE.

19 WHEN IT HAPPENED ERIC BURST INTO
20 EMOTIONS. IS THAT NOT HUMAN NATURE? IS
21 THAT NOT WHAT IT IS? SOMEONE YOU LOVE AND
22 CARE FOR? AND TO BE THERE AND TO SEE THE
23 THINGS THAT HE HAS SEEN AND THE THINGS THAT
24 [REDACTED] HAD TO SEE. HOW DO YOU ERASE THAT
25 FROM YOUR MEMORY? THOSE THINGS ARE GONNA

CLOSING ARGUMENT - SMITH

364

1 BE WITH THEM FOR THE REST OF THEIR LIVES.

2 SHE TOOK THIS WITNESS STAND -- AND AS
3 HARD AS MS. BLACKMON TRIED TO SHAKE HER, HER
4 TESTIMONY NEVER CHANGED. SHE NEVER SAW THE
5 GUN. THERE WAS NO PROBLEMS. THEY WERE
6 WATCHING A MOVIE.

7 NOW, THE JUDGE IS GONNA INSTRUCT YOU AS
8 TO THE LAW. AND HE IS GONNA EXPLAIN TO YOU
9 THE ELEMENTS OF THE LAW THAT YOU HAVE TO
10 CONSIDER. HE'S GONNA TALK ABOUT MURDER AND
11 HE'S GONNA TALK ABOUT MANSLAUGHTER AND THEIR
12 DIFFERENT ELEMENTS. VOLUNTARY MANS AND
13 INVOLUNTARY MANSLAUGHTER. HE'S GONNA GIVE
14 YOU THOSE CHARGES. WHATEVER CHARGES HE
15 GIVES YOU, YOU HAVE TO FIND ERIC GUILTY
16 BEYOND ALL REASONABLE DOUBT.

17 THE JUDGE IS GONNA TALK TO YOU ABOUT
18 GUILTY BEYOND ALL REASONABLE DOUBT. YOU, AS
19 TWELVE JURORS, ALL TOTAL, ALL TWELVE, MUST
20 FIND HIM GUILTY BEYOND ALL REASONABLE DOUBT.
21 THAT'S IT. IT HAS TO BE THIS UNDER THE LAW.

22 IF YOU GO BACK THERE AND YOU'VE HEARD
23 THIS EVIDENCE AND YOU SAY, WELL, HE'S
24 PROBABLY GUILTY, THAT'S NOT ENOUGH. THE LAW
25 SAYS THAT. SO WHEN YOU WALK BACK THERE, ALL

CLOSING ARGUMENT - SMITH

365

1 OF THE EVIDENCE HAS TO BE WEIGHED AND THE
2 SCALES JUST CAN'T TIP TOWARD GUILTY.
3 THEY'VE GOT TO BE ALL THE WAY ON THE BOTTOM,
4 GUILTY, AND GUILTY BEYOND A REASONABLE
5 DOUBT.

6 SO IF YOU'VE GOT A QUESTION, AND WHEN
7 ALL OF YOU TALK, IF THOSE THINGS HAVEN'T
8 BEEN ANSWERED, THEN YOU'RE NOT HERE. YOU
9 MAY BE IN PURPLE -- I'M PRETTY SURE HE DID
10 IT -- THAT'S NOT ENOUGH. THAT'S NOT ENOUGH.

11 BLUE, IT SOUNDS LIKE HE DID IT. THAT'S
12 NOT ENOUGH. UNDER OUR LAW.

13 GREEN, IT LOOKS LIKE HE DID IT. THAT'S
14 NOT ENOUGH. I BELIEVE HE MIGHT HAVE DONE
15 IT. THAT'S NOT ENOUGH.

16 TO FIND ERIC GUILTY OF THIS CHARGE --
17 THERE'S ONLY ONE CHARGE -- MURDER. TO FIND
18 HIM GUILTY OF MURDER, THIS IS WHERE YOU HAVE
19 TO BE.

20 WHEN I SIT DOWN, NO ONE STANDS UP AND
21 SPEAKS FOR ERIC AGAIN. HIS FATHER AND HIS
22 MOTHER HAVE BEEN HERE DURING THE COURSE OF
23 THIS TRIAL. YOU HEARD HIS MOTHER TESTIFY.
24 A SINCERE WOMAN. SHE WAS VERY SINCERE. SHE
25 WAS THERE THAT NIGHT. SHE TOLD YOU WHAT SHE

CLOSING ARGUMENT - SMITH

366

1 SAW AND SHE DIDN'T HOLD ANYTHING BACK. YOU
2 KNOW, THE WAY THE WORDING OF THINGS WAS KIND
3 OF REAL IMPORTANT WITH THE STATE. AGITATED.
4 HELD DOWN. WILD. SHE JUST SAID, HE WAS
5 SCREAMING HER NAME. HE WAS CRYING. HE WAS
6 KICKING. HE WAS GRABBING HER. THE MOTHER
7 HAD TO TRY TO PULL HIM AWAY FROM MS.

8 [REDACTED] SHE HAD TO REACH OUT AND GRAB HER
9 HANDS TO PULL HIM AWAY. SHE HAD TO CALL
10 HELP OVER THERE, TO HELP WITH HIM, BECAUSE
11 SHE WAS WORRIED ABOUT BOTH OF THEM.

12 I DON'T THINK ANYBODY COULD HAVE BEEN
13 MORE TRUTHFUL THAN JOHN GRAHAM. HE TOOK THE
14 WITNESS STAND AND TOLD YOU WHAT HE HEARD.
15 HE DIDN'T HOLD ANYTHING BACK. HE TOLD YOU
16 WHAT HAPPENED -- WHETHER IT WAS GOOD OR BAD,
17 HE TOLD YOU.

18 [REDACTED] MCDONALD DID THE SAME THING.

19 NOW, THEY ARE NOT TRAINED TO OBSERVE, TO
20 TAKE NOTES, TO PROSECUTE. THEY'RE JUST
21 WITNESSES HERE TO TESTIFY BECAUSE THEY WERE
22 SUBPOENAED BY THE STATE WHO WOULDN'T PUT
23 THEM UP.

24 PEOPLE, IF YOU'VE GOT TO SPECULATE OR
25 JUMP THROUGH HOOPS TO FIND THIS BOY GUILTY

CLOSING ARGUMENT - SMITH

367

1 JUST BECAUSE THEY WANT YOU TO SAY, WELL, YOU
2 KNOW, IT PROBABLY HAPPENED LIKE THIS OR IT
3 PROBABLY HAPPENED LIKE THAT, THAT AIN'T
4 ENOUGH. IT'S NOT ENOUGH. THEY HAVE TO
5 PROVE THEIR CASE. YOU'RE NOT SUPPOSED TO GO
6 BACK THERE AND GUESS. THAT'S THE WAY OUR
7 LAW IS.

8 COULD IT HAVE BEEN AN ACCIDENT? IT'S
9 NOT PROBABLE BUT IT'S POSSIBLE? PEOPLE,
10 GUILTY BEYOND ALL REASONABLE DOUBT GOES
11 BEYOND PROBABLE. HE'S PROBABLY GUILTY,
12 THAT'S PINK. THAT'S NOT ENOUGH.

13 I'M FIXING TO SIT DOWN, BUT, AGAIN, I
14 WANT TO THANK YOU FOR YOUR ATTENTION. ERIC
15 APPRECIATES THE ATTENTION YOU'VE GIVEN THIS
16 MATTER. HIS MOTHER DOES. AND HIS FATHER.
17 THE FAMILY HERE APPRECIATES THAT.

18 YOU HAVE A DIFFICULT TASK BEFORE YOU.
19 BUT THE MOST DIFFICULT TASK STARTED BEFORE
20 YOU GOT HERE, AND THAT WAS, THAT THE STATE
21 HAD TO PROVE THEIR CASE BEYOND A REASONABLE
22 DOUBT. THEY DIDN'T DO IT. YOU KNOW IT.
23 EVERYONE IN THIS COURTROOM KNOWS IT. THEY
24 KNOW IT. THEY WANT YOU TO BE EMOTIONAL.
25 THEY WANT YOU TO LOOK AT PHOTOGRAPHS. THEY

CLOSING ARGUMENT - BLACKMON

368

1 WANT YOU TO GET UPSET AND THEY WANT YOU TO
2 SPECULATE. AND, PEOPLE, THE LAW DOESN'T
3 ALLOW YOU TO DO THAT. YOU HAVE TO TAKE
4 WHAT'S BEEN PRESENTED AND, AGAIN, I WANT TO
5 THANK YOU FOR THIS OPPORTUNITY TO TALK WITH
6 YOU. I KNOW IT'S BEEN A LONG WEEK.
7 FORTUNATELY, FOR YOU, YOU WON'T HAVE TO COME
8 BACK TO THIS COURTROOM FOR THREE YEARS. I
9 DON'T ENVY YOUR TASK. BUT THE EVIDENCE
10 THAT'S BEEN PRESENTED, IT'S AN ACCIDENT.
11 THAT'S WHAT WE'VE GOT, A BAD ACCIDENT.

12 UNFORTUNATELY, THAT'S WHAT IT IS.

13 CLOSING ARGUMENT

14 BY

15 SOLICITOR BLACKMON

16 MR. SMITH, YOUR HONOR, LADIES AND
17 GENTLEMEN OF THE JURY, MR. SMITH SEEMS A
18 LITTLE UPSET OVER THE FACT I SUBPOENAED
19 WITNESSES I DIDN'T CALL. I DON'T HAVE TO
20 CALL EVERY WITNESS I SUBPOENA. BUT WHAT I
21 DO HAVE TO DO IS HAVE WITNESSES HERE WHOSE
22 TESTIMONY I'M GOING TO HAVE RE-STATED BY
23 SOMEONE ELSE, LIKE LAW ENFORCEMENT. I CAN'T
24 GET ANY OF THEIR STATEMENTS IN UNLESS
25 THEY'RE IN THE COURTROOM. IT DOESN'T MEAN I

CLOSING ARGUMENT - BLACKMON

369

1 HAVE TO CALL THEM AS WITNESSES. IT MEANS
2 THEY HAVE TO BE HERE TO ALLOW ME TO GET
3 EVIDENCE IN. IT CERTAINLY DOES NOT MEAN I'M
4 AFRAID TO CALL THEM.

5 SECOND, IT IS NOT ALL REASONABLE DOUBT.
6 IT IS A REASONABLE DOUBT. THE DEFENSE WOULD
7 HAVE YOU BELIEVE THAT THERE CAN BE
8 ABSOLUTELY NO DOUBT. THAT THAT SCALE HAS TO
9 FALL TO THE BOTTOM.

10 THE COURT WILL TELL YOU AGAIN, AND HE
11 WILL STOP ME IF I'M WRONG, A REASONABLE
12 DOUBT IS A DOUBT THAT WOULD CAUSE AN
13 ORDINARY, PRUDENT, AND REASONABLE PERSON TO
14 HESITATE TO ACT. IT DOES NOT ELIMINATE
15 EVERY DOUBT. AND I BELIEVE THE STATE HAS
16 MET THAT BURDEN.

17 I'LL TELL YOU WHY. JOHN GRAHAM TOOK THE
18 STAND AND I'M SURE THAT JOHN GRAHAM IS AN
19 HONEST MAN. I HAVE NO DOUBT ABOUT THAT AT
20 ALL. BUT JOHN GRAHAM WAS NOT IN THAT ROOM
21 WHEN THAT SHOT WAS FIRED, WHEN THAT GUN WAS
22 PUT TO HER THROAT. HE WAS NOT THERE. BUT
23 HE DID TESTIFY THAT WHEN HE CAME OVER, ERIC
24 GRAHAM WAS GOING, LOOK WHAT I'VE DONE, IT'S
25 MY FAULT, BIRDIE, LOOK WHAT YOU MADE ME DO.

CLOSING ARGUMENT - BLACKMON

370

1 NOW, I'M NOT REALLY SURE WHAT THAT
2 MEANS,, BUT THERE'S ABSOLUTELY NO DOUBT IN
3 ANYBODY'S MIND THAT ERIC GRAHAM DID NOT
4 SHOOT THIS GIRL. THERE IS NO DOUBT. AS FAR
5 AS EVIDENCE IS CONCERNED -- DR. PROCTOR WAS
6 VERY CLEAR, THIS WAS NOT AN ACCIDENT,
7 BECAUSE THAT IS A CATEGORY THAT THEY CAN PUT
8 ON AN AUTOPSY WHICH IS ADMITTED INTO
9 EVIDENCE. IT IS NOT CALLED AN ACCIDENT. IT
10 IS NOT CALLED A HOMICIDE AND WE WENT THROUGH
11 THAT SEVERAL TIMES, AND SO DID HE.

12 DR. PROCTOR DID NOT CHANGE IT AND THE
13 REASON HE DID NOT CHANGE IT WAS BECAUSE OF
14 THE TYPE OF WOUND IT WAS, THAT IT WAS A
15 CONTACT WOUND, THAT THE GUN HAD TO BE TO HER
16 THROAT. AND HE SAID THE REASON WAS BECAUSE
17 OF THE GASSES AND SMOKE THAT EMITTED FROM
18 THE BARREL OF THAT GUN WHEN SHE WAS SHOT,
19 BECAUSE IT HAD NOWHERE ELSE TO GO.

20 THAT'S NOT CONTROVERSIAL. THE ONLY
21 REFERENCE TO AN ACCIDENT WAS THE REFERENCE
22 MR. SMITH MADE FROM THE CORONER'S REPORT.
23 NOW, HE COULD HAVE HAD THE CORONER HERE, BUT
24 DID HE? NO. THE CORONER WOULD NOT HAVE
25 BEEN QUALIFIED.. HE WAS STATING IT ON THE

CLOSING ARGUMENT - BLACKMON

371

1 BASIS OF INFORMATION THAT HE WAS GIVEN. AND
2 MR. SMITH GOT INTO THAT WITH DR. PROCTOR.
3 HE SAID YOU FORMED YOUR OPINION BASED ON
4 INFORMATION YOU WERE GIVEN. AND WHAT DID
5 DR. PROCTOR SAY? HE SAID, NO. IT WAS BASED
6 ON SOLID MEDICAL EVIDENCE THAT HE DETERMINED
7 DURING THE COURSE OF THE AUTOPSY.

8 ALL RIGHT. EVERYBODY AGREES THAT MR.
9 GRAHAM WAS VERY EMOTIONAL AFTER HAVING SHOT
10 THIS GIRL. AND THERE IS A DIFFERENCE OF
11 OPINION ON WHAT RANGE OF EMOTION WE WOULD
12 HAVE. THE DEFENSE WANTS YOU TO THINK THIS
13 WAS AN ACCIDENT AND HE WAS ALL EXCITED.
14 THAT IS NOT WHAT HERBERT LEE SAID WHEN THEY
15 GOT HIM TO THE DETENTION CENTER. HERBERT
16 LEE SAID HE CALLED HIM DOWN FOR HIS
17 ATTITUDE.

18 NOW, THERE'S ABSOLUTELY NO WAY THAT
19 ANYONE WHO CAME IN THAT ROOM AFTER THAT SHOT
20 WAS FIRED CAN KNOW WHAT HAPPENED BEFORE.
21 THERE ARE ONLY TWO PEOPLE AND THAT IS ERIC
22 GRAHAM AND HIS FIRST COUSIN, [REDACTED]
23 MCDONALD, WHO SAID SHE WAS SITTING ON HIS
24 CUSHION AND STOOD UP AND TURNED TO WALK OUT
25 OF THE ROOM AND THAT SHOT WAS FIRED AND ERIC

CLOSING ARGUMENT - BLACKMON.

372

1 WAS SITTING HERE AND [REDACTED] WAS SITTING
2 HERE AND SHE SAID SHE DIDN'T SEE ANYTHING.

3 SHE COULDN'T EXPLAIN WHY THERE WAS A
4 VARIANCE IN HER STATEMENT. IN HER TESTIMONY
5 INITIALLY, SHE SAID I THOUGHT SOMEBODY HIT A
6 WALL. IN THE STATEMENT SHE GAVE SHE SAID
7 SHE THOUGHT IT WAS FIRECRACKERS. HERE SHE
8 SAID SHE HAD WALKED A FEW STEPS ACROSS THE
9 ROOM. IN HER STATEMENT SHE SAID, I STOOD UP
10 TO TURN BUT I DID NOT WALK.

11 IT IS AMAZING TO ME THAT SHE COULD HAVE
12 BEEN, EVEN IF SHE STOOD UP AND TOOK A FEW
13 STEPS -- TO GIVE HER THE BENEFIT OF THAT
14 DOUBT AND INCONSISTENCY, WHEN THAT GUN WENT
15 OFF SHE DIDN'T SEE ANYTHING. AND SHE SAID
16 SHE NEVER SAW THE WOUND, BUT IN HER
17 STATEMENT SHE SAID SHE SAW THE SMOKE COMING
18 OUT OF HER MOUTH AND BLOOD WAS EVERYWHERE.

19 AND NONE OF THEM SAW IT AT THE END,
20 THOUGH. NOT ONE OF THEM IN THAT HOUSE SAW
21 THAT BLOOD.

22 JOHN GRAHAM TESTIFIED HE WAS SITTING IN
23 THAT CHAIR AND WHEN HE WALKED IN HER HEAD
24 WAS BACK. MR. SMITH MADE A BIG DEAL ABOUT
25 THE BODY BEING MOVED. THE ONLY PEOPLE THAT

CLOSING ARGUMENT - BLACKMON

373

1. MOVED THE BODY WERE THAT FAMILY THAT WERE IN
2. THAT ROOM. THE POLICE DIDN'T MOVE IT. IT
3. HAD ALREADY BEEN COVERED.

4. THERE'S A LITTLE BIT OF CONTROVERSY OVER
5. THAT, TOO. BRIAN LEE, WHEN HE TOOK THE
6. STAND THE VERY FIRST TIME, SAID HE MISSED
7. THE BODY WHEN HE WALKED IN THE ROOM BECAUSE
8. IT WAS COVERED. HE SAW THE GUN FIRST. HE
9. ALSO TESTIFIED E-M-S WAS NOT THERE WHEN HE
10. AND BILL HUGGINS ARRIVED.

11. MS. GRAHAM SAID E-M-S WAS THERE.
12. SOMEBODY ASKED HER TO COVER THE BODY. SHE
13. DON'T KNOW. SHE DON'T EVEN KNOW IF SHE
14. COVERED THE BODY. BUT THEY KNOW EVERYTHING
15. ELSE AND NOBODY SAW THE WOUND.

16. OFFICER LEE TESTIFIED THE MINUTE HE
17. MOVED THAT BLANKET HE SAW IT.

18. AND I REALIZE YOU PEOPLE HAVE THE WORST
19. JOB IN THIS WHOLE ROOM RIGHT NOW. YOU
20. REALLY DO. AND YOU HAVE MY DEEPEST
21. SYMPATHIES ON THAT. BUT I'M COUNTING ON YOU
22. TO LISTEN TO EVERYBODY THAT TOOK THAT STAND,
23. TO LOOK AT THIS EVIDENCE THAT CAME IN. YOU
24. LOOK AT THEM. YOU JUDGE THEIR CREDIBILITY.
25. YOU JUDGE WHAT THEY'VE GOT TO GAIN OR LOSE

CLOSING ARGUMENT - BLACKMON

374

1 AND HOW THEY TIE INTO THIS THING.

2 MR. SMITH IS RIGHT. JOHN BLACK FROM
3 SLED, THE LATENT PRINT EXPERT, HE DID NOT
4 SAY THERE WERE NO PRINTS ON THE GUN -- LET
5 ME CORRECT THAT. HE SAID THERE WAS
6 INSUFFICIENT RIDGE DETAIL TO ELIMINATE OR
7 IDENTIFY. HE DIDN'T CUT ANYBODY LOOSE. HE
8 DIDN'T SAY THERE WERE NO PRINTS. HE SAID IT
9 WAS INSUFFICIENT AND HE ALSO SAID THAT WAS
10 NOT UNCOMMON. THIS AIN'T T.V. THIS IS
11 REAL.

12 YOU DON'T ALWAYS HAVE A MOTIVE. THE
13 STATE DOESN'T HAVE TO PROVE MOTIVE, AS MR.
14 SMITH WOULD MAKE YOU BELIEVE. ALL WE'VE GOT
15 TO PROVE BEYOND A REASONABLE DOUBT IS THAT
16 [REDACTED] WAS MURDERED, WAS KILLED,
17 BY MR. GRAHAM WITH MALICE AFORETHOUGHT.
18 AND, AS I TOLD YOU BEFORE, MALICE DOES NOT
19 REQUIRE SOME KIND OF GRUDGE. IT DOESN'T
20 REQUIRE SOME KIND OF BIG BLOW-UP. WE DON'T
21 KNOW WHETHER THAT HAPPENED OR NOT BECAUSE
22 THE ONLY PERSON IN THAT ROOM THAT CAN TELL
23 US AT THIS POINT IS DEAD. BUT I DON'T HAVE
24 TO PROVE MOTIVE. I DO HAVE TO PROVE MALICE
25 AS AN ESSENTIAL ELEMENT BUT, AS I SAID

CLOSING ARGUMENT - BLACKMON

375

1 BEFORE, MALICE CAN BE A GENERAL RECKLESS,
2 MALIGNANT RECKLESSNESS THAT REACHES THE
3 POINT OF DISREGARD FOR THE SAFETY OF OTHERS.
4 AND THERE IS NOBODY WHO SAID HE DIDN'T PULL
5 THAT GUN OUT AND SHOOT HER.

6 AND, FOR GOD'S SAKE, THE EVIDENCE SHOWED
7 HE PUT IT TO HER THROAT WHEN HE DID IT. IF
8 THAT ISN'T MALIGNANT RECKLESSNESS TO REACH
9 THE POINT OF MALICE I REALLY DON'T KNOW WHAT
10 IS, BECAUSE THERE'S NOT ONE SINGLE PERSON IN
11 THIS WHOLE ROOM THAT DOESN'T KNOW THAT YOU
12 DON'T POINT A LOADED GUN AT SOMEBODY UNLESS
13 YOU MEAN TO SHOOT THEM. AND YOU CERTAINLY
14 DON'T STICK IT TO THE PERSON UNLESS YOU MEAN
15 TO USE IT.

16 AFORETHOUGHT DOESN'T REQUIRE A LONG
17 PLAN. MALICE AFORETHOUGHT DOESN'T REQUIRE A
18 LONG PLAN. IT CAN BE INSTANT, BASED ON THAT
19 MALIGNANT RECKLESSNESS. AND I THINK THE
20 STATE HAS CERTAINLY PROVEN IT BEYOND A
21 REASONABLE DOUBT THAT HE ACTED WITH
22 MALIGNANT RECKLESSNESS.

23 AND I'M ASKING YOU -- [REDACTED]
24 IS NOT HERE AND WILL NEVER BE HERE AGAIN --
25 I'M ASKING YOU TO TAKE YOUR COMMON SENSE,

CHARGE BY THE COURT

376

1 BECAUSE THAT'S WHAT IT'S GOING TO TAKE HERE,
2 AND GO INTO THAT JURYROOM AND YOU WEIGH WHAT
3 EVERYBODY SAID ON THAT STAND AND THINK ABOUT
4 WHAT THEY'VE SAID, AND YOU LOOK AT THESE
5 EXHIBITS THAT HAVE BEEN ADMITTED INTO
6 EVIDENCE. AND I THINK THAT WHEN YOU DO, AND
7 WHEN YOU THINK ABOUT THE CREDIBILITY AND WHO
8 HAS WHAT TO LOSE OR GAIN, YOU'LL COME BACK
9 WITH A VERDICT OF GUILTY OF MURDER. THANK
10 YOU.

CHARGE BY THE COURT

11
12 MR. FOREMAN AND LADIES AND GENTLEMEN OF
13 THE JURY, IF I COULD HAVE YOUR ATTENTION.
14 YOU HAVE FOLLOWED VERY PATIENTLY AND
15 LISTENED VERY ATTENTIVELY TO THE
16 PRESENTATION OF THE EVIDENCE IN THIS CASE
17 AND I THANK YOU FOR THAT. I ALSO THANK THE
18 SOLICITOR AND ATTORNEY FOR THE DEFENDANT FOR
19 THEIR ABLE ARGUMENTS AND PRESENTATIONS IN
20 THIS CASE.

21 IT NOW BECOMES THE DUTY OF THE TRIAL
22 JUDGE, UNDER THE CONSTITUTION OF THIS STATE,
23 TO CHARGE AND INSTRUCT YOU THE LAW
24 APPLICABLE TO THE CASE AND IT IS YOUR DUTY,
25 AS JURORS, TO ACCEPT AND APPLY THE LAW THAT

CHARGE BY THE COURT

377

1 THE COURT WILL NOW STATE TO YOU.

2 AS JURORS, IT IS YOUR EXCLUSIVE DUTY TO
3 DECIDE ALL THE ISSUES OF FACTS IN THIS CASE
4 AND FOR THAT PURPOSE TO DETERMINE THE
5 EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH
6 OF THE EVIDENCE.

7 BOTH THE STATE AND THE DEFENDANT HAVE A
8 RIGHT TO EXPECT THAT YOU WILL
9 CONSCIENTIOUSLY CONSIDER AND EVALUATE THE
10 EVIDENCE AND APPLY THE LAW OF THE STATE
11 THERETO TO THE END THAT BOTH THE STATE OF
12 SOUTH CAROLINA AND THE DEFENDANT WILL
13 RECEIVE AND OBTAIN A FAIR AND IMPARTIAL
14 TRIAL IN THIS CASE. WHEN I USE THE WORD,
15 DEFENDANT, I REFER TO MR. ERIC ANTON GRAHAM.

16 THE STATE OF SOUTH CAROLINA, BY THE BILL
17 OF INDICTMENT IN THIS CASE, CHARGES THE
18 DEFENDANT WITH THE OFFENSES OF MURDER AND
19 CARRYING A PISTOL. FROM THIS POINT ON YOU
20 WILL BE CONCERNED ONLY WITH THE INDICTMENT
21 FOR MURDER BECAUSE EARLIER I ADDRESSED THE
22 ISSUE OF THE CHARGE OF CARRYING A PISTOL AND
23 I WILL DISCUSS THAT WITH YOU IN A MINUTE
24 WHEN I GET TO THE SPECIFIC CHARGES.

25 NOW, TO THE CHARGE AND TO THE INDICTMENT

CHARGE BY THE COURT

378

1 THE DEFENDANT HAS ENTERED A PLEA OF NOT
2 GUILTY. A PLEA OF NOT GUILTY BY THE
3 DEFENDANT PLACES THE BURDEN OF PROOF ON THE
4 STATE TO PROVE BY THE EVIDENCE THE GUILT OF
5 THE DEFENDANT BEYOND A REASONABLE DOUBT FOR
6 YOU, THE JURY, TO FIND THE DEFENDANT GUILTY.

7 THE DEFENDANT IS PRESUMED IN LAW
8 INNOCENT OF THE CHARGE CONTAINED IN THE
9 INDICTMENT AND IT IS A CARDINAL AND
10 FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT
11 A DEFENDANT, IRRESPECTIVE OF THE ENORMITY OF
12 THE CHARGE AGAINST HIM, WILL ALWAYS BE
13 PRESUMED INNOCENT OF THE CRIME FOR WHICH HE
14 IS INDICTED UNLESS AND UNTIL THE GUILT OF
15 THE DEFENDANT HAS BEEN PROVED BY EVIDENCE
16 THAT SATISFIES YOU, THE JURY, OF HIS GUILT
17 BEYOND A REASONABLE DOUBT. THE PRESUMPTION
18 OF INNOCENCE IS NOT A MERE LEGAL THEORY AND
19 IT IS NOT JUST A LEGAL PHRASE. THE
20 PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL
21 RIGHT TO WHICH EVERY ACCUSED IS ENTITLED.
22 OUR SUPREME COURT HAS DECLARED THAT THE
23 PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
24 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF
25 THE DEFENDANT AND IT REMAINS WITH HIM AND

CHARGE BY THE COURT

379

1 ASSIGNS HIM TO THAT CLASS, THE INNOCENT,
2 UNTIL THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS
3 HAS BEEN STRIPPED FROM HIS PERSON BY
4 EVIDENCE SATISFYING YOU, THE JURY, OF THE
5 GUILT OF THE DEFENDANT BEYOND A REASONABLE
6 DOUBT.

7 THE PRESUMPTION OF INNOCENCE ACCOMPANIES
8 THE DEFENDANT FROM THE TIME OF HIS
9 ARRAIGNMENT AND APPEARANCE IN THE COURT AND
10 CONTINUES WITH THE DEFENDANT THROUGHOUT
11 EVERY STAGE OF THE TRIAL AND CONTINUES WITH
12 THE DEFENDANT AFTER YOU RETIRE TO THE
13 JURYROOM TO DELIBERATE YOUR VERDICT. THE
14 PRESUMPTION OF INNOCENCE CONTINUES TO THE
15 BENEFIT OF THE DEFENDANT UNTIL YOU, THE
16 JURY, REACH THE CONCLUSION THAT THE STATE
17 HAS PROVED THE GUILT OF THE DEFENDANT BEYOND
18 A REASONABLE DOUBT.

19 THE STATE IS NOT REQUIRED TO PROVE THE
20 GUILT OF THE DEFENDANT BEYOND ALL DOUBT OR
21 BEYOND EVERY DOUBT BUT BEYOND A REASONABLE
22 DOUBT.

23 I CHARGE YOU THE DEFENDANT IS ENTITLED
24 TO EVERY REASONABLE DOUBT ARISING IN THE
25 CASE. IF UPON ANY ISSUE OF FACT BEFORE YOU

CHARGE BY THE COURT

380

1 CAN REACH A CONVICTION OF GUILTY, IF YOU
2 HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE
3 SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO
4 RESOLVE THAT REASONABLE DOUBT IN FAVOR OF
5 THE DEFENDANT.

6 A DEFENDANT, LADIES AND GENTLEMEN, IS
7 NOT REQUIRED TO PROVE HIS INNOCENCE, BUT THE
8 STATE IS REQUIRED, IN LAW, TO PROVE EVERY
9 ESSENTIAL ELEMENT OF THE OFFENSE CHARGED
10 AGAINST THE DEFENDANT BY EVIDENCE WHICH
11 SATISFIES YOU, THE JURY, OF THE GUILT OF THE
12 DEFENDANT BEYOND A REASONABLE DOUBT BEFORE
13 YOU CAN CONVICT THE DEFENDANT AND FIND HIM
14 GUILTY.

15 IF THEN, UPON THE WHOLE CASE, YOU HAVE A
16 REASONABLE DOUBT AS TO THE GUILT OR THE
17 INNOCENCE OF THE DEFENDANT, HE IS ENTITLED
18 TO THAT REASONABLE DOUBT AND WOULD BE
19 ENTITLED TO AN ACQUITTAL AND A VERDICT OF
20 NOT GUILTY.

21 BUT, ON THE OTHER HAND, IF UPON THE
22 WHOLE CASE YOU FIND THAT THE STATE HAS
23 PROVED BY EVIDENCE WHICH SATISFIES YOU, THE
24 JURY, OF THE GUILT OF THIS DEFENDANT BEYOND
25 A REASONABLE DOUBT, THEN IN SUCH

CHARGE BY THE COURT

381

1 CIRCUMSTANCE IT WOULD EQUALLY BE YOUR DUTY
2 TO CONVICT THE DEFENDANT AND FIND HIM
3 GUILTY.

4 IF YOU FIND THE DEFENDANT GUILTY BUT YOU
5 HAVE A REASONABLE DOUBT AS TO WHETHER THE
6 DEFENDANT BE GUILTY OF THE GREATER CRIME
7 CHARGED OR THE LESSER CRIME CHARGED, THEN
8 YOU WOULD RESOLVE THAT REASONABLE DOUBT IN
9 FAVOR OF THE DEFENDANT AND WRITE A VERDICT
10 OF GUILTY ONLY AS TO THE LESSER CHARGE.

11 BUT, OF COURSE, YOU COULD NOT WRITE A
12 VERDICT OF GUILTY TO ANY CHARGE UNLESS TO
13 THAT CHARGE YOU FIND ALL ELEMENTS OF THE
14 CHARGE HAVE BEEN PROVEN BY THE STATE BEYOND
15 A REASONABLE DOUBT.

16 NOW, IN THE CHARGE OF MURDER YOU HAVE
17 THE LESSER INCLUDED OFFENSES -- THAT OF
18 INVOLUNTARY MANSLAUGHTER AND VOLUNTARY
19 MANSLAUGHTER AND THAT CHARGE IS, THEREFORE,
20 GIVEN IN REGARDS TO THAT AND I WILL MORE
21 FULLY COVER THAT WITH YOU IN JUST A FEW
22 MINUTES.

23 I INSTRUCT YOU THAT THE INDICTMENT IN
24 THIS CASE, WHICH YOU WILL HAVE A FEW MINUTES
25 FROM NOW BACK IN THE JURYROOM, IS NOT

CHARGE BY THE COURT

382

1 EVIDENCE AND CANNOT BE CONSIDERED BY THE
2 JURY AS EVIDENCE IN THE CASE..

3 THE INDICTMENT IS SIMPLY THE FORMAL
4 WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE
5 AGAINST THE DEFENDANT AND IT SERVES AS THE
6 FORMAL DOCUMENT BY WHICH THIS CASE IS
7 PROCESSED INTO THE COURT.

8 DURING THIS TRIAL, EACH OF US, YOU AND
9 I, HAVE CERTAIN DUTIES TO PERFORM. AS THE
10 TRIAL JUDGE IT IS MY RESPONSIBILITY TO
11 PRESIDE OVER THE TRIAL OF THIS CASE AND I
12 ALSO HAVE THE DUTY TO RULE UPON AND PASS
13 UPON THE ADMISSIBILITY OF THE EVIDENCE
14 OFFERED DURING THE PROGRESS OF THIS TRIAL.
15 YOU ARE TO CONSIDER ONLY THE COMPETENT
16 EVIDENCE BEFORE YOU AND YOU ARE TO DISREGARD
17 AND DISABUSE FROM YOUR MIND ANY TESTIMONY
18 ORDERED STRICKEN FROM THE RECORD IN THIS
19 CASE DURING THE PROGRESS OF THE TRIAL IF
20 THERE BE ANY. AND YOU ARE TO CONSIDER ONLY
21 THE TESTIMONY WHICH HAS BEEN PRESENTED FROM
22 THE WITNESS STAND TOGETHER WITH ANY EXHIBITS
23 ADMITTED INTO THE RECORD OF THIS CASE AND
24 ANY STIPULATIONS THAT COUNSEL HAS MADE INTO
25 THE RECORD, IF THERE BE ANY.

CHARGE BY THE COURT

383

1 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU
2 THE APPLICABLE LAW OF THE CASE. AS THE
3 PRESIDING JUDGE I AM THE SOLE JUDGE OF THE
4 LAW OF THE CASE AND IT IS YOUR DUTY TO
5 ACCEPT AND APPLY THE LAW AS I STATE IT TO
6 YOU. IF YOU HAVE A PRECONCEIVED IDEA OF
7 WHAT THAT LAW IS OR WHAT THE LAW OUGHT TO BE
8 IN THE CASE AND IT SHOULD NOT AGREE WITH
9 WHAT I TELL YOU THE LAW IS, YOU ARE
10 OBLIGATED, UNDER YOUR OATH, TO ABANDON THIS
11 PRECONCEPTION ON YOUR PART BECAUSE YOU ARE
12 SWORN TO ACCEPT THE LAW PRECISELY AS I NOW
13 STATE IT TO YOU.

14 IN EVERY CASE TRIED IN THIS COURT BEFORE
15 A JURY, THE JURY BECOMES THE SOLE AND
16 EXCLUSIVE JUDGE OF THE FACTS OF THE CASE.

17 LET ME REPEAT THAT TO YOU. IN EVERY
18 CASE TRIED IN THIS COURT BEFORE A JURY, THE
19 JURY BECOMES THE SOLE AND EXCLUSIVE JUDGES
20 OF THE FACTS OF THE CASE. YOU, THE JURY,
21 ARE THE JUDGE OF THE FACTS OF THIS CASE.
22 THE COURT IS THE JUDGE OF THE LAW IN THE
23 CASE.

24 THE CONSTITUTION OF THIS STATE HAS
25 DECLARED THAT THE TRIAL JUDGE SHALL NOT

CHARGE BY THE COURT

384

1 INTIMATE, STATE, COMMENT UPON OR MAKE ANY
2 STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN
3 A CASE. SINCE YOU ARE THE SOLE JUDGES OF
4 THE FACTS YOU ARE NOT TO INFER FROM ANYTHING
5 THAT I'VE SAID DURING THE PROGRESS OF THIS
6 TRIAL, IN RULING UPON THE ADMISSIBILITY OF
7 EVIDENCE OR OTHERWISE, OR ANYTHING THAT I
8 SAY DURING THE COURSE OF THIS CHARGE TO YOU
9 THAT I HAVE AN OPINION ABOUT THE FACTS IN
10 THE CASE. THE LAW DOES NOT PERMIT ME TO
11 HAVE AN OPINION ABOUT THE FACTS IN THE CASE
12 AND THIS IS A MATTER SOLELY FOR YOU, THE
13 JURY, TO DETERMINE. AS JURORS THEN, IT IS
14 YOUR DUTY TO DETERMINE, AS I HAVE STATED TO
15 YOU, THE EFFECT, THE VALUE, THE WEIGHT, AND
16 THE TRUTH OF THE EVIDENCE PRESENTED DURING
17 THE COURSE OF THIS TRIAL.

18 NECESSARILY THEN, YOU MUST ASSESS THE
19 CREDIBILITY OF THE WITNESSES WHO HAVE
20 TESTIFIED IN THIS CASE. CREDIBILITY IS
21 SIMPLY A LEGALISTIC TERM WHICH MEANS
22 BELIEVABILITY. IT BECOMES YOUR DUTY THEN TO
23 ANALYZE AND EVALUATE THE EVIDENCE AND
24 DETERMINE THAT EVIDENCE WHICH CONVINCES YOU
25 OF ITS TRUTH. I CHARGE YOU THAT IN

CHARGE BY THE COURT

385

1 DETERMINING THE QUESTION OF CREDIBILITY OR
2 BELIEVABILITY OF THE WITNESSES, YOU MAY
3 BELIEVE ONE WITNESS AS AGAINST SEVERAL
4 WITNESSES OR SEVERAL WITNESSES AGAINST ONE
5 WITNESS. YOU MAY BELIEVE A PART OF THE
6 TESTIMONY OF A WITNESS AND REJECT THE
7 REMAINING PART OF THE TESTIMONY OF THAT SAME
8 WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
9 WITNESS IN ITS ENTIRETY OR REJECT THE
10 TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU
11 MAY CONSIDER WHETHER ANY WITNESS HAS
12 EXHIBITED ANY INTEREST, ANY BIAS, OR ANY
13 PREJUDICE IN THE CASE AND YOU MAY CONSIDER
14 THE Demeanor OF A WITNESS AND THE APPEARANCE
15 OF A WITNESS FROM THE WITNESS STAND. AND
16 YOU MAY CONSIDER THE OPPORTUNITY, THE
17 KNOWLEDGE CONCERNING THOSE THINGS ABOUT
18 WHICH A WITNESS TESTIFIES.

19 IN DOING SO, IN EXERCISING YOUR MENTAL
20 PROCESS, IN DETERMINING WHAT YOU CONSIDER TO
21 BE TRUE, THE LAW SIMPLY REQUIRES THAT YOU
22 EXERCISE YOUR GOOD JUDGEMENT, YOUR COMMON
23 SENSE, AND YOUR SENSE OF LOGIC AND REASON
24 AND YOUR EXPERIENCES IN LIFE. YOU THEN
25 APPLY THESE ATTRIBUTES OF ABILITY TO THE

386

CHARGE BY THE COURT

1 EVIDENCE AND DETERMINE WHAT YOU CONSIDER THE
2 TRUTHFUL EVIDENCE AND TO THESE TRUE STATED
3 FACTS AS DETERMINED BY YOU, THE JURY, YOU
4 TAKE IT AND APPLY THE LAW AS I STATE IT TO
5 YOU AND, THUS, ARRIVE AT A TRUE VERDICT IN
6 THE CASE.

7 NOW, THE DEFENDANT, IN THESE
8 INDICTMENTS, IS CHARGED WITH THE OFFENSE OF
9 MURDER AND THE SECOND INDICTMENT OF CARRYING
10 A PISTOL. EARLIER IN THE TRIAL, OUTSIDE OF
11 YOUR PRESENCE, I DIRECTED A VERDICT
12 CONCERNING THE CARRYING OF A PISTOL BASED ON
13 AN EXCEPTION WITHIN THE STATUTE THAT YOU CAN
14 POSSESS A PISTOL WITHIN YOUR OWN HOME AND,
15 THUS, WOULD NOT BE IN VIOLATION OF THE
16 STATUTE.

17 MR. FOREMAN, AT THIS TIME I'M GONNA HAND
18 THIS INDICTMENT TO YOU, THROUGH THE CLERK,
19 AND ASK THAT YOU, UPON MY DIRECTION, ENTER A
20 VERDICT OF NOT GUILTY AND PLEASE SIGN AND
21 DATE THIS PARTICULAR INDICTMENT.

22 ALL RIGHT. THE DEFENDANT, IN THE
23 INDICTMENT THAT I HAVE ON THE BENCH, 97-GS-
24 16-0224, CHARGES THE DEFENDANT, ERIC ANTON
25 GRAHAM, WITH THE OFFENSE OF MURDER. AND I

CHARGE BY THE COURT

1 WOULD SPECIFICALLY CHARGE YOU ON THAT AT
2 THIS TIME.

3 I AM GOING TO FIRST READ TO YOU SECTION
4 16-3-10 OF THE CODE OF LAWS OF SOUTH
5 CAROLINA. MURDER IS THE KILLING OF ANY
6 PERSON WITH MALICE AFORETHOUGHT, EITHER
7 EXPRESSED OR INFERRED. NOW, THE WORD,
8 IMPLIED ALSO MEANS THE SAME THING AS
9 INFERRED. NOW, UPON THE PRINCIPAL OR THEORY
10 OF OUR LAW THAT ANY GREATER OFFENSE INCLUDES
11 A LESSER OFFENSE, THE CHARGE OF MURDER ALSO
12 INCLUDES THE LESSER OFFENSE OF VOLUNTARY
13 MANSLAUGHTER AND ALSO INVOLUNTARY
14 MANSLAUGHTER.

15 EVEN THOUGH THE CHARGE OF MANSLAUGHTER
16 IS NOT WRITTEN INTO THE BODY OF THIS
17 PARTICULAR INDICTMENT, IT IS WHAT I TOLD YOU
18 IS A LESSER INCLUDED OFFENSE.

19 NOW, THE FIRST THING I'M GONE DO IS
20 DEFINE FOR YOU THE LAW OF MURDER AND THEN
21 I'M GOING TO DEFINE FOR YOU THE LAW OF
22 VOLUNTARY MANSLAUGHTER AND THEN INVOLUNTARY
23 MANSLAUGHTER.

24 MURDER IS THE UNLAWFUL KILLING OF ANY
25 PERSON WITH MALICE AFORETHOUGHT, EITHER

CHARGE BY THE COURT

388

1 EXPRESSED OR INFERRED. HENCE, IN ORDER TO
2 CONVICT ONE OF MURDER, THE STATE MUST NOT
3 ONLY PROVE THE KILLING OF THE DECEASED BY
4 THE DEFENDANT, BUT THAT IT WAS DONE WITH
5 MALICE AFORETHOUGHT. SUCH PROOF MUST BE
6 BEYOND A REASONABLE DOUBT.

7 MALICE AFORETHOUGHT IS AN ESSENTIAL
8 ELEMENT IN THE CRIME OF MURDER. NOW, WHAT
9 IS MALICE? MALICE IS DEFINED IN THE LAW OF
10 HOMICIDE AS A TERM OF ART. MALICE DOES NOT
11 NECESSARILY MEAN AN ACTUAL INTENT TO KILL.
12 THIS IS A TECHNICAL TERM, IMPORTING
13 WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL
14 EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM
15 WICKEDNESS, FROM DEPRAVITY, FROM A DEPRAVED
16 SPIRIT, FROM A HEART DEVOID OF SOCIAL DUTY
17 AND FATALLY BENT ON MISCHIEF. THE WORDS,
18 EXPRESSED OR INFERRED MALICE, DO NOT MEAN
19 DIFFERENT KINDS OF MALICE, BUT MERELY THE
20 MANNER IN WHICH THE ONLY KIND OF MALICE
21 KNOWN TO THE LAW MAY BE SHOWN TO EXIST.
22 THAT IS TO SAY, EITHER BY DIRECT EVIDENCE OR
23 BY INFERENCE.

24 MALICE MAY BE EXPRESSED AS WHERE
25 PREVIOUS THREATS OF VENGEANCE OR LYING IN

CHARGE BY THE COURT

389

1 WAIT OR OTHER CIRCUMSTANCES SHOW DIRECTLY
2 THAT AN INTENT TO KILL WAS ENTERTAINED.
3 MALICE MAY BE INFERRED WHERE, THOUGH NO
4 EXPRESS INTENT TO KILL IS PROVED BY DIRECT
5 EVIDENCE, IT MAY BE INFERRED FROM THE FACTS
6 AND CIRCUMSTANCES WHICH ARE PROVED. MALICE
7 MAY BE INFERRED FROM THE WILLFUL,
8 DELIBERATE, AND INTENTIONAL DOING OF AN
9 UNLAWFUL ACT WITHOUT JUST CAUSE OR LEGAL
10 EXCUSE. IN OTHER WORDS, IN ITS GENERAL
11 SIGNIFICATION, MALICE MEANS THE DOING OF A
12 WRONGFUL ACT, INTENTIONALLY, WITHOUT
13 JUSTIFICATION OR LEGAL EXCUSE.

14 BUT EVEN IF FACTS PROVED ARE SUFFICIENT
15 TO RAISE AN INFERENCE OF MALICE, THIS
16 INFERENCE WOULD BE SIMPLY AN EVIDENTIARY
17 FACT TO BE TAKEN INTO CONSIDERATION BY YOU,
18 THE JURY, ALONG WITH ALL THE OTHER EVIDENCE
19 IN THE CASE AND YOU MAY GIVE IT SUCH WEIGHT
20 AS YOU DETERMINE IT SHOULD RECEIVE AS TO
21 WHETHER OR NOT MALICE HAS BEEN PROVED BEYOND
22 A REASONABLE DOUBT.

23 WHILE MALICE MAY BE INFERRED FROM THE
24 USE OF A DEADLY WEAPON, WHERE THE
25 CIRCUMSTANCES RELATED TO THE HOMICIDE ARE

CHARGE BY THE COURT

390

1 BROUGHT OUT INTO EVIDENCE, THIS INFERENCE
2 VANISHES AND THE BURDEN IS ON THE STATE TO
3 PROVE MALICE BY EVIDENCE SATISFYING THE JURY
4 BEYOND A REASONABLE DOUBT.

5 IT WILL BE OBSERVED, LADIES AND
6 GENTLEMEN, THAT THERE MUST BE MALICE
7 AFORETHOUGHT. WHILE THE LAW DOES NOT
8 REQUIRE THAT MALICE MAY EXIST FOR ANY
9 PARTICULAR LENGTH OF TIME BEFORE THE
10 COMMISSION OF THE ACT, IT MUST BE
11 AFORETHOUGHT. THERE MUST BE A COMBINATION
12 OF THE PREVIOUS EVIL INTENT AND THE ACT
13 PRODUCING THE FATAL RESULT. BUT THE STATE
14 IS NOT REQUIRED TO PROVE A MOTIVE FOR
15 HOMICIDE.

16 MALICE DOES NOT NECESSARILY MEAN AN
17 ACTUAL INTENT TO TAKE A HUMAN LIFE. IT MAY
18 BE INFERENTIAL OR IMPLIED INSTEAD OF
19 POSITIVE. IT'S WHEN AN ACT WHICH IMPORTS
20 DANGER TO ANOTHER IS DONE SO RECKLESSLY OR
21 WANTONLY AS TO MANIFEST DEPRAVITY OF MIND
22 AND DISREGARD FOR HUMAN LIFE.

23 THE MAIN INGREDIENT OF MURDER IS MALICE,
24 WHICH MAY BE PROVED BY PREVIOUS THREATS,
25 FORMER GRUDGES, HATRED AND ILL WILL OR IT

CHARGE BY THE COURT

391

1 MAY BE INFERRED FROM THE FACTS ATTENDING THE
2 HOMICIDE SHOWING A CRUEL INDICATIVE TEMPER,
3 A WANTONNESS IN THE DESTRUCTION OF HUMAN
4 LIFE AND A HEART REGARDLESS OF SOCIAL DUTY
5 AND FATALLY BENT ON MISCHIEF. THE FORMER IS
6 DENOMINATED EXPRESSED AND THE LATTER,
7 IMPLIED MALICE.

8 THE WORD, AFORETHOUGHT IS USUALLY
9 UNDERSTOOD TO REFER TO THE TIME WHEN THE
10 EVIL IS CONCEIVED. IT NEED NOT EXIST FOR
11 ANY APPRECIABLE PERIOD OF TIME BEFORE THE
12 COMMISSION OF THE ACT. INDEED, IT MAY BE
13 CONCEIVED AT THE VERY MOMENT THE FATAL BLOW
14 IS GIVEN. IT IS SUFFICIENT IN THE LAW IF
15 THE COMBINATION OF THE EVIL INTENT AND THE
16 ACT PRODUCED THE FATAL RESULT.

17 DELIBERATION MUST NOT BE UNDERSTOOD TO
18 MEAN SLOWNESS IN COMPOSURE AS DISTINGUISHED
19 FROM SUDDENNESS OR EXCITEMENT, BUT FREEDOM
20 FROM THE TEMPORARY FRENZY EXCITED BY
21 SUFFICIENT LEGAL PROVOCATION AS
22 DISTINGUISHED FROM THAT FRENZY WOULD THE LAW
23 ALLOW TO MODERATE TO HUMAN FRAILTY.

24 A VOLUNTARY ACT WHICH IS WITHOUT
25 SUFFICIENT LEGAL PROVOCATION IS DELIBERATE,

CHARGE BY THE COURT

392

1 NO MATTER HOW SUDDEN OR FURIOUS IT MAY BE.

2 I AM NOW GOING TO DEFINE TO YOU THE LAW
3 OF VOLUNTARY MANSLAUGHTER. AS I HAVE
4 ALREADY INDICATED TO YOU, LADIES AND
5 GENTLEMEN, AND INSTRUCTED YOU, THAT AN
6 INDICTMENT FOR MURDER INCLUDES THE LESSER
7 CRIME OF VOLUNTARY MANSLAUGHTER AND
8 INVOLUNTARY MANSLAUGHTER. EVEN THOUGH THE
9 LESSER CRIME OF VOLUNTARY MANSLAUGHTER AND
10 INVOLUNTARY MANSLAUGHTER IS NOT WRITTEN INTO
11 THE BILL OF INDICTMENT. IN OTHER WORDS, A
12 DEFENDANT INDICTED FOR MURDER MAY BE
13 CONVICTED OF VOLUNTARY MANSLAUGHTER IF THE
14 EVIDENCE WARRANTS IT OR MAY BE CONVICTED OF
15 INVOLUNTARY MANSLAUGHTER IF THE EVIDENCE
16 WARRANTS IT.

17 NOW, WHAT IS MANSLAUGHTER? MANSLAUGHTER
18 IS THE UNLAWFUL KILLING OF A HUMAN BEING
19 WITHOUT MALICE, EXPRESSED OR INFERRED. YOU
20 WILL NOTICE THEN, LADIES AND GENTLEMEN, THAT
21 THE ABSENCE OF MALICE IS WHAT DISTINGUISHES
22 VOLUNTARY MANSLAUGHTER FROM MURDER.

23 I HAVE INSTRUCTED YOU THAT MALICE IS AN
24 ESSENTIAL ELEMENT OF THE CRIME OF MURDER.
25 MALICE IS NOT AN ESSENTIAL ELEMENT OF THE

CHARGE BY THE COURT

393

1 CRIME OF VOLUNTARY MANSLAUGHTER. THE
2 PRESENCE OF MALICE IN MURDER AND THE ABSENCE
3 OF MALICE IN VOLUNTARY MANSLAUGHTER IS WHAT
4 DISTINGUISHES THESE TWO OFFENSES.

5 MANSLAUGHTER IS DIVIDED INTO TWO CLASSES
6 -- INVOLUNTARY MANSLAUGHTER AND VOLUNTARY
7 MANSLAUGHTER. NOW, WHAT IS VOLUNTARY
8 MANSLAUGHTER? VOLUNTARY MANSLAUGHTER IS THE
9 FELONIOUS TAKING OF THE LIFE OF ANOTHER
10 HUMAN BEING IN SUDDEN HEAT AND PASSION AND
11 UPON A SUFFICIENT LEGAL PROVOCATION. THE
12 LAW RECOGNIZES, LADIES AND GENTLEMEN, THE
13 FACT THAT SUDDEN HEAT AND PASSION MAY, FOR
14 THE TIME BEING, AFFECT ONE'S SELF CONTROL.
15 TEMPORARILY DISTURBS THE SWAY OF REASON AND,
16 HENCE, REDUCES THE CRIME OF MURDER TO
17 VOLUNTARY MANSLAUGHTER WHERE THE HOMICIDE
18 WAS DONE IN SUDDEN HEAT AND PASSION,
19 PROVIDED THERE WAS SUFFICIENT LEGAL
20 PROVOCATION.

21 SUFFICIENT LEGAL PROVOCATION MUST BE
22 SUCH AS WOULD BE CALCULATED TO CAUSE A
23 PERSON OF ORDINARY REASON AND PRUDENCE,
24 SOMETIMES DESCRIBED AS THE AVERAGE PERSON,
25 TO BECOME ENRAGED. THAT IS, TO EXPERIENCE

CHARGE BY THE COURT

394

1 SUDDEN HEAT AND PASSION AND, HENCE, TO LOSE
2 CONTROL OF HIMSELF TEMPORARILY AND
3 FREQUENTLY IT INVOLVES SOME PHYSICAL
4 AGGRESSION OR ASSAULT.

5 MERELY BY WAY OF ILLUSTRATION AND
6 ILLUSTRATION ALONE, I SAY THAT WHEN AN
7 UNJUSTIFIABLE ASSAULT IS MADE WITH VIOLENCE
8 OR WITH CIRCUMSTANCES OF INDIGNITY UPON A
9 MAN'S PERSON AND THE PARTY SO ASSAULTED
10 KILLED THE AGGRESSOR, THE CRIME WOULD BE
11 REDUCED TO MANSLAUGHTER, IF IT APPEARS THAT
12 THE ASSAULT WAS RESENTED IMMEDIATELY, AND
13 THE AGGRESSOR WAS KILLED IN THE HEAT OF
14 BLOOD, FOR IT WILL BE OBSERVED THAT THE
15 KILLING MUST BE IN SUDDEN HEAT AND PASSION.
16 AND IF, IN FACT, PASSION HAD COOLED, OR IF
17 THERE WAS SUFFICIENT TIME BETWEEN THE
18 PROVOCATION AND THE KILLING THAT THE PASSION
19 HAD COOLED, THE KILLING WOULD NOT BE
20 ATTRIBUTED TO HEAT OF PASSION BUT TO MALICE.
21 THE SUFFICIENCY OF COOLING TIME WOULD DEPEND
22 UPON WHETHER THERE WAS TIME, ALL
23 CIRCUMSTANCES BEING CONSIDERED, OR A PERSON
24 OF ORDINARY REASON AND PRUDENCE TO COOL.

25 I WILL NOW CHARGE YOU WITH THE CRIME OF

CHARGE BY THE COURT

395

1 INVOLUNTARY MANSLAUGHTER. INVOLUNTARY
2 MANSLAUGHTER MAY BE DESCRIBED AS THE KILLING
3 OF ANOTHER WITHOUT MALICE AND
4 UNINTENTIONALLY, BUT WHILE ONE IS ENGAGED IN
5 THE COMMISSION OF SOME UNLAWFUL ACT, NOT
6 AMOUNTING TO A FELONY AND NOT NATURALLY
7 INTENDING TO CAUSE DEATH OR GREAT BODILY
8 HARM.

9 INVOLUNTARY MANSLAUGHTER MAY ALSO BE
10 DESCRIBED AS THE KILLING OF ANOTHER WITHOUT
11 MALICE AND UNINTENTIONALLY, BUT WHILE
12 ENGAGED IN THE DOING OF A LAWFUL ACT WITH
13 RECKLESS DISREGARD OF THE SAFETY OF OTHERS.

14 NOW, ONCE AGAIN, LET ME CHARGE YOU, IF
15 YOU FIND THE DEFENDANT GUILTY BUT YOU HAVE A
16 REASONABLE DOUBT AS TO WHETHER THE DEFENDANT
17 IS GUILTY OF THE GREATER CRIME CHARGED OR
18 THE LESSER CRIME CHARGED, THEN YOU WOULD
19 RESOLVE THAT REASONABLE DOUBT IN FAVOR OF
20 THE DEFENDANT AND WRITE A VERDICT OF GUILTY
21 ONLY AS TO THE LESSER CHARGE.

22 BUT, OF COURSE, YOU COULD NOT WRITE A
23 VERDICT OF GUILTY TO ANY CHARGE UNLESS AS TO
24 THAT CHARGE YOU FIND ALL THE ELEMENTS OF THE
25 CHARGE HAVE BEEN PROVEN BY THE STATE BEYOND

CHARGE BY THE COURT

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1 A REASONABLE DOUBT.

2 I INSTRUCT YOU NOW AND EMPHASIZE TO YOU
3 THAT THE FAILURE OF A DEFENDANT IN THE TRIAL
4 OF A CRIMINAL CASE TO TESTIFY IN HIS OWN
5 BEHALF IS NOT A FACTOR TO BE CONSIDERED BY
6 YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN
7 YOUR CONSIDERATION ON THE QUESTION OF GUILT
8 OR INNOCENCE OF THE ACCUSED.

9 IT MUST NOT BE CONSIDERED BY YOU IN ANY
10 MANNER WHATSOEVER AGAINST THE DEFENDANT OR
11 MITIGATE AGAINST HIM IN ANY RESPECT
12 WHATSOEVER.

13 A DEFENDANT HAS A CONSTITUTIONAL RIGHT
14 TO REMAIN SILENT AND THE ASSERTION OF SUCH
15 CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE
16 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

17 UNDER YOUR OATH, YOU ARE TO REACH NO
18 INFERENCE AND DRAW NO CONCLUSION WHATSOEVER
19 FROM THE FACT THAT THE DEFENDANT IN THIS
20 CASE DID NOT, HIMSELF, TESTIFY.

21 LADIES AND GENTLEMEN, YOU ARE NOT
22 PARTISANS OR ADVOCATES FOR THE STATE OF
23 SOUTH CAROLINA OR FOR THE DEFENDANT. YOU DO
24 NOT SERVE AS JURORS TO REWARD FRIENDS OR
25 PUNISH ENEMIES. OBVIOUSLY, SUCH A PERVERTED

CHARGE BY THE COURT

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1 SYSTEM OF JUSTICE WOULD BE INTOLERABLE.

2 YOU HAVE BEEN SELECTED BY BOTH THE
3 STATE AND THIS DEFENDANT AS FAIR AND
4 IMPARTIAL JURORS. IT IS YOUR DUTY THEN, BY
5 YOUR JOINT DELIBERATIONS, TO DETERMINE THE
6 TRUTH IN THE CASE, GIVING TO THE DEFENDANT
7 THE BENEFIT OF EVERY REASONABLE DOUBT ON
8 EACH AND EVERY ISSUE AND THEN TO THE FACTS
9 AS YOU DETERMINE TO BE TRUE, YOU THEN TAKE
10 AND APPLY THE LAW AS GIVEN TO YOU BY THE
11 COURT, THUS ARRIVING AT A VERDICT WHICH DOES
12 SPEAK THE TRUTH IN THE CASE, FOR THE WORD,
13 VERDICT, LADIES AND GENTLEMEN, HAS A LATIN
14 DERIVATIVE, WHICH MEANS A TRUE SAYING.

15 WHEN YOU HAVE ACCOMPLISHED THESE
16 RESPONSIBILITIES, YOU WILL HAVE SATISFIED
17 YOUR OATH AS JURORS AND YOU WILL HAVE
18 DISCHARGED YOUR DUTY TO THE COURT.

19 I WILL NOW INSTRUCT YOU AS TO THE FORMS
20 OF THE VERDICT IN THE CASE. IF THE STATE
21 HAS FAILED TO PROVE THE GUILT OF THIS
22 DEFENDANT BEYOND A REASONABLE DOUBT YOUR
23 VERDICT WILL BE TWO WORDS, NOT GUILTY. IF
24 THE STATE HAS PROVED THE GUILT OF THIS
25 DEFENDANT BEYOND A REASONABLE DOUBT, YOUR

CHARGE BY THE COURT

1 VERDICT WILL BE GUILTY, ACCORDING TO
2 WHICHEVER CHARGE YOU DETERMINE, AS I HAVE
3 INSTRUCTED YOU ABOUT THE CRIME CHARGED AND
4 THE LESSER INCLUDED OFFENSES.

5 SO THERE ARE, IN EFFECT, FOUR POSSIBLE
6 FORMS OF VERDICT IN THIS CASE. YOU WILL NOT
7 GIVE ANY WEIGHT WHATSOEVER AS TO HOW I
8 NUMERICALLY GO THROUGH THESE. THE POSSIBLE
9 FORMS OF VERDICT WOULD BE GUILTY OF MURDER,
10 GUILTY OF VOLUNTARY MANSLAUGHTER, GUILTY OF
11 INVOLUNTARY MANSLAUGHTER, OR NOT GUILTY.

12 LADIES AND GENTLEMEN, NO MATTER WHAT
13 YOUR VERDICT IS, THE VERDICT THAT YOU RENDER
14 IN THE CASE MUST BE THE VERDICT OF EACH AND
15 EVERY JUROR. IT MUST BE YOUR UNANIMOUS
16 VERDICT. ALL TWELVE JURORS MUST AGREE ON
17 THE VERDICT WHICH YOU AUTHORIZE THE FOREMAN
18 TO WRITE FOR THE JURY.

19 MR. FOREMAN, IN A FEW MINUTES, AFTER
20 I'VE CHECKED IN WITH THE ATTORNEYS ONE LAST
21 TIME, I WILL SEND THE INDICTMENT, ALONG WITH
22 THE EXHIBITS BACK TO THE JURYROOM. I
23 INSTRUCT YOU, DO NOT DELIBERATE THIS CASE
24 UNTIL I DO THAT.

25 MR. FOREMAN, ONCE THE JURY HAS REACHED A

CHARGE BY THE COURT

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1 VERDICT, IT WILL BE YOUR DUTY TO WRITE IN
2 THE APPROPRIATE VERDICT ON THE BACK OF THIS
3 INDICTMENT WHERE IT SAYS, VERDICT. THE
4 VERDICT WILL HAVE TO BE ONE OF THE FOUR THAT
5 I HAVE JUST GONE OVER WITH YOU. ONCE THAT
6 HAS BEEN DONE, YOU WILL SIGN YOUR NAME, AS
7 FOREMAN, AND DATE IT AND KNOCK ON THE DOOR
8 AND LET MR. JAMES KNOW WHEN YOU HAVE REACHED
9 A VERDICT.

10 THE BAILIFF WILL BE STATIONED OUTSIDE
11 THE JURYROOM. ONCE YOU HAVE REACHED A
12 VERDICT YOU WILL LET HIM KNOW BY KNOCKING ON
13 THE DOOR AND WE WILL RECEIVE THE VERDICT AT
14 THAT TIME. SO IF THE TWELVE OF YOU WILL
15 STEP BACK, WITH THE ALTERNATE REMAINING WITH
16 ME IN THE COURTROOM, WE WILL FOLLOW THAT
17 PROCEDURE.

18 (WHEREUPON THE JURY RETIRED AT 5:28
19 P.M., TO BEGIN THEIR DELIBERATIONS.)

20 (WHEREUPON THE ALTERNATE WAS EXCUSED BY
21 THE COURT.)

22 COURT: ALL RIGHT, ANY EXCEPTIONS OR
23 ADDITIONS AT THIS TIME?

24 SOLICITOR BLACKMON: NONE FROM THE
25 STATE.

VERDICT OF THE JURY

400

1 MR. SMITH: NONE FROM THE DEFENSE, YOUR
2 HONOR.

3 (WHEREUPON THE JURY RETURNED AT 6:00
4 P.M., HAVING REACHED A VERDICT.)

5 CLERK: MR. FOREMAN, HAVE YOU REACHED A
6 VERDICT?

7 FOREMAN: YES, WE HAVE.

8 CLERK: YOUR HONOR, THIS IS CASE NUMBER
9 97-GS-16-0224, STATE VERSUS ERIC ANTON
10 GRAHAM, INDICTED FOR MURDER. WE, THE JURY,
11 FIND ERIC ANTON GRAHAM GUILTY OF MURDER.
12 SIGNED FOREPERSON, FRANK WATFORD, 8-27-98.
13 IS THIS YOUR VERDICT, SO SAY YOU ALL? (ALL
14 ANSWERED IN THE AFFIRMATIVE.)

15 COURT: ANYTHING FURTHER OF THE JURY?

16 SOLICITOR BLACKMON: NOTHING FOR THE
17 STATE.

18 MR. SMITH: YOUR HONOR, THE DEFENSE
19 WOULD ASK THAT YOU POLL THE JURY.

20 (WHEREUPON THE JURY WAS INDIVIDUALLY
21 POLLED BY THE CLERK OF COURT, EACH JUROR
22 ANSWERING IN THE AFFIRMATIVE.)

23 COURT: ANYTHING FURTHER?

24 MR. SMITH: NOTHING FOR THE JURY, YOUR
25 HONOR.

SENTENCING

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1 (WHEREUPON THE JURY WAS EXCUSED BY THE
2 COURT.)

3 COURT: IS THE STATE READY TO PROCEED
4 TO THE SENTENCING PHASE?

5 SOLICITOR BLACKMON: THE STATE'S READY.

6 COURT: DEFENSE READY?

7 MR. SMITH: YOUR HONOR, DUE TO THE
8 LATENESS OF THE HOUR. YOUR HONOR, THE
9 DEFENSE HAS A NUMBER OF MOTIONS TO MAKE THAT
10 WE'D LIKE FOR THE COURT TO CONSIDER AND WE'D
11 LIKE SOME TIME TO REFLECT ON IT. DOES HIS
12 HONOR PLAN TO RETURN TOMORROW MORNING?

13 COURT: I AM, BUT WE HAVE A VERY BUSY
14 SCHEDULE. DO YOU NEED A FEW MINUTES?

15 MR. SMITH: YES, YOUR HONOR.

16 COURT: ALL RIGHT, THE COURT WILL
17 STAND AT EASE. TAKE A FEW MINUTES.

18 (WHEREUPON A BREAK WAS TAKEN BY THE
19 COURT.) (NO MOTIONS WERE MADE AT THIS
20 TIME.)

21 COURT: ALL RIGHT. I'LL HEAR FROM THE
22 STATE.

23 SOLICITOR BLACKMON: YES, SIR. MAY
24 IT PLEASE THE COURT, , BASED ON THE JURY'S
25 VERDICT, THE STATE HAS NO RECOMMENDATION TO

SENTENCING

1 THE COURT OTHER THAN A MAXIMUM SENTENCE.
2 AND THAT WOULD BE BASED ON THE GROUNDS THAT
3 THERE IS ABSOLUTELY NO EXCUSE FOR THIS TO
4 HAVE HAPPENED IN THE FIRST PLACE. MR.
5 GRAHAM DOES HAVE A PRIOR RECORD. HE ENTERED
6 A PLEA IN THIS COURT 7-23-98 TO CARRYING A
7 WEAPON ON SCHOOL PROPERTY. HE IS CURRENTLY
8 SERVING A SENTENCE FOR THAT. HE'S BEEN
9 INVOLVED IN OTHER INCIDENTS WITH FIREARMS.
10 HE HAS NO OTHER CONVICTIONS AT THIS TIME
11 CONCERNING FIREARMS. AND I KNOW THE COURT
12 REALLY CAN'T CONSIDER IT, HOWEVER HE DOES
13 HAVE CHARGES PENDING INVOLVING FIREARMS.

14 IN JANUARY OF THIS YEAR HE WAS THE
15 VICTIM OF A SHOOTING. MR. GRAHAM,
16 OBVIOUSLY, HAS LITTLE DISREGARD FOR HUMAN
17 LIFE. HE PUT THIS GUN TO THIS GIRL'S THROAT
18 AND HE SHOT HER AND THE STATE WOULD ASK FOR
19 A MAXIMUM SENTENCE. THIS IS THE VICTIM'S
20 FAMILY AND THEY CAN ADDRESS THE COURT IF
21 THEY'D LIKE AT THIS POINT.

22 COURT: ALL RIGHT. FOR EVERYBODY'S
23 KNOWLEDGE, SO YOU KNOW WHAT THE CURRENT LAW
24 IS, ANY CONVICTION FOR MURDER WHERE THE
25 DEATH PENALTY IS NOT SOUGHT, OF COURSE, 'X'

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1 CLASSIFIES A FELONY, VIOLENT, MOST SERIOUS
2 OFFENSE AND INDICATES NO PAROLE, NO Y-O-A.
3 THE POSSIBLE SENTENCE IS LIFE OR THIRTY
4 YEARS.

5 MR. STANLEY: YOUR HONOR, MAY IT PLEASE
6 THE COURT, , I'VE BEEN REPRESENTING THE
7 FAMILY FOR ABOUT THE LAST YEAR NOW AND I'VE
8 BEEN DEEPLY INVOLVED WITH MS. [REDACTED]
9 MOTHER AND STAND HERE BEFORE THE COURT TODAY
10 TO SAY THAT WE HAVE NO RECOMMENDATION OTHER
11 THAN TO ASK THE COURT FOR THE MAXIMUM
12 SENTENCE. WE THINK IT'S A VERY VIOLENT
13 OFFENSE. THE MOTHER HAS REJECTED ALL
14 NOTIONS OF ANYTHING LESS THAN MURDER, WHICH
15 IS WHY WE'RE HERE TODAY, AND SHE WANTED
16 JUSTICE DONE, SHE BELIEVES JUSTICE HAS BEEN
17 DONE, AND SHE WOULD ASK FOR THE MAXIMUM
18 SENTENCE.

19 COURT: ALL RIGHT. ANY OF THE FAMILY
20 MEMBERS LIKE TO SAY ANYTHING NOW? LET ME
21 SAY THIS, I DO ALLOW ANY OF THE VICTIM'S
22 FAMILY TO MAKE A STATEMENT AFTER WE HEAR
23 FROM THE DEFENSE. SO IF YOU'D RATHER WAIT,
24 YOU CAN DO THAT, THAT'S FINE WITH ME. I'LL
25 LEAVE THAT DECISION TO WHOEVER.

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1 SOLICITOR BLACKMON: THEY DON'T WANT TO
2 MAKE A STATEMENT AT THIS TIME.

3 COURT: ALL RIGHT. MR. SMITH?

4 MR. SMITH: YOUR HONOR, IF IT PLEASE
5 THE COURT, I'VE BEEN INVOLVED WITH THIS
6 FAMILY EVER SINCE THE BEGINNING OF THIS
7 MATTER.

8 THE INCIDENT MS. BLACKMON SPOKE OF ABOUT
9 A GUN ON SCHOOL PROPERTY IS WHERE A GUN WAS
10 DISCHARGED BY SOMEONE ELSE FROM HIS CAR. HE
11 CAME BEFORE THE COURT, HE ADMITTED THAT, AND
12 IT WAS NOT HIS FIRING OF THE GUN, BUT THE
13 GUN DISCHARGED FROM HIS CAR. HE WAS
14 SENTENCED UNTIL THE YOUTH OFFENDER'S ACT AND
15 HE IS SERVING TIME ON THAT AT THIS POINT.

16 YOUR HONOR, IN THIS CASE, WE FEEL AS
17 THOUGH, THAT THIS CASE DOES NOT WARRANT THE
18 MAXIMUM PENALTY. CONTRARY TO THE JURY'S
19 VERDICT, YOUR HONOR, WE FEEL AS THOUGH THE
20 EVIDENCE SUBSTANTIATING A MAXIMUM VERDICT
21 WAS NOT THERE. I CANNOT SPECULATE ON WHAT
22 THE JURY FOUND TO BE SO PREJUDICIAL. I'M
23 SURE THERE WAS A -- AS YOUR HONOR HEARD THE
24 EVIDENCE PRESENTED TO THIS COURT, THERE ARE
25 A NUMBER OF HOLES IN THE STATE'S CASE. AND,

SENTENCING

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1 YOUR HONOR, WE FEEL AS THOUGH THERE WAS SOME
2 PREJUDICE IN THE DECISION AND WE WOULD ASK
3 THE COURT TO CONSIDER THE AGE OF THE
4 DEFENDANT, AND WE'D ASK THE COURT TO
5 CONSIDER THE CIRCUMSTANCES AS IT WAS SOMEONE
6 WHO WAS CLOSE TO HIM AND HAD BEEN WITH HIM
7 AND SOMEONE HE CARED ABOUT. WE HAVE NO
8 EVIDENCE OF ANY ARGUMENT. WE HAVE NO
9 EVIDENCE OF ANY FIGHT. WE HAVE NO EVIDENCE
10 OF ANY PROVOCATION. WE HAVE NO EVIDENCE OF
11 ANY EMOTIONS.

12 WE RESPECT THE VERDICT OF THE JURY AND
13 THE COURT'S CONSIDERATION FOR LENIENCY.

14 MOTHER OF THE DEFENDANT: (BECOMES
15 EMOTIONAL AND COMPLETELY UNINTELLIGIBLE.)

16 MOTHER OF THE VICTIM: I WOULD LIKE TO
17 SAY SOMETHING. BOBBIE JEAN AND THE GRAHAM
18 FAMILY, I, TOO, AM SORRY. BUT I LOVED MY
19 BABY, TOO. AND SHE WAS ALL I HAD. MY HEART
20 GOES OUT TO ERIC BUT YOU CAN HOLD YOUR BABY
21 ANY DAY OF THE WEEK YOU WANT. I AIN'T GONE
22 NEVER SEE MINE AGAIN. I'M SORRY. BUT I'M
23 GLAD JUSTICE WAS DONE.

24 DEFENDANT GRAHAM: YOU KNOW HOW MUCH I
25 LOVED BIRDIE. YOU KNOW I WOULDN'T HAVE

SENTENCING

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1 NEVER DID NOTHING TO HARM HER. I WOULD HAVE
2 GIVE BIRDIE THE WORLD IF I COULD.

3 COURT: MR. GRAHAM, ANYTHING YOU'D LIKE
4 TO ADDRESS TO THE BENCH?

5 DEFENDANT GRAHAM: I'M JUST SORRY IT
6 HAPPENED. IF I COULD CHANGE IT, I WOULD.

7 COURT: SOLICITOR, THIS INCIDENT
8 OCCURRED DECEMBER 7, 1996. WHEN WAS THE
9 INCIDENT CONCERNING THE DISCHARGE OF THE
10 FIREARM ON SCHOOL PROPERTY?

11 SOLICITOR BLACKMON: JULY 15, 1996,
12 JUST A FEW MONTHS BEFORE MS. WINGATE WAS
13 SHOT. AND I UNDERSTAND THAT DEFENSE COUNSEL
14 SAID THAT SOMEONE ELSE FIRED THE GUN OUT OF
15 HIS CAR. HOWEVER, THE TESTIMONY AT THE PLEA
16 WAS THE GUN WAS HIS, HE PROVIDED THE GUN,
17 AND HE THREW THE GUN AWAY. IT WAS NEVER
18 RECOVERED. THE GUN BELONGED TO MR. GRAHAM.
19 IT WAS A DIFFERENT GUN THAN THE ONE HE HAD
20 THIS GO-ROUND. HE HAD, PREVIOUSLY, HAD --
21 IN FACT, SCHOOL WAS IN SESSION. THEY WERE
22 IN SUMMER SCHOOL WHEN THIS OCCURRED. HE AND
23 SOME FRIENDS OF HIS FIRED THE GUN OUT OF THE
24 CAR AS THEY WERE LEAVING SCHOOL PROPERTY
25 WITH THE BUSES LEAVING. AND THAT WAS IN

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1 THE RECORD IN THAT PLEA. SO THIS GUN CHARGE
2 HAPPENED -- THE GUN CHARGE AT SCHOOL WAS A
3 PRIOR INCIDENT TO HIS SHOOTING MS. WINGATE
4 AND IT WAS A DIFFERENT GUN.

5 COURT: ANYTHING ELSE? ANYTHING FROM
6 THE FAMILY?

7 IT'S THE SENTENCE OF THE COURT THAT ERIC
8 ANTON GRAHAM BE CONFINED TO THE STATE
9 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
10 HIS NATURAL LIFE. I'LL DO THIS FOR YOU, MR.
11 GRAHAM. THAT WILL BE CONCURRENT TO THE
12 OTHER SENTENCE THAT YOU MAY BE SERVING AT
13 THIS TIME.

14 SOLICITOR BLACKMON: FOR THE RECORD,
15 YOUR HONOR, ANY PENDING CHARGES AGAINST MR.
16 GRAHAM CURRENTLY IN DARLINGTON COUNTY WILL
17 BE DISMISSED.

18 COURT: GOOD LUCK,

19 *****END OF REQUESTED TRANSCRIPT *****
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CERTIFICATE

C E R T I F I C A T E

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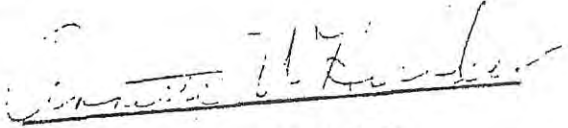
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25

I, the undersigned, ANNETTE W. HERNDON,
Circuit Court Reporter for the the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete Transcript of Record
of proceedings had in the trial of the captioned
case, relative to appeal, in the Court of General
Sessions for Darlington County, South Carolina on
the 27th day of August, 1998.

I do further certify that I am neither of
kin, counsel, nor interest to any party hereto.


ANNETTE W. HERNDON
OFFICIAL COURT REPORTER

August 10, 1999

Latta, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON) IN THE COURT OF GENERAL SESSIONS

State of South Carolina,)
Plaintiff,)
-versus-)
Eric A. Graham,)
Defendant.)

TRANSCRIPT OF RECORD

Motion Hearing

September 4, 1998

B E F O R E:

Honorable Paul M. Burch

A P P E A R A N C E S:

Billie C. Blackmon, Esquire
Assistant Solicitor
Office of the Solicitor
Fourth Judicial Circuit
Darlington County
Attorney for Plaintiff

Karl H. Smith, Esquire
Attorney for the Defendant

Grace L. Hurley, CVR-CM
Official Reporter

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EXHIBITS

(There were no exhibits marked during the hearing.)

1 THE COURT: All right, we didn't sine die
2 last week because of the -- Mr. Smith's request about the
3 post-trial motions. So, we're back for that.

4 MR. SMITH: Thank you, Your Honor. If it
5 pleases the Court, Your Honor, we have a number of motions
6 we'd like to bring to the Court's attention today. The
7 first motion that I have, Your Honor, is we would move for
8 a new trial in this matter. Your Honor, this motion is
9 made upon due process. Your Honor, our argument is
10 basically that it -- the criminal trial of an incompetent
11 Defendant violates due process. That's Cooper versus
12 Oklahoma, Your Honor, which is a United States Supreme
13 Court decision.

14 Your Honor, the right not to stand trial
15 while incompetent is sufficiently important to merit
16 protection even if the Defendant has failed to make timely
17 requests for a competency determination. That is Cooper
18 again, Your Honor.

19 In this case, Your Honor, I requested and
20 asked the Defendant to testify in the defense of his case.
21 I met with him and discussed that matter on more than one
22 occasion that day, as a matter of a fact, three different
23 occasions that day. I also, Your Honor, paused this court
24 for another 10-minute recess so that I could address that
25 issue with him and his family. Your Honor, the Defendant,

1 in my opinion, failed to either apprehend or comprehend the
2 seriousness of the charges against him. He, I believe,
3 made an incompetent decision not to testify, and I think,
4 Your Honor, that his actions following, very shortly,
5 within an hour after that, showed that his emotional state
6 was that that his competency is in question, and Your
7 Honor, again, if, you know, the Defendant upon leaving the
8 courtroom was involved in altercations with deputies, he
9 destroyed personal property, and Your Honor, he is
10 presently in Kirkland, the psychiatric ward of Kirkland
11 Institute in Columbia. Your Honor, we believe that based
12 on the Defendant's actions it reflects upon his ability to
13 help in the defense of himself, and we feel as though, Your
14 Honor, he was not competent to understand what was taking
15 place before him and we would ask for the Court not only to
16 issue some type of competency hearing as a determination of
17 the Defendant's ability to help in the defense of himself,
18 but that the Court consider granting a motion for a new
19 trial.

20 MS. BLACKMON: May it please the Court, the
21 State's position on that is that he was not denied any due
22 process and that there was no evidence of his incompetence.
23 As a matter of a fact, he stood before this Court on July
24 23rd, 1998, and entered a guilty plea on carrying a pistol
25 on school property. There has never been a question of his

1 competence.

2 If the Defense had felt that he was
3 incompetent they might have noted the little fit he threw
4 at lunch on the day, the final day of this trial concerning
5 this murder charge and his sentencing; that was never
6 raised. He stood before this Court, and if I am not
7 mistaken, I do believe this Court questioned him
8 extensively on his right to testify. At no time then when
9 he was answering those questions did he appear incompetent.
10 His incompetence has just, or this incompetence based on
11 the fit he threw afterwards is just when he realized --
12 it's the State's position when he realized that he had been
13 found guilty and that he had been sentenced. it was highly
14 stressing to him. That certainly does not mean that he was
15 incompetent at any time during the trial. He answered all
16 the questions the Court posed to him as far as his right to
17 testify and or not to testify. That record is complete.
18 The State opposes it and feels that incompetence is not --
19 a violation of due process based on his incompetence to
20 prepare in his defense is not valid at this point and the
21 State's position is that that we would ask the Court to
22 deny that motion.

23 MR. SMITH: Your Honor, just in quick reply
24 to that. The Solicitor has made my argument for me. There
25 was an outbreak during lunch before the presentation of the

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6

1 Defense case, and Your Honor, my interpretation of that
2 outbreak was frustration, but obviously at that time and
3 what is later shown and where his current situation rests
4 the State views him as a psychiatric problem. That's why
5 he's here today in a white uniform coming from the
6 psychiatric unit of Kirkland. That should have alerted not
7 only me but the Solicitor's Office and this Court to the
8 fact that this guy was having emotional problems to the
9 point of making him incompetent to be able to help in the
10 defense of himself, and Your Honor, clearly, his actions
11 were not rationale, they were not reasonable, and they
12 clearly showed incompetency on his part in dealing with the
13 charges presented against him.

14 MS. BLACKMON: May it please the Court, the
15 State's position is frustration is not tantamount to mental
16 incompetence as is designated under the code, and the
17 State's position is still that that motion for a new trial
18 based on incompetence should be denied.

19 THE COURT: Yeah, the record of the trial
20 indicates his responses to me and there was nothing that
21 went on in the trial that gave the Court any concern about
22 that, and quite often after that hammer falls and the jury
23 finds you guilty and that sentence becomes a realization
24 you have problems everywhere I go around the State, and it
25 seems like it's getting worse. Once, as I say, the hammer

1 falls and it causes a violent reaction, and it's
2 unfortunate, but, no, that motion's denied.

3 MR. SMITH: Your Honor, we would also move
4 for a new trial on the issue of the photographs that were
5 presented in the trial of this case. Your Honor, we
6 objected to those photographs and their presentation. The
7 evidence, Your Honor, as presented by the State was clearly
8 prejudicial and had very little probative value.

9 Your Honor, the State is trying to say that
10 these photographs were necessary for the pathologist to
11 testify as to the evidence of the shooting itself. Well,
12 Your Honor, the photographs were of the whole victim's face
13 and head. All the photographs were. If they were trying
14 to, in fact, just show the scientific evidence they could
15 have presented a photograph, a closeup photograph of the
16 chin area showing the marks, and they could have showed a
17 close-up photograph of the head showing the exit of the
18 bullet. In this case, Your Honor, they wanted to present
19 and did present a set of photographs that later they
20 substituted in for enlargements that showed whole head
21 shots of the victim. Your Honor, we feel like that those
22 were very prejudicial, that the jury in viewing those
23 photographs that it caused such an emotional outburst in
24 them which is shown in the shortness of the time that they
25 considered the verdict, Your Honor. Looking at the whole

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1 case as it stands, Your Honor, and I'm going to get to
2 another motion dealing with the elements of murder, but
3 Your Honor, clearly the jury saw those photographs, they
4 were put into evidence, and they used that where there was
5 a lack of any evidence of malice aforethought in rendering
6 their verdict and we feel like it was very prejudicial,
7 Your Honor, and we would ask for a new trial on that issue.

8 MS. BLACKMON: May it please the Court, the
9 State's position on that is the entrance wound and the exit
10 wound were clearly necessary to be shown to show the damage
11 that was done.

12 In addition, the pathologist used marks and
13 other bruising on her face to describe the damage that was
14 done and the position of the gun. Those photographs were
15 clearly necessary. The fact that it was -- they're going
16 to be messy by nature because of the nature of what he did.
17 It accurately depicted the damage. It accurately depicted
18 her condition afterwards, and they were necessary to show
19 the contact wound and exactly what happened and the path of
20 the bullet. That was absolutely necessary, and that's
21 valid admissible evidence under the rules.

22 Mr. Smith has no way of knowing and neither
23 does the State whether just merely looking at those
24 photographs had anything as far as how the jury determined
25 or the length of time of their deliberation.

1 Going to the malice aforethought argument,
2 the State would restate malice aforethought under State
3 versus Mouzan requires a showing of a general malignant,
4 recklessness to the health and safety of others. The
5 pathologist testified that he put the gun to her throat.
6 The State's position is that certainly shows that it was a
7 direct contact wound, that all of the burning was inside
8 the wound, that there was no powder outside showing any
9 evidence of what the Defendant was indicating. The State's
10 position is the State clearly met its burden and the jury's
11 verdict indicates that.

12 THE COURT: All right, we're rehashing what
13 we've already gone over. I carefully went over the
14 photographs. Some came in. Some didn't. I found the
15 probative value outweighed any prejudicial value because of
16 the scientific evidence and the nature of the crime.
17 Motion denied.

18 MR. SMITH: Your Honor, finally we would make
19 a motion for a new trial, Your Honor, based on the elements
20 of the crime itself. Murder is the killing of a human
21 being with malice aforethought. "Circumstances surrounding
22 a homicide, the conduct, actions and general demeanor of
23 the accused immediately before the killing are admissible
24 to show that he was in a vicious humor is bearing on the
25 great issue in the case, his frame of mind at the time of

State v. Eric Graham (Motion Hearing 9-4-98)

1 the homicide." Your Honor, that's State versus Peak. It
2 also says where there is reasonable doubt as to whether the
3 Defendant committed murder or manslaughter, the doubt
4 should be resolved in favor of the lesser offense, which in
5 this case, Your Honor, would be manslaughter.

6 Clearly, Your Honor, the evidence as
7 presented by the State in this case showed no malice
8 aforethought. The pathologist who testified in this case,
9 his testimony was to relate only to the scientific
10 evidence, not as to intent, not as to anything else that
11 deals with the thinking of the Defendant in the action of
12 the crime. His was scientific evidence. It was a contact
13 wound. It was placed close to the skin. That was why
14 there was a powder ring, and Your Honor, we feel like the
15 State based -- what we do know is this, nobody in this case
16 has testified as to any malice, any motive, anything that
17 would show any ill will on the part of the Defendant in
18 this murder trial, and Your Honor, we would move for a new
19 trial on that.

20 MS. BLACKMON: May it please the Court, the
21 State does not have to prove motive. That is not an
22 element that has to be established. That is a
23 determination made by the jury based on the facts and
24 evidence presented to them.

25 Furthermore, the State doesn't have to show.

1 ill will or a plan or a grudge or anything else. The only
2 thing the State has to show is a general reckless disregard
3 for the life and safety of others, and obviously, the jury
4 determined that we did meet that burden beyond a reasonable
5 doubt to return their verdict. In fact, Mr. Smith is
6 saying we failed to show intent. The State case law
7 indicates that intent can be shown by the mere presence of
8 a deadly weapon, and if a gun to her throat wasn't enough,
9 I don't know what is. The State would respectfully ask
10 that the motion be denied.

11 THE COURT: All right, use of firearm jammed
12 up under the throat, went up through her brain like that, I
13 agree with the State on that. The motion is denied.

14 MR. SMITH: Thank you, Your Honor. Your
15 Honor, I don't have any further motions at this time.

16 THE COURT: All right, okay.

17 MR. SMITH: Thank you, Your Honor.

18 (Adjourned.)
19
20
21
22
23
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25

4-11

C E R T I F I C A T E

I, the undersigned Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing taken in the Court of General Sessions for Darlington County, South Carolina, on September 4, 1998.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley

Grace L. Hurley, CVR-CM
Official Reporter

November 23, 1998.

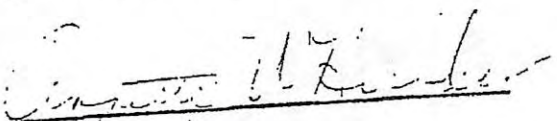
CERTIFICATE

C E R T I F I C A T E

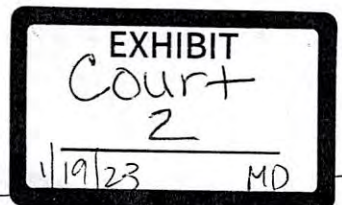
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I, the undersigned, ANNETTE W. HERNDON,
Circuit Court Reporter for the the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete Transcript of Record
of proceedings had in the trial of the captioned
case, relative to appeal, in the Court of General
Sessions for Darlington County, South Carolina on
the 27th day of August, 1998.

I do further certify that I am neither of
kin, counsel, nor interest to any party hereto.


ANNETTE W. HERNDON
OFFICIAL COURT REPORTER

August 10, 1999
Latta, South Carolina



451

C E R T I F I C A T E

I, the undersigned Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing taken in the Court of General Sessions for Darlington County, South Carolina, on September 4, 1998.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley

Grace L. Hurley, CVR-CM

Official Reporter

November 23, 1998.

EXHIBIT
Court
3
11/9/23 MD



DEFENDANT'S
EXHIBIT
1
19/23
LWS

Certificate of Completion

This is to certify that

Eric Graham 251687

has satisfactorily completed the requirements prescribed for

Cognitive Thinking

Given on this, the Twenty Seventh day of July, Two Thousand and Twenty Two

Alw My
Warden

Shirley Lanning Program Facilitator
Authorizing Person

Certificate printed in red and black on security paper; security feature on face and back

Certificate printed in red and black on security paper; security feature on face and back



Certificate of Completion

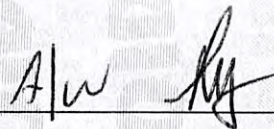
This is to certify that

Eric Graham 251687

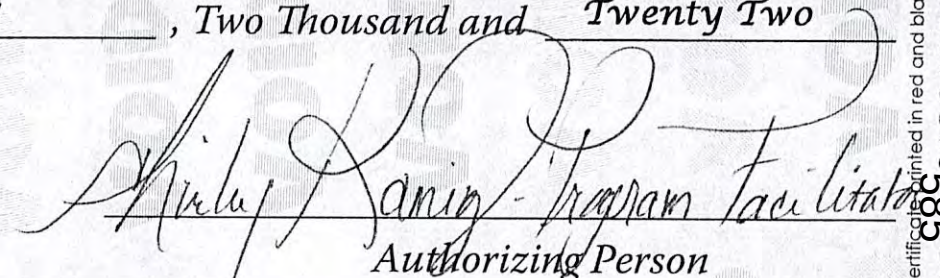
has satisfactorily completed the requirements prescribed for

Anger Management

Given on this, the Twenty Seventh day of July, Two Thousand and Twenty Two



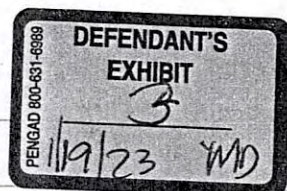
Warden


Authorizing Person

Certificate printed in red and black on security paper; security feature on face and back.

Certificate printed in red and black on security paper; security feature on face and back.

WRITE LEGIBLY



Bobby J. Graham - mother
 Raymond Graham, Sr. - Father
 Betty James - Aunt
 Shirley Scott - Aunt
 Willie Scott - Uncle
 Rev. Calvin Daniels - Pastor
 Brenda Zimmerman - Aunt
 Vickie Lynn Williamson - Aunt
 Terrance Scott - Cousin
 Raymond Graham, Jr. - Brother
 Shawn Zimmerman - Cousin
 Kadiiga Zimmerman - Cousin
 Marcus Scott - Cousin
 Corinthian Smith - Family Friend
 Keyia J. Stuckey - God-Sister
 Ali Graham - Cousin
 Ernestine Hamlin - Cousin
 Patricia Wallace - Family Friend
 Latoya Coe - Family Friend
 Kenja Benjamin - Family Friend
 Candy Perkins - Cousin
 Mary Benjamin - Family Friend
 John Graham, Sr. - Uncle
 Edward Fort - Family Friend
 Claudia Fort - Family Friend

Total
25

WITNESSES

Monty Thompson

Dcsd

ARREST WARRANT #:

F368172

Arrested on December 07, 1997

ACTION OF GRAND JURY

True Bill 2/20/97

Foreman:

Grand Jury

Guilty of Murder

VERDICT

Foreman:

Petit Jury

Date: 8-27-98

DOCKET #: 97GS16-0224

THE STATE OF SOUTH CAROLINA
County of Darlington

COURT OF GENERAL SESSIONS

Term: February, 1997

THE STATE

vs.

Eric Anton Graham

INDICTMENT FOR

0116

MURDER

16-3-20-
10

STATE OF SOUTH CAROLINA)
County of Darlington)

INDICTMENT #97GS16-0224

At a Court of General Sessions, convened on February 20, 1997,
the Grand Jurors of Darlington County present upon their oath:

COUNT:

MURDER

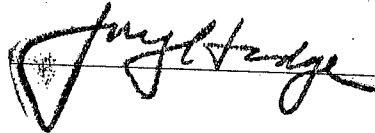
16-3-20

10

That Eric Anton Graham did in Darlington County on or about December 07,
1996, feloniously, wilfully and with malice aforethought, kill one Curtisha
Wingate by means of shooting her and that the said Curtisha Wingate did die in
Darlington County as a proximate result thereof on or about the 7th day of
December, 1996.

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

SOLICITOR:



98 MAY 26 AM 9:37
CLERK OF COURT
DARLINGTON COUNTY S.C.

STATE OF SOUTH CAROLINA

COUNTY OF Darlington

STATE

vs.

Eric Anton Graham

AKA:

Race: B Sex: M

DOB: [REDACTED] Age: 19

SSN: [REDACTED]

DL# [REDACTED]

SID#: [REDACTED]

589
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #:

97-GS-16-0224

A/W#: F368172

Date of Offense: 12-7-96

S.C. CODE §: 16-03-0010

CDR Code #: 0116

SENTENCE

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: MURDER

in violation of § 1603-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence

☒ Recommendation by the State

ATTEST:

Brian C. Blackman
Solicitor

Eric A. Graham
Defendant

Paul J. Smith
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, or ☐ Under Youthful Offender Act for a term of natural life days/months/years and/or to pay a fine of \$; provided the sentence be suspended upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable*; the balance suspended with probation for months/years.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: to any other sentences being served

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$

Pay Terms:

Recipient:

*Fine: \$
§14-1-206 - Assessments 100% \$
§14-1-211 - Surcharge \$ 103
(Exceptions: See §14-1-211)
§56-5-2995 (DUI) \$
TOTAL \$ 103

Scott B. Lynn
Clerk of Court

- ☐ PTUP
- ☐ days/hours Public Service Employment
- ☐ Obtain GED
- ☐ Attend Voc Rehab. or Job Corps
- ☐ May serve W/E beginning
- ☐ Substance Abuse Counseling
- ☐ Random Drug/Alcohol Testing
- ☐ Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
- ☐ Other:
- ☐ Other:

Paul J. Smith
PRESIDING JUDGE 8/29/98

The Supreme Court of South Carolina

Eric Graham,

Petitioner,

v.

State of South Carolina,

Respondent.

Darlington County

Docket No.: 1997-GS-16-00224

ORDER

Petitioner filed a motion for the appointment of counsel and a hearing was held on that motion on April 4, 2016. Elizabeth A. Franklin-Best was appointed as counsel by order of the Honorable Roger E. Henderson. Subsequently, petitioner filed a motion for resentencing on June 9, 2016 pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable Roger E. Henderson be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Henderson shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where he may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

TRUE CERTIFIED COPY
John B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge Henderson shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.

This order is effective *nunc pro tunc* April 4, 2016.



Costa M. Pleicones
Chief Justice

August 16, 2016
Columbia, South Carolina

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington

STATE

VS.

Eric Anton Graham

AKA:

Race: Black Sex: M Age: 43DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: ,

DL#: SID#: INDICTMENT/CASE#: 97GS16-0224A/W#: F368172Date of Offense: 12/7/1996S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

Jan 30 2023**SC Court of Appeals***CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Murder / Murderin violation of § 16-03-0010; 16-03-00 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Solicitor

SC Bar #

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for the remainder of his Natural Lifefor a determinate term of days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Eric Anton Graham INDICTMENT/CASE#: 97GS16-0224

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5 %)				\$ _____
§14-1-211(A)(1) (Conv. Surcharge)			\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)			\$100	\$ _____
§56-5-2995 (DUI Assessment)			\$12	\$ _____
§56-1-286 (DUI Breath Test)			\$25	\$ _____
§14-1-212 (Law Enforce. Funding)			\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)			\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)			\$41	\$ _____
§50-21-114(BUI-Breath-Test-Fee)			\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)			\$40/ea	\$ _____
3% to County (if paid in installments)			TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.			\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund			TBD	\$ _____

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Michelle Horton
Court Reporter: Lisa CarterPresiding Judge: [Signature]
Judge Code: 3754
Sentence Date: 1-23-2023

CERTIFICATE OF COUNSEL FOR APPELLANT

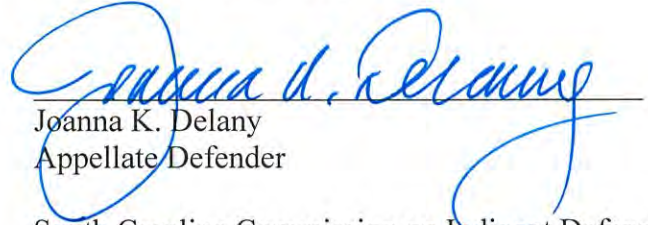
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jul 22 2024

SC Court of Appeals



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of July, 2024.

RECEIVED

Jul 22 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 22nd day of July, 2024.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Oct 11 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

SUPPLEMENTAL RECORD ON APPEAL

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

TOMMY EVANS, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

WILLIAM B. ROGERS
Solicitor, Fourth Judicial Circuit
110 N. Liberty Street
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

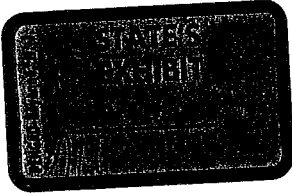
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DARLINGTON COUNTY SHERIFF'S OFFICE

STATEMENT OF RIGHTS

(MIRANDA WAIVER)



PLACE: Sheriff's Office

DATE: 12-7-96

TIME: 4:50 P.M.

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- YOU HAVE THE RIGHT TO REMAIN SILENT.
- ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.
- IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE QUESTIONING IF YOU WISH.
- IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT HAVING A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE A RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER.

WAIVER OF RIGHTS

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

SIGNED: Chris H. [Signature]

WITNESS: Henry [Signature]

WITNESS: Marty C. Thompson

DARLINGTON COUNTY SHERIFF'S OFFICE

STATEMENT OF RIGHTS

(MIRANDA WAIVER)



PLACE: GRAHAM RESIDENCE

DATE: 12-7-96

TIME: 7:50 A.M.

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- YOU HAVE THE RIGHT TO REMAIN SILENT.
- ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.
- IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE QUESTIONING IF YOU WISH.
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SIGNED Ernestine M. McDonald

WITNESS: Monty E. Thompson

WITNESS: Raymond E. Gray

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

DAVID M. BEASLEY
GOVERNOR



ROBERT M. STEWART
CHIEF

Latent Print Department

December 17, 1996

SLED Lab No.: L96-15566

Your Case No.: 96017983

Incident Date: 12-7-96

(V) Curtisha Wingate

(S) Eric A. Graham

Monty C. Thompson
Darlington County Sheriff's Office
PO Box 783
Darlington, SC 29532

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case has been or will be conducted by any other Laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

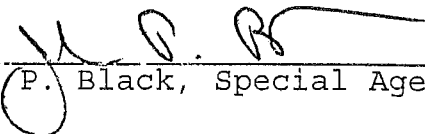
ITEM(S) SUBMITTED:

- 1 One (1) Hi-Point Model C 9mm pistol, serial #32764, plus one (1) magazine, plus one (1) unfired round bearing the headstamp "CCI N R 9mm LUGER" from chamber.

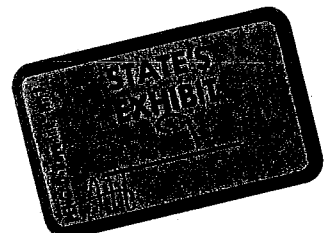
RESULTS OF EXAMINATION: Examinations and/or comparisons were conducted on the previously listed item(s) of evidence with the following results.

- 1 Contain insufficient ridge detail for identification.

These examinations and comparisons were conducted by Special Agent John P. Black, Examiner with this Division.


John P. Black, Special Agent

JPB/bg

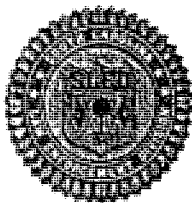


APP 600

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

DAVID M. BEASLEY
GOVERNOR



ROBERT M. STEWART
CHIEF

INVESTIGATOR MONTY C THOMPSON
DARLINGTON COUNTY SHERIFFS OFFICE
PO BOX 783
DARLINGTON SC 29532

Firearms Department
January 6, 1997
SLED Lab No.: L96-15566
Your Case No.: 96017983
Incident Date: 12/7/96
(V) Wingate, Curtisha
(S) Graham, Eric A.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case has been or will be conducted by any other Laboratory or agency.

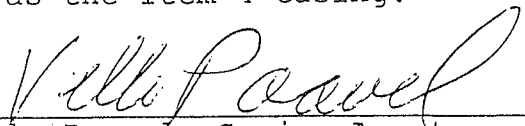
Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEM(S) SUBMITTED:

- 1 One Hi-Point Model C pistol; 9mm Luger caliber; serial number 032764; with one unfired 9mm Luger caliber cartridge. (Please note that the SLED Evidence Inventory Sheet indicates that the serial number is "02764". The correct number is 032764.)
- 4 One fired, "CCI" brand 9mm Luger caliber cartridge case.

RESULTS OF EXAMINATION: The Item 1 pistol was examined, test fired, and found to be in working order. The trigger pull weight for this pistol was measured and found to be 6 3/4 - 7 1/4 pounds. This weight is normal for this type of pistol.

Test cartridge cases fired from the Item 1 pistol were compared with Item 4. Individual identifying characteristics were found, and it was concluded that Item 4 was fired from the Item 1 pistol. The unfired Item 1 cartridge was the same caliber, brand, and type as the Item 4 casing.


Vello Paavel, Senior Agent

VP/tsr

cc: Coroner Eldridge Norton



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

DAVID M. BEASLEY
GOVERNOR



ROBERT M. STEWART
CHIEF

TOXICOLOGY DEPARTMENT

December 30, 1996
SLED Lab No: L9615566
Your Case No: 96017983
Incident Date: December 07 1996
(V) Wingate, Curtisha
(S) Graham, Eric

Monty C Thompson
Darlington County Sheriff's Office
P.O. Box 783
Darlington, SC 29532

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Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 8: Blood labeled "Wingate, Curtisha"

RESULTS:

0.021 % blood alcohol found.

Item 9: Urine

RESULTS:

Negative for ethanol in urine.

Negative screen for Barbiturates.
(Secobarbital et al.)

Urine threshold 0.2 mg/L; Blood threshold 2.0 mg/L.

Negative screen for Cocaine and/or Cocaine metabolites.
(Cocaine, benzoylecgonine, et al.)

Urine threshold 0.3 mg/L; blood threshold 0.3 mg/L.

Negative screen for Opiates.
(Morphine, codeine, et al.)

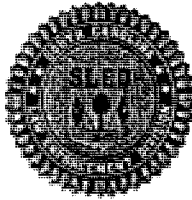
Urine threshold 0.2 mg/L; blood threshold 0.2 mg/L.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

DAVID M. BEASLEY
GOVERNOR



ROBERT M. STEWART
CHIEF

Trace Department
January 7, 1997
SLED Lab No: L96-15566
Your Case No: 96017583
Incident Date: 12-7-96
(S) Eric Graham
(V) Curtisha Wingate

MONTY THOMPSON
DARLINGTON COUNTY SO
P O BOX 783
DARLINGTON SC 29532

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case has been or will be conducted by any other Laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

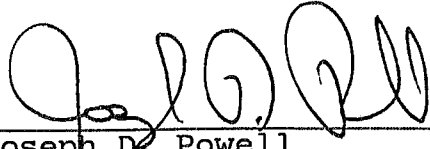
ITEM(S) SUBMITTED

5. One (1) GSR Kit from Eric Graham
6. One (1) GSR Kit from Curtisha Wingate
7. One (1) GSR Kit from Curtisha Wingate taken at autopsy

RESULTS OF EXAMINATION(S)

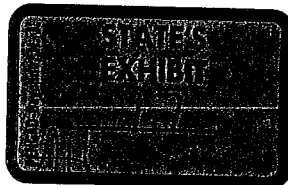
5. In the samples submitted from E. Graham, the quantities of metals detected on the hand regions do not indicate the presence of gunshot residue.
6. In the samples submitted from C. Wingate, the quantities of metals detected on the hand regions do not indicate the presence of gunshot residue.
7. In the samples submitted from C. Wingate (taken from autopsy), no analysis performed.

These examinations were conducted by Lt. Joseph D. Powell, Forensic Trace Evidence Supervisor with this Division.


Lt. Joseph D. Powell

1-9-97
Date

JDP/ksw



Autopsy Protocol
FA96-237
Myrtle Beach, SC 29572

RECEIVED JAN 13 1997

Eric Graham
Murder

97-224

NAME: WINGATE, Curtisha AGE: 17
RACE: Negroid SEX: Female

DATE OF DEATH: December 7, 1996
TIME OF DEATH: 1:30 a.m.

DATE OF AUTOPSY: December 7, 1996
TIME OF AUTOPSY: 12:45 p.m.

AUTHORIZING AUTHORITY: W. Eldridge Norton
Darlington County Coroner
South Carolina

PROSECTOR: Edward L. Proctor, Jr., M.D.

ASSISTANT: Leroy Rush

HISTORY: This 17-year-old black female was allegedly shot once in the submental area with an approximate 9 mm weapon. By history from witnesses, her boyfriend apparently pulled out a gun and it discharged striking her in this area. She was pronounced dead and permission for autopsy was granted by the Darlington County Coroner, Mr. W. Eldridge Norton.

EXTERNAL DESCRIPTION: The body is identified as Curtisha Wingate. The body is that of a well-developed, well-nourished black female appearing approximately 20 years of age. The head is covered by black hair. There is a single gunshot wound of entrance in the submental area of the chin. This is located 10.0 inches inferior to the top of the head in the midline. This is a contact wound of entrance with irregular edges measuring 2.0 cm with edges opposed. There is a surrounding muzzle imprint and abrasion collar about the entrance site. The path of this projectile is inferior to superior penetrating the floor and roof of the mouth, the frontal sinuses, and the frontal skull. There is a gunshot wound of exit in the anterior forehead at the midline. This is an irregular exit measuring 3.0 x 3.0 cm and shows protruding and brain matter. The eyes are brown and the pupils measure 0.5 cm bilaterally. The sclerae and conjunctivae are pale. There is a mild periorbital edema and recent contusion about the right eye. The ears appear unremarkable. The nose contains a bloody discharge. Palpation reveals a fracture of the nasal bridge. The mouth shows fractures of both the mandible and maxilla with separation of both the upper and lower teeth. The teeth are in good repair. The neck is supple without masses or tracheal deviation. The chest is flat. The breasts contain no masses. The abdomen is flat. There are no palpable masses or fluid wave. The genitalia are those of a normal adult female. The lower extremities show a tattoo of the name Eric on the right upper leg. The upper extremities and back appear

unremarkable.

INTERNAL DESCRIPTION: The body is opened in the usual manner to reveal the thoracic and abdominal organs to lie in their usual anatomic positions. There is no fluid in either pleural cavity. The pericardial sac contains approximately 5.0 cc of a clear fluid. The peritoneal cavity contains no fluid.

HEART: The epicardium contains minimal fat. The myocardium is firm and tan. The endocardium is smooth.

LUNGS: The pleural surfaces are smooth and glistening. Sections reveal a soft spongy parenchyma.

KIDNEYS: The capsules strip to reveal smooth cortical surfaces. Sections reveal distinct corticomedullary demarcations. The ureters appear unremarkable. The bladder shows a flattened trabecular mucosa and contains approximately 15.0 cc of yellow urine.

GYN ORGANS: A small uterus, ovaries, and fallopian tubes are present. These appear grossly normal. Sections of the uterus reveal no evidence of an intrauterine pregnancy.

SPLEEN: The capsule is slate grey. Sections reveal a soft pulp.

PANCREAS: Examination is unremarkable.

BRAIN: The scalp is reflected to reveal multiple calvarial fractures. The calvarium is removed and approximately 30-40 cc of blood and blood clots are noted within the subdural and subarachnoid spaces. There is a defect within the anterior calvarium from the area of the bullet exit. There is extensive flattening of the usual sulci and gyri. There is prominent maceration and pulpation of the left frontal lobe. There is evidence of acute contusion with punctate hemorrhages within numerous parenchymal areas. The basilar skull shows multiple fractures across the frontal and orbital plates. A projectile is not recovered.

Vitreous, blood, and urine were obtained. A gunshot residue examination was performed on the hands. Inspection of the hands revealed no evidence of material underlying the fingernails.

MICROSCOPIC EXAMINATION:

LUNGS: Sections reveal a mild congestion of the alveolar septal capillaries. Scattered alveolar spaces contain minimal aggregates of a pink edema fluid and rare extravasated red blood cells. The bronchi are lined by a uniform respiratory mucosa.

KIDNEYS: Sections reveal a mild congestion of the glomerular capillaries. The tubules and interstitium appear

unremarkable.

HEART: Sections reveal intact myocardial fibers.

LIVER: Sections reveal an intact lobular architecture. Central veins appear histologically normal. Portal areas show minimal fibrosis and normal appearing bile ducts.

BRAIN: Sections reveal a generalized edema and diffuse contusion characterized by a marked vascular congestion and multifocal areas of red cell extravasation into the surrounding parenchyma.

BLOCK SUMMARY: A - lungs; B - heart, liver, kidney; C - brain.

CASE SUMMARY:

At autopsy, examination revealed a single gunshot wound of entrance in the submental area. This wound was located 10.0 inches inferior to the top of the head within the submental area of the chin. The wound was a contact wound with irregular edges exhibiting a surrounding muzzle imprint. The path of the projectile was inferior to superior penetrating the skin and soft tissues at the submental area and passing through the floor and roof of mouth, maxillary sinuses, frontal skull, and brain and exited through the frontal calvarium. There were associated multiple fractures of the facial bones and nasal bridge as well as extensive edema, hemorrhage, and maceration of the cerebral tissues. Microscopic evaluation revealed a generalized cerebral edema with extensive acute contusion. Additional findings revealed a generalized visceral congestion.

In summary, this 17-year-old black female died as the result of a single gunshot wound to the head. Based upon information from investigative authorities and the findings of a contact wound with muzzle imprint, the manner of death is best classified as homicide.

FINAL AUTOPSY DIAGNOSES:

I. GUNSHOT WOUND TO HEAD.

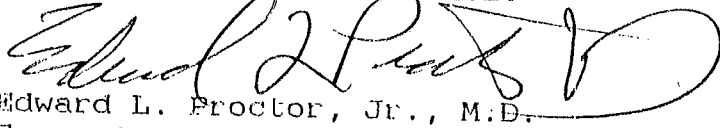
- A. **ENTRANCE:** CONTACT ENTRANCE SUBMENTAL AREA WITH MUZZLE IMPRINT AND SURROUNDING ABRASION.
- B. **PATH:** INFERIOR TO SUPERIOR PENETRATING FLOOR OF MOUTH, ROOF OF MOUTH, MAXILLARY SINUSES, BRAIN, AND FRONTAL CALVARIUM.
- C. **EXIT:** FRONTAL CALVARIUM AT MIDLINE.
- D. **EXTENSIVE MACERATION AND PULPATION BRAIN.**
- E. **INTRACRANIAL HEMORRHAGE 30-40 CC.**

II. SIGNIFICANT FINDINGS:

- A. GENERALIZED VISCERAL CONGESTION.
- B. BLOOD ETHANOL - TO DARLINGTON COUNTY CORONER.
- C. URINE DRUG SCREEN - TO DARLINGTON COUNTY CORONER.

CAUSE OF DEATH: GUNSHOT WOUND TO HEAD.

MANNER OF DEATH: HOMICIDE.


Edward L. Proctor, Jr., M.D.
Forensic Pathologist

WITNESSES

Eric A. Hodges

Citz

E.A. Hodges

ARREST WARRANT #:

F050577

Arrested on July 19, 1996

ACTION OF GRAND JURY

True Bill *10-16-96*

Foreman:

Rev. W. L. Little Jr.
Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 96GS16-2145

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 1996

THE STATE

vs.

Eric A. Graham

INDICTMENT FOR

1004

CARRYING WEAPONS ON SCHOOL PROPERTY

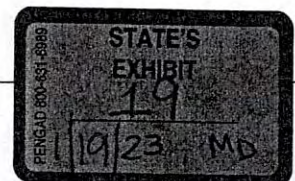
16-23-430

Karl Smith

332-4700

TRUE CERTIFIED COPY,

Scott B. Sizer
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC



STATE OF SOUTH CAROLINA)
County of Darlington)

INDICTMENT #96GS16-2145

At a Court of General Sessions, convened on October 21, 1996,
the Grand Jurors of Darlington County present upon their oath:

COUNT: CARRYING WEAPONS ON SCHOOL PROPERTY
16-23-430

That Eric A. Graham did in Darlington County on or about July 15, 1996,
did willfully and unlawfully carry on his person a handgun, while on school
property.

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

SOLICITOR:

Clayton McBride

☒ appear in open court and plead guilty to Carrying weapon on school
property the within indictment, consent for _____
☒ My plea to be published, and ask the mercy of the court.
Signed *Eric A. Graham*
Witness _____

TRUE CERTIFIED COPY,
Scott B. Saffer
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF Darlington

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE #:

STATE

vs.

Eric Graham

AKA:

Race: BSex: M

DOB: [REDACTED]

Age: 19

SSN: [REDACTED]

DL#

SID#:

A/W#: F050577Date of Offense: 6-15-96S.C. CODE §: 16-23-430CDR Code #: 1004 615

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Carrying weapon on School Property 615in violation of § 16-23-430 of the S.C. Code of Laws, bearing CDR Code # 1004☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUSThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence☐ Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, or ☒ Under Youthful Offender Act for a term of Not to exceed 5 days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance suspended with probation for _____ months/years.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____

Pay Terms: _____

Recipient: _____

*Fine: \$ _____

§14-1-206 - Assessments 100% \$ _____

§14-1-211 - Surcharge \$ 103

(Exceptions: See §14-1-211)

§56-5-2995 (DUI) \$ _____

TOTAL \$ 103

Clerk of Court/Deputy Clerk

Court Reporter: Grace Hunley

APP 610

PRESIDING JUDGE

Sentence Date: 7-23-98Judge Code: 0041

TRUE CERTIFIED COPY,

☐ PTUP☐ _____ days/hours Public Service Employment☐ Obtain GED DARLINGTON COUNTY, SC☐ Attend Voc Rehab. or Job Corps☐ May serve W/E beginning _____☐ Substance Abuse Counseling☐ Random Drug/Alcohol Testing☐ Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____☒ Other: SHOCK INCARCERATION☐ Other: _____

STATE OF SOUTH CAROLINA
COUNTY OF Darlington
STATE OF SOUTH CAROLINA

IN THE Ticket or Warrant No.:
() COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF



v. Eric G. Graham
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Pass. of firearm on School Property
At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$_____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$_____. The defendant will be obligated to the State in the full amount of \$_____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 1000.00.

3. That the defendant shall appear at (check one):

☒ the term of the court of general sessions beginning on [Date: August 23] at [Time: 9:00] o'clock, A.M., at [Place: Darlington County Courthouse 5th floor]
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date: _____] at [Time: _____] o'clock, _____ M., at [Place: _____]. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant EA

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Daniel B. Causey III
Signature of Judge

7-19-96
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me if I violate any condition of the Order or fail to appear as required.

Shirley M. Reed
Society Hill SC
383-9610

Eric G. Graham
Signature of Defendant

July 19, 1996
Date

County Number/Telephone No.

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE APPENDED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.
Original copy for the Trial Court - Copy for the Defendant

Hartsville Magistrate
CASE HISTORY FOR CASE U500789

The State of South Carolina VS Eric Anton Graham

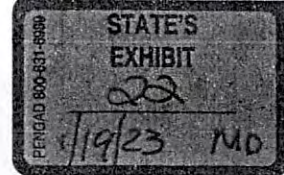
FILED DATE: 10/12/1996

CASE TYPE: TR

ASSIGNED JUDGE: Morris, William Cleveland

DISPOSITION JUDGE: Morris, William Cleveland

ARRESTING AGENCY: S C Highway Patrol



STATUS: Disposed

CASE PARTIES:

Defendant Graham, Eric Anton

Sherrills Mill Rd., Hartsville, SC 29550

Officer Chavis, A J

CASE HISTORY FOR CASE U500789

Graham, Eric Anton
Sherrills Mill Rd.
Hartsville, SC 29550

Age: Unknown

DL#:

DOB: Unknown

SSN: 000-00-0000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
2980 D.U.I.	10/12/1996	Guilty Bench Trial	11/14/1996

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: D.U.I.				
Fine to General Fund	\$200.00	\$0.00	\$200.00	999
State Assessment	176.00	0.00	176.00	999
Total:	\$376.00	\$0.00	\$376.00	

DATE	TIME	EVENT DESCRIPTION
10/14/1996	12:00 AM	Received payment of \$376 from GRAHAM, ERIC ANTON for GRAHAM, ERIC ANTON. Printed receipt #224288.
11/7/1996	11:00 AM	Court event: Criminal/Traffic Court
11/14/1996	12:00 AM	recorded the following Case Note: MONEY FR G ATKINSON

Certified True Copy
Hartsville Magistrate's Office

Print Date: 12/05/2022
Print Time: 2:04:31PM
Requested By: C16SSMITH

CaseHistory.rpt V6.1

Page 1 of 1



Certification for Court

Customer No: 23496991 Driver License No: [REDACTED]
Name: GRAHAM, ERIC ANTON
Address: [REDACTED] SHERRILLS MILL RD.
City: HARTSVILLE State: SC Zip: 295500000
County: DARLINGTON
DOB: [REDACTED] 1979 Height: 5'11 Weight: 160 Eyes: Sex: M Race: BLACK Driver Training: N
Status - DL: SUSPENDED CDL: DISQUALIFIED

License Information

Type	Class	Function	Issued	Expires	First Issued	Rest.	Endor.	Document Identifier (ACN / DDN)
Current								
Prior								
ID		Returned	07/16/1997	07/16/2002		N	N	N/A
ID		Original	07/16/1997	07/16/2002		N	N	N/A
DL	D	Returned	08/16/1994	05/14/1998	07/16/1997	Y	N	N/A
DL	D	BP to DL	08/16/1994	05/14/1998	07/16/1997	Y	N	N/A

Point Summary

Total Current Points: 0
Driver Credit: -0
Adjusted Current Points: 0

Suspension Summary

Driving Under the Influence:	Total 0 DUI Suspensions
Driving Under Suspension:	Total 0 DUS Suspensions
Unlawful Alcohol Concentration:	Total 0 Per Se Suspensions
Failure To Make Payment For Gasoline:	Total 0 Gasoline Suspensions
Uninsured Motorist:	Total 0 UM Violations

SC Driver License Surrendered

License Type: DL Class: D Function: BP to DL
Date Surrendered: 01/18/2020
Reason for Return: EXPIRED LICENSE CANCELLED

Posted: 01/18/2020
Issued: 08/16/1994

Returning State:

SUSP: 013 - Driving Under Suspension

Special Driving Privilege: NONE

Suspension Beg: 07/15/1998

Causal: 06/10/1998

Reinstatement Requirements Met: INDEFINITE

ACD: B26 Withdrawal Loc Ref:

Suspension No: 2

Violation No: 2

Status: ACTIVE

Reason:

Suspension End: 10/15/1999

Post: 08/31/1998

Reinstatement Fee Paid: N

Withdrawal Reason Ref:

Last Change: 07/28/2002

Ticket#: 90052AW

SUSP: 001 - Driving Under the Influence

Special Driving Privilege: NONE

Suspension Beg: 11/14/1996

Causal: 10/12/1996

Reinstatement Requirements Met: INDEFINITE

ACD: A20 Withdrawal Loc Ref:

Suspension No: 1

Violation No: 1

IID Required: N

Status: ACTIVE

Reason:

Suspension End: 05/14/1997

Post: 12/05/1996

Reinstatement Fee Paid: N

Withdrawal Reason Ref:

Last Change: 07/30/2002

Ticket#: U500789

Certification for Court

Customer No: 23496991
Name: GRAHAM, ERIC ANTON

Driver License No: 7504258

End of Report



STATE OF SOUTH CAROLINA
COUNTY OF Darlington
STATE OF SOUTH CAROLINA
v. Eric A. Graham
Name of Defendant

Ticket or Warrant No. F-368172 - Murder
F-368183 - minor handgun
F-368184 - CPU
F-368187 - Firearm ABC
IN THE () COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF _____

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Murder; Unlawful possession of a firearm by a minor; Committing Vicious Act with a Handgun; Possession of a Handgun in an ABC Establishment
At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☒ The release of the defendant on recognizance will result in an unreasonable danger to the community.
This determination was based upon the following findings of fact:

Nature of offenses require surety bond.



[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
- That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$ _____. The defendant will be obligated to the State in the full amount of \$ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 20,000.00.

3. That the defendant shall appear at (check one):

- ☒ the term of the court of general sessions beginning on [Date:] 1/24/97 at [Time:] 9:00 o'clock, A.M., at [Place:] Darlington County Courthouse and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of magistrate/municipal (circle one) court beginning on [Date:] _____ at [Time:] _____ o'clock, _____ M., at [Place:] _____. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant EAG

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

[Signature]
Signature of Judge

12-12-96
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Sherrill Mill Rd.
Address
Society Hill, SC 29593
City/State/Zip

383-9610
Telephone No.

Eric A. Graham
Signature of Defendant

12-12-96
Date

Karl H. Smith
Attorney Representing Accused (If known)



PAULETTE LOWE
Clerk of Court

DARLINGTON, S. C.

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

BOND CERTIFICATE

THIS IS TO CERTIFY THAT RAYMOND GRAHAM
IS A FREEHOLDER IN THE COUNTY AFORESAID AND IN MY OPINION IS WORTH
THE SUM OF TWENTY THOUSAND DOLLARS*****
(\$20,000.00***) DOLLARS, OVER AND ABOVE ANY LIABILITIES AND THE
AMOUNT OF EXEMPTION UNDER THE LAW.

Paulette Lowery
CLERK

DARLINGTON, SOUTH CAROLINA

DECEMBER 12, _____, 1996.

BOND FOR: ERIC GRAHAM

OFFENSE/CHARGE: _____

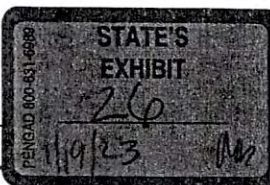
PLACE OF DETENTION: DCDC

TRUE CERTIFIED COPY,
Sgt B Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

P.O. BOX 498
DARLINGTON, SOUTH CAROLINA 29532

DARLINGTON COUNTY CLERK OF COURT
DARLINGTON, SOUTH CAROLINA 29532

TELEPHONE 803-398-4330
803-398-4333



WITNESSES

James Davis

Darlington Pd

b *David Wearn*

ARREST WARRANT #:

F050927

Arrested on June 10, 1998

ACTION OF GRAND JURY

True bill *7/16/98*

Foreman:

Melanie P. E. Terling
Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 98GS16-1682

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: July, 1998

THE STATE

vs.

Eric Graham

I N D I C T M E N T F O R

0139

ARMED ROBBERY

(16-11-330)

*WP convicted of murder
and sentenced to life
on 8/26/98*

TRUE CERTIFIED COPY,

San B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

ECB *8/27/98*

STATE OF SOUTH CAROLINA)
County of Darlington)

INDICTMENT #98GS16-1682

At a Court of General Sessions, convened on July 20, 1998,
the Grand Jurors of Darlington County present upon their oath:

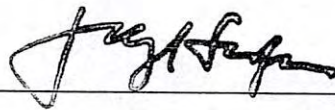
COUNT:

ARMED ROBBERY
(16-11-330)

That Eric Graham did in Darlington County on or about June 09, 1998, while armed with a deadly weapon, to wit: (handgun), feloniously take from the person or presence of the victim, Eugene Hansen, by means of force or intimidation goods or monies of said victim, such goods or monies being described as follows: (cash, a pager, jewelry).

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

SOLICITOR:



TRUE CERTIFIED COPY,
Sgt B Suge
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.



WITNESSES

G M Henderson

Darlington Pd

15 *David Wain*

ARREST WARRANT #:

90051AW

Arrested on June 09, 1998

ACTION OF GRAND JURY

True Bill *7/16/98*

Foreman: *Melanie B. Easterday*
Grand Jury

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 98GS16-1698

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: July, 1998

THE STATE

vs.

Eric Anton Graham

I N D I C T M E N T F O R

0043

WEAPON/CARRYING CONCEALED

16-23-460

TRUE CERTIFIED COPY,
Sgt B Sign
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

NP
plead in
city court
plead in
city court
to this charge
1.2.14
11.4

STATE OF SOUTH CAROLINA)
County of Darlington)

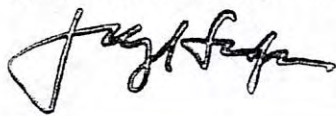
INDICTMENT #98GS16-1698

At a Court of General Sessions, convened on July 20, 1998,
the Grand Jurors of Darlington County present upon their oath:

COUNT: WEAPON/CARRYING CONCEALED
16-23-468
430

That Eric Anton Graham did in Darlington County on or about June 09, 1998,
carry concealed about his person a deadly weapon.

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

SOLICITOR: 

I VOLUNTARILY WAIVE PRESENTMENT
TO THE GRAND JURY ON THIS INDICT-
MENT.

Date

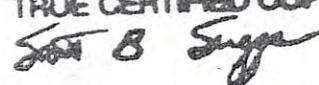
Defendant

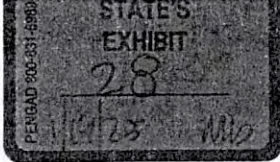
Witness

I appear in open court and plead guilty to the within indictment
the within indictment, consent for
my plea to be published, and ask the mercy of the court.

Witness:

Signed 

TRUE CERTIFIED COPY

CLERK OF COURT/FMC
DARLINGTON COUNTY, S.C.



City of Darlington

Municipal Court

P.O. Box 57

Darlington, South Carolina 29540

Robert L. Stucks

Municipal Judge

Melinda R. Osborne

Clerk of Municipal Court

CERTIFIED TRUE COPY

BY Melinda R. Osborne
CLERK OF COURT

Telephone

(843) 398-4004

Fax

(843) 398-4102

Final Disposition Form

CITY OF DARLINGTON, SC

VS

Chie Anton Graham
DEFENDANT

FOR COURT USE ONLY

Date: 10-12-17

Completed by: Melinda Osborne

Title: Clerk of Court

This form is to be stamped "CERTIFIED TRUE COPY", sealed with "MUNICIPAL COURT CITY OF DARLINGTON" seal and signed by individual completing form.

TICKET/WARRANT #: 90051 AW DISPOSITION: Guilty - 30 days

DATE OF DISPOSITION: 7-15-98

CHARGE: Concealed Weapon

TICKET/WARRANT #: 90052 AW DISPOSITION: Guilty - 30 days

DATE OF DISPOSITION: 7-15-98

CHARGE: DUS

TICKET/WARRANT #: 90057 AW DISPOSITION: Guilty - 30 days

DATE OF DISPOSITION: 7-15-98

CHARGE: Unlawful use of license

TICKET/WARRANT #: 90053 AW DISPOSITION: Guilty - 30 days

DATE OF DISPOSITION: 7-15-98

CHARGE: Seatbelt

TICKET/WARRANT #: _____ DISPOSITION: _____

DATE OF DISPOSITION: _____

CHARGE: _____

DISPOSITIONS:

Bond Forfeiture

Dismissed

Guilty/Tried in Absence

Time Served

Guilty

Community Service

30 Days (Jail)



STATE OF SOUTH CAROLINA
COUNTY OF Darlington
STATE OF SOUTH CAROLINA

Ticket or Warrant No.: F-050927
IN THE ☒ COURT OF GENERAL SESSIONS
☐ MAGISTRATE'S COURT
☐ MUNICIPAL COURT OF _____

Eric Graham
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Armed Robbery

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.
This determination was based upon the following findings of fact:

East B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

Bond denied

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$ _____. The defendant will be obligated to the State in the full amount of \$ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☐ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ _____.

3. That the defendant shall appear at (check one):
☒ the term of the court of general sessions beginning on [Date: 7-24-2008] at [Time: 9:00] o'clock, A.M., at [Place: Dar Co. Courthouse]
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date: _____] at [Time: _____] o'clock, _____M., at [Place: _____]. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Daniel B. Causey Jr 6-10-98
Signature of Judge Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me should I violate any condition of the Order or fail to appear as required.

Sherrill D. Zell Rd.
Wentville, SC
City/State/Zip

June 10, 1998
Signature of Defendant Date

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
 _____ Name of person or organization

_____ Address _____ City _____ State/Zip _____ Telephone _____
 who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the
 appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the
 defendant violates any conditions of his release or disappears.

_____ Signature of Custodian (If Appointed) _____ Date _____

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ M. to _____ o'clock, _____ M. on
 _____ on condition that he return to the custody of _____
 _____ at _____ as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____, 19____, personally appeared before the undersigned judge the surety named
 below who acknowledged himself indebted to the State of South Carolina, in the sum of \$_____, such sum to be levied on his
 real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and
 underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

 Name of Surety (Printed or Typed)

 Signature of Surety

 Address of Surety

 Signature of Judge

 City/State/Zip

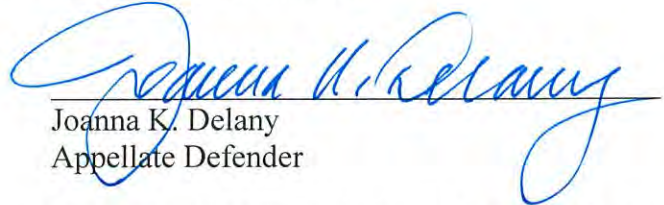
 Date

Form Approved by
 S.C. Attorney General
 Section 17-15-40
 March 7, 1990

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Oct 11 2024

SC Court of Appeals

This 11th day of October, 2024.

RECEIVED

Oct 11 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Supplemental Record on Appeal in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary email address listed within the Attorney Information System (AIS), this 11th day of October, 2024.


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

RECEIVED

Aug 12 2024

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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¹ *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in resentencing Appellant to life imprisonment, where the court did not make any specific findings as to the *Aiken v. Byars*² factors or conclusions of law, since the sentencer of a juvenile defendant facing a life without parole sentence must consider the evidence and analyze the *Aiken* factors before imposing sentence?

² *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

STATEMENT OF THE CASE

On February 20, 1997, a Darlington County Grand Jury indicted Eric Graham, Appellant, for the December 7, 1996, murder of C.W., Decedent. Appellant was tried before the Honorable Paul M. Burch, and a jury, on or about August 24 – 28, 1998. Karl H. Smith represented Appellant. Billie E. Blackmon prosecuted the case. Appellant was convicted as indicted, and he was sentenced to life without parole. On September 4, 1998, the court heard and denied post-trial motions.^{3,4}

On June 9, 2016, Appellant filed a motion for resentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). On August 17, 2016, the South Carolina Supreme Court filed an order vesting the Honorable Roger E. Henderson with exclusive jurisdiction over the resentencing motion.⁵

On January 19, 2023, a resentencing hearing was held before Judge Henderson. Elizabeth Franklin-Best represented Appellant. Kelley Jackson represented the State. The court heard testimony and argument, and took the matter under advisement. On January 23, 2023, the court

³ R. 587; R. 165; R. 166, ll. 1-4; R. 260, ll. 16-19; R. 381, l. 25 – 382, l. 1; R. 570; R. 582-583 (Court's Exhibits #2 – 3).

⁴ At the time of the crime, S.C. Code Ann. § 16-3-20 (1996), provided that when the punishment for murder was life imprisonment: “‘life imprisonment’ means until death of the offender. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section.”

⁵ R. 590 (*Aiken v. Byars* order).

issued a new sentence sheet, filed January 30, 2023, in which it resented Appellant to life without parole.⁶

This appeal follows.

⁶ R. 1 – 5; R. 162, l. 21 – 163, l. 4; R. 592 (2023 Sentence Sheet).

STANDARD OF REVIEW

When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law. *State v. Mack*, Op. 6031 (S.C. Ct. App. refiled November 1, 2023) (Howard Adv. Sh. No. 43 at 16) (citing *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)). The appellate courts will not disturb the circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support. *State v. Finley*, 427 S.C. at 423, 831 S.E.2d at 160.

ARGUMENT

The court erred in resentencing Appellant to life imprisonment, where the court did not make any specific findings as to the *Aiken v. Byars*⁷ factors or conclusions of law, since the sentencer of a juvenile defendant facing a life without parole sentence must consider the evidence and analyze the *Aiken* factors before imposing sentence.

The trial court erred when it resentenced Appellant to life without parole. The court did not explain its reasoning for the sentence, and the sentence sheet was insufficient to show compliance with the requirements of *Aiken v. Byars*.

Relevant facts

On the night of December 7, 1996, seventeen-year-old Appellant and his seventeen-year-old girlfriend, C.W., were on the couch watching a movie at the home of Appellant's parents in Darlington County. The young couple had a "lovey-dovey" relationship. No arguments had been observed between the two. Appellant's eighteen-year-old first cousin, Ms. McDonald, was also on the couch—the girls sat at either end of the couch and Appellant sat in the middle.⁸

Around 1:30 a.m., McDonald got up to go to bed, since she was not enjoying the movie they had put on. A shot rang out within seconds of McDonald, who now had her back to the couch, standing up. Appellant began to scream. McDonald turned around and saw smoke coming

⁷ *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

⁸ R. 220, l. 15 – 222, l. 3; R. 236, ll. 13-25; R. 261, ll. 16-21; R. 409, ll. 15-19; R. 413, ll. 22-24; R. 416, ll. 6-25; R. 435, ll. 20-22; R. 124, l. 13.

out of C.W.'s mouth; blood was everywhere. C.W. was dead from a single contact gunshot wound which entered under her chin, and exited the top of her head.⁹

McDonald called 911 and woke Appellant's mother, Mrs. Graham. Mrs. Graham went into the family room; Appellant was screaming and crying and holding C.W. Appellant was hysterical. According to Mrs. Graham, Appellant stated that he had gotten the gun out, C.W. hit his arm, and the gun accidentally went off. "She grabbed the gun." Mr. John Graham, Appellant's uncle, said that Appellant stated, "I'm sorry. Look what I've done. It's my fault." Mr. John Graham said Appellant fell down in front of C.W.'s body and stated, "Look what you made me do."¹⁰

When law enforcement arrived, two family members were holding Appellant down on the floor; the gun was on the floor a few feet away. The body was seated on the couch covered with a blanket. Officers heard Appellant say, "I shot her, I shot her." Officers heard Appellant's father, Mr. Raymond Graham, Sr., say, "I told you that damn gun was gone get you in trouble." No gunshot residue was found on C.W.'s hands. Appellant was tried for murder. The State proceeded on a theory of *Mouzon*¹¹ malice. The defense argued accident. Appellant was convicted and sentenced to life imprisonment without the possibility of parole.¹²

⁹ R. 216, ll. 10-18; R. 221, ll. 3-23; R. 229, ll. 4-16; R. 239, ll. 12-17; R. 274, l. 17 – 275, l. 9; R. 386, l. 12 – 388, l. 8; R. 418, l. 11 – 424, l. 9.

¹⁰ R. 220, ll. 17-21; R. 235, ll. 14-22; R. 240, l. 10 – 241, l. 3; R. 452, l. 23 – 453, l. 3; R. 458, ll. 7-19; R. 480, l. 4 – 485, l. 6; R. 426, l. 20 – 428, l. 8.

¹¹ *State v. Mouzon*, 231 S.C. 655, 99 S.E.2d 672 (1957).

¹² R. 217, l. 10 – 219, l. 10; R. 224, l. 22 – 225, l. 22; R. 233, ll. 3-7; R. 247, l. 3 – 248, l. 2; R. 262, l. 22 – 263, l. 6; R. 354, l. 23 – 355, l. 18; R. 512, l. 15 – 513, l. 4; R. 528, l. 8; R. 589 (1998 Sentence Sheet); R. 568, ll. 7-10.

In 2016, Appellant applied for resentencing pursuant to *Aiken v. Byars*. A hearing was convened. Appellant had then been in prison for twenty-six years. He was seventeen at the time of the offense. The circuit court heard testimony and a number of exhibits, including the trial transcript, were entered.¹³

Favorable evidence for Appellant included evidence about his childhood that went to the possibility of rehabilitation, including testimony about his religious upbringing. Appellant was raised going to New Hopewell Missionary Baptist Church. He went to Sunday School, and was in the choir. Appellant had a tight-knit, extensive family that lived close to each other in Darlington County. Twenty-five family members and friends appeared in support of Appellant at the hearing.¹⁴

Appellant was a smart young man who made good grades in school before he was expelled. Appellant was expelled for carrying a weapon on school grounds prior to the murder. Peers were involved in that weapons offense. Regarding the murder trial, during post-trial motions Appellant's trial counsel stated that Appellant did not follow his repeated advice that Appellant should testify, and he believed Appellant did not comprehend the seriousness of the case.¹⁵

Appellant and Decedent had a loving relationship. As seen, Appellant was extremely upset, screaming and crying immediately after C.W. was shot. Appellant was remorseful when he addressed the resentencing court. The court heard expert testimony from Dr. Elizabeth

¹³ R. 590 (*Aiken v. Byars* order); R. 1; R. 6, l. 9 – 15, l. 17.

¹⁴ R. 22, l. 14 – 24, l. 2; R. 35, l. 24 – 37, l. 12; R. 583 (Court's Exhibit #3).

¹⁵ R. 24, l. 17 – 25, l. 13; R. 155, l. 23 – 156, l. 3; R. 572, l. 6 – 573, l. 19.

Cauffman, a psychologist whose area of focus was adolescent development and juvenile justice. Dr. Cauffman's testimony included an explanation that impulse control is underdeveloped in seventeen-year-olds, such that an adolescent can know the right thing to do, but still may be unable to self-regulate to do it.¹⁶

The resentencing court took the matter under advisement. It signed a new sentence sheet four days later, in which it resentenced Appellant to life imprisonment without the possibility of parole.

Discussion

Appellant was entitled to consideration of the mitigating circumstances of his youth in sentencing pursuant to the Eighth Amendment and S.C. Const. art. I, § 15. This Court should remand this case for specific findings of fact and conclusions of law on the *Aiken v. Byars* factors as they apply to him.

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. "[T]he Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U.S. 551, 560 (2005). "The provision is applicable to the States through the Fourteenth Amendment." *Id.*

"The United States Supreme Court sequentially has interpreted the protections of the Eighth Amendment to hold that juveniles are entitled to different treatment in sentencing when the death penalty or a life-without-parole sentence is imposed." *Jones v. State*, 440 S.C. 14, 26, 889 S.E.2d 590, 597 (2023). *See Roper v. Simmons*, 543 U.S. at 575 (Eighth Amendment prohibits capital punishment for murder where offenders were under eighteen at time of crime);

¹⁶ R. 19, l. 13 – 20, l. 5; R. 140, l. 21 – 141, l. 3; R. 88, ll. 8-11; R. 86, ll. 3-6; R. 92, l. 7 – 94, l. 13.

Graham v. Florida, 560 U.S. 48, 74 (2010) (Eighth Amendment prohibits life without parole for offenders who were under eighteen and committed nonhomicide offenses); *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (mandatory life without parole for those under age eighteen at time of homicide violates the Eighth Amendment).

It is the “rare juvenile offender whose crime reflects irreparable corruption.” *Roper v. Simmons*, 543 U.S. at 57. “[B]ecause juveniles have lessened culpability they are less deserving of the most severe punishments.” *Graham v. Florida*, 560 U.S. at 68. “[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.” *Id.* “[A]ppropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Miller v. Alabama*, 567 U.S. at 479. “Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*, 567 U.S. at 480.

“[A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *Miller v. Alabama*, 567 U.S. at 489. “A hearing where ‘youth and its attendant characteristics’ are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not.” *Montgomery v. Louisiana*, 577 U.S. 190, 210 (2016) (quoting *Miller*, 567 U.S. at 465). However, *Miller* did not require the sentencer to make a separate finding of permanent incorrigibility before imposing a life without parole sentence. *Jones v. Mississippi*, 141 S.Ct. 1307, 1316 (2021).

“We have followed United States Supreme Court precedent in interpreting the Eighth Amendment as applied to South Carolina law. See *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572

(2014) (holding inmates sentenced to life without parole as juveniles before *Miller* were entitled to resentencing because their sentences violated the Eighth Amendment).” *Jones v. State*, 440 S.C. at 27, 889 S.E.2d at 597.¹⁷ “[I]t is for the states, in the first instance, to explore the means and mechanisms for complying with the Eighth Amendment.” *State v. Slocumb*, 426 S.C. 297, 313, 827 S.E.2d 148, 156 (2019).

Aiken requires juveniles receive an individualized hearing where the mitigating hallmark features of youth are fully explored before they may be sentenced to life without parole. *State v. Smart*, 439 S.C. 641, 648, 889 S.E.2d 573, 577 (2023).

Miller establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (1) the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth—for example, the offender’s inability to deal with police officers or prosecutors (including on a plea agreement) or the offender’s incapacity to assist his own attorneys; and (5) the possibility of rehabilitation.

Aiken v. Byars, 410 S.C. at 544, 765 S.E.2d at 577 (cleaned up). “[T]he type of mitigating evidence permitted in death penalty sentencing hearings unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above. *Id.*, 410 S.C. at 544-45. “[W]e are mindful that juveniles are entitled to careful sentencing under the Eighth Amendment, and we direct circuit court judges to consider the mitigating factors of youth articulated in *Aiken v. Byars*.” *Jones v. State*, 440 S.C. at 25, 889 S.E.2d at 596.

¹⁷ Cf. *Aiken*, 410 S.C. at 546, 765 S.E.2d at 578 (Pleicones, J., concurring) (“the majority exceeds the scope of current Eighth Amendment jurisprudence in ordering relief under *Miller*, I would reach the same result under S.C. Const. art. I, § 15”).

There is no burden of proof or persuasion on either party at an *Aiken v. Byars* resentencing hearing, and there is no presumption for or against any sentence. *State v. Smart*, 439 S.C. at 645, 889 S.E.2d at 575. The resentencing court must consider all the evidence and arguments presented at the resentencing hearing and impose an appropriate sentence without any regard to the prior sentencing court's thought process or decision." *Id.*

A "textbook example of what a proper *Aiken* hearing affords" is one in which the resentencing court: listened to testimony from an expert psychologist who examined the defendant and reviewed his records; received testimony from a number of witnesses regarding the circumstances of the crime and the defendant's background; weighed the evidence; considered counsel's arguments; and analyzed the *Aiken* factors before imposing a sentence. *Jones v. State*, 440 S.C. at 32, 889 S.E.2d at 600 (Hearn, Acting J., concurring). *See State v. Mack*, Op. 6031 (S.C. Ct. App. refiled November 1, 2023) (Howard Adv. Sh. No. 43 at 16, 31) ("the resentencing court's order does not reflect a careful and thorough consideration of the *Aiken* factors").

Much favorable evidence was introduced at the hearing. Appellant's religious upbringing and large, close-knit family were positive facts on the possibility of rehabilitation. Dozens of family members and community members were present in support of Appellant at the resentencing hearing. Appellant's intelligence was also a fact in his favor. Appellant's impetuosity and immaturity at the time of the crime were demonstrated by his 1996 expulsion from school for carrying a weapon on school property. Peers were involved in that offense. The spur-of-the-moment nature of the murder also went to Appellant's impetuosity and immaturity.

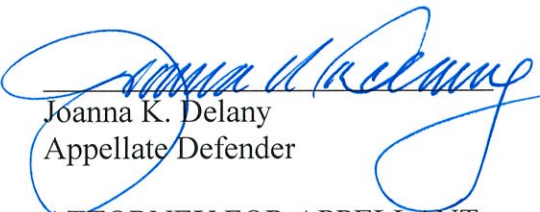
Trial counsel's statements to the trial judge that Appellant did not follow his advice to testify, and that Appellant did not understand the seriousness of the case, went to how the

incompetencies of youth affected the case's outcome. Appellant was remorseful. His age would have caused him to have underdeveloped impulse control, as explained by Dr. Cauffman.

It is not apparent the trial court weighed this information. The court did not rule on the record, and instead only issued a sentence sheet. This order does not reflect that the constitutionally required careful consideration of evidence on the *Aiken v. Byars* factors occurred in determining the appropriate sentence. This Court should remand the matter for the circuit court to make specific findings and conclusions on the *Aiken* factors. U.S. Const. amend. VIII; S.C. Const. art. I, § 15; *Aiken v. Byars*, 410 S.C. at 544, 765 S.E.2d at 577; *Jones v. State*, 440 S.C. at 25, 889 S.E.2d at 596.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse and remand the matter for the circuit court to make specific findings and conclusions in accordance with *Aiken v. Byars*.


Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

This 12th day of August, 2024.

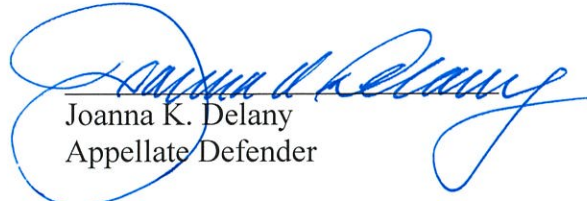
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Aug 12 2024

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 12th day of August, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

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Aug 12 2024

THE STATE,

RESPONDENT,

SC Court of Appeals

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); this 12th day of August 2024.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

ERIC ANTON GRAHAM,.....APPELLANT

FINAL BRIEF OF RESPONDENT
Appellate Case No. 2023-000160

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
Telephone No. (803) 734-6305

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

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APPELLANT'S STATEMENT ON APPEAL

Whether the court erred in resentencing Appellant to life imprisonment, where the court did not make any specific findings as to the *Aiken v. Byars* factors or conclusions of law, since the sentencer of a juvenile defendant facing life without parole sentence must consider the evidence and analyze the *Aiken* factors before imposing sentence?

RESPONDENT'S COUNTER ARGUMENT ON APPEAL

Did the sentencing court err in resentencing the Appellant to life without parole without any specific findings or conclusions of law when it is not mandated pursuant to the *Aiken v. Byars* decision, and sufficient evidence was provided by both parties during the hearing for the sentencing court to consider the factors listed in *Aiken v. Byars*?

STATEMENT OF THE CASE

On December 7, 1996, deputies from the Darlington County Sheriff's Office responded to a shooting that occurred in the Appellant's residence. Once they arrived, they saw the victim, seventeen-year-old Curtisha Wingate slumped over on a couch covered with a blanket. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 217 l. 10-13; R. 219 l. 5-10). Appellant Eric Anton Graham, also seventeen years of age, was the victim's boyfriend. When deputies arrived, they saw the Appellant emotional on the floor being held by his uncle and cousin. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 217 l. 10-13; R. 458 l. 20-24). Deputies placed the Appellant in handcuffs. The murder weapon was found next to the Appellant, so deputies took the weapon into evidence. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 247 l. 23-24; R. 248 l. 16-20).

The Appellant was later taken to the Sheriff's department for questioning. After being read his *Miranda* rights he told Deputies that he was guilty of voluntary manslaughter and that was what he'd plead to. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 187 l. 22 – R. 188 l. 2). Appellant did indicate he shot the victim. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 188 l. 2-5). After he made that statement, his father came into the interrogation room and told Deputies that his son wanted a lawyer. All questioning ceased after his father informed them that his son would not be answering questions without counsel present.

On August 28, 1998, Appellant's case was called for trial. Appearing before the Honorable Paul M. Burch was the Appellant along with his counsel Karl H. Smith. Representing the State of South Carolina was Assistant Solicitor Billie E. Blackmon of the Fourth Circuit Solicitor's office.

During the trial Dr. Edward Lee Proctor testified. Dr. Proctor was qualified as an expert in forensic pathology. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 385 l. 17). Dr.

Proctor performed the autopsy on the victim on December 7, 1996. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 385 l. 24-25). Dr. Proctor testified that the imprint of the entrance site along the surrounding muscle was the actual imprint of the barrel of a gun. This imprint was around the wound. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 387 l. 18-22). This indicated that the wound was a contact wound. The gun was pressed up against the skin under the chin. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 388 l. 4-8). Dr. Proctor also testified that the bullet traveled straight through the entrance site, through the roof of the mouth, through the sinuses where it exited out of the frontal skull. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 390 l. 5-10; R. 391 l. 25 – R. 392 l. 1). Dr. Proctor determined that the victim died as a result of a gunshot wound to the base of the chin area. The actual cause of death was a gunshot wound with the bullet subsequently passing through the brain, causing extensive swelling and fragmentation and hemorrhaging to the brain matter itself. (Court's Exhibit 1, Trial Transcript dated August 28, 1998, R. 392 l. 6-10).

After one day of trial, a jury of his peers found the Appellant guilty of murder. Upon conviction Appellant appeared before the trial judge for sentencing. The trial judge sentenced the Appellant to a period of incarceration for the remainder of his natural life without the possibility of parole for the offense of murder.

While serving his sentence, the United States Supreme Court decided the case of *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012). In *Miller*, the United States Supreme Court decided that a mandatory sentence of life imprisonment without parole for those under the age of eighteen at the time of the crime violates the Eighth Amendment's prohibition on cruel and unusual punishment. Due to the *Miller* decision the South Carolina Supreme Court granted certiorari in the case of *Aiken v. Byars*, 401 S.C. 534, 765 S.E.2d 572 (2014). In *Aiken*, the South Carolina Supreme

Court decided to apply the *Miller* standards to South Carolina juveniles who were sentenced to life without parole. In *Aiken*, the South Carolina Supreme Court determined that this is retroactive, so any juvenile sentenced to life without parole was allowed to petition the court for a resentencing. Appellant petitioned the court for resentencing.

On January 19, 2023, all interested parties appeared before the Honorable Roger E. Henderson for a resentencing hearing. Appearing before the sentencing judge was Appellant along with his counsel Elizabeth Franklin-Best. Appearing representing the State of South Carolina was Assistant Solicitor Kelley Jackson of the Fourth Judicial Circuit.

During this hearing Appellant's mother Bobby-Gene Graham testified as well as his father Raymond Graham. They testified how much the Appellant loved the victim, (*Aiken* hearing R. 19 l. 16-25), that the Appellant was raised in a good home that was actually built by his father, (*Aiken* hearing R. 33 l. 24), and that the Appellant attended church. (*Aiken* hearing R. 23 l. 21 – R. 24 l. 4). Reverend William C. Daniels who was the pastor for the Appellant and the victim also testified. Reverend Daniels testified about how tight knit the Appellant's and victim's family were. (*Aiken* hearing R. 36 l. 18-20). Reverend also testified about mercy and forgiveness. (*Aiken* hearing R. 38 l. 9 – R. 40 l. 4). Testifying for the Appellant was Dr. Elizabeth Cauffman who considered herself a teaching expert. (*Aiken* hearing R. 87 l. 7-9). She never examined the Appellant because she was brought in as a developmental psychologist, she was there to teach science not to give any diagnoses. (*Aiken* hearing R. 107 l. 13-17). She testified in order to explain the hallmark features of youth. The brain of a teenager functions differently than an adult.

Testifying for the State of South Carolina was William Sumner of the Darlington Police Department. Officer Sumner was the resource officer for Darlington High School. (*Aiken* hearing R. 66 l. 1-7). There was an incident involving the Appellant bringing a gun to school. This gun was

taken off campus provided to another person who fired a shot. (*Aiken* hearing R. 67 l. 4-5). They were stopped in a car being driven by the Appellant. The car was registered to the Appellant's father. They discovered that the Appellant was driving with a suspended license. (*Aiken* hearing R. 154 l. 20-22). A pistol was also found inside the car under the driver's seat; however, this was not the gun used in this incident. *Aiken* hearing R. 71 l. 1-11). Appellant later confessed that he threw that gun into a lake near Hartsville. (*Aiken* hearing R. 68 l. 9-13). Appellant was later charged with driving under suspension, unlawful possession of a pistol, and armed robbery.¹ (*Aiken* hearing R. 711 l. 16-19).

Ernest Ray of the South Carolina Department of Corrections also testified on behalf of the State. During his testimony Mr. Ray stated that while in custody, the Petitioner committed twenty-six infractions, eleven major and fifteen minor. (*Aiken* hearing R. 82 l. 4-10). Mr. Brian Kendall, warden of Leiber Correctional Institution, the prison where the Appellant began his sentence also testified. Warden Kendall testified that Leiber is classified as a level III institution. This means it is a close custody maximum custody prison. (*Aiken* hearing R. 115 l. 20-24). There was a request for a transfer of prisoners to Mississippi, Mr. Kendall recommended the Appellant. He felt that the Appellant should be transferred because he kept getting cell phones. (*Aiken* hearing R. 116 l. 24 – R. 117 l. 3). Because inmates can continue their illegal activity on the streets through the use of a cellphone, possessing a cell phone is a great hazard. (*Aiken* hearing R. 117 l. 7-13). Of the twenty-six infractions that the Appellant had while he was in prison five involved possession of a cell phone. (*Aiken* hearing R. 80 l. 13-14, 19-20, 21-22; R. 81 l. 3-4, 17-18).

At the conclusion of the hearing the sentencing judge stated:

“I have a strong feel for this matter. As I said I’ve reviewed everything I spent all last weekend going through everything. Spent about three days pulling through

¹ The armed robbery was later nolle prossed.

everything I had and I'm very familiar with the facts and I've had the opportunity today to hear from both sides and this is a very emotional matter" (R. p. 162 l. 5-13).

The sentencing judge took all of the evidence under advisement to make a determination at a future date. On January 23, 2023, the sentencing judge signed a sentencing order sentencing the Appellant to a term of incarceration for the remainder of his natural life without the possibility of parole.

ARGUMENT

- 1. The circuit court did not err in resentencing the Appellant to life without parole without listing the factors under *Aiken v. Byars* or conclusions of law when the *Aiken v. Byars* decision does not mandate this be included in the sentencing order. Within the hearing sufficient evidence was provided revealing that the *Aiken* criteria was considered prior to the final decision.**

Relevant Factors

The Appellant, who was a minor when he committed this murder, was previously sentenced to a lifetime period of incarceration without the possibility of parole. Pursuant to the South Carolina Supreme Court decision of *Aiken v. Byars*, Appellant was afforded a new sentencing hearing. During this hearing numerous individuals testified on behalf of the Appellant and the State. At the conclusion of this hearing the sentencing judge stated that he reviewed all of the evidence that was presented. The sentencing judge also stated, "I will follow the law as it has been handed down to me and all other judges." (*Aiken* hearing R. 162 l. 18-20). About two weeks later the sentencing judge imposed a sentence of life without the possibility of parole. This sentence was handed per order without any further explanation.

Standard of review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827, 829 (2001). On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich*, 268 S.C. 411, 234 S.E.2d 230 (1997). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.582, 586 (2007). When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment, the appellate court's standard of review extends only to the correction of error of law. *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158 (Ct. App. 2019).

Discussion

In *Miller*, the United States Supreme Court held that a mandatory life sentence without the possibility of parole for a juvenile offender violated the Eighth Amendment prohibition against cruel and unusual punishment.² *Miller*, 567 U.S. at 465, 470. In *Miller* the United States Supreme Court decided:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Id. 567 U.S. at 477-478.

² Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const. Amend. VIII.

Miller, did not categorically bar life sentences for juvenile murderers; rather, the Court held that a sentencing court is required to “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.*, 567 U.S. at 476. The United States Supreme Court held that a sentencing authority must consider youth as “more than a chronological fact,” but also a factor which carries with it immaturity, irresponsibility and recklessness. *Id.* The United States Supreme Court held a juvenile convicted of murder could still be sentenced to life without parole, but only after “a judge or jury had the opportunity to consider mitigating circumstances before imposing the harshest penalty for juveniles.” *Id.*, 567 U.S. at 489.

The United States Supreme Court left it up to the states to figure a way to allow juveniles to have the hallmark features of youth considered. As a result, the South Carolina Supreme Court decided the case of *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). In *Aiken*, the South Carolina Supreme Court applied the *Miller* factors to South Carolina juveniles sentenced to life without parole. They also ordered that *Miller* should be applied retroactively. *Aiken*, 410 S.C. at 540-541. The South Carolina Supreme Court acknowledged that *Miller* applied only to mandatory sentencing schemes rather than discretionary schemes such as in South Carolina. However, in *Aiken* the South Carolina Supreme Court stated, “whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment’s guarantee against cruel and unusual punishment.” *Id.*, 410 S.C. at 544, 765 S.E.2d at 577. In *Aiken*, the South Carolina Supreme Court held that juveniles previously sentenced under our discretionary scheme who receive a life without parole sentence were nevertheless entitled to resentencing to allow them

“to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight.” *Id.*

In *Aiken* the South Carolina Supreme Court determined that the *Miller* factors must be considered during a separate hearing to determine whether or not a juvenile should be subject to a life without parole sentence. In *Aiken* the Supreme Court created the following criteria:

Consequently *Miller* establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequences;” (2) the “family and home environment” that surround the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth – for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorneys; and (5) the “possibility of rehabilitation.”

Aiken, 410 S.C. at 544, quoting, *Miller*, 132 S.Ct. at 2468.

Just as the United States Supreme Court in *Miller*, the South Carolina Supreme Court explained that juveniles could still receive a sentence of life without parole, but only after “an individualized hearing where the hallmark features of youth are fully explored.” *Id.*, 410 S.C. at 545, 765 S.E.2d at 578.

Within their brief the Appellant argues that the sentencing court erred by not placing within the order specific findings of the *Aiken v. Byars* factors prior to issuing a sentence of life without parole. There is nothing in *Aiken* that states the sentencing judge must list detailed factors that was considered or state any findings of facts or conclusions of law. The Appellant is entitled to a separate sentencing hearing where the hallmark features of youth are raised. The Appellant was given this hearing.

During the separate hearing all of the *Aiken* factors were presented by both parties, so it was considered. Examples of the evidence provided relating to the *Aiken* factors include:

1. Hallmark features of youth – During this hearing both of the Appellant’s parents testified, as well as the pastor of both families. It was explained that the Appellant and the victim were in a very loving relationship. The Appellant was a good student that made good grades. Dr. Elizabeth Cauffman, a psychologist and professor of psychological science at UC Irvine testified. (*Aiken* hearing R. 84 l. 5-6). Dr. Cauffman did not examine Appellant personally, she made it clear that she was not a clinician. (*Aiken* hearing R. 107 l. 13-17) She was a developmental psychologist who was presented to teach science, considered herself a “teaching expert” (*Aiken* hearing R. 87 l. 7-9). Dr. Cauffman was brought in to explain the hallmark features of youth, how the young brain is different than an adult brain, and how that must be considered during sentencing after the arrest of a juvenile for committing a violent act.
2. Home and family environment – The Appellant’s mother and father testified as to the Appellant’s home environment. He was raised in a very clean and loving home. His mother testified that the Appellant has an older brother that served in the military, and she raised three young ladies that she was not related to. (*Aiken* hearing R. 18 l. 6-7; R. 18 l. 25 – R. 19 l. 6). She explained that the Appellant had chores to do and a curfew and there were consequences if he did not follow them. (*Aiken* hearing R. 21 l. 22 – R. 22 l. 1). Appellant and his family lived in the same home for his entire life, a home that was built by his father. (*Aiken* hearing R. 33 l. 2-4) The family was also avid church goers. (*Aiken* hearing R. 23 l. 5 – R. 24 l. 4). The Appellant’s father testified that they had about eight other family members that were living around them, and their family was very close. (*Aiken* hearing R. 33). His brother was a retired military officer and lived close to them; he served as a mentor to the Appellant. (*Aiken* hearing R. 21 l. 18 – R. 22 l. 4).
3. Circumstances of the crime – Investigator William Huggins testified on behalf of the State. He testified that when he got to the crime scene, he saw the victim slumped over a chair covered. (*Aiken* hearing R. 43 l. 3-6). When he got to the scene the Appellant was screaming and crying. (*Aiken* hearing R. 43 l. 8). He was the officer that transported the Appellant to the county detention center, and while being transported the Appellant showed no remorse. (*Aiken* hearing R. 47 l. 13-16). Investigator Huggins also read the autopsy report into the record for the sentencing judge to hear the injuries inflicted on the victim by the Appellant.
4. Incompetency of youth – The Appellant had no mental health issues, was on no medications, nor abusing alcohol or drugs. The only time he got into trouble at school was when he carried a firearm to school and got expelled. After the murder he expressed to law enforcement that this was more like voluntary manslaughter and that is what he will plead to. (R. 26 l. 22 – R. 27 l. 2). This was not brought up during the hearing; however, this was testified to during the trial and the transcript of the original trial was introduced as exhibit number one by the State. So, this statement was reviewed by the sentencing court. It revealed that the Appellant was aware of the criminal justice system and was in no way incompetent, he understood his charges, knew how to deal with law enforcement and prosecutors, and had the ability to assist his attorneys.
5. Possibility of rehabilitation – Mr. Ernest Ray of the South Carolina Department of Corrections was brought in by the State to testify regarding the Appellant’s behavior during

his twenty-six years of incarceration in the Department of Corrections. During his period of incarceration Mr. Ray testified that the Appellant had infractions for, refusing or failing to obey orders; failing or refusing to respond to employee questions; failure to report to work; refusing to work; obscene, vulgar or profane language; possession of an alcoholic beverage; six counts of possession of contraband; possession of distilling alcoholic beverages; five counts of possession of a cellphone; trafficking or use of possession of marijuana; trafficking use or possession of marijuana and tobacco; damaging or destroying South Carolina Department of Corrections property. In total Mr. Ray testified that the Appellant had a total of twenty-six (26) infractions at the Department of Corrections. Mr. Bryan Kendall, Warden of Leiber Correctional Institution also testified. Mr. Kendall explained that the Appellant had so many infractions he was recommended for transfer to Mississippi as part of a project to send their most difficult and problematic inmates. (R. 116 l. 24 –117 l. 3; R. 120 l. 8-11).

As listed above each criterion was addressed either during the hearing or evidence was introduced to the court. The State would argue that there is nothing in *Aiken v. Byars* stating the sentencing court is obligated to state specific findings of law or a conclusion of fact. It only must be shown that the Appellant had a sentencing hearing where this information was presented and considered.

In *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022), the South Carolina Supreme Court decided that in “stand your ground” immunity hearings the trial court must place in the record or order, that specific credibility or factual findings as to any aspect of the testimony. This is due to the fact that during these hearings the burden of proof is on the defendant by a preponderance of the evidence. An *Aiken v. Byars* hearing is a sentencing hearing. This is not a hearing to determine guilt or if the Appellant’s actions were justified as being in self-defense. The Appellant was already found guilty by a jury of his peers, so the only thing remaining is a determination of his sentence. Due to the fact the Appellant was a juvenile at the time he committed this offense he was granted a hearing where other criteria were examined. However, there exists no burden of proof on either side. As in any other sentencing, the trial court is not obligated to explain its sentence or how it came up with the conclusion. All that must be revealed is that the

proper mitigation was presented and considered by the sentencing judge. As stated by the South Carolina Supreme Court in *State v. Smart*:

In a resentencing hearing afforded to a juvenile originally sentenced to life without parole – as with almost any other sentencing proceeding there is no burden of proof or persuasion placed on either party and there is no presumption for or against any sentence; instead, both the State and the juvenile defendant have a mutual burden of production to provide the resentencing court with any evidence and arguments they believe bear on factors governing the resentencing or otherwise relate to what should be the appropriate sentence.

State v. Smart, 439 S.C. 641, 889 S.E.2d 573 (2023).

In the United States Supreme Court case of *Jones v. Mississippi*, 593 U.S. 98 (2021), the United States Supreme Court determined that a judge does not have to make an on-the-record sentencing explanation with an implicit finding of an offender’s permanent incorrigibility. The United States Supreme Court also determined that an on-the-record sentencing explanation is not necessary to ensure that a sentencer considers the defendant’s youth. *Jones*, 593 U.S. at 114. In *Jones* the United States Supreme Court reasoned why it is not necessary for a court to establish that they considered the *Miller/Aiken* criteria. In *Jones* it states:

If the sentencer has discretion to consider the defendant’s youth, the sentencer necessarily *will* consider the defendant’s youth, especially if defense counsel advances an argument based on the defendant’s youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant’s youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.

Id. (emphasis in original).

It is clear by statements of the court at the conclusion of this hearing that it was taken very seriously. Any Circuit Court Judge faced with the possibility of placing a person in prison for the remainder of their natural life would take it seriously. Therefore, that person would consider all of the criteria that are mandatory pursuant to *Aiken*. The sentencing judge made it clear how much attention he placed on this case even prior to the hearing. The judge stated on the record that he

spent the entire weekend going through all of the evidence, and three days “pulling through” everything. (*Aiken* hearing R. 162 l. 7-8). This effort was exerted before the hearing. So can anyone doubt that he did not consider the criteria, especially since it was brought before him by evidence submitted by both sides?

Within his brief the Appellant raised the same favorable evidence raised during the hearing. Just because there was some favorable evidence, and he was still given a life sentence, does not mean it was not considered. The decision still remains that of the sentencing court, and although another judge may have ruled more favorably does not mean this court did not consider all the criteria presented during this hearing. As the United States Supreme Court determined in *Jones*:

It is true that one sentencer may weigh the defendant’s youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in a specific case. Some sentencers may decide that a defendant’s youth supports a sentence less than life without parole. Other sentencers presented with the same facts might decide that life without parole remains appropriate despite the defendant’s youth. But the key point remains that, in a case involving a murderer under 18, a sentencer cannot avoid considering the defendant’s youth if the sentencer has discretion to consider that mitigating factor.

Id., 593 U.S. at 115.

Within his brief the Appellant alleges that the sentencing court possibly had not weighed the information, although it was presented to the court through testimony and exhibits. Since there is no burden either side must satisfy and the sentencing court is not a fact finder, there exists no rule of law that forces the court to state any findings of facts or conclusions of law. The information that was presented was proof that there were factors to consider. The *Aiken* factors were the only thing presented during the hearing. Appellant had an *Aiken v. Byars* hearing where he was able to present evidence in mitigation and the State was able to present evidence regarding the facts of the case and the Appellant’s lack of rehabilitation. The court had sufficient information to make a reasoned decision. That decision was displayed on the sentencing order, just like any other

sentence given under South Carolina law. It has never been stated in any case that specific findings must be stated after an *Aiken v. Byars* hearing or any other sentencing. This case should be upheld, and the decision of the sentencing judge should stand without remand for specific findings and conclusions.

CONCLUSION

The sentencing judge made no error in the decision to sentence the Appellant to life without parole. The State respectfully requests this Honorable Court to affirm the decision of the sentencing judge.

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

TOMMY EVANS, JR.
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

By: s/ Tommy Evans, Jr.
TOMMY EVANS, JR.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

August 2, 2024

ATTORNEYS FOR RESPONDENT

RECEIVED

Aug 02 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

Respondent,

v.

ERIC ANTON GRAHAM,

Appellant.

Appellate Case No. 2023-000160

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

This is the 2nd day of August 2024.

s/Tommy Evans, Jr.

Tommy Evans, Jr.

Assistant Attorney General

ATTORNEY FOR RESPONDENT

Aug 02 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

Respondent,

v.

ERIC ANTON GRAHAM,

Appellant.

Appellate Case No. 2023-000160

PROOF OF SERVICE

I, Tommy Evans, Jr., as the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent, Certificate of Compliance, and Proof of Service has been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, August 2, 2024 to JDelany@sccid.sc.gov, and her assistant Kaylynn Warren at KWarren@sccid.sc.gov.

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

This is the 2nd day of August 2024.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

Brandy Rankin

From: Brandy Rankin
Sent: Friday, August 2, 2024 8:20 AM
To: Delany, Joanna
Cc: Warren, Kaylynn; Tommy Evans, Jr.
Subject: The State v. Eric Anton Graham - Final Brief of Respondent - Appellate Case No. 2023-000160
Attachments: Graham.Eric - Final Brief of Respondent, Certificate of Compliance, Proof of Service - 8-2-24 (03654379xD2C78).pdf
Follow Up Flag: Worldox

Dear Ms. Delany,

Please find attached the Respondent's Final Brief, Certificate of Compliance, and Proof of Service. These documents will be filed today with the South Carolina Court of Appeals today, August 2, 2024, along with a copy of this email. Have a great weekend!

Sincerely,
Brandy Rankin

Brandy Rankin, Legal Assistant to Tommy Evans, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305



This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.



The South Carolina Court of Appeals

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CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 03, 2025

Ms. Joanna Katherine Delany, Esquire
PO Box 11589
Appellate Defense
Columbia SC 29211

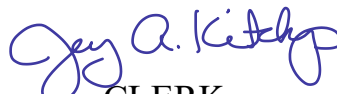
Mr. Tommy Evans, Jr., Esquire
PO Box 11549
Columbia SC 29211

Re: The State v. Eric A. Graham
Appellate Case No. 2023-000160

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Donald J. Zelenka, Esquire
Paul Michael Burch, Jr., Esquire
The Honorable Roger E. Henderson

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Eric Anton Graham, Appellant.

Appellate Case No. 2023-000160

Appeal From Darlington County
Roger E. Henderson, Circuit Court Judge

Unpublished Opinion No. 2025-UP-396
Submitted November 1, 2025 – Filed December 3, 2025

VACATED AND REMANDED

Appellate Defender Joanna Katherine Delany, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Assistant
Attorney General Tommy Evans, Jr., all of Columbia;
and Solicitor Paul Michael Burch, Jr., of Bennettsville,
all for Respondent.

PER CURIAM: Eric Anton Graham, a juvenile offender, appeals his sentence of life imprisonment without the possibility of parole (LWOP) following an *Aiken v. Byars*¹ hearing. On appeal, Graham argues the circuit court erred by sentencing him to LWOP without applying the *Aiken* factors. We vacate and remand pursuant to Rule 220(b), SCACR.

We hold the circuit court abused its discretion when it failed to apply the *Aiken* factors to Graham. *See State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019) ("When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law."); *id.* ("Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion."); *id.* ("An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support."); *Miller*, 567 U.S. at 465 (holding "mandatory [LWOP] for those under the age of [eighteen] at the time of their crimes violates the Eighth Amendment[]"); *State v. Miller*, 433 S.C. 613, 626-27, 861 S.E.2d 373, 380 (Ct. App. 2021) ("Our supreme court interpreted *Miller* as creating a categorical ban on juvenile LWOP sentences 'absent individualized considerations of youth' and establishing a duty for courts to 'fully explore the impact of the defendant's juvenility on the sentence rendered.'" (quoting *Aiken*, 410 S.C. at 540-41, 543, 765 S.E.2d at 575, 577)), *aff'd*, 441 S.C. 106, 893 S.E.2d 306 (2023); *id.* at 627, 861 S.E.2d at 380 ("[T]rial courts must hold individualized sentencing hearings and consider the mitigating factors of youth discussed in *Miller* before imposing an LWOP sentence on a juvenile."); *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (explaining the factors a sentencing court must consider include "(1) the chronological age of the offender and the hallmark features of youth, including 'immaturity, impetuosity, and failure to appreciate the risks and consequence'; (2) the 'family and home environment' that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the 'incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys'; and (5) the 'possibility of rehabilitation'" (alteration in original) (quoting *Miller*, 567 U.S. at 477-78)); *Jones*

¹ 410 S.C. 534, 539-45, 765 S.E.2d 572, 576-78 (2014) (applying the United States Supreme Court's holding in *Miller v. Alabama*, 567 U.S. 460 (2012), retroactively to all juvenile offenders sentenced to LWOP and requiring an individualized resentencing hearing considering the mitigating factors of youth).

v. Mississippi, 593 U.S. 98, 120 (2021) ("States may direct sentencers to formally explain on the record why a [LWOP] sentence is appropriate notwithstanding the defendant's youth."); *State v. Mack*, 441 S.C. 526, 539, 894 S.E.2d 820, 827 (Ct. App. 2023) ("The plain language of *Jones* provides that the decision is not intended to remove state-level safeguards for juvenile sentencing."); *id.* ("Our supreme court has decided that, in South Carolina, compliance should take the shape of a review of the *Aiken* factors."); *id.* at 543-44, 894 S.E.2d at 829 ("We are concerned only with whether the resentencing court's order shows a meaningful consideration of the evidence about [the defendant's] home life."); *id.* at 540, 543, 894 S.E.2d at 827, 829 (finding the resentencing court erred when "[t]he resentencing court's order address[ed] [the defendant's] age only as a chronological fact and [did] not seem to consider the 'hallmark features of youth' at all"); *id.* at 541, 894 S.E.2d at 828 ("[A]ge is not a sliding scale that necessarily weighs against mitigation the closer the offender is to turning eighteen years old at the time of the crime." (alteration in original) (quoting *State v. Roby*, 897 N.W.2d 127, 145 (Iowa 2017))); *id.* at 544, 894 S.E.2d at 830 ("Applying the *Aiken* factors involves more than repeating the words; it requires applying the substantive content of those factors.").

Accordingly, we vacate and remand to the circuit court for a new hearing and findings of fact and conclusions of law pursuant to *Aiken*.

VACATED AND REMANDED.²

KONDUROS, GEATHERS, and VINSON, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2023-000160

THE STATE,.....RESPONDENT

v.

ERIC ANTON GRAHAM,.....APPELLANT

RESPONDENT'S PETITION FOR REHEARING

On December 3, 2025, this Court issued an unpublished opinion vacating and remanding the sentence of the Appellant's 1998 conviction for murder. *State v. Graham*, Up. Op. no. 2025-UP-396 (S.C. Ct. App. Filed December 3, 2025). In vacating and remanding the sentence of the Appellant this Court found that the trial judge erred in not stating a finding of fact and conclusion of law pursuant to the South Carolina Supreme Court decision of *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to Rule 221(a), SCACR, Respondent, the State, respectfully petitions for rehearing because this Court appears to have misapprehended the sentencing court's compliance with the *Aiken v. Byars* decision. This decision indicates that the South Carolina Supreme Court did not use the *Aiken v. Byars* standard. The Supreme Court does not state that the trial court must reveal a finding of fact and conclusion of law in the sentencing of the Appellant after the conclusion of an *Aiken v. Byars* sentencing hearing.

In the United States Supreme Court decision of *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012), the Supreme Court decided that after the conviction of a juvenile for an offense, prior to sentencing that juvenile to a life sentence without parole, the court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Miller*, 567 U.S. at 476.

After the *Miller* decision, the South Carolina Supreme Court decided *Aiken v. Byars*. Within *Aiken*, the South Carolina Supreme Court decided to apply the *Miller* factors to South Carolina juveniles who have received life without parole sentences. Within *Aiken* the South Carolina Supreme Court decided that the sentencing of a juvenile to life without parole without considering the hallmark features of youth violates the Eighth Amendment of the United States Constitution.

In *Aiken*, the South Carolina Supreme Court decided that *Miller* established a specific framework and factors the sentencing court must consider during a separate sentencing hearing. These factors include:

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth – for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorney’s; and (5) the “possibility of rehabilitation.”

Aiken, 410 S.C. at 544, quoting, *Miller*, 132 S.Ct. at 2468.

In *Aiken*, the Supreme Court also decided that the principles in *Miller v. Alabama* apply retroactively, and they gave similarly situated offenders the ability to file a motion for resentencing within one year from the filing of that opinion. *Id.*

The Appellant committed his offense on December 7, 1996. His trial began on August 28, 1998. After being found guilty by a jury of his peers, Appellant was sentenced to a term of incarceration for the remainder of his natural life by the Honorable Paul Burch on August 29, 1998. Due to the *Aiken v. Byars* decision the Appellant was allowed to petition the courts for a resentencing hearing. On January 19, 2023, the Appellant along with his counsel Elizabeth Franklin-Best appeared before the Honorable Rodger E. Henderson for a sentencing hearing pursuant to *Aiken v. Byars*. Appearing on behalf of the state of South Carolina was Kelly Jackson Assistant Solicitor for the Fourth Circuit Solicitor's Office. For the hallmark features of youth, Dr. Elizabeth Cauffman, a psychologist and professor of psychological science at UC Irvine, testified. Dr. Cauffman was brought in to explain the hallmark features of youth, how the young brain is different than an adult brain, and how that must be considered during sentencing after the arrest of a juvenile for committing a violent act.

Regarding the family and home environment, the Appellant's mother and father both testified as to the Appellant's home environment and how he was raised. For the circumstances of the offense, former Deputy William Huggins of the Darlington County Sheriff Department testified. He was one of the officers that first arrived at the crime scene. Deputy Huggins testified about what he saw at the crime scene. (R. p. 43 l. 3-8; l. 8). Deputy Huggins was also the law enforcement officer who transported the Appellant to the county detention center. He testified that the Appellant showed no remorse during this transport. (R. p. 47 l. 13-16). Deputy Huggins also read the autopsy report into the record.

For the incompetency of youth factor, it was revealed that the Appellant had no mental health issues, was on no medications, and was not abusing alcohol or drugs. Appellant was also

aware of the criminal justice system and not incompetent. Appellant understood his charges, knew how to deal with law enforcement and had the ability to assist his attorneys.

As for the likelihood of rehabilitation, Mr. Ernest Ray of the South Carolina Department of Corrections testified regarding the Appellant's behavior while incarcerated. Mr. Ray stated that the Appellant had a total of twenty-six (26) infractions. Bryan Kendall, Warden of Leiber Correctional Institution, also testified. Mr. Kendall testified that Appellant had so many infractions it was recommended he be transferred to Mississippi as part of a project to send away their most difficult and problematic inmates. (R. p. 116 l. 24 – p. 117 l. 3; R. p. 120 l. 8-11).

At the conclusion of testimony and the closing arguments, the sentencing judge stated the following:

“Counsel, and ladies and gentlemen, I am not going to make a decision at this moment. I’m going to, what we call ‘take this matter under advisement’ and go back and consider all the testimony that I’ve heard today. I know that’s probably disappointing to both sides. I know you want this to be brought to some resolution, but I want you to try put yourself in my shoes and realize what a difficult decision I have before me.”

“I have had a chance to review the transcript of the first trial and looked at all the exhibits and whatnot, but I’m thrust, somewhat, in a position of a jury. But there’s only one of me and not 12 of me. I want to make sure that I do the right thing. I want to consider this matter carefully, because it’s important to everyone, to Eric Graham, and to the Wingate family.

“So if you could put your disappointment aside for a couple of days. I’m not gonna take a long time, because I have a good strong feel for this matter. As I said, I’ve reviewed everything. I spent all last weekend going through everything. Spent about three days pulling through everything I had and I’m very familiar with the facts and I’ve an opportunity today hear from both sides and this is a very emotional matter. And for both sides, this is a very tough situation to deal with for the families and quite frankly for me as well.”

“And I will follow the law as it has been handed down to me and all other judges.”

“With that being said this matter will be taken under advisement. I will let you hear from me very shortly. We’ve got a weekend coming up, so it may be first couple of days of the week. I don’t know if I’ll be able to get everything out to the attorneys,

but I'll certainly be able to get things taken care of, I'll say no later than Tuesday. So that given you some idea, some timeline, as to when you can expect a decision from the Court.” (R. p. 161 l. 12 – p. 163 l. 4).

On January 23, 2023, the trial judge issued a sentencing order sentencing the Appellant to a period of incarceration for the remainder of his natural life. (R. pp. 592-593). This decision was appealed to this Court. This Court issued a decision vacating and remanding to the circuit court for another hearing so a finding of fact and conclusion of law would be included pursuant to *Aiken*. *State v. Graham*, Up. No. 2025-UP-396 (S.C. Ct. App. Filed Dec. 3, 2025).

The Respondent submits this petition for rehearing because *Aiken* does not require that the court issue an order explaining the finding of fact and conclusion of law. The Respondent argues that this decision misapprehends the compliance by the sentencing judge to *Aiken v. Byars*.

In *Jones v. Mississippi*, the United States Supreme Court stated, “In *Miller*, the Court mandated ‘only that a sentencer follow a certain process – considering an offender’s youth and attendant characteristics – before imposing’” a life-without-parole sentence. *Jones v. Mississippi*, 593 U.S. 98, 141 S.Ct. 1307, 1309 (2021). This hearing was given to the Appellant; he was allowed to present evidence regarding this upbringing and an expert to testify how a juvenile’s mind is different than an adult which must be considered by the Court. In *Jones* the United States Supreme Court also stated the following:

An on-the-record sentencing explanation is not necessary to ensure that a sentencer considers a defendant’s youth. Jones’s argument to the contrary rests on the assumption that meaningful daylight exists between (i) a sentencer’s discretion to consider youth, and (ii) the sentencer’s actual consideration of youth. But if the sentencer has discretion to consider the defendant’s youth, the sentencer necessarily will consider the defendant’s youth, especially if defense counsel advances an argument based on the defendant’s youth. Faced with a convicted murderer who was under 18 at the time of the offense and with defense arguments focused on the defendant’s youth, it would be all but impossible for a sentencer to avoid considering that mitigating factor.

Jones, 593 U.S. at 114, 141 S.Ct. at 1319.

The above statements from the trial court reveal that the sentencing judge considered all of the evidence presented from the exhibits to testimony. There is nothing in *Aiken* that requires the court to present a finding of facts or conclusion of law. The Court needs only to consider the evidence during the sentencing hearing which the Judge's statements on the record reveal that he did. The order was signed on January 23, 2023, four days after the hearing concluded. That is ample time for the judge to have considered carefully evidence presented.

The Respondent argues that an *Aiken v. Byars* hearing, as any other sentencing, does not obligate the judge to explain their sentence. All *Miller* or *Aiken* requires is that proper mitigation be allowed to be presented, and considered by the sentencing judge. That was done in this case. Because the Constitution does not require an on-the-record explanation of mitigating circumstances by the sentencer in *death penalty cases*, it would be incongruous to require an on-the-record explanation of the mitigating circumstances of youth by the sentencer in *life-without-parole cases*. *Id.* 593 U.S. at 117, 141 S.Ct. at 1321-22. (emphasis in original).

If the South Carolina Supreme Court required the sentencing judge to mention a finding of fact and conclusion of law, they would have made that clear in *Aiken v. Byars*. However, that is not in the opinion. In *State v. McCarty*, 437 S.C. 355, 878 S.E.2d 902 (2022), the South Carolina Supreme Court determined that in a “stand your ground” immunity hearing the trial court must place in the record or order, specific credibility or factual findings as to any aspect of the testimony. *McCarty*, 437 S.C. at 372, 878 S.E.2d at 911. The Respondent argues that the South Carolina Supreme Court never forced a sentencing judge to make a finding of fact and conclusion of law as part of the sentence because *Aiken v. Byars* is a sentencing hearing, not a hearing to determine immunity, guilt or innocence. Like any other sentencing, the court is not obligated to explain their sentence. So there should be no expectation in the sentencing of a juvenile. As long as the Appellant

was allowed to present mitigating evidence pursuant to *Aiken v. Byars*, and the sentencing judge considered that evidence, this is all that's required prior to sentencing a juvenile to life without parole.

In *Aiken* the Supreme Court stated, “ However, *Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmarks features of youth are fully explored. *Aiken*, 410 S.C. at 545, 765 S.E.2d at 578. The determination in *Aiken* never mentioned that the court must state a finding of fact and conclusion of law in the final decision. The *Aiken* decision states that petitioners and those similarly situated are accordingly entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional right. *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577. Respectfully, this Court misapprehended the judge's compliance with the law, so this case should be revisited.

In the unpublished opinion, this court decided that this case should be vacated and remanded for a new hearing pursuant to *Aiken v. Byars*. Even though the Respondent is not relinquishing any of its previous arguments regarding this court's misapprehension of compliance with the law, if this Court does not to grant this petition, Respondent requests this Court allow the judge to review the transcript and all of the exhibits and to come to a conclusion regarding the sentence of the Appellant without a hearing.¹ The Respondent makes this request due to the burden on victim's family having to testify during any hearing. The Respondent believes it would be unfair for them to rehash all of those emotions again during a new hearing, when the testimony would be the same. The mother of the victim, Wanda Wingate, and the victim's aunt, Krystal Wingate,

¹ Judge Henderson is currently retired from the bench. Another judge needs to be appointed to make this decision.

testified at the last hearing. In the Respondent's opinion it would not be fair for them or any other witness in this hearing to testify identically as in the first hearing. There is no new evidence, and nothing has changed since the initial hearing. Since the only action asked for by the lower court is to create a new order revealing a finding of fact and conclusion of law, that could be easily done by a circuit court judge through reading the transcript and reviewing all of the exhibits submitted. This is done frequently for immunity hearings under Protection of Persons and Property Act, when they are reversed. The same can be accomplished regarding a decision pertaining to an *Aiken v. Byars*.

CONCLUSION

For the reasons stated above, the Respondent petitions this court for a rehearing pursuant to Rule 221(a), SCACR, and requests this Court to reinstate the Appellant's sentence for life without parole.

If this court is not inclined to grant this petition, the Respondent respectfully requests that the newly appointed circuit court judge be allowed to review the transcript and exhibits in order to make a decision. A hearing is not necessary; a circuit court judge can make an informed decision regarding sentencing just from the transcripts and exhibits since no new evidence exists nor was there any change in circumstances.

Respectfully submitted

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
ID No. 14244

TOMMY EVANS, JR.
Assistant Attorney General
ID No. 65282

WILLIAM B. RODGERS, JR.
Fourth Circuit Solicitor

BY: s/ Tommy Evans, Jr.
Tommy Evans, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Columbia, South Carolina
December 17, 2025_

ATTORNEYS FOR THE RESPONDENT

RECEIVED

Dec 18 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2023-000160

THE STATE,.....RESPONDENT

v.

ERIC ANTON GRAHAM,.....APPELLANT

PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Respondent's Petition for Rehearing, along with the Proof of Service have been forward to Appellant's counsel, Joanna Delany, Esquire via email today December 18, 2025 to Jdelany@sccid.sc.gov and to her assistant, Sara McInnis, at SMcinnis@sccid.sc.gov .

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

This is the 17th day of December 2025.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

Brandy Rankin

From: Brandy Rankin
Sent: Thursday, December 18, 2025 11:00 AM
To: Delany, Joanna
Cc: Mcinnis, Sara; Tommy Evans, Jr.
Subject: The State v. Eric Anton Graham - Respondent's Petition for Rehearing - Appellate Case No. 2023-000160
Attachments: Graham.Eric.Anton.Petition for Rehearing and Proof of Service.pdf

Dear Ms. Delany,

Please find attached the Respondent's Petition for Rehearing together with the Proof of Service, in the above-captioned case. These documents will be filed today, December 18, 2025 in the South Carolina Court of Appeals, along with a copy of this email. Thank you.

Sincerely,

Brandy Rankin

Brandy Rankin, Legal Assistant to Tommy Evans, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305



This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.



The South Carolina Court of Appeals

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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 29, 2026

Ms. Joanna Katherine Delany, Esquire
PO Box 11589
Appellate Defense
Columbia SC 29211

Re: The State v. Eric A. Graham
Appellate Case No. 2023-000160

Dear Counsel:

We received Respondent's Petition for Rehearing on December 18, 2025. The Court requests a return within ten (10) days of the date of this letter.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Tommy Evans, Jr., Esquire
Donald J. Zelenka, Esquire
Paul Michael Burch, Jr., Esquire

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Feb 09 2026
SC Court of Appeals

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

Opinion No. 2025-UP-396

THE STATE,

RESPONDENT,

V.

ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

RETURN TO PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant requests that this Court deny rehearing. The State has not shown any points overlooked or misapprehended. This Court correctly concluded Appellant was entitled to a new hearing and findings of fact and conclusions of law pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

Pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), the South Carolina Supreme Court held in *Aiken v. Byars*, 410 S.C. at 544, 765 S.E.2d at 577, that a circuit court must consider the following factors when sentencing a juvenile to a life without parole sentence: (1) the chronological age of the offender and the hallmark features of youth, including immaturity,

impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth—for example, the offender’s inability to deal with police officers or prosecutors (including on a plea agreement) or the offender’s incapacity to assist his own attorneys; and (5) the possibility of rehabilitation.

The State’s argument that *Aiken v. Byars* does not require findings of fact or conclusions of law is unavailing. *See* Petition for Rehearing at 5 – 7. Because the circuit court provided neither an on-the-record ruling nor a written order containing findings of fact and conclusions of law, it is unclear whether it properly analyzed the *Aiken* factors, and this Court cannot conduct meaningful appellate review of the circuit court’s decision. In *Aiken*, 410 S.C. at 545 n. 10, 765 S.E.2d at 578 n. 10, the Supreme Court noted it would not set out a specific process for trial judges to follow in these cases as it had confidence in the trial judges to weigh the factors and sentence juveniles in light of this new jurisprudence. However, it is clear from case law following *Aiken* that well-meaning and well-informed judges can still make errors in these decisions and that a written order or on-the-record ruling is necessary.

For instance, in *State v. Mack*, 441 S.C. 526, 540, 894 S.E.2d 820, 827 (Ct. App. 2023), *cert. denied*, this Court held the “resentencing court missed the mark” “in considering the *Aiken* factors.” There, the resentencing court “erred by failing to adequately consider whether Mack’s crimes were affected by his chronological age and the hallmark features of youth”, where its order addressed Mack’s age only as a chronological fact and did not seem to consider the hallmark features of youth at all. *Mack*, 441 S.C. at 540-43, 894 S.E.2d at 828-29. It “erred in

its interpretation of the *Aiken* factor concerning a defendant's home life", where it did not conduct a specific and individualized inquiry into the impact of the defendant's family and home environment on his crimes. *Id.*, 441 S.C. at 543-44, 894 S.E.2d at 829-30. This Court held that because "the resentencing court's order does not reflect a careful and thorough consideration of the *Aiken* factors", Mack was entitled to reversal. *Id.*, 441 S.C. at 545-46, 894 S.E.2d at 830-31.

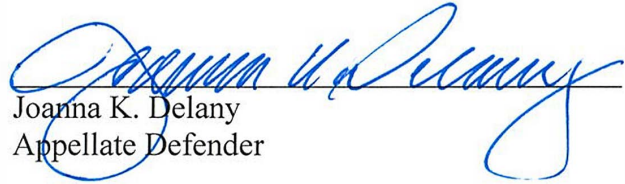
To the contrary, in *State v. Smart*, 439 S.C. 641, 646, 889 S.E.2d 573, 576 (2023), the South Carolina Supreme Court concluded that "[a]fter a careful review of the entire record . . . we are convinced the resentencing court thoroughly considered Smart's background and history in light of the *Aiken* factors." In *Smart*, the resentencing judge issued an extensive oral ruling, which comprised approximately forty pages of transcript, in which it provided findings on each of the *Aiken* factors. *See State v. Smart*, Appellate Case No. 2021-000987, Record on Appeal pp. 357 – 396. Because the resentencing court issued a ruling which contained findings and conclusions, this Court and the Supreme Court were able to review the record and hold no error occurred. Notably, *Smart* and *Mack* were decided after *Jones v. Mississippi*, 593 U.S. 98 (2021).

This Court correctly held "the circuit court abused its discretion when it failed to apply the *Aiken* factors to Graham." *State v. Graham*, Op. No. 2025-UP-396 at 2 (S.C. Ct. App. filed December 3, 2025). "An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support." *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019). In this case, unlike *Mack*, there was no written order containing an analysis of the *Aiken* factors. Unlike *Smart*, there was no on-the-record oral ruling containing an analysis of the *Aiken* factors. Relevant to *Aiken*, *Jones v. Mississippi*, 593 U.S. at 114, held only that a separate finding of permanent incorrigibility is not required. "The plain language of *Jones* provides that the decision is not intended to remove

state-level safeguards for juvenile sentencing.” *State v. Mack*, 441 S.C. at 539, 894 S.E.2d at 827. *See Jones v. Mississippi*, 593 U.S. at 120 (“States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant’s youth.”). Moreover, Appellant is entitled to meaningful appellate review of this decision, which cannot be performed without a complete record. *Cf. State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (new trial is appropriate if appellant establishes the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review). The court erred in failing to provide an order or on-the-record ruling addressing the application of the *Aiken* factors.

The State argues in its petition for rehearing that since the resentencing judge retired, another judge will need to be appointed and that judge should be limited to reviewing the transcripts and exhibits rather than conducting a new hearing. *See* Petition for Rehearing at 7 – 8. This Court correctly determined Appellant is entitled to a new sentencing hearing. *State v. Graham*, Op. No. 2025-UP-396 at 3. Testimony was taken from approximately a dozen witnesses. The circuit judge needs to make credibility determinations in order to apply the *Aiken* factors. A court cannot make credibility determinations from a cold record. *See generally Thompson v. State*, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018) (“While we defer to the PCR court’s credibility findings as to witnesses who testified before the PCR court, we do not defer to the PCR court’s credibility findings as to witnesses who did not testify before the PCR court. The PCR court reviewing the trial transcript is in no better position than we are to determine the credibility of trial witnesses or otherwise assess the strength of the State’s case[.]”).

Appellant respectfully requests this Court deny the petition for rehearing.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of February, 2026.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Feb 09 2026
SC Court of Appeals

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

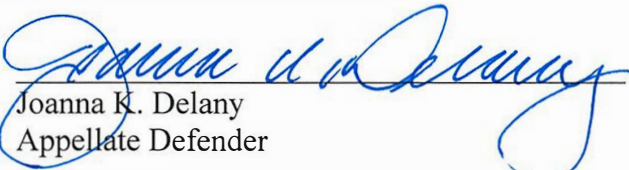
ERIC ANTON GRAHAM,

APPELLANT

APPELLATE CASE NO. 2023-000160

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Rehearing in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Eric Anton Graham, #251687, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 9th day of February, 2026.


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

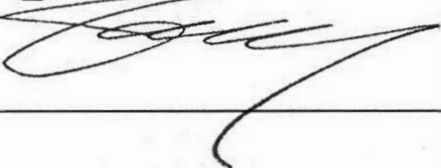
v.

Eric Anton Graham, Appellant.

Appellate Case No. 2023-000160

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Joanna Katherine Delany, Esquire
Tommy Evans, Jr., Esquire
Donald J. Zelenka, Esquire
Paul Michael Burch, Jr., Esquire

FILED
Feb 27 2026