



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 15, 2014

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

FILED
Horry County
2014 JUL 23 PM 4: 10
MELANIE HUGGINS-WARD
CLERK OF COURT

REMITTITUR

Re: The State v. Vivian Schrader-Falls
Lower Court Case No. 2012GS2602679
Appellate Case No. 2014-001022

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

CERTIFIED COPY

2014 JUL 23 PM 4: 14

Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

cc: Man Moore, Esquire
Jonathan Eric Fox, Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.

Vivian Lynn Schrader Falls

AKA: _____

Race: _____ Sex: F Age: 51

DOB: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2012GS2602679

A/W#: M972065

Date of Offense: 3/31/2012

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or

FILED
HORRY COUNTY
2014 JUL 23 PM 4:09
MELANIE HUGGINS-WARD
CLERK OF COURT

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)

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

ATTEST:

SCB68532

Graustein, Scott A.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended 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.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 21-13-40 to be calculated and applied
by the State Department of Corrections. *Including time on ankle monitor or GPS.*

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$ 100
§ 56-1-286 (DUI Breath Test)	\$ 12
Proviso 47.9 (Public Def/Prob)	\$ 25
§ 14-1-212 (Law Enforce. Funding)	\$ 500
§ 14-1-213 (Drug Court Surcharge)	\$ 25
§ 50-21-114 (DUI Breath Test Fee)	\$ 150
§ 56-5-2942(D) (Vehicle Assessment)	\$ 50
Proviso 90.5 (SCCJA Surcharge)	\$ 50/ea
3% to County (if paid in installments)	\$ 5.00
TOTAL	\$ 3.90
	\$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly installments
pmts. of \$ 25.00 beginning 06/08/2014

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter

Melanie Huggins-Ward
Dixie Eubanks

Presiding Judge

Judge Code: _____

JUL 25 2014

5/8/14

WITNESSES LED

Neal Frebowitz Horry County Police Department

2014 JUL 23 PM 4: 10

MELANIE HUGHES-WARD
CLERK OF COURT

DOCKET NO. 2012-GS-26-02679

The State of South Carolina

County of Horry

Scott A. Graustein

12H01428

COURT OF GENERAL SESSIONS

JULY, 2012 TERM

ARREST WARRANT NUMBER

M972065

CDR: 0116 16-03-0010, 0020

DOA: 3/31/2012

ACTION OF GRAND JURY

Vivian Lynn Schrader Falls

VS.

THE STATE

Foreperson of Grand Jury

JUL 26 2012

Date:

VERDICT

ATTORNEY: Fox, J. Eric

Indictment for

MURDER

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

ORIGINAL

HORRY COUNTY
CLERK OF COURT

Melanie Hughes-Ward

31:4 PM 22 JUN 410Z

Y003 021111330

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

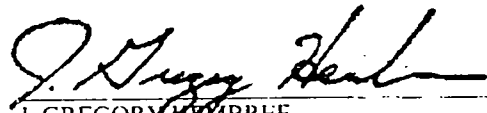
At a Court of General Sessions, convened on JULY 26, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That **Vivian Lynn Schrader Falls** did in Horry County, on or about March 31, 2012, willfully, feloniously, and intentionally kill the victim, Tony Hughes, with malice aforethought, either express or implied, by means of SHOOTING HIM SEVERAL TIMES WITH A HANDGUN, and the victim did die as a proximate result thereof on or about MARCH 31, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

FILED
HORRY COUNTY
2014 JUL 23 PM 4:10
MELANIE HUGGINS-WARD
CLERK OF COURT

CERTIFIED COPY

2014 JUL 23 PM 4:13

Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

ARREST WARRANT

M-972065

STATE OF SOUTH CAROLINA
County/ Municipality of

Horry

THE STATE

2017 APR - 9 AM 05:55
12029998

Vivian Lynn Schrader Falls

against

NEAL FREBOWITZ
MURDER / MURDER

DESCRIPTION OF OFFENSE

Murder / Murder

STATE OF SOUTH CAROLINA
County/ Municipality of

Horry

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2005
SCCA 618

I, the undersigned, being a sworn deponent and says that defendant Vivian Lynn Schrader Falls did within this county and state on or about 03/31/2012 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Horry) in the following particulars:

DESCRIPTION OF OFFENSE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On or about Saturday March 31, 2012, at 8:30 AM, the defendant, with malice aforethought, did drive to the residence located at 207 Bay Force Road, in the Myrtle Beach section of Horry County, South Carolina. Once at the home, not her own, the defendant knocked on the front door, announced her presence and demanded to speak to the victim, who was her estranged boyfriend, "Tony" Hughs, a living person. Witness statements indicate the victim, at the defendants request followed her outside the home where she produced a handgun, fired several shots, which took effect killing the victim.

Case # 12029998

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of

Horry

Affiant's Address: 2560 N. Main Street
Conway, SC 29526-
Affiant's Telephone: (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/31/2012

defendant Vivian Lynn Schrader Falls

did violate the criminal laws of the State of South Carolina (or ordinance of Horry) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before me for trial to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 03/31/2012 at Conway, SC

Signature of Issuing Judge
Christopher John Arakas

Judge Code: 5080

Judge's Address

J. Ruben Lynn Schrader Falls
Conway, SC 29526-1071

Judge's Telephone

(843)365-9222 Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Offense Code: 0116
Code/Ordinance Sec: 16-03-0010, 0020
This warrant is CERTIFIED FOR SERVICE in the Horry County/ Municipality of Horry
is to be arrested and brought before me to be dealt with according to the law. (L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Vivian Lynn Schrader Falls on 3/31-12

Signature of Issuing Judge
Christopher John Arakas

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

CERTIFICATE OF REPRESENTATION
(APPOINTING AS COUNSEL)

-VS-

VIVIAN SHRADER-FALLS

ERIC FOX

DEFENDANT)

FILE NO: 26A12-00001335

SSN: 255-21-4544

TO: Court of General Sessions of the Fifteenth Judicial Circuit
Office of the Solicitor
Appointed Counsel
Defendant

MELANIE HUGGINS-WARD
CLERK OF COURT

2012 MAY 21 PM 1:47

FILED
HORRY COUNTY

This certifies that the above captioned Defendant is eligible for the services of the Public Defender, such determination having been made on, 16th day of May, 2012, regarding the charge(s) of:

M-972065 Murder

The Defendant's Counsel is Eric Fox. The office of the Public Defender requests on the Defendant's behalf any and all evidence in the possession of you and or your agents pursuant to S.C. Criminal Practice Rule 5, and Brady v. Maryland 373 U.S. 383 (1963). The formal Motion for Discovery is attached.

CERTIFIED COPY

2014 JUL 23 PM 4:14

Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

CORWAY, SC

DATE: May 17, 2012

ORRIE E. WEST
FIFTEENTH CIRCUIT
PUBLIC DEFENDER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSION
COUNTY OF HORRY) OF THE FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) NOTICE AND MOTION FOR PRODUCTION
) OF SPECIFIC EVIDENCE AND
-VS-) DISCLOSURE OF WITNESSES

VIVIAN SHRADER-FALLS
DEFENDANT)

FILE NO: 26A12-00001335

SSN: 255-21-4544

TO: SOLICITOR FOR THE FIFTEENTH JUDICIAL CIRCUIT

FILED
HORRY COUNTY
2017 MAY 21 PM 1:47
MELANIE HUSSINS-WARD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that unless the prosecution responds to the Defendant's request for disclosure within 30 days, or within such time as may be ordered by the Court, Counsel for the Defendant will move this Court for an Order compelling that the State:

1. Make available for Defendant any and all written and oral statements by the Defendant which are, or may come to be, in the possession of the State.
2. Make available for purposes of inspection, and copying, any and all police reports relating to the investigation and circumstances surrounding the crime which the Defendant is charged with, including any and all statements taken from witnesses and the Defendant.
3. Make available to the Defendant all tangible objects obtained during the investigation of this case, including, but not limited to:
 - (a) All tangible objects obtained from the scene of the crime; and
 - (b) All tangible objects obtained from the State's witnesses in this case
 - (c) All tangible objects the State intends to introduce into evidence at Trial which are relevant to the offense charged.
4. Make available any witnesses known to the State who have knowledge of facts which might be favorable to the Defendant.
5. Make available any promises made or actions taken by the State which caused or might have caused any witnesses for the State to testify on behalf of the State.
6. Make available any inconsistent statements made by witnesses for the State or any statements made by witnesses for the State which tend to exculpate the Defendants or to negate participation by the Defendants in the alleged crime.
7. Make available to the Defendant all results of laboratory tests, scientific tests, or physical examinations conducted in connection with this case, including but not limited to:
 - (a) Analysis of handwriting
 - (b) Photographs secured of the scene of the crime
 - (c) Comparison of fingerprints

CERTIFIED COPY

2017 JUL 23 PM 4:14

Melanie Hussins-Ward
Clerk of Court

8. Make available any facts which tend to exculpate the Defendant.
9. Make available any and all scientific or medical, psychiatric, legal or other information, reports or records which might tend to reflect on the credibility or competence of any of prospective witnesses for the State.
10. Make available to the Defendant the names and addresses of all persons who have knowledge of this case or who have been interviewed by the investigating officers in connection with this case.
11. Make available to the Defendant, the SLED, FBI, and local arrest and conviction records of all persons, including the Defendant, named in connection with this proceeding.

12. Make any chemist, analyst, and all persons within the chain of custody appear in Court for the purpose of personally testifying. Attorney for the Defense thus objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, S.C. Rules of Criminal Procedure.

This information is requested pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure. This information is further requested pursuant to Brady vs Maryland, 373 U.S. 383, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963), U.S. vs Adams, U.S. 97, 49 L Ed 2nd 342, 96 S. Ct. 2392 1976, State vs Mixon 274 S.E. 2d 408 (1981). Further this information is requested on the grounds that it is essential to insure the Defendant's right to a fair trial, right to confrontation of witnesses, the right to effective Counsel and due process of law guaranteed by the South Carolina Constitution, and the United States Constitution.

WHEREFORE, Defendant prays:

- (a) That the Solicitor be Ordered to produce all information described herein and allow the Defendant the right to examine, inspect, copy and photograph, such materials and information at a specific time and place to be fixed by the Court.
- (b) That the information be provided no later than 30 days from the date of this request, as reflected by the Clerk of Court's time-stamp appearing on the face of this Document.
- (c) That the Court enter an Order requiring the Solicitor's Office to make continuing disclosure of all matters requested herein up to and during the Trial of the charges against the Defendant.

RESPECTFULLY SUBMITTED,



ORRIE E. WEST
FIFTEENTH CIRCUIT
PUBLIC DEFENDER

DATED: May 17, 2012
CONWAY, SOUTH CAROLINA

CERTIFIED COPY

2014 JUL 23 PM 4:14

Pelanie Higgins-Ward
CLERK OF COURT
Horry County

FILED
Horry County
JUL 23 2014
CLERK OF COURT
Horry County

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

STATE OF SOUTH CAROLINA,)
)
v.)
)
VIVIAN LYNN SCHRADER FALLS,)
)
)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2012-GS-26-02679

VERDICT FORM

FILED
HORRY COUNTY
2014 JUL 23 PM 4:10
MELANIE HUGGINS-WARD
CLERK OF COURT

I. MURDER

On the charge of Murder, we the Jury, by unanimous consent, find the Defendant, Vivian Lynn Schrader Falls (*Check only one of the following options*):

Not Guilty

or

Guilty

Walter Lynch
FOREPERSON'S SIGNATURE

May 8th, 2014
Conway, South Carolina

CERTIFIED COPY

2014 JUL 23 PM 4:14

NOTE
Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

If you find the Defendant 'Not Guilty' of Count I (Murder), please proceed to Count II (Voluntary Manslaughter) on page 2. If you find the Defendant 'Guilty' of Count I (Murder), please notify the Bailiff that deliberations are complete.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

STATE OF SOUTH CAROLINA,)
)
v.)
)
VIVIAN LYNN SCHRADER FALLS,)
)
)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2012-GS-26-02679

VERDICT FORM

FILED
HORRY COUNTY
2014 JUL 23 PM 4:10
MELANIE HUGGINS-WARD
CLERK OF COURT

II. VOLUNTARY MANSLAUGHTER

On the charge of Voluntary Manslaughter, we the Jury, by unanimous consent, find the Defendant, Vivian Lynn Schrader Falls (*Check only one of the following options*):

Not Guilty

or

Guilty

FOREPERSON'S SIGNATURE

May _____, 2014
Conway, South Carolina

Once you have reached a verdict on Count II (Voluntary Manslaughter), please notify the Bailiff that deliberations are complete.

CERTIFIED COPY

2014 JUL 23 PM 4:14

NOTE
Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

M 972065

79

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

STATE OF SOUTH CAROLINA,)
)
vs.)
)
VIVIAN LYNN SCHRADER FALLS,)
)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-GS-26-02679

**ORDER GRANTING DEFENDANT'S
MOTION TO RECONSIDER DENIAL
OF EARLY PAROLE ELIGIBILITY
PURSUANT TO S.C. CODE § 16-25-90**

This matter came before the Court on a Motion to Reconsider the Court's denial of Defendant's Motion for Early Parole Eligibility Pursuant to § 16-25-90, Code of Laws of South Carolina, 1976, as amended. Defendant was represented by Eric Fox, Esq. and Kia Wilson, Esq. of the Fifteenth Circuit Public Defender's Office. The State was represented by Assistant Solicitor Scott Graustein, Esq. of the Fifteenth Circuit Solicitor's Office. The Defendant was convicted of Murder by a jury on May 8, 2014, and received a sentence of thirty (30) years in prison. Contemporaneous with the consideration and imposition of the Defendant's sentence, the Court denied a motion by defense counsel for a ruling under § 16-25-90 making Defendant eligible for early parole after serving one-fourth of the sentence.

PROCEDURE

"The circuit court must make specific findings in ruling on parole eligibility or ineligibility under § 16-25-90." *State v. Blackwell-Selim*, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011). Section 16-25-90 provides that:

... an inmate who was convicted of ... an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to ... an offense against the household member ... presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

CERTIFIED COPY

2014 JUL 23 PM 4: 14

Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

MELANIE HUGGINS-WARD
CLERK OF COURT

2014 JUL 14 PM 12: 56

HORRY COUNTY

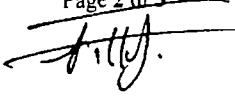
S.C. Code Ann. (1976 as amended). "Such a history [of criminal domestic violence] must be proven by a preponderance of the evidence." *Blackwell-Selim*, 392 S.C. at 3-4, 707 S.E.2d at 428 (citing *State v. Grooms*, 343 S.C. 248, 254, 540 S.E.2d 99, 102 (2000)). "Therefore, mere production of evidence does not automatically result in earlier parole eligibility; instead, the defendant must persuade the judge by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than its nonexistence." *Grooms*, 343 S.C. at 253-54, 540 S.E.2d at 101-02 (citing 2 *McCormick* on Evidence § 339 (5th ed. 1999)). "Use of the term 'credible evidence' indicates the legislature intended the defendant's evidence to be, in fact, trustworthy, not simply plausible The defendant must persuade the judge her evidence is reliable." *Blackwell-Selim*, 392 S.C. at 4, 707 S.E.2d at 428.

FINDINGS

The Court finds Defendant's trial testimony to be credible and reliable regarding the existence of a relationship between herself and the victim and the fact that she and the victim cohabitated. Defendant's testimony regarding her relationship with the victim and their cohabitation was also corroborated at trial by the testimony of her daughters, Vanessa Kay Johnson and Rosanna Marie Pegg. Therefore, the Court finds that the victim in this matter, in relation to the Defendant, meets the definition of a household member as envisioned by § 16-25-90.

The Court also finds the trial testimony of Beverly Saylor and defense expert Vicky Borbus credible and reliable. Both Ms. Saylor and Ms. Borbus testified regarding specific instances of criminal domestic violence experienced by the Defendant at the hands of the victim. This testimony was also corroborated at the hearing of the instant motion by defense witnesses Ann Rich and Raphael Falls. The Court finds this evidence to be persuasive that a history of criminal domestic violence was more probable than not despite the fact that the victim had neither a prior criminal history nor any documented history of domestic violence. In making its findings, the Court did not consider testimony or evidence of prior

CERTIFIED COPY
2014 JUL 31 4 14
M. J. [unclear]
CLERK OF COURT
HOBBS COUNTY

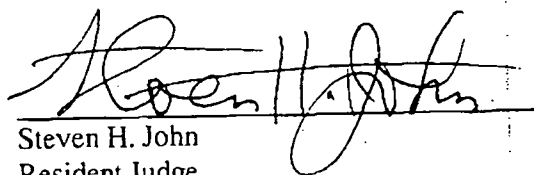


domestic abuse suffered by the Defendant at the hands of third parties. Therefore, while this is a close question, the Court finds that the Defendant has proven, by a preponderance of the evidence, a history of criminal domestic violence suffered by the Defendant at the hands of the victim, a household member.

While I do not believe I now have the jurisdiction to amend my earlier sentence of the Defendant of thirty (30) years, for future consideration at any parole hearing, the Court states that its earlier denial of the Defendant's Motion for Early Parole Eligibility on May 8, 2014, was factored into the Court's sentence of the minimum thirty (30) years imprisonment. The Court believes that serving seven and a half (7.5) years (i.e. one-fourth of a thirty year sentence) would be both inappropriate and inadequate for the crime the Defendant committed. Furthermore, had the Court granted the Defendant's Motion for Early Parole Eligibility on May 8, 2014, the Court would have imposed a sentence of forty-one (41) years.

Notwithstanding, it is therefore

ORDERED that Defendant is eligible for early parole after serving one-fourth of her sentence for murder pursuant to § 16-25-90.



Steven H. John
Resident Judge
Fifteenth Judicial Circuit

July 14, 2014
Conway, South Carolina

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2014 JUL 23 PM 4: 14

Melania Huggins-Ward

CLERK OF COURT
Horry County

